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Kent Political Almanac

'Europe in the World' 2019

Special issue

School of Politics and IR

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The Kent Political Almanac was created to provide a platform for academic debate and peer-reviewed publication opportunities for students in Politics and International Relations. This journal's purpose is to showcase the School's best undergraduate and postgraduate essays.

The initiative came from students of the School of Politics and IR, which led to the journal being launched November 2013.

All articles are peer-reviewed by both students and members of the School's academic staff. We are proud to be an entirely student-led publication supported from our School of Politics and IR at the University of Kent.

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‘Europe in the World’ Special issue

Dear Readers,

May we welcome you to the 2019 edition of the *Kent Political Almanac* (KPA)! We are glad to announce that this year’s edition marks the KPA’s fifth publication.

The editorial board is honoured to once again launch the journal in partnership with the Global Europe Centre at the University of Kent. In light of this partnership, we decided to continue the path initiated by previous editorial boards, and thus follow the theme ‘Europe and the World’.

This journal represents a selection of the best works submitted by POLIR students of any degree stage at the University of Kent. Given the diverse backgrounds of the selected authors, this year KPA offers a wide range of academic and political perspectives to the study of the EU and its Member States, while demonstrating an extensive potential of Kent students.

The articles touch upon many critical current issues concerning the European Union, its characterization and its engagement *vis-à-vis* the ‘Other’. As such, whilst premising our selection process mainly on the quality of the contents, we have also tried to cover as many current topics as possible, in order to make this publication updated with all the recent developments. Furthermore, we have aimed to accommodate different perspectives and methodologies, going from explanatory researches to discourse analyses, from mainstream and classic theoretical frameworks to critical approaches. These two aspects make this fifth publication an invaluable academic source for reflection and critical engagement.

Nonetheless, the abovementioned process could not have been possible without the intense and dedicated work of all members of the editorial board as well as the staff of the School of Politics and International Relations, who employed their time to the cause of this superb project. Special thanks must also be given to the brilliant group of authors, whose diligence was essential for the purpose of this journal. Our most generous thanks go, however, to Professor Elena Korosteleva, for her considerable help throughout the year, her cordiality, and her devotion to this activity. We are hence obliged to her for this year’s edition.

Our hope is that this journal will be able to stimulate a constructive dialogue among the university community.

Yours sincerely,

Emanuele Errichiello
Editor-in-chief

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Abstract

Launched in 1962, the Common Agricultural Policy (CAP) is a common policy for all the countries of the European Union (EU) aiming at supporting farmers and improving agricultural productivity. To these imperatives of productivism and protectionism have been added other principles now underpinning as well the CAP, such as rural community development or environmentally sustainable farming, deemed to be necessary reforms in tune with the times. Such measures appeared however quite late on the CAP agenda and CAP reforms have often been described as 'incremental' as their results have not been as groundbreaking as they were supposed to be. This article thus addresses the hurdles the CAP faces and sheds light on the reasons why the CAP has been so difficult to reform. It seems that internal pressures have largely preclude the CAP from benefiting from any radical reforms. First, Member States within the Agricultural and Fisheries Council retain most of the power over the CAP decision-making process, voicing either their liberal discourses on agriculture, or their protectionist views in the name of a certain patriotism. 'Epistemic communities' comprising interest groups and agricultural trade unions and organizations also play a major role in the upholding of protectionism, impeding the CAP reform process towards more liberalism. It is finally argued that the CAP undergoes the burden of 'path-dependency' making it difficult to take a completely new direction without any costs. This article concludes by acknowledging the competitiveness of European agriculture in the world, that still needs however to adapt to the current globalized context to maintain its position as a world leader.

On the difficulty to reform the Common Agricultural Policy: A reflection of the discrepancies between European agriculture and the rest of the world

Introduction

According to Carsten Daugbjerg, the decision-makers of the Common Agricultural Policy 'cannot have been unaware of the basic problems and the welfare economic gains which could be brought about by radical reform' (Daugbjerg, 1999: 410). This concern, that the Professor of food and agricultural policy raises, questions the efficiency of the CAP ongoing reform process. The CAP is the first and largest supranational policy in the EU. It was originally designed to ensure decent living standards to European farmers as well as to provide a sustainably produced supply of food, as enshrined in the 1957 Treaty of Rome (Article 39). Therefore, the CAP quickly appeared as an important symbol of European integration, governing not only the relationships of EU Member States with each other, but also with the rest of the world. Through market unity, community preference and financial solidarity, as its core principles, the CAP implemented a dose of protectionism in an increasingly globalized and market-oriented world. This observation, amongst other issues such as overproduction or expensiveness, has led to several calls for reforms since the establishment of the policy. Nonetheless, it seems that the CAP is resistant to change, as its initial defects remain, leading to criticisms regarding its reforms, often qualified as 'piecemeal' or 'incremental'. One may thus wonder to what extent the CAP has not yet been subjected to a 'radical reform', to quote Daugbjerg. In other words, what are the internal and external pressures that prevent EU policy-makers to adopt a revision of the CAP? In order to tackle this question, this article will focus on the CAP itself, its reform process, and the stakeholders who intervene in the latter, rather than the reforms that have already been adopted. To do so, the role of the institutional structure and of interest groups and farmers' organizations will be assessed, as well as the burden of 'path-dependency'. The main findings are that while the CAP is a European level policy, Member States seem to manage to impose their interests, in response to interest groups' pressures and for fear of transitional costs.

The role of institutions in the non-reform process

The formal CAP decision-making process, the overwhelming power of Member States within the Council of the EU and the autonomy of European institutions as a whole, seem to be partly responsible for the difficulty to reform the CAP. To begin with, the CAP decision-making process has largely constrained the possibility for radical reforms. Historically, the European Commission and the Agriculture and Fisheries Council (AGRIFISH), composed of the agriculture Ministers of all Member States, are the main actors of the CAP decision-making process, the former drafting legislation and the latter adopting, modifying or rejecting it (Cini and Borragán, 2016). The European Parliament, for its part, was rather considered as a 'marginal player' (Grant, 1995: 175). Indeed, its role was limited to a mere consultation and the Council of the EU could bypass it regarding CAP expenditures until the Treaty of Lisbon. Within the AGRIFISH, the qualified majority voting (QMV) system was supposed to prevail but the practice favored unanimity, giving each Member State a veto power (Cini and Borragán, 2016). The institutional set-up was thus a curb to the overhaul that was needed, as Member States often had different views and have always been willing to avoid

unpopular reforms (Wilkinson, 1994). As a result, CAP changes kept being incremental during the 1970s and 1980s by only responding to particular crises. While restrictions on production were imposed to counter the issue of surpluses (e.g. 'guaranteed ceilings' or quotas), the guaranteed prices principle remained (Cini and Borragán, 2016). Nonetheless, the QMV system imposed itself within the AGRIFISH in the wake of the 2003 Nice Treaty, and the CAP decision-making process came under the ordinary legislative procedure with the Treaty of Lisbon (Ibid). These European institutional reforms were deemed to pave the way for a more dynamic and efficient reform process. The 2013 CAP reform was the first to be adopted by the co-decision procedure. It seems however that the growing role of the European Parliament undermined the Commission and empowered the Council, which usually voices national agricultural concerns (Ibid), leading to what some have called 'co-indecision'. The reform that was adopted had therefore little to do with what was originally announced, especially as far as the environmental aspect of the reform was concerned. The Commission is still rather seen as an essential institution in the agricultural policy-making in that the agriculture commissioner should act as a policy entrepreneur (Nedergaard, 2006). Yet, this has not prevented the Commission from marginalizing CAP reform to facilitate the 2004 and 2007 enlargements, even though food security and agricultural structural funds were at stake (Grant, 1995). This may be explained by a lack of dialogue between pundits and decision makers (who usually call for CAP revisions) which hampers the reform pace (Nedergaard, 2006).

As mentioned earlier, Member States within the Council and through their agriculture ministers within the AGRIFISH, retain most of the power in the reform process, and this for two main reasons: an 'inflationist bargaining dynamic' (Cini and Borragán, 2016: 310) and an 'economic patriotism' (Grant, 2012) resulting from particular ideas of some Member States. Decision-taking in the area of agriculture is the outcome of bargaining and compromise in the first place. During negotiations, each agriculture minister attempts to assume 'the biggest slice of pie' possible regarding the EU budget dedicated to agriculture (Cini and Borragán, 2016). The AGRIFISH therefore often rejects propositions that would jeopardize the redistribution aspect of the CAP, which makes it difficult for the Commission to introduce reforms that cut costs (Ibid). Even though the CAP is the first European common policy, Member States, thanks to the Council, enjoy an overwhelming power over the decision-making process. This means that Member States can easily voice their positions as regards the CAP, which leads, at worst, to the upholding of the status quo, and, at best, to incremental reforms. Two main different discourses indeed exist amongst countries: a neo-liberal one – e.g. Sweden or the United Kingdom – and a protectionist one

– e.g. France or Ireland – (Grant, 2012). While neo-liberals are market-oriented and thus reform-friendly, protectionists rather view agriculture as 'exceptional' with cultural and economic values (Ibid). France is a case in point of this 'economic patriotism'. French agricultural 'exceptionalism' stems from identity constructions (Alons, 2014) as well as an economic paradigm characterized by state intervention (Kessler, 1999). On the one hand, France's self-image of leading a European coalition resisting to the American hegemony shaped the country's position in favor of the protection of its agricultural sector. This was particularly noticeable during the 1986 Uruguay Round of the General Agreement on Tariffs and Trade which led to the so-called 'MacSharry reform', less liberalizing than originally planned because of the pressure from several agricultural protectionist countries. On the other hand, France simply expresses its economic interests in pursuing such a protectionist policy (Konold 2010). The CAP system is in the best interest of agricultural powers, which is somewhat reminiscent of Stanley Hoffman's 'intergovernmentalism'. All in all, it appears that ideas are embedded in state interests, making the possibility of reform more difficult since states seem to have the final word.

The Farming Lobby

As assessed previously, European institutions strike as bearing a share of responsibility in the CAP (non-) reform process. Ideas are at the roots of national identities and economic paradigms, which decisively influence countries' positions. Nonetheless, one may argue that agricultural unions, interest groups and farmer's organizations hold a salient part in pressuring national governments to voice their interests, especially thanks to their access to European institutions. National pressures undertaken by farmers' organizations must not be overlooked as they manage to impose their views at the European level through the agriculture ministers within the AGRIFISH (Cini and Borragán, 2016). It is noteworthy that agrarian interest groups often demand the status quo (Ackrill, 2000), generally because of economic interests, but also of farmers' conservatism (Cini and Borragán, 2016). The latter can be explained thanks to the French example, once again. The main French farmers' organization is the *Fédération Nationale des Syndicats d'Exploitants Agricoles* (FNSEA), which yields significant influence over the French government (Ibid). The FNSEA has for instance constantly been opposed to the direct payments system as it was considered as a form of salary that would imperil the status of farmers as individual entrepreneurs (Ibid). Conservatism is therefore often linked to the farming identity, which is the reason why many interest groups have campaigned against reforms.

One may nonetheless wonder why farmers' trade unions and interest groups carry out such a clout in the CAP decision-making process, while the share of agriculture in the global economy is in decline and the rural population is on the wane. First of all, farm groups are not in competition with any other groups to obtain government attention and subsidies (Kay, 2003). Their influence can also be explained by their incentives to mobilize. According to Public Choice Theory (Buchanan and Tullock, 1965) political agents are constantly searching for utility maximization and self-interest. Therefore, it is in the interest of farmers to lobby for the upholding of the CAP subsidy system (Mueller, 2003). It will indeed always be more profitable to partake in lobby activities to maintain the status quo, provided the resources spent in lobbyism are lower than those required to change production in the wake of a CAP reform (Ibid). It also means, paradoxically, that interest groups do not call for fairness in the allocation of subsidies. Rent-seeking has thus become an actual activity in the same way as farm production: since the 2003 'mid-term review' (MTR), interest groups pressure European institutions into preserving the Single Farm Payment (SFM), which gave the final blow to the completion of decoupling. Unions, organizations and lobbies finally retain such an influence thanks to their institutionalized access to the decision-making process. An 'epistemic community' (Haas, 1992) has surely emerged, enabling interest groups to share their knowledge and expertise, hence their empowerment. The *Comité des Organisations Professionnelles Agricoles* (COPA) is a relevant example of the

establishment of such a policy network. The COPA has been regarded as an influential EU-level sectoral association (Hix, 2005) and enjoys a right of consultation on all CAP decisions (Kay, 2003). Some could argue that the COPA undergoes a lack of unity because of constant budgetary pressures (Grant, 1995), but the reality is that it still yields an effective farm lobby influence. The COPA's opposition to the green payment scheme that was included in what was to become the 2013 reform for instance, led to a less radical change (Cini and Borragán, 2016). Nevertheless, national governments and European institutions have sometimes decided to go against the will of farmers' organizations. The MacSharry reform of 1992 implemented direct payments while the FNSEA had expressed its opposition. This reform can thus be considered as a critical juncture in the CAP history. The introduction of the SFP in the wake of the 2003 MTR is an other example of interest groups' failure. The CAP 'epistemic community' remains however a stability factor as policy-makers act in agreement with interest groups in order to keep a strong agrarian electorate.

A situation of no return

Having analyzed the interface between farmers' groups and national governments and EU institutions, which is one of the reasons why no real radical reforms have been undertaken so far, the third part of this paper will linger over the effects of the original objectives of the CAP, namely food production and security, on its difficulty to reform. It seems indeed that the CAP might bear within itself the seeds of its own incapacity to be reformed. The idea of 'path-dependency' explains how a change of direction in the policy would lead to unwanted costs.

According to Wyn Grant, 'reforms of the CAP have introduced new instruments for the management of the policy, but they have not fundamentally changed the nature of the policy itself' (Grant, 1995: 13). This statement sheds light on the 'path-dependency' (Kay, 2003) the CAP undergoes, that can be understood as a self-reinforcing mechanism. The original objectives of the CAP enshrined in the Treaty of Rome remain indeed the core of the policy (Ackrill, Hine, Rayner and Suardi, 1997). To begin with, agricultural productivity and technological progress, that appeared as primary ambitions, have always been highly influential in the reform process. The choice for high prices for instance stems from those objectives (Neville-Rolfe, 1984). No reforms have been able to escape from this productivist environment, even reforms that were deemed to be radical. The MacSharry reform was considered by some not as groundbreaking as it was supposed to be: incomes were only partially decoupled from production – even though the decoupling process will eventually succeed with the SFP – (Ackrill, Hine, Rayner and Suardi, 1997) and intervention buying was unchanged (Grant, 1995). Likewise, the 2013 CAP reform proved once again that the policy legacy was reasserted. While the greening aspect of the reform was seen as a 'paradigm shift', the original ideas of redistribution and subsidies were still in effect (Greer, 2017). The environmental discourse was therefore shadowed by the emphasis on food production (Ibid). Furthermore, the challenge of food security is still topical and favors the 'economic patriotism' rhetoric. This 'revival of the food security discourse' (Grant, 2012: 420) imperils the idea of 'multifunctionality' as well as the effectiveness of the second pillar of the CAP.

One could nonetheless wonder why the CAP bears the brunt of this 'path-dependency'. In other words, why would a shift of policy direction hardly be possible? A switch in the policy direction would entail many costs, in terms of time, information and administrative resources. As the CAP is a complex common policy that requires specific and technical knowledge and administrative skills, a new direction would translate into the need for new pundits and specialized bureaucrats, able to seize the new challenges (Kay, 2003). It is thus often said that the management of the 1984 and 1988 budgetary crises was limited by the administrative heritage of the CAP (Ibid). By the same token, farmers adapt their work to the policy in effect. They may indeed develop particular skills and invest in specific capitals required for their production under the policy that prevails (Pierson, 1993). Each CAP

decision consequently demands farmers to modify their means of agricultural production, which involves several costs. Decision-makers may therefore have a hard time shifting the direction of the CAP, all the more so as it could be detrimental to small producers and lead to a decrease in farmers support. In order to avoid such costs, farmers gather in organizations in order to pressure national governments and EU institutions, as discussed in the previous part of this paper.

European agriculture in the world

The European Union cannot get out of the need for a Common Agricultural Policy. As long as the CAP is about a common market, and taking into account the strategic importance of food and of the technological and economic specificities of this sector, the agricultural policy must be assumed in a common way by all Member States, in accordance with the principle of solidarity. This urge for solidarity is occurring at the same time as the acceleration of the liberalization of trade in agricultural products at world level. The competitive pressure resulting from the opening of the Community market is an additional factor of pressure on European agriculture. Therefore, in the context of a globalized economy, several conclusions can be drawn from the difficulty to reform the CAP. In the first instance, the path-dependency of the CAP reveals a common belief in productivism and protectionism, a belief that remains strong today. While those watchwords have allowed European agriculture to be competitive, they have also led to an isolation of European agriculture from third parties. It seems today that the food trade, *inter alia*, remains low with developing countries for example, even though the EU could benefit a lot from them, enabling one to consider the EU as a normative power. Most importantly, the difficulty to reform the CAP sheds light on the division of Member States in their conception of world affairs and therefore the place of European agriculture in the world. Several recent reform proposals have however gained public attention, which would not displease diehard intergovernmentalists. A CAP renationalization has thus become a possibility, one of the proposition being the co-financing of Pillar one, leaving Member States the choice to decide how the money is spent (Mattews, 2018). Beyond the benefits it would bring in terms of a more efficient use of EU funds, such a reform would enable Member States to move away from Brussels' stranglehold on agriculture, and thus reduce the existing divisions. This would not mean a questioning of the Community dimension of the CAP, but rather a larger autonomy for Member States, probably leading at the end of the day to greater spending on rural development. The EU could consequently become a world leader in green agriculture and farmers support.

Conclusion

The CAP, as the oldest European supranational policy, might also be the one the most difficult to reform. Indeed, as observed throughout our analysis, the CAP has been difficult to reform for several reasons, including the CAP decision-making process and the role of interest groups. The policy network that surrounds the CAP might therefore be a hurdle to its radical revision, which seems to be a growing concern amongst scholars particularly (Cini and Borragán, 2016). Decision-makers have thus not been 'unaware of the basic problems', in the words of Daugbjerg, but have merely based their decisions on a cost/benefit analysis, and responded to internal pressures from farmers' organizations. The CAP remains fueled with contradictions, between supranationalism and the overwhelming clout of Member States, while problems of 'path-dependency' still remain. It seems therefore that the most likely future of the CAP is the continuity of what has been done so far, namely incremental responses to particular crises. Nonetheless, the United States' current will to pursue national economic interests and China's status as a non-market economy might open a breach in the EU's position as a defender of the multilateral system, even in agriculture.

Bibliography

Ackrill, R.W. (2000) 'CAP reform 1999: a crisis in the making?', *Journal of Common Market Studies* 38(2).

Ackrill, R.W., Hine, R.C., Rayner, A.J. and Suardi, M. (1997) 'Member states and the preferential trade and budget effects of the 1992 CAP reform: a note', *Journal of Agricultural Economics* 48(1).

Alons, G. (2014) 'Farmers versus ideas: explaining the continuity in French agricultural trade policy during the GATT Uruguay Round', *Journal of European Public Policy*, 21:2.

Buchanan, J. M and Tullock, G. (1965). *The Calculus Of Consent* (Ann Arbor: The University of Michigan Press).

Cini M. and Pérez-Solórzano Borragán N. (2016). *European Union Politics* (Oxford: Oxford University Press).

Daugbjerg, C. (1999) 'Reforming the CAP: policy networks and broader institutional structures', *Journal of Common Market Studies* 37(3).

Grant W, 'Is agricultural policy still exceptional?', *The Political Quarterly 66(3)*, 1995.

Grant W. (1995) 'The limits of common agricultural policy reform and the option of denationalization', *Journal of European Public Policy*, 2:1.

Grant W. (2012) 'Economic patriotism in European agriculture', *Journal of European Public Policy*, 19:3.

Greer A. (2017) 'Post-exceptional politics in agriculture: an examination of the 2013 CAP reform', *Journal of European Public Policy*, 24:11.

Haas, P. (1992) 'Introduction: Epistemic communities and international policy coordination', *International Organizatio*n, 46(1).

Hix S., *The Political System of the European Union*, (New York: Palgrave MacMillan, 2005).

Kay A. (2003) 'Path dependency and the CAP', *Journal of European Public Policy*, 10:3.

Kessler, M.C. (1999). *La Politique Étrangère de la France: Acteurs et Processus* (Paris:

Presses de la fondation nationale des sciences politiques).

Konold, D. (2010) 'Farm interests as bargaining chips: France in the EU – Mercosur free

trade negotiations', *Journal of Public Policy* 30.

Mueller, D. C. (2003). *Public Choice III*, (New York: Cambridge University Press).

Nedergaard, P. (2006) 'The 2003 Reform of the CAP. Against all Odds or Rational Explanations?', *Journal of European Integration* Vol.28, No.3.

Neville-Rolfe (1984). *The Politics of Agriculture in the European Community* (London:

European Centre for Policy Studies).

Pierson, P. (1993) 'When effect becomes cause: policy feedback and political change',

World Politics 45.

Wilkinson, A., Kjeldahl, R. and Tracy M. (1994). *Renationalisation Of The Common Agricultural Policy?* (Institute of Agricultural Economics).

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Abstract

Through analysing the Court of Justice of the European Union's case law, this article traces the role of the Court in furthering European integration through direct effect, supremacy, and mutual recognition. Adhering to neofunctionalist expectations, the Court exhibited a spill-over effect, assuring negative economic integration. However, intergovernmentalism provides an equally valid theoretical basis for accounting for the Court's central function in the process of European integration. Additionally, this article questions whether both theories can be applied to the fundamental role of the Court in disintegration, acting as an antagonist within the Eurosceptic narrative constructed by the Leave campaign for Brexit. Integrationist judgements of the Court, notably *Factortame* and *Thoburn* (the 'metric martyrs' case), were perceived as an interference into British sovereignty, supporting Brexiteers' calls for 'taking back control.' After analysing the theoretical capacity of neofunctionalism and intergovernmentalism to explain disintegration, this article concludes that Europe is decisively distancing itself from a historical reality that either theory can fully account for. The Court will remain integrationist; these are the values enshrined in European treaties. Therefore, one must question whether the Court's legitimacy will be contested in the near future, thus challenging the foundation of the Union itself.

The contribution of the Court of Justice of the European Union to European (dis)integration: a political analysis

Introduction

Jean Monnet summarised his method for European integration as "*petits pas, grands effets*": baby steps, big effects (Schmitter, 2005: 257). Monnet's analogy echoes Haas' theory of neofunctionalism. Emphasising the role of supranational institutions (Hix, 2005: 15), neofunctionalism theorises integration through the principle of spill-over, defined as "a given action, related to a specific goal, creat[ing] a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action, and so forth" (Lindberg, 1963: 10). The case law of the Court of Justice of the European Union (CJEU) demonstrates spillover. Small legal actions lead to large results: the direct effect and supremacy of European over national law ensured economic and in turn, political negative integration, wherein barriers hindering integration are removed. Landmark court decisions such as *Van Gend en Loos* (1962) and *Costa v. ENEL* (1964) constitutionalised European Community (EC) treaties (Azoulai and Dehousse, 2012: 4) – specifically the 1958 Treaty of Rome – and transformed them into a set of rights and obligations enforceable upon all citizens, public and private entities (Stone Sweet and Brunell, 1998: 65). The Court thus placed itself at the forefront of the first phase of negative European integration in the 1960s and 1970s (Marciano and Josselin, 2007: 72), specifically related to the development of the common market. Driven by *Cassis de Dijon* and the resulting principle of mutual recognition, the Court removed trade barriers (Stone Sweet, 2010: 16), ensuring economic integration which spilled-over into political harmonisation. In examining direct effect and supremacy through a neofunctionalist and intergovernmental lens, this article demonstrates that the CJEU played a fundamental role in European integration, most notably as its legal principles fuelled EC market liberalisation. Equally, CJEU case law contributed to European disintegration, exemplified in the United Kingdom's decision to leave the European Union. In this article, European disintegration is understood as an "indeterminate process," as articulated by Rosamond (2016: 868). Within the narrative of the EU constructed by the Leave campaign, CJEU rulings were often the main

antagonist. Court rulings exercising supremacy over British national law were construed into Eurosceptic myths and perceived as a violation of sovereignty. Accordingly, the following sections evaluate the ability of neofunctionalism and intergovernmentalism to explain the role of the Court in European (dis)integration.

Integration beyond states: direct effect

Firstly, the direct effect of European law on individuals enabled its penetration into national law, thus furthering European integration. Direct effect assures that individuals may invoke European law in national courts, as if European law itself were national law (Weiler, 1991: 2413). Direct effect was established in the infamous *Van Gend en Loos* case. The case was taken before the Court in 1963 before internal tariffs within Member States (MS) were abolished (Stein, 1981: 4). A Dutch company imported chemicals from West Germany. The company sued the Dutch Tax Administration before a Dutch tariff tribunal, arguing that the required customs duty on the chemicals violated Article 12 of the Treaty of Rome (Stein, 1981: 4), which required states to stop increasing tariffs on imports from fellow EC MS (Treaty of Rome, 1957: 8). The CJEU held that the article prohibits an increase in customs duties, has direct effect, which thereby establishes individual rights which may be upheld in national courts (Lagrange, 1967: 723). Hence, the Court distanced itself from the doctrine of international law, where international obligations are only applied to states (Weiler, 1991: 2413). However, Article 12 only imposes obligations on MS, stating that MS should not introduce "new customs duties on imports or exports" or other charges with similar effect (Treaty of Rome, 1957: 8). Thus, the Court provided "thrust" to the process of integration (Lagrange, 1967: 724) and read beyond the legal principle to ensure the political objectives of the Treaty of Rome: rebuilding the European post-war economy, upholding peace in Europe and European integration. According to Judge Pescatore, who served at the Court at the time, the judges possessed "*une certaine idée de l'Europe*" (Pescatore, 2015: 2): a certain idea of Europe, perhaps hinting at judicial activism. However, a majority of the cases heard in front of the CJEU are preliminary references. Thus, its integrationist judgments may be an unintended consequence. Nevertheless, whilst its political agency is significantly constrained, the Court found itself at the forefront of the process of European integration through upholding pro-integration values enshrined in the constitutional Treaty of Rome.

Negative economic integration: supremacy and mutual recognition

Following direct effect, the supremacy of European allowed the Court to further enact a pro-integration agenda. Supremacy entails that in a conflict between European and national law, the former prevails (Stone Sweet and Brunell, 1998: 65-66). The principle was established in *Costa v ENEL* in 1964 (Costa v ENEL, [1964]). Costa – a shareholder of a private company nationalised by the Italian authorities – had shares transferred to ENEL, a company established by the government to enable the nationalisation of the company (Kaczorwksa, 2016: 274). Costa brought a dispute against ENEL regarding an electricity bill (*ibid*). The Court decided that the nationalisation was not compatible with the provisions outlined in the Treaty of Rome and that EC law could not be overridden by na tional law (Costa v ENEL, [1964]). The Court thus established the vital principle of supremacy, which, according to Judge Federico Mancini, "was not only an indispensable development," but "also a logical development" (Mancini, 1989: 600). As the Court had previously expanded its powers through establishing direct effect in *Van Gend en Loos*, supremacy was a natural progression. Realising the complete significance of direct effect required supremacy (Mancini, 1989: 600-601). Furthermore, without supremacy, MS could annul the doctrine of direct effect because national law would prevail over European obligations (Kaczorwska, 2016: 275). Although supremacy is a principle also found in international law, the CJEU

modified the principle that when in conflict with national law, international law is overruled (De Waele, 2010: 4-5). The supremacy of European law overrules national law and constitutions (Maduro, 1998: 175), thus sparking intergovernmentalist critique over potential violations of national sovereignty. The widespread powers of the Court through supremacy were unprecedented at the time of its inception, and continued to increase throughout history. Supremacy and direct effect were thus vital to European integration.

Likewise, the principle of mutual recognition allowed the Court to substantively contribute to economic negative integration through removing trade barriers between MS, thus ensuring the free movement of goods. Mutual recognition entails that goods produced or marketed in one member state are sold without restrictions in other MS, even if different MS have different "technical or quality specifications" (Kaczorowska, 2016: 594). The *Cassis de Dijon* case established mutual recognition in 1979 (Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein, [1979]). The German government set the minimum strength of alcohol of 25% per litre for marketing of certain alcoholic beverages (Kaczorowska, 2016: 593), which prohibited an importer from selling Cassis de Dijon, a French liqueur, in Germany, as it had 15-20 % alcohol (Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein, [1979]). The importer challenged the prohibition in German court, which referred the case to the CJEU. According to the CJEU, the German minimum alcohol percentage content could constitute a measure equivalent to a quantitative restriction, thus hindering free trade within the customs union and violating Article 30 of the Treaty of Rome (*ibid*), which states that "quantitative restrictions on imports and all measures having equivalent effect shall […] be prohibited between Member States" (Treaty of Rome, 1957: 13). Several similar rulings followed regarding cider vinegar, soft wheat pasta and substitute milk powder (Barnard and Peers, 2014: 336). Overall, *Cassis* and mutual recognition monumentally affected European integration. Mutual recognition highlighted the need for harmonisation in a time of 'Eurosclerosis' (Alter and Meunier-Aitsahalia, 1994: 537). At the time *Cassis* was brought to the Court, the 1973 oil crisis, inflation, and subsequent economic crisis (Phinnemore, 2016: 18) halted calls for economic and political integration in Europe. MS pursued protectionism and were hesitant to pursue collective European policies (*ibid*). Besides interpreting the treaties, the Court gave the process of harmonisation momentum at a time when it was stalled through ensuring negative economic integration by removing trade barriers.

Neofunctionalism

Alongside the Court, the Commission, businesses, lobbying groups and MS transformed the principle of mutual recognition beyond the common market and free movement of goods, as explained by a neofunctionalist interpretation of mutual recognition, (Stone Sweet and Brunell, 1998: 76). Put forward by Ernst Haas in the late 1950s (Burley and Mattlis, 1993: 43), neofunctionalism asserts that supranational institutions and transnational interest groups are central to the process of integration (Hix, 2005: 15). According to Haas, MS can be "persuaded to shift their loyalties, expectations, and political activities" towards a supranational institution with jurisdiction over states (Haas, 1961: 366-367). Thus, non-state actors drive integration as opposed to states (Hix, 2005: 15). Neofunctionalism highlights the independent role of the Court in ensuring integration, as explained by the principle of spill-over. Critically, following Haas, the integration of coal and steel lead to the integration of other economic and political areas (Lindberg, 1963: 10), as established by the neofunctionalist strategies of Monnet and the 1950 Schuman Plan (Marciano and Josselin, 2007: 64). Overall, Haas did not anticipate the "quiet accumulation" of Court decisions, specifically supremacy of European over national law and mutual recognition (Schmitter, 2005: 262). Regardless, following neofunctionalism, direct effect spilled-over into the principle of supremacy, which in turn triggered economic integration, culminating in political integration.

As the Court involved private individuals as opposed to states, direct effect triggered legal integration, thus ensuring progressive integration. With the exception of the International Criminal Court and special tribunals, most international courts rule on a national or supranational level. The CJEU established direct effect and supremacy, asserting that European law may be invoked by individuals in national courts. Therefore, the Court constitutionalised European law (Stone Sweet, 2010: 16). This increased the number of cases brought by individuals, requiring the Court to make more preliminary rulings, leading to greater interaction between the CJEU and national judges, cumulating in a rapid expansion of the Court's jurisprudence and effective power (Stone Sweet, 2010: 16). According to Haas, the growth of European law through private instead of national actors "is one of the strongest pieces of evidence in favour of progressive integration" (Haas, 1968: 485). Thus, direct effect generated greater European integration on an individual level.

Neofunctionalism further accounts for the spill-over of mutual recognition from economics to politics. Former Commissioner for the internal market Etienne Davignon, proposed that, in light of the *Cassis de Dijon* ruling, harmonisation policy should be altered and extended (Alter and Meunier, 2009: 143). The European Commission issued a communication broadly interpreting mutual recognition beyond trade, citing *Cassis* as the "foundation" for new harmonisation policies (Alter and Meunier, 2009: 143-144). In its 1985 White Paper regarding completing the common market, the Commission deemed mutual recognition as a general principle (Maduro, 1998: 132) and "an effective strategy for bringing about a common market in a trading sense" (European Commission, 1985: 18). Hence, *Cassis de Dijon* acted as a "catalyst," triggering a political retort from the Commission, which utilised the Court's decision to restart the stalled political harmonisation present in the first phase of European integration (Alter and Meunier-Aitsahalia, 1994: 535). The Commission's expansive interpretation of the case lead to increased lobbying from interest groups to MS, pushing for economic integration (*ibid*). Thus, the Court's legal decision reinvigorated European integration on a national and supranational level. In the second phase of European integration in the 1980s and 1990s, mutual recognition cumulated in the 1987 Single European Act (SEA), containing European "objectives and requirements," including "health, safety, consumer protection, and the environment" guidelines (Alter and Meunier-Aitsahalia, 1994: 554). Mutual recognition applied to the recognition of diplomas and professional qualifications of citizens across MS, securing the free movement of services, and cooperation of national courts regarding civil and criminal cases (Kaczorowska, 2016: 1051). Beyond mutual recognition, the treaty harmonised economic, monetary, and social policy (Phinnemore, 2016: 20). It triggered resurgence in calls for integration and a European Union (*ibid*). Therefore, according to neofunctionalism, the court indisputably contributed to European integration beyond the first phase of European economic integration.

However, neofunctionalism does not account for MS' opposition to integration. In the 1965 'empty chair' crisis, French President and intergovernmentalist Charles de Gaulle opposed qualified majority voting, fearing it may undermine French authority and sovereignty, resulting in a seven-month crisis where France did not attend Council meetings (Phinnemore, 2016: 17). Contemporarily, had a neofunctionalist prediction of integration been correct, Europe would have been fully integrated by today, perhaps including a common tax system or a European-wide Schengen area. Instead, the European Union faces more issues threatening disintegration than ever before, such as the United Kingdom exiting the European Union or the potential threat of Article 7 sanctions against Poland and Hungary. Thus, the effects of spill-over predicted by Haas may have been exaggerated, as it does not take into account the autonomy of MS. Instead, neofunctionalism asserts that whilst MS' opposition or reactions to the integration process can disrupt it, an integrated Europe remained inevitable, which is not factual. However, neofunctionalism does not

assume a linear journey to integration and expects disruptions, including crises such as Brexit (Hooghe and Marks, 2019: 3). Yet, Haas' theory is limited to integration. The contemporary challenges the EU faces are unprecedented in their severity. For the first time, a MS has chosen to leave the Union. Thus, Haas' school of thought is limited in its ability to explain European disintegration.

Intergovernmentalism

Improving from neofunctionalism's ontological faults, intergovernmentalism asserts that integration is driven by national governments following their national interests (Cini, 2016, p. 66). Although acknowledging the role of organisations and non-state actors in integration, intergovernmentalism follows the realist doctrine, maintaining that integration is linked to states' cost-benefit evaluation of zero-sum interests (Hix, 2005: 15). Thus, examining the case law of the Court through an intergovernmental lens raises concerns over potential judicial activism. According to intergovernmentalism, the Court transformed from possessing legal authority limited to infringement proceedings – as enshrined in the Treaty of Paris – to actively and perhaps independently furthering economic integration and constitutionalising the Treaty of Rome; "against the explicit opposition" of MS, as argued by Phelan (2018: 1563). In the case of *Van Gend en Loos*, Belgium, the Netherlands, and West Germany objected with claims of national sovereignty, echoed by the Advocate General (Stein, 1981: 4). The Belgian and Dutch governments expressly opposed the CJEU's jurisdiction (ibid). Regardless, the Commission and the Court took a pro-European stance (*ibid*). In *Cassis*, "high standard countries" such as France, Germany and Italy objected to the Court's ruling (Alter and Meunier-Aitsahalia, 1994: 542). Even the United Kingdom – which favoured market liberalisation – remained critical (*ibid*). Thus, in asserting the Court's independent role in integration, intergovernmentalism can account for the slow growth of EU case law.

When explaining economic integration, intergovernmentalism deems the Court as a tool to ensure MS abide by their commitments, thus emphasising the role of MS. In a European free trade zone, the benefits outweighed the costs (Stone Sweet and Brunell, 1998: 65) in both a realist and economic sense. Specifically, in the 1970s and early 1980s, European integration was relaunched under the guise of economics because of shifts in national politics. In 1983 (Alter and Meunier-Aitsahalia, 1994: 553), failed socialism in France triggered a move from autarkic (Barnard and Peers, 2014: 310) to conservative policies, favouring market liberalisation. Margaret Thatcher became prime minister of the United Kingdom in 1979 (Alter and Meunier-Aitsahalia, 1994: 553), and the conservative Christian Democrats unseated the Social Democratic government in Germany in 1982 (*ibid*). Despite being proposed by the Court through Cassis and the principle of mutual recognition, the implementation of economic integration only ensured because MS priorities and concerns (*ibid*: 155) changed. According to intergovernmentalism, laws and policies are nothing if they are not supported and enforced by governments, thus minimising the independent role of the Court in ensuring economic integration.

However, intergovernmentalism is not without its faults. Although the idea of a common market was relaunched partly because of changes in national government, the CJEU remains central to integration. Integration would not have been possible without its legal precedent. Furthermore, MS are generally willing to accept the jurisdiction of the Court, direct effect and supremacy, although the crux of the issue remains the relationship between national constitutional law and European law (Kaczorwska, 2016: 294). Regardless, specifically regarding economic integration, the Court's pro-integration agenda is a "social good" (Burley and Mattlis, 1993: 48) so long as it is compatible with the majority of MS interests. Yet, the central role of the Court in integration remains indisputable.

Thus, European integration was thus determined by MS' governments, the Commission and the Court. Attributing integration solely to the Court raises doubts of democratic deficit in the EC and judicial activism favouring integration. Whilst the Court's legal precedent is a precondition to integration by other actors, there is an intrinsic link between the Commission, the Court, and MS. States remain fundamental to the political decision-making process of the Commission and it is national judges who interpret EU law on a daily basis. The Commission proposes policy on the basis of CJEU decisions (Maduro, 1998: 108) and policies may be in turn be legitimised by the Court's decisions, as in the case of economic integration and the Treaty of Rome (*ibid*). Consequently, the central role of the Court is indisputable due to the power of European law ensured by supremacy and direct effect.

European disintegration: Brexit

Yet, whilst intergovernmentalism and neofunctionalism effectively explain the role of the Court in European integration, are the theories able to account for European disintegration? What role – if any – do the integrationist rulings of the CJEU play in the United Kingdom's decision to leave the European Union? On 23 June 2016 (Corbett, 2016: 11), with a turnout of 72.2% (*ibid*: 21), the United Kingdom voted to leave the European Union. 51.9% of voters chose to leave, 48.1% voted to remain (*ibid*: 11). A perceived lack of sovereignty, an urge to take back control from an apparent unelected, foreign decision-making body, the aftermath of the Great Recession in 2008, austerity, increased migration and "competition for low-skilled, low-pay insecure work" in Britain, all contribute to growing Euroscepticism, populism and English nationalism in the UK (*ibid*: 12-14), cumulating in Brexit. According to Eurosceptics, the CJEU in particular symbolises the divide between Britain and the European Union as a European court interfering with British sovereignty (Drewry, 2007: 102). The Court is the antagonist in the Eurosceptic narrative expressed by the Leave campaign; it is a foreign court imposing policies decided by unelected bureaucrats. Thus, the Court's supremacy over national courts and increasingly political decisions may be an important factor contributing to Euroscepticism and European disintegration.

One of the first CJEU cases illustrating supremacy of EC over UK law is *R v Secretary of State for Transport, ex parte: Factortame Ltd*. In 1990, a company of Spanish fishermen (*Factortame Ltd*) managed fishing vessels, which were registered as British. However, to avoid "quota hopping," UK legislation required a majority of owners to be British citizens. Thus, *Factortame* initiated legal proceedings against the British government. Ultimately, the Court deemed the legislation to be a violation of EU provisions (The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and Others [1990]). It must be noted that, as with future cases, the British court freely requested a preliminary reference to the CJEU and upheld EU law (Drewry, 2007: 114). *Factortame* yielded political alongside judicial implications, symbolising that the "almost unassailable constitutional wisdom" of parliamentary sovereignty was "compromised" by EC membership (*ibid*: 101). Thus, *Factortame* introduced an unprecedented influence of a 'foreign' court into British law, as was claimed by Drewey (2007). However, it equally demonstrates the increasing readiness of British courts to enact supremacy of EC over UK law (*ibid*).

The Eurosceptic narrative of the CJEU originates in *Thoburn v Sunderland City Council*. Known as the "metric martyrs" case, the 2003 proceedings concerned four food retailers who did not comply with the European metrication directive, of which three were criminally prosecuted. Particularly, Steven Thoburn asserted a right to be allowed to weigh and advertise his groceries in pounds and ounces (Drewry, 2007: 103; Thoburn v Sunderland City Council [2002]) According to the *Daily Star*, the directive in question may have resulted in a banning of the British pint, whilst the *Daily Telegraph* predicted the Queen's estate would need to cease "selling wood in imperial measures […] or trading standards of ficers will prosecute" (Drewry, 2007: 103; 'EU Imposes Metric Measurements on UK – European Commission,' 2001). Whilst metrication in Britain began in 1965, prior to EC membership, following *Thoburn*, Eurosceptic myths surrounding obscenely particular EU laws unearthed (*ibid*). Notably, during the Leave campaign, Boris Johnson said it was "absolutely crazy that the EU is telling us how powerful our vacuum cleaners have got to be, what shape our bananas have got to be, and all that kind of thing" (Henley, 2016). Whilst such regulations are Commission directives and not CJEU case law, the origin of Eurosceptic myths can be traced to *Thoburn*.

In emphasising the agency and independence of supranational institutions, neofunctionalism may account for the negative portrayal of the Court's decisions. Furthermore, the disintegration exhibited in Brexit may be an adverse effect of Haas' predictions, wherein if states favour supranational over national institutions, regional integration results (Hooghe and Marks, 2019: 2). Accordingly, contextual, social, and cultural factors contributed to the negative perception of the European Union, particularly the Court, resulting in regional disintegration. However, neofunctionalism is limited in its understanding of disintegration. In emphasising "path dependence" and "prior integration," disintegration supposedly poses more costs than benefits (*ibid*: 3) and thus is an unlikely possibility. Furthermore, neofunctionalism posits European integration as inevitable (*ibid*).

Conversely, intergovernmentalism asserts MS national interests and sovereignty, thus echoing the political discourse surrounding Brexit. Predicted by Hooghe and Marks, if integration challenges "national diversity," the latter triumphs (*ibid*). Similarly, as illustrated in the Eurosceptic interpretation of *Thoburn* and the perpetuation of similar myths, the CJEU was deemed as a foreign court opposing British national identity. Equally, Hoffman asserts that whilst states can cooperate on low politics, such as economics, integration of high politics is not possible (Hoffmann, 1966: 882). Thus, increased supranationalism may account for early British Euroscepticism. Prior to the 1986 Single European Act, Prime Minister Margaret Thatcher favoured market liberalisation (Drewry, 2007: 104). As economic integration spilled-over into political integration, Thatcher cited fears of a "European super-state," a sentiment later echoed in the Leave campaign (*ibid*; 'Speech to the College of

Europe "The Bruges Speech"' n.d.). The continuing integrationist agenda of the Court, upholding the Four Freedoms and furthering social rights, may thus have fuelled Euroscepticism. However, the Court's judgements are nuanced. On 14 June 2016, the Court ruled that the United Kingdom may restrict European "economically inactive" migrants' access to child benefit and tax credits (European Commission v United Kingdom of Great Britain and Northern Ireland – 2016). The judgement is not explicitly integrationist. Thus, the Court may – at most – be one of many factors contributing to Euroscepticism.

Conclusion

The CJEU drove economic integration forward through supremacy, direct effect and mutual recognition. When explaining economic integration, both neofunctionalism and intergovernmentalism retain elements of truth. From an intergovernmentalist perspective, MS partially forfeited national sovereignty to the Court through direct effect and supremacy to reap the economic benefits of neo-liberalism and the Commission's pro- integration agenda. Regardless, the Court will likely continue to promote integration, as these are the values enshrined in European treaties (Stone Sweet, 2010: 25). Thus, the CJEU is a unique institution within international law: transforming treaties into a de-facto supranational constitution (Stein, 1981: 1) is far outside the realm of other international courts. Yet, like its counterparts, the CJEU – in part because of its political implications – will face greater public scrutiny in the future (Azoulai and Dehousse, 2012: 12). As more recent treaties such as the 1992 Maastricht Treaty and 2009 Treaty of Lisbon strengthened the role of the CJEU, i.e. through enabling the CJEU to sanction states for not complying with its judgment (Burley and Mattlis, 1993: 74) and extending CJEU jurisdiction to the "third pillar" (Stone Sweet, 2010: 39), it seems MS – albeit begrudgingly – accepted the supremacy of the Court (*ibid*). At the moment, however, the Court is the crux of widespread Euroscepticism. In the discussions regarding Brexit, the constraints European law places on national policy contributed significantly to the Leave campaign with its slogan of 'take back control.' As Europe moves away from neofunctionalist or intergovernmentalist ideas of supranationalism and integration, it is uncertain whether the Court's pro-integration rulings will be uncontested by other MS and their courts or trigger outrage and opposition. If contested, the legitimacy of European law and indeed the Union may be at risk.

Bibliography

'EU Imposes Metric Measurements on UK – European Commission'. 2001. 17 January 2001. https://blogs.ec.europa.eu/ECintheUK/eu-imposes-metric-measurements-on-uk/.

'Speech to the College of Europe ("The Bruges Speech")'. n.d. Margaret Thatcher Foundation. Accessed 5 February 2019. https://www.margaretthatcher.org/document/107332.

Alter, K. and Meunier, S. (2009). Judicial Politics in the European Community: European Integration and the Pathbreaking Cassis de Dijon Decision (1994). In: K. Alter, ed., *The European Court's Political Power*, 1st ed. Oxford: Oxford University Press, pp.139-158.

Alter, K. and Meunier-Aitsahalia, S. (1994). Judicial Politics in the European Community: European Integration and the Pathbreaking Cassis de Dijon Decision. *Comparative Political Studies*, 26(4), pp.535-561

Azoulai, L. and Dehousse, R. (2012). The European Court of Justice and the Legal Dynamics of Integration. In: A. Menon and E. Jones, ed., *The Oxford Handbook of the European Union. Oxford Handbooks Online*.

Barnard, C. and Peers, S. (2014). *European Union law.* Oxford: Oxford University Press.

Blauberger, M. and Schmidt, S.K. (2017). The European Court of Justice and its political impact. *West European Politics*. 40(4), pp. 907-918

Burley, A. and Mattli, W. (1993). Europe Before the Court: A Political Theory of Legal Integration. *International Organisation*. 47(1), pp. 41-76

Cini, M. (2016). Intergovernmentalism. In: M. Cini, and N. Pérez-Solórano Borragá, ed., *European Union Politics*, 5th ed. Oxford: Oxford University Press, pp.65-70.

Corbett, Steve. (2016). 'The Social Consequences of Brexit for the UK and Europe'. *International Journal of Social Quality* 6 (1): 11–31.

Costa v ENEL [1964] ECLI:EU:C:1964:66 Case 6-64 (European Court of Justice), p.587.

De Waele, H. (2010). The Role of the European Court of Justice in the Integration Process: A Contemporary and Normative Assessment. *Hanse Law Review*. 6(1), pp.3-26

Drewry, Gavin. (2007). 'The Jurisprudence of British Euroscepticism: A Strange Banquet of Fish and Vegetables'. *Utrecht Law Review* 3 (2): 101–15.

European Commission (1985). *Completing the internal market: White paper from the Commission to the European Council*. Belgium: Commission of the European Communities, p.18.

European Commission v United Kingdom of Great Britain and Northern Ireland. (2016). ECLI:EU:C:2016:436 Case C-308/14 (European Court of Justice)

Haas, E. (1961). International Integration: The European and the Universal Process. *International Organisation*. 15(3), pp. 366-392

Haas, E.B. (1968). *The uniting of Europe: political, social and economic forces, 1950-1957*. Stanford: Stanford University Press.

Henley, Jon. (2016). 'Is the EU Really Dictating the Shape of Your Bananas?' The Guardian. 11 May 2016. https://www.theguardian.com/politics/2016/may/11/boris-johnson-launches-the-vote-leave-battlebus-in-cornwall.

Hix, S. (2005). *The political system of the European Union*. Houndmill, Basingstoke; New York: Palgrave Macmillan.

Hoffmann, Stanley. (1966). 'Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe'. *Daedalus* 95 (3): 862–915.

Josselin, J.M. and Marciano, A. (2007). How the court made a federation of the EU. *Review of International Organisations*, 2(1), pp.59-7

Kaczorwska, A. (2016). *European Union law*. 4th ed. London: Routledge, Taylor & Francis Group.

Lagrange, M. (1967). The Court of Justice as a Factor in European Integration. *The American Journal of Comparative Law*. 15, pp.709-725

Lindberg, L. N. (1963). *The Political Dynamics of European Economic Integration*. Stanford: Stanford University Press

Maduro, M.P. (1998). *We the Court: European Court of Justice and the European Economic Constitution.* Oxford: Hart.

Mancini, F.G. (1989). The making of a Constitution for Europe. *Common Market Law Review*. 26, pp.595-614

Marks, Gary, and Liesbet Hooghe. (2019). 'Grand Theories of European Integration in the

Twenty-First Century.' *Journal of European Public Policy*, January, 1–21. https://doi.org/10.1080/13501763.2019.1569711.

Pescatore, P. (2015). The doctrine of 'direct effect': an infant disease of Community law. *European Law Review.* 40(2), pp.135-153

Phelan, William. (2018). 'European Legal Integration: Towards a More Liberal Intergovernmentalist Approach'. *JCMS: Journal of Common Market Studies* 56 (7): 1562–77. https://doi.org/10.1111/jcms.12782.

Phinnemore, D. (2016). The European Union: Establishment and Development. In: M. Cini, and N. Pérez-Solórano Borragá, ed., *European Union Politics*, 5th ed. Oxford: Oxford University Press, pp.11-30.

Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein. (1979). ECLI:EU:C:1979:42 Case 120/78 (European Court of Justice), p.650.

Rosamond, B. (2016). Brexit and the problem of European disintegration. *Journal of Contemporary European Research*. 12(4), pp.864–871.

Schmitter, P. (2005). Ernst B. Haas and the legacy of neofunctionalism. *Journal of European Public Policy*, 12(2), pp.255-272

Stein, E. (1981). Lawyers, Judges, and the Making of a Transnational Constitution. *The American Journal of International Law.* 75(1), pp.1-27

Stone Sweet, A. (2010). The European Court of Justice and the judicialisation of EU governance. *Living Reviews in European Governance*. 5(2), pp.2-53

Stone Sweet, A. and Brunell, T.L. (1998). Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community. *The American Political Science Review*, 92(1), pp.63-81

The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and Others. (1990). ECLI:EC:C:1990:257 Case C-213/89 (European Court of Justice)

The Treaty of Rome, 25 March 1957. [Online]. 289 U.N.T.S. 11. [Accessed 11 December 2018]. Available from: https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf.

Thoburn v Sunderland City Council (2002). EWHC 195 (Admin). 2002. EWHC (Admin).

Weiler, J.H.H. (1991). The Transformation of Europe. *The Yale Law Journal*. 100, pp.2403-2483

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Abstract

This article examines the extent to which immigration has been securitized in Europe. It does so by privileging the integration of securitising practices to the discursive analysis of 'speech acts' given by classic formulations securitisation. It will be shown how the process of securitization has served to create both public insecurity as well as 'extraordinary conditions' to justify the strengthening of existing policies and the employment of extraordinary practices.

Divide et Impera: The Securitization of Immigration in European Discourses and Practices

Introduction

The reasons why immigration toward the European continent has become a matter of security are vastly debated. Nonetheless, a rather extensive literature agrees on the fact that migration has become one of, if not the most contentious issue in Europe over time. Such a broad agreement is mainly due to the empirical support given by the increasing focus the EU and its member states have had on migration and asylum issues since the very creation of the Union. This trend, crucially, has culminated into the formulation of policies and agencies, such as FRONTEX, that have often contributed to a politicization of migrants flows, portraying the latter as an existential threat to the community life (Leonard, 2010). For this reason, it has been argued that migration and asylum in Europe have been securitized (Baldaccini and Guild, 2007; Chebel d'Appollonia and Reich, 2008). The article's point of departure is exactly this last consideration. By analysing the securitization of the most recent influx of refugees from MENA countries to Europe as a case study, it will show how securitization has served to create both public insecurity as well as 'extraordinary conditions' to justify the strengthening of existing policies and the employment of extraordinary measures (Huysmans, 2000a). Yet, it is argued here that, while the discursive investigation provided by the employment of the 'classic' securitization theory – meaning the Copenhagen school's formulation – is substantial to the aim of the analysis, the approach has to be considered only as one of the two sides of the whole investigation. This is because, in order to consistently understand the extent to which migratory flows have been securitized, a focus on practices seems also necessary. Such an epistemological integration is due to the fact that, while the Copenhagen school is able to provide a fixed unit of analysis through the concept of 'speech acts', it lacks a definition of securitising actors and practices (Leonard, 2007). Accordingly, a praxeological integration is expected to strengthen the investigation by combining the study of both discourse and practice of securitization, first; to provide a better insight in a context such as the EU where migration policy has already been framed and institutionalized through a discursive securitization trend for a relatively long period of time, second (Huysmans, 2006).

The paper is structured as follows. It begins with the characterization of the theoretical framework underpinning the analysis. Then, it moves on to the analysis of the discursive securitization of migration flows and consequently looks at verbal interventions of top-leaders and activists as well as media coverage on the most recent influx of refugees. This particular choice is owed to the idea that these actors have the most capabilities to succeed in the securitization process (Wæver, 1995). Lastly, the paper will look at securitizing practices through the analysis of FRONTEX.

Theoretical framework

Securitization theory is a theoretical approach in the security field elaborated by Ole Wæver, Barry Buzan and Jaap de Wilde, who are known as the Copenhagen school. It rests on the constructivist idea that the social world, security threats included, is constructed. In this context, security issues come into life through a discursive articulation, which dramatizes

and prioritizes them (Wæver, 1995). An accomplished securitization process is the result of a successful reception of a securitizing actor's 'speech act' by the targeted audience, whereby a particular issue is presented as an existential threat to the survival of the 'referent object' (e.g. the state, a community). This process creates a sense of insecurity among the audience, so that the latter becomes willing to accept claims of exceptionality (Huysmans, 2000a). Thus, the constructed security issues are perceived within the sphere of the exceptional, thereby exceptional measures become both accepted and justified (Buzan et al*.,* 1998*)*. The discursive nexus between the claims of exceptionality and the continuous promulgation of insecurity is a core feature to understand how security is socially constructed (Huysmans, 2000a). For this reason, security issues have to be understood as 'securitized issues', meaning that – beyond the fact of whether they are concretely existent or not – they only become politically relevant within the context of a social construction. Furthermore, because threat plays a substantial role in shaping popular perception of danger, securitization is seen as a 'technique of governing' (*ibid*). Not only, but it has the power to assert and challenge the very *raison d'être* of a threatened community. As such, security knowledge preserves and is inscribed within certain paths of institutionalizing and rationalizing the relations of people between themselves and others. It also delineates the position as well as the *modus essendi* of a political community through 'the relatively systematic, explicit discursive problematization and codification of the practice of government as a way of rendering the objects of government in a way that makes them governable' (Dean, 1994: 187). As a result of this process, security policing becomes a practice of surveillance which aim is to differentiate the accepted spaces and groups from the unaccepted ones, provoking a self-disciplining practice upon individuals (Huysmans, 2000b).

Nonetheless, this process of policing, and more broadly the whole translation of discourses into practices, cannot be understood only through the lens of self-disciplinary and governing methods. This does not mean that Huysmans' formulation is refused in this paper. Rather, it is seen as a crucial aspect for understanding security. However, security policing has to be understood also within another crucial dimension of the securitizing process: practices. Indeed, analysing security policing both discursively and practically is important to understand the two mutual constitutive dimensions of a political response to the securitized issue. Thus, a focus on practices seems necessary if one is about to fully evaluate the political response to a constructed threat. Likewise, under certain circumstances, for

example when the securitization of a particular matter, in this case migration, has already happened –as in the case of the EU – practices can provide a more adequate and complete understanding to current employments of securitization processes (Bigo, 2002). As such, the new logic(s) of security must be seen also through a praxeological lens (Buzan et al., 1998). Particularly, it is necessary to focus the study also on 'empirical referents of policy – policy instruments – that the EU utilizes to alleviate public problems defined as threats' (Balzaq, 2008: 76). For the aim of this analysis, policy instrument is seen as a 'device that is both technical and social, that organizes specific social relations between the state and those it is addressed to, according to the representations and meanings it carries' (Lascoumes and Le Galès, 2007: 4).

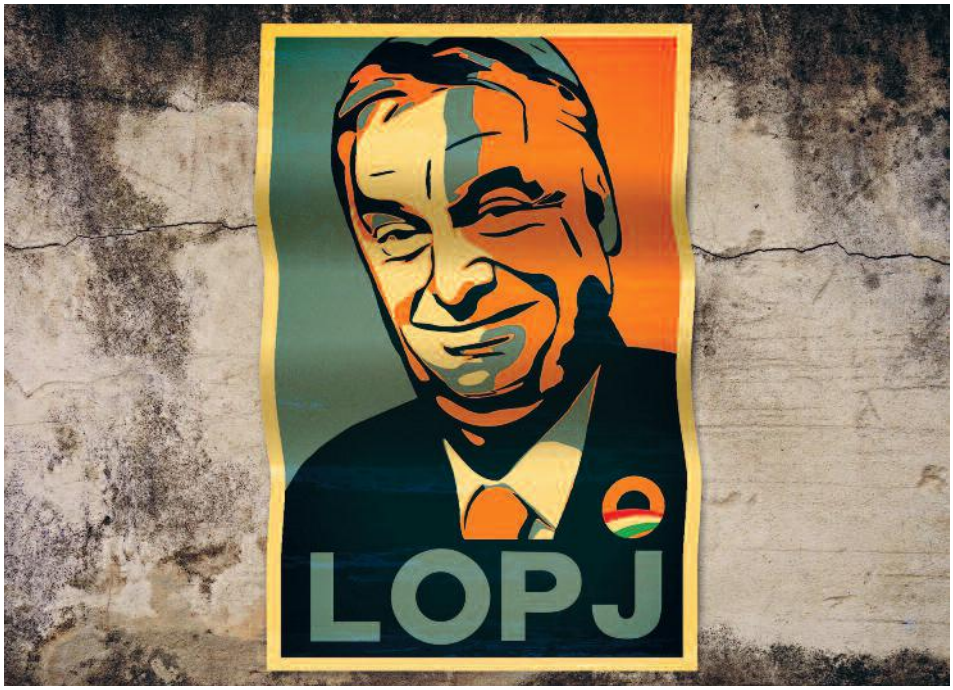
On the basis of these theoretical assumptions, the paper can then move on, in the next sections, to the analysis of the discursive perpetuation of the already existing drama on migration and its practical application.

The current discursive securitization

According to Beck (2017), security policing on immigration has had a huge impact in Europe. In order to understand how so-called 'hard policies' are widely seen as legitimate, it is substantial to analyse the perpetuation of the current political debate, which is mainly based on existing dramas resulted from issues such as the migration from former Yugoslavian countries. Immigration and asylum are considered as kinds of phenomena whereby a sense of insecurity is constructed and through which a community's unity and existing identity are secured. For this reason, in political debates, immigrants and refugees – functionally defined as the same group despite the conceptual legal differences – are often depicted as endangering a given way of life which characterizes a community (Huysmans, 2000b). Whilst no complex arguments are made on how the growth of the number of migrants can endanger a community, even at a modest empirical level, it is possible to argue that the securitization of this issue seems to be strategically employed in the European context.

Through the employment of powerful metaphors such as 'flood' or 'invasion', immigrants have been given an *existential* and *homogenous* connotation in negatively shaping certain aspects of the community life. Existential because they are portrayed as dangerous to the very existence of the community and its members – the creation of a fear of dying (it can be an ideational as well as a material death). Security practices thus become essential to postpone this imminent death. Homogenous because they are portrayed as a group that hangs together, while the discourse ignores the individual sphere of it, the stories, the sufferance, the reasons behind the immigrants' choices. In this way, dialogue and constructive engagement between the 'threatened' and the 'threatening' is impossible. Such a limit keeps alive the separation between the accepted and unaccepted, the disciplined and the undisciplined. Securitization has led to the belief that immigrants can negatively influence the very existence and wellbeing of a community. This belief is made possible through the discursive articulation of mainly three lines of argument on immigration: the idea that immigrants threaten the values and the culture of the community, the link between immigration and terrorism and the negative impact immigration has on the economy. Each of them has a particular aim that serves for the maintenance of the existing power hierarchies.

The discursive construction of immigrants as a threat to values and culture serves to create a political domain of insecurity in which the fear of the outsider helps to consolidate the community identity, even though the core features of this identity are often not really clear. For instance, in the case of the most recent migration flows to Europe, articulating a Muslim threat facilitated the perpetuation of an idea of Western/European cultural unity, whilst it has been never highlighted what the features of the latter are. This articulation has been clear in the past five years in Europe if we analyse what is defined as the 'political spectacle'



(Edelman, 1967 and 1988). This spectacle takes multifaceted forms in the political debate in Europe. Notably, exponents of the political right such as Marie Le Pen declared that 'France is not burkinis on the beach. France is Brigitte Bardot' (Le Pen, 2017). Hungarian President Viktor Orbán also made more than once comments regarding the illegality of Islam in the context of 'a country (Hungary e.d.) constitutionally Christian' (Orbán, 2018). Besides, he also recommended to those who live in the country to convert to Christianity or to become atheist (Beck, 2018).

Nonetheless, while one could think that this kind of arguments is strictly confined to some segments of the political right, evidence shows that also proponents of political liberalism have portrayed immigration of 'non-enlightened' Muslims as a threat. A well-known example is the German feminist Alice Schwarzer, who declared in October 2015 that in order to defend gender equality and acceptance of sexual orientations, there is a necessity to ban Muslim associations, such as *Qantara*, the IGD and other organizations affiliated to *Zentralrat der Muslime*. She argued that the mere existence of these associations could potentially shape ideas toward women in a hostile and violent way (Euro-Islam, 2014). The links between violence, terrorism and immigration are also widely employed by different segments of institutional politics. A strong example is a response given by Marcus Pretzel of the Alternative for Germany party to the attack on the Christmas market in Berlin in 2016: 'these are Merkel's deaths'. Clear enough, his comment was referring to Merkel's decision to make refugees come to Germany from Hungary in 2015, at the peak of the Syrian refugee crisis.

The economic aspect has also been extensively employed as a means to securitize migration flows. The idea that immigration negatively impacts the national economy is perhaps the most widely shared discourse in and outside institutional politics. Even the leader of the German Left Sahra Wagenknecht claimed the incapability of the German economy to accept too many 'economic immigrants' (Wagenknecht, 2018). On the same line, Theresa May also declared, back in 2011: '[…] we know what damage uncontrolled immigration can do to our infrastructure, as our housing stock and transport system become overloaded., and to our public services' (May, 2011). On the basis of this statement, the current British Prime Minister justified, at the time, extraordinary measures as the drastic cut of immigration and even the removal of foreign nationals.

Securitization in practices

In this context of the politics of fear, immigrants are not mere objects, but capable human beings willing to emigrate from unliveable situations. Relying on human traffickers, even strong measures such as border control are ineffective to prevent the movement of people. This forced choice to break the law, however, has only strengthened the idea of refugees as not genuine and thus 'illegal' people, making certain 'hard' practices both possible and widely accepted. The concept of 'integrated border management' (IBM), for example, has been made possible due to the perpetuation of such discourses. Equally, the creation of FRONTEX has been achievable due to the fact that the idea of controlling external European borders has become widely accepted among the public. For this reason, the analysis cannot end with an investigation of the processes of institutionalization of such an agency. Rather, it must continue in evaluating its practices as FRONTEX is, despite its limited autonomy, a crucial actor in the complex arena of border controls. Specifically, its practices must be taken into consideration to understand what stage the securitization process in Europe has reached and to what extent securitization has been not only discursively perpetuated, but also practically implemented.

According to Leonard (2010), for practices to become securitized, they must fall into at least one of the two categories of securitising practices, which are ordinary securitising practices (e.g. employment of military troops) and extraordinary measures (involvement of an emergency). Depending on which category they fall into – if they do so – one can understand the level of the practical securitization. Therefore, to understand whether FRONTEX practices can be seen as securitized (and at what level), the agency's main activities have to be highlighted. The main tasks of FRONTEX are: (1) coordinating cooperation between the Member States on external borders; (2) training of national border guards; (3) conducting risk analyses; (4) following up developments of the control and surveillance of external borders; (5) assisting Member States with operational and technical assistance; (6) assisting in joint return operations. If these activities are analysed, it can be argued that all of them fall into at least one of the two aforementioned categories.

Practices of training, risk analyses and the following up of developments of the control and surveillance of external borders fall into the category of ordinary securitizing practices. Such coordinated actions amongst various states have traditionally been deployed to address more traditional security issues such as a military attack from a third state, piracy or drug-trafficking, and only consequently utilized to tackle migratory flows (Lutterbeck 2006). Given that some of the actors involved in these joint operations have a semi-military status in their country, such as the *Guardia Civil* in Spain or the *Guardia di Finanza* in Italy (Lutterbeck 2006), these joint operations that aim to stem migration flows can be seen as a 'semi-militarisation' of border controls and thereby a securitisation of migration flows given the traditional role of the military in addressing security issues. When analysing these practices more in depth, such a securitization becomes even clearer. Evidently, the content of the training activities organised by FRONTEX for surveillance operations reinforces the idea that the external borders of the EU Member States are under threat by irregular migration and need to be protected through the use of sophisticated technological means, such as aerial surveillance operations (Léonard, 2010). Moreover, FRONTEX has been active in developing increasingly sophisticated risk-management structures to gather, produce and disseminate amongst the EU Member States what it calls 'intelligence' on irregular migration flows. Risk analysis is carried out by the Risk Analysis Unit (RAU) using the Common Integrated Risk Management Model (CIRAM). FRONTEX produces various types of reports aiming to assess the extent and evolution of irregular migration flows, as well as the 'risk' that they pose to the security of the EU external borders. Considering that these instruments have only been employed, historically, to monitor security threats, they are another proof of the practical securitization of migratory flows. The securitization becomes even more

evident if one considers that, along with the risk analysis, the agency is active in ensuring that the issue of migration control is part of the EU security agenda and that funding is available to support border security-related research and development activities (practice of research on developments).

The other activities, interestingly enough, match both criteria (Léonard, 2010). For instance, joint operations, which are the most important activities in terms of their cost, are extraordinary practices on several grounds. Although FRONTEX does not have the overall responsibility to organise joint return operations, it plays an increasingly important role in the EU return policy by facilitating the organisation of joint operations on the basis of its expertise and financial means. The activities of FRONTEX in this area can also be seen as securitising practices on the grounds that they are significantly 'out of the ordinary'. Nowhere else in the world, and never before, has there been such a high level of sophistication in the coordination of operations aiming to expel certain groups of migrants amongst such a large group of states. FRONTEX allows the EU Member States to plan and coordinate return operations more easily than before and can even assist them financially and logistically. Moreover, the extraordinary character of this practice is clear if observing its ambiguity from a legal point of view. Particularly, the 'non-refoulement' principle, one of the bases of the international protection regime that prohibits states from returning individuals to a situation where they may face persecution, is *de facto* ignored in this practice (see Gil-Bazo 2006, Commission of the European Communities 2007, Fischer-Lescano et al. 2009, Hernandez-Carretero 2009, Trevisanut 2009, Den Heijer 2010, Papastavridis 2010). Lastly, operational assistance of Member States through expertise has also to be considered within the frame of extraordinary practices. As the latter practice is, by date, mainly based on trainings, it is argued here that carrying out continuous trainings, perpetuates the idea that migrants' influx might create a situation of emergency at any time, requiring an extraordinary response.

Conclusion

This paper has tried to show how migrants' influx into Europe has been securitized both discursively through a 'political spectacle' and practically through the employment of both ordinary and extraordinary practices. This has been supported by an insight in the political debate in Europe and by looking at FRONTEX practices in the context of the 2015-refugee crisis. In particular, it has been shown how the securitization of such a crisis has even strengthened the already framed process of securitization by inserting it into the arena of 'extraordinarity', and by making it more Europeanized as a result of the process of Europeanization of right-wing parties, the response to this process, and the creation of agencies such as FRONTEX. On the basis of the analysis, it can be argued that there has been a consistent growth in securitising discourses and practices toward migrants in Europe, both by states and by the EU. This increase is surely owing to the rise of far-right parties, discursively and, practically, to agencies such as FRONTEX that, playing the role of both an agent and an arena for coordination, has facilitated the involvement of European States in securitising practices (COWI, 2009: 59).

Overall, to the extent to which the Europeanization of migration issues advances the securitization of the influx, it could be argued that such a process can be defined as a radical strategy whose aim is the exclusion of certain categories of people. By stressing the ideational and material destabilizing factors analysed in the first and second sections, the refused integration of immigrants into the community of the 'attacked' citizens impacts concepts of solidarity and social integration – which are said to be core values of the Western/European/Christian community. In light of this, it seems necessary to deconstruct securitizing discourses if one is willing to understand the reality of issues such as migratory flows.

Bibliography

Baldaccini, A. and Guild, E. (2007). *Terrorism and the foreigner: a decade of tension around the rule of law in Europe*. Leiden: Martinus Nijhoff.

Balzacq, T. (2008). The policy tools of securitization: information exchange, EU foreign and interior policies. *Journal of common market studies*, 46 (1): 75-100.

Beck, M. (2018). *Securitization of Refugees in Europe*. [online] E-International Relations. Available at: https://www.e-ir.info/2017/09/18/securitization-of-refugees-in-europe/ [Accessed 13 Dec. 2018].

Bigo, D. (2002). Security and immigration: toward a critique of the governmentality of unease. *Alternatives*, 27 (Special Issue).

Buzan, B., Wæver, O., and de Wilde, J. (1998). *Security: a new framework for analysis*. Boulder, CO and London: Lynne Rienner.

Chebel d'Appollonia, A. and Reich, S. (2008). *Immigration, integration, and security: America and Europe in comparative perspective*. Pittsburgh, PA: University of Pittsburgh Press.

Colman, N. (2006). From Gulf war to Gulf war: years of security concern in immigration and asylum policies at EU level. In: A. Baldaccini and E. Guild, eds. *Terrorism and the foreigner: a decade of tension around the rule of law in Europe*. Leiden: Martinus Nijhoff.

Commission of the European Communities. (2007). Commission staff working document: study on the international law instruments in relation to illegal immigration by sea. SEC(2007) 691, 15 May 2007. Brussels: Commission of the European Communities.

COWI, 2009. FRONTEX: external evaluation of the European agency for the management of operational coordination at the external borders of the Member States of the European Union, final report. Kongens Lyngby: COWI A/S. Available from: http://www.frontex.europa.eu/ specific_documents/other/ [Accessed 1 June 2010].

Dean, M. (1994). *Critical and Effective Histories. Foucault's Methods and Historical Sociology*. London: Routledge.

Den Heijer, M. (2010). Europe beyond its borders: refugees and human rights protection in extraterritorial immigration control. In: B. Ryan and V. Mitsilegas, eds. *Extraterritorial immigration control: legal challenges*. Leiden: Martinus Nijhoff.

Edelman, M. (1967) *The Symbolic Uses of Politics*. Chicago:University of Illinois Press.

Euro-Islam (2014). *feminism – euro-islam.info*. [online] More.bham.ac.uk. Available at: https://more.bham.ac.uk/euro-islam/tag/feminism/ [Accessed 28 Mar. 2019].

Gerard, A. and Pickering, S. (2013). Gender, Securitization and Transit: Refugee Women and the Journey to the EU. *Journal of Refugee Studies*, 27(3), pp.338-359.

Gil-Bazo, M.-T. (2006). The practice of Mediterranean states in the context of the European Union's Justice and Home Affairs External Dimension. *International journal of refugee law*, 18(34): 512-524.

Fischer-Lescano, A., et al. (2009). Border controls at sea: requirements under international human rights and refugee law. *International journal of refugee law*, 21 (2): 256-296.

Hernandez-Carretero, M. (2009). Reconciling border control with the human aspects of unauthorized migration. PRIO Policy Brief 1/2009. Oslo: International Peace Research Institute Oslo. Available from: http://www.prio.no/sptrans/724731520/Reconciling-Border-Control.pdf [Accessed 1 December 2018].

Huysmans, J. (2000). *The politics of insecurity*. London: Routledge, Taylor & Francis Group.

Huysmans, J. (2000). The European Union and the securitization of migration. *Journal of common market studies*, 38 (5): 751-802.

Huysmans, J. (2006). *The politics of insecurity: fear, migration and asylum in the EU*. London: Routledge.

Lascoumes, P. and Le Gales, P. (2007). Introduction: Understanding Public Policy through Its Instruments – From the Nature of Instruments to the Sociology of Public Policy Instrumentation. *Governance,* 20(1): 1-21.

Leonard, S. (2007). *The European Union and the 'securitization' of asylum and migration: beyond the Copenhagen school's framework*. Thesis (PhD). University of Wales, Aberystwyth.

Léonard, S. (2010). EU border security and migration into the European Union: FRONTEX and securitisation through practices. *European Security*, 19(2): 231-254.

Le Pen, M. (2017). *Marine Le Pen: "France Isn't Burkinis on the Beach, France is Brigitte Bardot"*. [online] Infowars.com. Available at: https://www.infowars.com/marine-le-pen-france-isnt-burkinis-on-the-beach-france-is-brigitte-bardot/ [Accessed 13 Dec. 2018].

Lutterbeck, D., 2006. Policing migration in the Mediterranean. *Mediterranean politics*, 11 (1), 598.

May, T. (2018). *Theresa May speech in full*. [online] politics.co.uk. Available at: http://www.politics.co.uk/comment-analysis/2011/10/04/theresa-may-speech-in-full [Accessed 13 Dec. 2018].

Noborder Network. (2006). Crossing borders: movements and struggles of migration. Transnational newsletter, 1st issue, October 2006. Available from: http://www.noborder. org/ [Accessed 1 December 2018].

Orbán, V. (2018). *About Hungary*. [online] Abouthungary.hu. Available at: http://abouthungary.hu/speeches-and-remarks/prime-minister-viktor-orbans-speech-at-the-29th-balvanyos-summer-open-university-and-student-camp/ [Accessed 28 Mar. 2019].

Papastavridis, E. (2010). Fortress Europe' and FRONTEX: within or without international law? *Nordic journal of international law*, 79(1): 751-781.

Scharzers, A. (2018). *Alice Schwarzers Islamkritik: Dem siegreichen Feminismus ist die Minderheit egal*. [online] FAZ.NET. Available at: https://www.faz.net/aktuell/feuilleton/themen/alice-schwarzers-islamkritik-dem-siegreichen-feminismus-ist-die-minderheit-egal-11039246.html [Accessed 13 Dec. 2018].

Trevisanut, S. (2009). Maritime border control and the protection of asylum-seekers in the European Union. *Touro international law review*, 12: 157-169.

Wæver, O. (1995). *Securitization and desecuritization*. New York, NY: Columbia University Press.

Wagenknecht, S. (2018). *Germany: New 'Aufstehen' movement of Sahra Wagenknecht is shaking up leftists*. [online] DW.COM. Available at: https://www.dw.com/en/germany-new-aufstehen-movement-of-sahra-wagenknecht-is-shaking-up-leftists/a-45047762 [Accessed 28 Mar. 2019].

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Abstract

The European Union (EU) has played an increasingly important role in promoting sustainable development across the world. However, its role has not, insofar, been consistent. From the early days of its first landmark partnership agreement with the African, Caribbean and the Pacific (ACP) Group, the EU has sought to use a normative approach to ensure that partnered states abided by strict norms and values, which many states did not consider relevant to their own national development policies. The dissolution of the French and British Empires following World War II and the steady rise of the EU has yielded positive and negative results. The European Communities (EC) – the name of the EU prior to 1993 – was justified in their reason to create partnerships with newly-independent states who were in dire need of inspiration to set up infrastructure and rebuild post-conflict, in many cases. On the other hand, the manner in which the EC/EU 'imposed' certain norms and values onto these fragile, infant nations caused the governments of said states to rebel. The article explores the case of Zimbabwe as a way of 'testing' the extent to which the normative role played by the EU with regards to development policy is contradictory. Zimbabwe was once considered to have a stable relationship with the EU, but all this would radically change when accusations of malpractice surrounding the 2002 presidential elections caused the EU to suspend aid to a country, whose population was among the poorest in Sub-Saharan Africa. However, the case does not wholly represent the EU's so-called contradictory normative role in development policy, and it remains to be seen whether or not the EU will be tested once more in the future. However, the EU's actions in Zimbabwe have left lasting scars on a fragile state.

A Contradicting Normative Role? The European Union and its Development Policy

Introduction

The European Union (EU) has been considered for a number of years, a key player in promoting sustainable development in third-world countries, particularly those located in Africa. In the years immediately following the Cold War, the modern-day EU was formed, which prompted the institution to re-shape some of its policy areas, most notably that of its foreign policy. Having worked closely with former colonies mainly under British and French rule with regards to promoting human rights, establishing economic ties and implementing principles of good governance, the Cotonou Agreement in 2000 was a welcome positive step in terms of future cooperation between the EU and the colonies that eventually would become a part of a new group, named the African, Caribbean and the Pacific (ACP) Group.

The ACP is an organisation created by the Georgetown Agreement in 1975. It is composed of African, Caribbean and Pacific states signatories to the agreement mentioned above, which is also more commonly known as the Partnership Agreement between the ACP and the EU. This is officially called the 'ACP-EC Partnership Agreement'. The main goals are listed as follows:

1 Sustainable development of its Member-States and their gradual integration into the global economy, which entails making poverty reduction a matter of priority and establishing a new, fairer, and more equitable world order;

2 Coordination of the activities of the ACP Group in the framework of the implementation of ACP-EC Partnership Agreements;

3 Consolidation of unity and solidarity among ACP States, as well as understanding among their peoples;

4 Establishment and consolidation of peace and stability in a free and democratic society.

Most of the former colonies had endured brutal regimes in the Cold War era and coming into the 21st century, were underdeveloped and reliant on foreign aid as a means to keep the country going (Tindale, 2013). The EU's actions, especially in Africa, in the field of development have provoked academics to place a label on the behavior exerted by the institution. One notable academic, Ian Manners, labeled the EU as a 'normative power'. He believed that the EU had an incentive to impose certain norms and standards, which are considered to be universally applicable (Manners, 2002: 240). However, based on current events, does the EU still fit this definition of a 'normative power'?

This article will argue that the EU's development policy, redrafted as a result of the Cotonou Agreement, does support its role as a normative actor but in part, also contradicts it. In order to 'test' whether or not the EU can still be defined as a normative actor, this essay will draw upon the case study of Zimbabwe, a country whose aid was suspended from the EU in 2002 following controversial elections, which witnessed widespread violence and human rights violations. However, the response from the Zimbabwean government in this instance, in particular, has led several academics to believe that the EU's role as a normative power and actor is under threat.

Normative Power Europe?

The idea of the EU as a normative power in international relations is a debate that is not new in academia. Two prominent academics, Ian Manners and Richard Whitman, believe that through an analysis of the EU's actions beyond its own territory, it can be concluded that the institution and member states are inclined to spread values and norms but also to impose such norms, in certain cases, across states primarily pertaining to the 'neighbourhood' but also to areas that signed comprehensive trade and aid agreements with the EU, notably the ACP Group (Whitman, 2013: 172) But which are the norms that the EU has sought to impose on partners and how does this relate to the institution's development policy? According to Manners, the EU's norms can be grouped in the following areas: founding principles, tasks and objectives, stable institutions and fundamental rights. As the EU is not a military power per-se, it needed to devise an alternative way for striking partnership agreements and increasing its own internal security whilst taking into consideration the security of its partners (Manners, 2002: 237).

Manners furthermore noted that through negotiations with partner countries that are located within the EU's 'neighbourhood' and those outside of it, the EU was able to impose certain ideals, some of which were viewed as 'outrageous' by its partners (Manners, 2006: 190). Ideals especially relating to promoting democracy and fundamental human rights. Promoting the equality of both genders and freedom of speech proved to be increasingly difficult especially with partnership agreements signed with the ACP Group in the late 20th century seeing as a number of the members of that group were hit by devastating civil wars and brutal regimes, that for some time showed no signs of collapsing (Staeger, 2015: 982). Moreover, the same countries showed increasing signs of rejecting so-called 'Western' ideals that included the advancement of core EU values through partnership agreements. The Cold War backdrop paved the way for proxy wars and African countries including Zimbabwe move away from the 'West' in favour of closer relations with the Soviet Union (USSR) and China.

Africa, at least in the EU's terms, was and still is viewed as the ideal stage for which the EU to exert norms and values for three primary reasons. Firstly, the continent is the EU's largest export market for African products. Secondly, as the majority of the states were developing the EU could have the upper hand in influencing certain areas seeing that the countries were rebuilding in part as a result of civil wars and devastating natural disasters. Thirdly, the continent is the largest recipient of development aid. With regards to EU-Africa relations, the EU's normative efforts have sought to empower certain countries whilst attempting to promote its core values internationally (Scheipers and Sicurelli, 2008: 608). Countries especially in the Sub-Saharan region have undergone a substantial amount of reform owing to aid promises made by the EU. Many countries were attracted by proposals from the EU to deliver aid in exchange for reforming internal structures such as adopting international human rights treaties and transitioning towards democracy (Birchfield, 2011: 147).

Fostering a Development Policy Partnership

Throughout the history of EU-Africa relations, there was an incentive for both partners to establish a development policy, which would assist the social and political dimensions of development in African countries. Many African countries in the latter part of the 20th century saw regimes collapse and incoming governments forced to deal with the consequences of devastating atrocities including the persecution of minority groups, civil wars (especially those in West Africa but also in Angola and Mozambique), widespread poverty, persecution of minority groups and weak economies that would have unlikely recovered without the intervention of EU aid (EurActiv, 2014).

Since the 20th century, the EU has become a significant actor within the realm of international development assistance. Its development policy, which has formed the basis of a number of bilateral agreements with other countries most notably in Africa, comprises of different areas including aid, trade and humanitarian assistance to least developed countries (European Commission, 2013). However, the idea of an EU development policy exists on two levels, called 'shared competencies': the European Commission leads the way in engaging with a 'European' development policy that can be implemented in partner countries, but member states are free to devise national development policies in line with their own interests (Farrel, 2008: 225). The somewhat confusing nature of the EU's development policy has raised questions with regards to whether or not a 'European' policy is feasible. If member states are allowed to engage with partner countries and offer assistance in line with their own policies, then is an EU development policy necessary? Countries such as France and the UK have maintained a close relationship with their former colonies and are key aid donors within those countries; offering aid in the form of emergency food supplies, improving agricultural methods and reforming educational structures (Hadfield, 2007: 51).

However, the EU was committed to implementing a so-called universal development policy through partnership agreements especially with members of the ACP Group. One of the core achievements on the EU-ACP relationship was the creation of the Cotonou Agreement, which was signed in 2000 (European Council, 2015). The agreement was significant as it laid out provisions for an increased protection of human rights as well as incentives to assist ACP members in achieving the United Nations' Millennium Development Goals, which aimed to eradicate hunger and ensuring environmental sustainability. However, one key article within this agreement that caused backlash among ACP members was the inclusion of a clause that would prompt the EU to suspend aid to countries that were found guilty of violating terms of the agreement (Farrell, 2008: 230).

On one hand, this can be considered as a smart move from the EU's perspective as it was committed to assisting developing countries especially in Africa and the Caribbean regions to reform policies, which would in turn allow them to achieve the Millennium Development Goals. It is worth noting that the EU's incentive to suspend aid as a means of punishing those who failed to abide by the terms of the agreement was legal. Countries that were accused of violating the terms of any partnership agreement and who were also accused of sending their governments into free-fall were formally invited by the EU to discuss solutions to development-related crises, but some countries refused all together the solutions proposed by the EU as they were convinced that the EU's solutions were not relevant and in turn could damage the internal structures of their own countries further (European Council, 2016). The EU attempted to enforce solutions it viewed as sustainable, but the institution failed to take into account the diversity factor of the African continent and beyond. No African country was the same as its neighbour in terms of political structures, demography and culture (Birchfield, 2011: 149).

The proposals mentioned in the Cotonou Agreement required a substantial amount of foreign funds, and this was problematic. The EU had set up the European Development Fund in the 1950's at a time when the EU was still a collection of states and the eventual partnership with the ACP Group was virtually inexistent and was yet to flourish. The total amount of funding granted to members of the ACP Group varied on an annual basis, which meant that some countries developed faster than others and those who were subject to fewer EU funds had to source funds from their former colonial rulers or other partner countries (Hadfield, 2007: 61). Furthermore, certain countries including Mozambique and Sudan who were original signatories to the Cotonou Agreement in 1975 had suffered internal disturbance, which in turn, meant that development would be slow and worryingly unlikely.

In this instance, the EU proved again to be rather powerless. As much as it attempted to enforce its norms and ideas through the bilateral Cotonou Agreement, the monitoring of progress that partner countries had made was virtually inexistent. Without a monitoring mechanism, the EU sought to 'cherry pick' cases that seemed to violate the terms of the agreement and cause countries to take a step back as opposed to going forward (EurActiv, 2014). Not all countries were positively assisted by the EU when the cry for help came. Some countries especially in the case of Zimbabwe, that will be developed further in this article, had aid suspended whereas other countries who were accused of failing to meet the aims of any partnership agreement were only given formal warnings. The EU did not seem to have a streamlined strategy for dealing with cases that involved treaty violations. Based on this, it seems as if the EU's wish to implement a concrete development policy was proving to be more of a challenge in part because of its case-by-case method to 'resolve' treaty violations and other partnership-related struggles (Scheipers and Sicurelli, 2008: 618).

In order to 'test', to an extent, whether or not the EU is still a viable normative actor within the area of development, the case of the aid suspension of Zimbabwe will be analysed. The country failed to adhere to the provisions of protecting human rights and promoting democracy and was heavily punished by the EU (House of Commons, 2012). The case of Flawed election in Zimbabwe in 2002 gathered a substantial amount of attention at the EU level and almost immediately the EU imposed sanctions on the Sub-Saharan country, that had been under the guidance of a dictator in the shape of Robert Mugabe since its independence from the United Kingdom in 1980 (European Council, 2015). Seeing that the Cotonou Agreement laid out provisions for the suspension of aid to members of the ACP Group in light of possible human rights violations and malpractices of democracy, the EU had every right to act in the way it did in Zimbabwe but perhaps the institution and its member states were not prepared for the Zimbabwean response to the suspension of aid (Tindale, 2013).

Case Study: Zimbabwe

The transition to power for Robert Mugabe came about after civil war marred an earlier independence attempt but he had gathered enough support from neighbouring countries in the form of military assistance and by April 1980, the country was free. In the years that succeeded independence, the country established itself as one of the primary recipients of aid by the EU owing to a weak economy and poor incentives to improve the lives of the people (Staeger, 2015: 987). However, by 2002, the EU had imposed sanctions in line with Article 96 of the Cotonou Agreement, which outlined the duty of the EU to do so in the case of mass violations of human rights and flawed elections, both of which were the main reasons as to why the EU acted in the way it did. The Zimbabwean election of 2002 was marred by political violence and accusations by the opposition of ballot box 'stuffing', which alarmed the EU. First and foremost, the EU could have acted in a different way than it did perhaps by way of engaging in political dialogue with Mugabe and his officials (Welle, 2002). However, as the country had signed the Cotonou Agreement and had agreed to respect fundamental rights, in line with the EU's own norms, and aid suspension was legal as it was inscribed in the convention, the institution had every right to intervene in the way it did. EU aid to the Zimbabwean government especially in the fields of budget support and security sector reforms was immediately suspended without any real disagreements from its own member states (House of Commons, 2012).

The EU's actions in Zimbabwe were considered legal as the in theory the institution had a right to take action with regards to treaty violations, but the eventual suspension of aid highlighted the idea of the EU being a normative actor seeing that it was not afraid to take action against those that were unwilling to cooperate with them and take steps forward rather than backwards. It was clear that Zimbabwe had violated certain terms of the Cotonou Agreement, most of which were 'dictated' by the EU. Members of the ACP Group were seemingly forced to abide by the same terms or else they would have faced the same fate as the Sub-Saharan country (Manners 2006: 192). Many of the terms in the Cotonou Agreement were aimed at speeding up the development of African countries and even though most were keen on keeping pace with the EU in terms of the respect for the human rights, others were not (EurActiv, 2014).

Although Zimbabwe seemed to be progressing in the right direction up until the flawed election of 2002, the aid suspension was viewed as a nail into Mugabe's coffin by many of Zimbabwe's neighbours and there seemed to be a wave of fear forming around the governments of other ACP members who had promised to adhere to the terms of the Cotonou Agreement (Welle, 2002). Many countries especially in sub-Saharan Africa had adopted a growing fear of the EU seeing as they possessed the power to suspend aid in line with the rule of law to countries that needed the EU's aid the most. Moreover, these same countries were not in a strong negotiating position to open up partnership agreements with other 'blocs' because of the level of EU influence already existing within the country. If we refer back to Manner's definition of a normative actor then in this instance, the EU's reaction to the lack of adherence of Zimbabwe to its core norms is justified. However, some might argue that the EU's decision to suspend aid to one of its partners was 'too harsh' of a move especially since up to 2002, Zimbabwe had made a considerable amount of progress even though the dictatorship had angered the EU (Farrell, 2008: 231). However, the response by Mugabe made in light of the EU's decision to suspend aid can be considered as an instance where the EU's status as a normative actor was challenged.

After the suspension of aid, it seemed almost likely that the response from Mugabe and his officials would take the form of an acceptance of the wrongdoing but in fact, his response took on the form of a verbal attack on the EU and its own policies. Mugabe believed that the conditions of the aid suspension would do more harm than good to the country's development. Without funding to cover the distribution of textbooks to schools in rural areas

and funding to cover the distribution of medicines in deprived regions of the country, Zimbabwe was destined for complete disintegration (Welle, 2002). Mugabe furthermore stated that solely the EU and its member states decided upon the conditions of the aid suspension without consulting the affected country. The EU did not respond to the latter part of Mugabe's statement so it cannot be said whether or not the claim was valid. Following the initial suspension of aid, there was an increasing amount of pressure by the EU on Zimbabwe to re-evaluate the structure of its electoral commission and increase respect for human rights. Mugabe, evidently outraged by the EU's actions ignored the pressure and went about reforming sectors of government through his own ideals and not what the EU had laid out for him to follow (European Council, 2016).

The breakdown of the relationship between Zimbabwe and the EU following the initial suspension of aid affected the EU's normative actorness in Africa but it should be noted that the EU continues to maintain strong development ties with other African countries including Zambia and South Africa. Despite the tense relationship that remains between the EU and Zimbabwe, the EU's normative actorness has seemingly flourished and that the case of Zimbabwe is not representative of the greater picture of EU-Africa development ties in particular. However, the EU was not in a position to enforce change if there were internal disagreements in a particular the partner country nor could it adequately respond to the violations of terms embedded in its partnership agreements with the ACP Group (European Commission, 2011). Within a few years after the EU imposed sanctions on Zimbabwe, the aid suspension was lifted partly due to pressure on the EU by Zimbabwe who continued to deny any wrongdoing and decided to step up reforms as a means of allowing the free-flow of aid once again. Nevertheless, Zimbabwe has continued to be marred by political violence despite an increasing amount of calls by the EU to conduct emergency reforms for the greater good of the people who were subject to increasing levels of poverty and malnutrition as a result of the aid suspension (House of Commons, 2012). Even today, the Zimbabwean government maintains a sour relationship with the EU hierarchy despite increasing efforts by civil society organisations to enforce changes (European Council, 2016). Relations have improved slightly since Mugabe's ousting from power in 2018 and there are now positive signs that EU-Zimbabwe relations are on the mend but only time will tell if they reach the strength shown prior to 2002.

Conclusion

It is difficult to say whether or not the EU remains a normative actor especially with regards to the implementation of its development policy, which formed the basis of the Cotonou Agreement. The EU has been challenged in its role as a normative actor and power especially in Zimbabwe's case as the article has explored but the EU is still ever-present in several other notable African countries but also in other ACP group member states in terms of mainting diplomatic relations but also working on implementing national development programmes (Birchfield, 2011: 153). As this article has demonstrated through the case of aid suspension in Zimbabwe, the EU was not in a position to dismiss Mugabe's government because of treaty violations and general failure to host 'free and fair' elections but this is not wholly representative of the way in which the EU has dealt with other development and political challenges in other partner countries. It is certain that the creation of an EU development policy is a notable achievement for the institution, but it has attracted criticism mainly due to the fact that it was very 'European' and did not truly reflect reality (Tindale, 2013).

Whether or not the EU continues to be labeled as a normative actor remains to be seen. Its core development policy has remained largely unchanged since a revision of the Cotonou Agreement in 2005 and other efforts to assist developing countries meet the UN's Sustainable Development Goals, as they are now known as, have yielded mixed results.

Bibliography

Birchfield, V.L. (2011). 'The EU's Development Policy: Empirical Evidence of 'Normative Power Europe?', in *Normative Power Europe: Empirical and Theoretical Perspectives*. Great Britain: Palgrave MacMillan, pp. 142–160.

EurActiv (2014). *Why we should stop talking about 'European' development aid*. Available at: https://www.euractiv.com/section/development-policy/opinion/why-we-should-stop-talking-about-european-development-aid/ [Accessed: 23 February 2017].

European Commission (2011). *Press Release – Zimbabwe: Commission supports the council decision*. Available at: http://europa.eu/rapid/press-release_IP-11-190_en.htm?locale=en [Accessed: 23 February 2017].

European Commission (2013). *European development policy – international cooperation and development – European commission*. Available at: http://ec.europa.eu/europeaid/policies/european-development-policy_en [Accessed: 23 February 2017].

European Council (2015). *Article 96 – essential elements: Consultation procedure and appropriate measures as regards human rights, democratic principles and the rule of law*. Available at: http://www.consilium.europa.eu/en/policies/eu-africa/text-article-96/ [Accessed: 23 February 2017].

European Council (2016). *Article 96 of the Cotonou agreement – consultation procedure*. Available at: http://www.consilium.europa.eu/en/policies/eu-africa/article-96-cotonou-agreement/ [Accessed: 23 February 2017].

Farrell, M. (2008). 'Internationalising EU development policy', *Perspectives on European Politics and Society*, 9(2), pp. 225–240. doi: 10.1080/15705850801999776.

Hadfield, A. (2007). 'Janus Advances? An Analysis of EC Development Policy and the 2005 Amended Cotonou Partnership Agreement', *European Foreign Affairs Review*, (12), pp. 39–66.

House of Commons (2012). *House of commons – European scrutiny committee*. Available at: https://www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-li/42814.htm [Accessed: 23 February 2017].

Manners, I. (2002). 'Normative power Europe: A contradiction in terms?', *JCMS: Journal of Common Market Studies*, 40(2), pp. 235–258. doi: 10.1111/1468-5965.00353.

Manners, I. (2006). 'Normative power Europe reconsidered: Beyond the crossroads1', *Journal of European Public Policy*, 13(2), pp. 182–199. doi: 10.1080/13501760500451600.

Scheipers, S. and Sicurelli, D. (2008). 'Empowering Africa: Normative power in EU–Africa relations', *Journal of European Public Policy*, 15(4), pp. 607–623. doi: 10.1080/13501760801996774.

Staeger, U. (2015). 'Africa-EU relations and normative power Europe: A Decolonial Pan-African critique', *JCMS: Journal of Common Market Studies*, 54(4), pp. 981–998. doi: 10.1111/jcms.12350.

Tindale, S. (2013). *Priorities for EU development aid*. Available at: https://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2013/pbrief_sct_development_14june13-7556.pdf (Accessed: 23 February 2017).

Welle, D. (2002). *Mugabe's ZANU-PF dismisses partial suspension of EU sanctions | Africa | DW.COM | 19.02.2014*. Available at: http://www.dw.com/en/mugabes-zanu-pf-dismisses-partial-suspension-of-eu-sanctions/a-17442861 [Accessed: 23 February 2017].

Whitman, R.G. (2013). 'The neo-normative turn in theorising the EU's international presence', *Cooperation and Conflict*, 48(2), pp. 171–193. doi: 10.1177/0010836713485538.

The EU Role in The UN's Leaky Flagship for International Development

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Abstract

The Millennium Development Goals (MDGs) were adopted in the year 2000 and given a lifespan of fifteen years. Their agenda was quite straightforward, eliminate global extreme poverty and alleviate the causes of it, as was their target: the global south. Though limited in scope, the MDGs were the first time the world leaders had sat down and decided that perhaps something ought to be done about the ongoing state of affairs in so called "developing countries". That in itself is quite commendable, and the impact reports on the MDGs are often glowing with evidence of the impact that the billions of dollars that were invested over the 15 year period were all very well spent. When the world leaders sat back down in 2012 at the United Nations Conference on Sustainable Development in Rio to discuss their post-2015 development agenda, they were able to look back on the last 12 years of global sustainable development initiatives and reflect on how they could improve them for the next 15 (until 2030.) This article will be examining how much the Sustainable Development Goals (SDGs) improve on the MDGs in terms of their formation and content, while exploring the role the European Union played in the MDGs and how it should reflect on itself through the SDGs. Moreover, it will be critically analysing impact that the SDGs can really have as part of the 2015 sustainable development agenda, as the UN's flagship for International Development.

Introduction

Being only three years into the United Nations' (UN) post-2015 development agenda, it is difficult to assess the extent to which the Sustainable Development Goals (SDGs)[1] have been achieved. The goals are due to be completed by 2030, and so impact reports from civil society organisations (NGOs), charities and governments are still yet to be completed, even from short term projects. As a result, this critical analysis of the SDGs will focus primarily on the formation of the goals, their content and the UN's strategy for implementation over their lifespan. Moreover, it will explore the role that the European Union (EU) can play in both the establishment and the delivery of the SDGs in comparison to its work throughout the duration of the Millennium Development Goals (MDGs). In this sense, the EU will act as a running example throughout this assignment, who's actions will be continually referenced and examined. Assessing how much of an improvement the SDGs are over the MDGs will focus on the formulation, scope and the implementation of the goals on a national, supranational and global level. This is because the MDGs have run their full course, and the UN has dedicated time to assessing the impact of the goals, whereas the SDGs are still in the early stages of their enactment on the world stage. Therefore, any comparison relating to how far the goals have been realised would be invalid due to the different stages the two long term development strategies are at. This article will examine the formation and content of the SDGs, before moving to explore how they build on the MDGs both as a direct comparison of the process of their formation, and how, through their tackling of inequality on a global scale, they strive to have a more global impact. Finally, this article will close by examine some of the key criticisms of the SDGs and scrutinising the EU's ability to navigate these.

The content and formation of the Sustainable Development Goals

The SDGs are the leading ambitions of the UN and its members in relation to its post-2015 international development agenda and will come to their conclusion in 2030. Implemented in January 2016, the 17 goals aim to 'transform the world' by 'reducing inequality', promoting 'good health and well-being', and bringing an end to poverty 'in all forms everywhere' (UN, 2018). Described by the delegate of India as "an agenda of breath-taking ambition and hope" (Lebada, 2015: 23) this rather challenging set of goals for the international community will only be achieved with co-operation and commitment from all actors on all levels (Bhore, 2016). The SDGs are large in scope, ranging from improving quality of life for individuals, like goal 2 'zero hunger' or goal 4 'quality education for example, to focusing on sustainability and the environment, as with goal 11 'sustainable cities and communities' or goal 13 'climate action' (The UN, 2019). As a result, the goals cover the three key pillars needed for long term sustainable development: economic growth, social inclusion and environmental protection.

The SDGs were drafted by an 'Open Working Group' (OWG) consisting of 30 representatives from the UN's five regional groups, after the need for a post-2015 development agenda was approved at the UN Conference on Sustainable Development (UNCSD) in Rio de Janeiro in 2012 (Rio 20+). The OWG programme secured the involvement of "relevant stakeholders and experts from civil society, the scientific

1 Also referred to as the 'Global Goals'

community and the UN system" and was tasked with submitting the proposal for the SDGs at the 68th meeting of the UN General Assembly (UNGA) in 2013 (Chasek et al, 2016: 8). Following this, the OWG spend 18 months meeting with the relevant stakeholders in order to develop their agenda, with the focus on limited targets and goals (Chancel et al, 2018:. 8). During this process however, the decision was made that the SDGs would act as the successors to the MDGs and increase in scope to include environmental challenges and economic growth in a far more universal format, which would place as much of the onus for achieving the goals on 'developed' nations as it would on developing nations. The outcome of this process was the construction of 17 goals and 169 targets as the successors to the MDGs (Chasek et al, 2016). Combining the interest of 193 member states and introducing the SDGs to the world's population, who would inevitably need to play a role in holding governments and the UN accountable for the progress of the goals, was undoubtedly one of the greatest tasks the UN has undertaken.

Building on the Millennium Development Goals – From Formation to Tackling Inequality Globally

The formation of the SDGs through such committees and working groups is one of the main advantages they have over the MDGs. Many of the issues faced in implementing the MDGs were due to the fact the goals were formed by experts from donor countries, with "minimal inputs from developing country stakeholders" (Higgins, 2013: 12). This led to the MDGs being born from a "North-South paradigm" and therefore poorly placed to deliver their targets, especially in relation to countries in the global south. (Higgins, 2013: 12) (Chasek et al, 2016). This is exemplified by the role of the EU in the delivery of these goals. While it would be unjust to criticize the efforts of the EU assisting with the MDGs, donations from the European Development Fund (EDF), totaling €1billion, were part of the reason global extreme poverty was halved by 2010 (European Commission, 2015), it can be said that the EU's role as part of the 'saviour' west played a larger role in the underlying narrative that pouring enough money into developing countries would be a sufficient solution rather than working with them to identify what needed improving and how it could be done. This was an issue that the SDGs mitigated right from the start by incorporating delegates from 70

Member States, rather than reducing it down to 30 as recommended in the Rio+20 mandate. The broader inclusion of NGOs, citizens and a wider range of governments resulted in a set of goals that can be considered to be truly universally endorsed (Chasek et al, 2016). This set the SDGs up for a far better start than their predecessors.

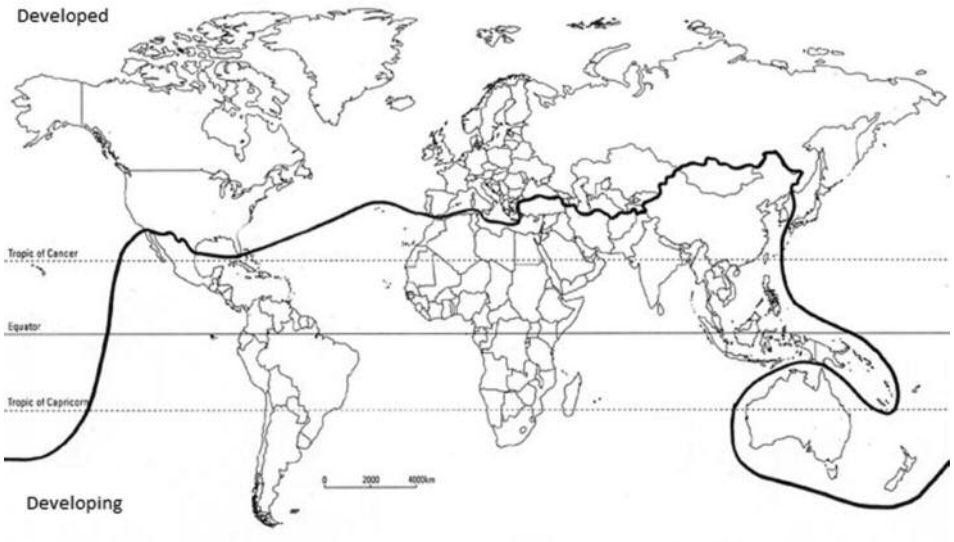
A result of this new universal mandate was a larger scope of enactment. One of the key challenges the SDGs take on is the problem of inequality, a rising concern that has been highlighted by the World Bank and UN agencies within recent years (Freistein and Mahlert, 2016). 11 of the 17 goals address forms of global inequality, especially goal 10 – 'reduce inequality *within and among* countries' – which directly tackles inequality as a goal in its own right (UN, 2018). Moreover, goals such as gender equality (goal 5) and further links to education, work and health rights indicate that inequality is being recognised as a crucial factor for sustainable development (Freistein and Mahlert, 2016). The second key indication of this inclusion of reduced inequality is that it removes the traditional 'developed saving the underdeveloped' approach to international development (Easterly, 2009). By recognising that all countries have areas in which they can develop, the SDGs redact from the more separated narrative that the MDGs were accused of (Freistein and Mahlert, 2016) (Chasek et al, 2016). This practice of disaggregation is crucial for recognising the need to include disadvantaged groups that exist within countries that are classified as 'developed' under the scope of the SGDs. Indeed, the World Inequality Report (2018) indicates that economic inequality is widespread globally, both intra and interstate (Chancel et al, 2018). This report demonstrates that the West also has to take action and the universal nature of the SDGs could be crucial to that. Another clear indicator of this is inequality within the EU. Since the 1980s, income inequality in Europe has been on the rise as a result of a culmination of factors: the slowdown of economic activity in the eurozone in the early 2000s, the 2008 financial crisis and ensuing austerity and the process of economic liberalisation itself is thought to have contributed to rising inequality. Since the end of the 2000s, income inequality in the EU was higher than the average OECD country (Pérez-Morenoa and Angulo-Guerrero, 2016). As inequality throughout the West has been rising, it becomes increasingly important to recognise relative forms of poverty and inequality on a national as well as global level (Quadir, 2013; Freistein and Mahlert, 2016).

Critiquing the Sustainable Development Goals

Thomas Pogge levies three main criticisms of the sustainable development goals. Firstly, he argues the goals lack any real instructions as to who is responsible for their implementation. He uses the example of goal 5.1 ('end all forms of discrimination against all women and girls everywhere'). While this is a very laudable goal, and certainly one that all countries should be striving to achieve, Pogge notes that it fails to specify what is required of states, acting both domestically and internationally, as well as NGOs and other international organisations in order to achieve it (Pogge and Sengupta, 2015). Without this, poorer states are likely to be held accountable for failing to reach unattainable goals without proper support from perceived 'developed' countries or international organisations. This is the same problem that the MDGs encountered. William Easterly argues that the aforementioned 'west as a saviour' approach combined with the inequity of the goals as a result of their formation led to the MDGs being seen as a failure in parts of Africa, cumulating in the overlooking of some of the successes on the continent, as mentioned in his work '*How the Millennium Development Goals are Unfair to Africa'* (Easterly, 2009) (Higgins, 2013). For example, Easterly highlights how MDG Goal 4 – to reduce infant mortality rates – would be seen as a failure in parts of Africa as a result of the S-shaped curve that results when measuring reductions in infant mortality. Even though Africa as a region is successful in reducing absolute morality rate, it's relative rate of reduction would cause this to be regarded as a failure in Africa (Easterly, 2009: 31). This issue of measurement will be explored shortly, but the issue of responsibility for implementation is undoubtedly something that the SDGs will be striving to improve upon, and they have the potential to trigger a shift in focus towards inequality in developed nations.

Secondly, the SDGs do not contain structural or institutional reforms. Critics such as Pogge, Sengupta, Fourie and O'Manique argue that the SDGs do not challenge the current international structure economically, thus failing to address some of the root causes of poverty. Pogge argues that the current economic structures both globally and nationally are orientated against the poor, and therefore hinder the eradication of global poverty (Pogge, 2015). Those who benefit financially from institutional schemes surrounding education, business, and healthcare are far better poised to lobby for changes than citizens for example. This has the largest impact on the portion of the population that the SDGs are aimed at. Yet, the SDGs fail to address huge international challenges such as corporate tax evasion, profit shifting, exploitation of a country's natural resources or large-scale lobbying of governments by firms (Pogge, 2015). Fourie and Colleen further this argument by claiming that the SDG's failure to address the impact of current socio-economic structures, as well as their insistence on having economic growth as a primary focus of the SDGs, enables "neoliberal economism to continue to capture the global development project" (Fourie and O'Manique, 2016). This mode of thinking and the desire to maintain the status quo in terms of global economic is structure means that humanitarian development and environmental sustainability will remain secondary to the economic interests of states and those reaping the most benefits from the current structure.

The final issue that the SDGs must strive to improve upon is how the success of the goals are measured. The UN can honestly state that the portion of people living under the global poverty line of $1.90 a day decreased from 28% (1.7 billion) in 1999 to 11% (767 million) in 2013 (UN, 2018) during the period of the MDGs. However, in reality, this figure is far less impressive than it first appears. The figure of $1.90 is set by the World Bank, an institution that is not only staffed by government appointees but also reliant on governments for funding, represents extremely low purchasing power (Pogge and Sengupta, 2015). Moreover, the case can be made that the concept of a global poverty line is redundant, as different countries have experienced different rates of inflation and deflation throughout the last decade and therefore the Purchasing Power Parity that the World Bank relies on is invalid (Kakwani and Son, 2016). In order for the official progress reports for SDG to be truly reflective of the progress that is being made on the ground, the UN should devolve the responsibility for measuring said progress from governmental bodies and institutions, which have to rely on remaining in the favour of those in power, to fully independent academic experts who would be committed to remaining fully transparent in the progress of the goals (Pogge and Sengupta, 2015).



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Further Critiques and The Role of the EU in Delivering the Post-2015 Agenda

The UN's Universal Declaration on Human Rights is one of the most renowned UN declarations of the 20th century, setting out the fundamental rights of all people in one document for the first time (UN, 1948). The question therefore remains as to why (despite a mention in the preamble) the SDGs have failed to include a strong human rights focus, especially in relation to the rights of women. Valeria Esquivel notes in her feminist analysis of the SDGs that the goals priorities economic growth over the rights of women (Esquivel, 2016). Moreover, the goals fail to address and tackle the patriarchal structures that inhibit a woman's ability to benefit from economic growth (Esquivel, 2016). Even when referring to the empowerment of women throughout the goals, it seems to be in relation to realising the potential of women, which can be interpreted as rights allowing women to become productive workers within the global economy, as opposed to enabling rights as an end in themselves, as women deserve (Esquivel, 2016; Fourie and O'Manique, 2016). This is an area in which the EU can position itself to take up the mantel. With a long history of strong human rights enforcement and a history of recognising the importance of women's rights, the EU is well placed to ensure that they continue to be respected both within its borders and through its development work. Indeed, the European Instrument for Democracy and Human Rights funded 120 projects between 2014 and 2017 aimed at the promotion and protection of women's rights. Crucially, this was mostly achieved through supporting local civil society organisations, which are important actors for establishing the sustainability of international development (European Commission, 2019). Moreover, the EU's 2018 report on gender equality within the EU included 5 key strategies for the eradication of gender inequality for the years 2016-2019, one of which included promoting gender equality outside of the EU (European Commission, 2018). This highlights the issue of power balances in the SDGs, the fact that large actors still have the most significant say in terms of maintaining current socio-economic structures, as well as the SDGs general inability to challenge these structures nationally and globally. However, it does emphasises the role the EU can play alongside the UN as a norm entrepreneur, as well as how the EU has recognised that gender inequality cannot be seen as purely an issue for developing countries, but one that, in order to be truly eradicated, must be challenged globally.

While the SDGs go a long way to capture the problem of inequality in international development, several criticisms have been levied against them in relation to how they intend on challenging it. One of the key issues with the SDGs is their need to be ratified and domesticated by national governments in order to take hold. Their non-binding nature means they do little bar espouse values and norms, and, by offering governments a "get-out-of-jail-free card," fail to ensure that the goals are ever effectively implemented (Fourie and O'Manique, 2016). Pogge and Sengupta also highlight the non-binding nature of the SDGs and the related issues with state compliance, whilst conceding that this does have the potential to inspire governments and citizens to take long term action rather than enact short term legislature (Pogge and Sengupta, 2015). However, it is broadly binding legislature which can lead to tangible changes in policy and outcomes. Generally speaking, intra-EU Communication leads to a common voice for the EU-27 in the UN General Assembly, and the coordination between the EU and the UN on issues such as human rights and international peacekeeping has increased over time (Bourantonis and Blavoukos, 2017, p. 259). The relationship between the EU and the UN is important and coherence between/amongst EU member states in the UN General Assembly can enable UN debates and expectations to be brought back to the negotiating table in Brussels. The EU has the ability to codify the norms and agendas it helps shape at the UN for its member states. However, aside from what perceived influence EU member states may have over their former colonies, it has little ability to ensure commitment to the goals beyond its borders.

Conclusion

Even in light of the above criticisms of the SDGs, the case can still be made that they are an improvement on the MDGs. The SGDs were far more inclusive in their formation. This important factor has two tangible implications. Firstly, it removed the 'North-South' narrative that plagued the MDGs and led to the countries that needed the most support actually being chastised for not meaning unrealistic targets (Easterly, 2009) (Chasek et al, 2016). Secondly, it meant that the SDGs were far more universal in their application. With this, not only were the SDGs were able to be directed at hard to reach populations in developed countries, but it also meant that sustainable development finally was seen as a global effort, not just something for the global south to work on. The SDGs also have a much bigger scope than their predecessors. The MDGs focused primarily on poverty eradication and social inclusion. Conversely, the SDGs are more expansive, covering far reaching goals such as environmental sustainability and economic growth. While this broader scope is far more ambitious, as the arguments in this article have already established, the SDGs are constrained by the structures of neoliberalism, such as the World Bank (Freistein and Mahlert, 2016).

This leads to some closing remarks regarding the EU's role in both the MDGs and the SDGs. Throughout the MDGs, the EU was able to act as a donor in part of this north-south paradigm, with no real focus on development within its own borders. Through the establishment of the SDGs, the EU, and other 'western' nations, have been forced to reflect internally in order to achieve these wide reaching goals. For example, ensuring its building stock is carbon neutral and the production of 'zero energy' buildings is sufficiently industrialised is an important step in achieving goal 7 (clean, affordable energy) and goal 9 (industry, innovation and infrastructure) (Saheb et al., 2018). Moreover, it can be argued that the existing frameworks of multilateral development actors such as the World Bank are exactly what is needed for organising collective action on global development. Through these institutions and collective organisation, targeted development projects can be established and carried out globally, offering the EU a chance to put many of its visions and resources into action (Bodenstein et al., 2017).

Despite being the UN's flagship for international development, the Sustainable Development Goals clearly have a few leaks. To continue with the ship metaphor, the Global Goals have set sail without any cannons, while being helmed by 192 sailors all with a different idea of where north is. That is to say, the SDGs lack direction and the means for proper enforcement due to the commitment to "nationally appropriate" methods of implementation and the overriding issues of sovereignty (Fourie & O'Manique, 2016) (UN, 2018) (Target 1.3). However, perhaps a flag bearer is all the SDGs are meant to be. The UN itself, for the most part, lacks the power to impose binding legislation on its members, and this is reflected with the goal's implementation being required predominantly on a national level. This therefore raises a separate question: should the SDGs take precedence over a countries sovereignty and the targets be translated into binding legislations that countries are obliged to enact? Of course, the issues with this radical approach to sustainable development are far reaching. Perhaps, therefore, the SDGs should remain as mere recommendations, or ambitions, to save our species and our planet and we should hope enough time remains.

Bibliography

Bhore, S. J. (2016). Global Goals and Global Sustainability. *International Journal of Environmental Research and Public Health,* p. Letters.

Bodenstein, T., Faust, J. and Furness, M. (2017). European Union Development Policy: Collective Action in Times of Global Transformation and Domestic Crisis. *Development Policy Review, 35 (4),* pp. 441- 453.

Bourantonis, D. and Blavoukos, S. (2017). *The EU in un Politics: Actors, Processes and Performance,.* s.l.:Palgrave Macmillan Limited.

Chancel et al, L. (2018). *World Inequality Report 2018,* Berlin: World Inequality Lab.

Chasek et al, P. S. (2016). Getting to 2030: Negotiating the Post-2015 Sustainable Development Agenda. *Review of European Community and International Environmental Law,* pp. 5-16.

Easterly, W. (2009). How the Millennium Development Goals are Unfair to Africa. *World Development Vol. 37 (1),* pp. 26-35.

Esquivel, V. (2016). Power and the Sustainable Development Goals: a feminist analysis. *Gender & Development,* pp. 9-23.

European Commission (2015). *The EU's Contribution to the Millennium Development Goals- Key results from European Commission programmes,* s.l.: International Cooperation and Development.

European Commission (2018). *2018 report on equality between women and men in the EU,* Brussels: OIB.

European Commission (2019). *Women's Rights.* [Online] Available at: https://ec.europa.eu/europeaid/sectors/human-rights-and-governance/democracy-and-human-rights/anti-discrimination-movements/women_en

Fourie, P. and O'Manique, C. (2016). 'It Sells, But It Does Not Fly': An Early Assessment of the 2030 Agenda for Sustainable Development. *Development,* pp. 274-279.

Freistein, K. and Mahlert, B. (2016). The potential for tackling in equality in the Sustainable Development Goals. *Third World Quarterly, 37:12,* pp. 2139-2155.

Higgins, K. (2013). *Reflecting on the MDGs and Making Sense of the Post-2015 Development Agenda,* Canada: NSI: The North-South Institute .

Kakwani, N. and Son, H. H. (2016). Global poverty estimates based on 2011 purchasing power parity: where should the new poverty line be drawn?. *The Journal of Economic Inequality Vol.14, (2),* p. 173–184.

Lebada, A. (2015). Summary of the Seventh and Eighth Sessions of Intergovernmental Negotiations on the Post-2015 Development Agenda: 20 July. *Earth Negotiations Bulletin,* pp. 20-32.

Pérez-Morenoa, S. & Angulo-Guerrero, M. J. (2016). Does economic freedom increase income inequality? Evidence from the EU countries. *Journal of Economic Policy Reform, Vol. 19, No. 4,* p. 327–347.

Pogge, T. (2015). *The Sustainable Development Goals: Brilliant Propaganda?.* s.l.:s.n.

Pogge, T. and Sengupta, M. (2015). The Sustainable Development Goals (SDGs) as Drafted: Nice Idea, Poor Execution. *Washington International Law Journal Vol 24 (3).*

Quadir, F. (2013). Rising Donors and the New Narrative of 'South–South' Cooperation: What Prospects for changing the Landscape of Development Assistance Programmes?. *Third World Quarterly 34, no. 2,* p. 321–338.

Saheb, Y. et al. (2018). Energy transition of Europe's building stock Implications for EU 2030 Sustainable Development Goals. *Responsibility and Environment,* pp. 62-67.

The UN (2019. *The Sustainable Development Agenda.* [Online] Available at: ht)tps://www.un.org/sustainabledevelopment/development-agenda/

UN (1948). *The Universal Declaration of Human Rights.* [Online] Available at: http://www.un.org/en/universal-declaration-human-rights/

UN (2018). *The Sustainable Development Goals.* [Online] Available at: https://sustainabledevelopment.un.org/?menu=1300

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Abstract

In analyzing the EU's role in the world, its engagement in the struggle against so called Islamic State (IS) poses an interesting case study regarding the effects of EU foreign policy on the ground. This article delves into this topic by taking the example of weapon deliveries made by EU member states, condoned and supported by the EU foreign affairs council, to the Iraqi Kurds in 2014/2015 to aid their fight against IS. This article thus poses the research question asking why the weapons deliveries had a divisive effect on the Iraqi Kurds and how this impeded their struggle against IS in 2014/2015. In applying Realistic Group Conflict Theory which relies on rationalist and realist factors in explaining inter-group collective behavior, this article argues that weapon deliveries divided the Iraqi Kurds over access to and distribution of the weapons by intensifying and reigniting existing inter-tribal rivalry and competition. This caused a conflict of interest among the Iraqi Kurds, leading to heightened distrust between the two dominant Kurdish tribal confederations, thus frustrating concerted Kurdish military and diplomatic action in face of the IS threat. In highlighting intra-Kurdish tribal political competition as well as the one-sided nature of the weapons' delivery and distribution the article offers a critique of the effectiveness of the EU support to the Kurds by identifying adverse effects thereof. The article thus contributes toward debates surrounding European and western intervention in conflict and specifically the middle east as well as providing an interesting analysis of the internal Iraqi Kurdish tribal political realities which continue to leave them susceptible to external influence and challenge their agency in the region.

Fomenting division amongst a strategic partner: The impact of EU States' weapon deliveries on the Iraqi Kurds in the fight against IS

Introduction

On Friday the 15th of August 2014, the European Union formulated a unified statement in reaction to the rapid territorial gains in Iraq by the so-called Islamic State (IS) (Baetz and Hinnant, 2019). Following an emergency meeting in Brussels, the bloc's 28 foreign ministers condoned direct arms deliveries to the Kurds of Iraqi Kurdistan, who were then proving themselves effective fighters against IS and who had appealed to the West for military aid (*ibid*). Thus, in mid-2014, IS' advances; its genocide against the Yezidi religious group with their resulting flight to Mt. Sinjar; and the resulting refugee streams led "Europe toward taking action" (*ibid*). Thereby, Europe took a clear step of external action, as then-Italian Prime Minister and current EU High Representative for Foreign Affairs and Security Policy Federica Mogherini remarked "[t]hese are crises…that are of concern to our European neighbourhood, to our security and stability" (*ibid*).

While the EU statement itself was a response to France's and the UK's decisions to directly supply the Iraqi Kurds with ammunition and equipment, it nonetheless symbolized a greater EU involvement in Iraq (ibid.). The EU foreign affairs council similarly welcomed "the decision by individual member states to respond positively to the call by the Kurdish regional authorities to provide urgently military material" (Borger, 2014). This shift is particularly interesting when considering the bloc had since the 2003 US invasion been reluctant to get involved in Iraq (America.aljazeera.com, 2019). This in turn prompted further military aid and deliveries from other EU member states (Borger, 2014). Most notably, it led Germany to abandon its policy of not sending weapons into conflict zones as well as its "long-standing reluctance to join military operations overseas" by directly supplying the Iraqi Kurds with modern weaponry, ammunition and military training (Dw.com, 2014). The German contingent alone was worth a total of 70 million euros and according to Defence Minister Ursula von der Leyen and then-Foreign Minister Frank-Walter Steinmeier aimed to equip at least 4,000

soldiers (Kimball S. 2014; Dw.com, 2014). Amongst others, these weapon deliveries included anti-tank missiles, as well as state-of-the art assault rifles, machine guns and ammunition as well as heavily armoured Dingo infantry vehicles (Dw.com, 2014).

This instance of shifting European actorness and foreign political agency warrants a closer look when conceiving of Europe as an actor in the world. In inquiring about EU external action and foreign policy, this instance of EU-condoned direct military aid to the Iraqi Kurds begs the question of its effects on the ground, namely how it affected the Iraqi Kurds. With IS now largely defeated in Iraq and Syria, praise towards western aid to the actors involved in the fight on the ground seems easy to provide, yet can an analysis be offered regarding adverse effects of European external action in form weapons deliveries?

This article takes a closer look at the Iraqi Kurds, a strategic EU partner in the war against IS, and analyses the impact EU weapons deliveries had on them and their struggle against IS. Using the Realistic Group Conflict Theory, the article answers the question why the weapons deliveries had a divisive effect on the Iraqi Kurds and how this impeded their struggle against IS in 2014/2015. By highlighting rationalist and realist factors to explain inter- group conflict, Realistic Group Conflict Theory is useful at explaining why the Iraqi Kurds, conceptualized as consisting of two large tribal confederations, became embroiled in a conflict of interest over the weapons as resources. These years were chosen as they make up the timeframe where the Kurdish struggle against IS was the most desperate, where IS made most of its territorial gains and whereupon the Kurds formally called upon military aid from Europe and the West. This paper argues that the weapon deliveries divided the Iraqi Kurds over access to and distribution of the weapons by intensifying and reigniting existing inter-tribal rivalry and competition which caused a conflict of interest among them. This in turn led to heightened distrust between the two dominant Kurdish tribal confederations, thus impeding unified Kurdish military and diplomatic action in face of the IS threat.

The article begins by presenting realistic group conflict theory (RCT) and conflicts of interest. The next section introduces the Iraqi Kurds as well as their internal division along rivalling and competing tribal lines based on rationalist and realist factors such as security and economic advantages. This is followed by a section wherein RCT is applied and the divisive effect of western weapons deliveries on the Iraqi Kurds' fight against IS in 2014/2015 is analysed. The conclusion sums up the findings and duly reflects upon and criticizes the theoretical approach taken.

Realistic Group Conflict Theory

Realistic Group Conflict Theory (RCT) is a theory from the field of Peace and Conflict Studies developed by Campbell in 1965[2] and elaborated upon by LeVine and Campbell in 1972[3]. RCT aims to explain the nature of, the causes for and outbreak of intergroup conflict as well as answering questions of how and why conflicts escalate (Fisher, 1990: 24). RCT rests upon the core assumption that "group conflicts are rational in the sense that groups do have incompatible goals and are in competition for scarce resources" (*ibid*)[4]. Thereby, conflicts of interest and inter-group competition are the core cause of conflict (ibid.: 26).

Realistic Group Conflict Theory has a twin epistemological basis, as it identifies rational and realist factors such as economic benefit, security and power, as causing and driving intergroup conflict (*ibid*: 24). RCT posits that real conflict of interest and real threat cause a perception of threat, and furthermore that real threat causes hostility to the source of this threat. Real conflicts of interest are "based on incompatible goals and competition for scarce resources (especially in situations of relative deprivation) [and] result in the perception of threat, which then increases […] and drives invidious group comparisons." (Fisher, 2013: 7).

2 See bibliography: Campbell, D.T. (1965).

3 See bibliography: LeVine, R.A. / Campbell, D.T. (1972).

4 Fisher cites (Campbell 1965: 287). See Bibliography: Campbell, D.T. (1965).

Within Realistic Group Conflict Theory, threats are real in the sense that they are "based on a combination of real conflict of interest, past or present conflict between the groups and the existence of competitive out-groups" (Fisher, 1990: 95). The conflict of interest between groups regarding scarce resources thus leads to the perception of threat – in form of the opposing group. Fisher clarifies the notion of real threat as being comprised of "incompatible interests, primarily economic and territorial; […] unmet needs for security; […] or incompatible aspirations for power" (ibid.: 96). However, in contradiction to social-constructivist thinking, it must be stressed that within RCT; perception of threat rests decidedly upon "real differences" which cause intergroup conflict: "differences in disputes are real and objective and not simply misperceptions" (*ibid*, 96: 114).

Threat and the perception thereof presents the critical variable of RCT and has the twin effect of "causing hostility to the source of the threat" while at the same time "caus[ing] awareness of in-group identity and solidarity" (Fisher, 2013: 7, 65). Thereby, real threat leads to intergroup mistrust, rivalry, tension and conflict as well as intra-group cohesion and processes such as patronage, clientelism and rent-seeking (*ibid*: 7)[5]. Relations between groups may thus result in potentially protracted periods of inter-tribal competition, rivalry, distrust and a sense of an intergroup "security dilemma[6]" (as conceived of by Herz, 1950: 157). These processes can lead to several forms of intergroup conflict, including intractable conflict.

In taking rationalist and realist factors into account for explaining intra-and intergroup dynamics, RCT offers a theoretical perspective that applies effectively to the realities of the Kurdish rivalry and conflict of interest over the weapon deliveries. In this light, the concept will be applied by conceptualizing the weapons as scarce resources. Furthermore, the distribution thereof and the clash and conflict of interest regarding the allocation of these weapons is explained. Lastly the distrust this caused between the parties showcases the estrangement and reluctance to cooperate between the two Kurdish parties against IS.

The Kurds of Iraqi Kurdistan

Of the larger transnational national group termed *Kurds*, the Iraqi Kurds are a regional subgroup. Roughly between 4 and 6 million Kurds live in the state of Iraq today, where they constitute around 15 percent of the total population and largely occupy the north-eastern territories of Iraq: the Kurdistan Autonomy Region, also called the Kurdistan Region or Iraqi Kurdistan (Aziz 2015: 8). The Iraqi Kurdistan is officially recognized by the Iraqi government as being an autonomous region within an increasingly federal Iraqi state (Lemke, 2016: 165).

Tribal divisions focussed around large tribal confederations[7] dominate the Iraqi Kurdish political landscape (McDowall, 1992: 18; Ciment, 1996: 92f). Specifically, two such confederations compete in Iraqi Kurdistan and within the KRG. One is the Kurdistan Democratic Party (KDP), led by the Barzani clan, while the other is the Patriotic Union of Kurdistan (PUK), led by the Talabani clan (Ciment, 1996: 19f).

Since the achievement of Kurdish Autonomy in 1992, both confederations have divided and shared political power and government ministries in the KRG whereby it remains largely split along this tribal power divide (ICG, 2015: 5). Though democratic in name, both parties are actually "tribal confederations garbed in the rhetoric and trappings of democratic political institutions" (Ciment, 1996: 6, 87). Both tribal camps portray similar socio-political structures, as both rely on kinship and family ties for intra-tribal confederation cohesion but also economic and security rational (*ibid*: 6, 20, 86; McDowall, 1992: 18).

5 Fisher references (Brown & Capozza, 2000; LeVine & Campbell, 1972). See bibliography.

6 Herz defines security dilemma as „A structural notion in which the self-help attempts of states to look after their security needs tend, regardless of intention, to lead to rising insecurity for others as each interprets its own measures as defensive and measures of others as potentially threatening".

7 Tribal confederations stand above a *tribe* in terms of number of group members as well as in terms of hierarchical political organization and can be seen as an amalgamation of a group of tribes under a united political leadership for political purposes and interests. See Khoury & Kostiner 1990.

It is this type of economic-gain and cost-benefit rationale of top-down resource distribution, clientelism and patronage governs the relationship between individual tribes and the ruling clan (Khalil, 2016: 164).

The essentially exclusive monopoly of the two tribal confederations over wealth and security leads to Kurdish tribes, for their economic or political survival, to join a confederation. Therefore, there exists a pressure for tribe to join a tribal confederation for economic and/or security purposes (*ibid*: 182). Similarly, within the confederation, this creates a converse systemic pressure for the ruling clan to provide its individual constituent tribes with the essential security and or economic goods to produce loyalty, cohesion and strength. Indeed, following Khalil, "tribes will perish if the political parties do not distribute money or other types of financial and political favours through the tribal chieftains. Such measures reinforce the belief for tribesmen that without the tribe and its chieftain their life, security and prosperity would be jeopardized. […] If political parties did not reinforce tribes, they [themselves] could not be reinforced" (*ibid*: 167).

Conflict of Interest among Iraqi Kurds

The economic and security aspects driving the cohesion towards divisive tribal confederations form a cornerstone of a dominating feature of the KRG, namely tribal rivalry (*ibid*: 166). The threat this formed towards the unity and survival of the whole can be seen since the beginnings of Iraqi Kurdistan's autonomy in the early 1990's, namely in form of the Iraqi-Kurdish civil war in the mid-1990s. Thereby, the Kurdish civil war itself was caused primarily due to economic and power rivalry, as "the balance of actual power between the parties – determined through economic and territorial advantages – led to […] war" (Taucher et al. 2015: 143; Perthes 2006: 248; Kirisci / Winrow 1997: 164).

The balance of interest and power calculations between the two tribal confederations due to continuing economic, security and power concerns continue to divide the Kurds and breeds competition, rivalry, discord and conflict. (Taucher et al, 2015: 142f; Ciment, 1996: 11; Kirisci and Winrow, 1997: 213). Furthermore, these conflicts of interest and inter-tribal strife have led to the Kurds frequently engaging in opposing alliances rather than forging unity on a national basis and is viewed by Kurdish nationalists as destructive to the stated common cause of Kurdish unity and nationhood (Ciment, 1996: 97, 128; Kirisci and Winrow, 1997: 25).

This rivalry weakens the KRG as it problematizes unified action and in turn leaves Iraqi Kurdistan at the mercy of the divergent whims and policies of the two tribal confederations (Meho, 1997: 18; Ciment, 1996: 5). This in turn weakens the potential of the KRG also in its efforts towards efficient and effective security policy as "[r]eal political power lies with the KDP and the PUK [whereby] [t]hese two political parties maintain [divided] armies of Peshmerga […] which enable them to […] siphon off foreign aid" (Ciment, 1996: 5f). Ultimately, the division of Kurdistan into rivalling tribal confederations based on competition over resources has a potentially destructive effect on Iraqi Kurdistan, as it challenges united action against external threats (Khalil, 2016: 180).

The IS Threat and Western Weapon Deliveries effects

In 2014, the advance and onslaught of IS posed an existential external threat for the Iraqi Kurds and in responding to it both dominant Kurdish parties experienced the scarcity of a critical security resource: modern weaponry. Gunter states:

"when IS suddenly struck [Iraqi Kurdistan] on 3 August 2014, its vaunted military or Peshmerga found themselves outgunned because of inferior military equipment [...] [whereby it was unable] to stem the IS tide that had driven within a mere 20 miles of its capital, Erbil, with its 1.5 million inhabitants" (Gunter, 2017: 180).

Following European weapons deliveries, the adverse effect was nevertheless that this created the situation whereby the weapons became a resource and point of conflicting interests. Competition between the KDP and PUK for this resource duly became a dominant feature of inter-Kurdish politics. The International Crisis Group remarks that arming the Kurds in Iraq in the fight against IS caused fragmentation and competition as well as rivalry among them: "[r]ather than forging a strong, unified military response to the IS threat, building up Kurdish forces accelerated the Kurdish polity's fragmentation [and] increased tensions between these forces and […] strengthened […] centrifugal forces" (ICG, 2015: i). Thereby:

"rather than shore-up Kurdish unity and institutions, the latest iteration of the 'war on terror' is igniting old and new internecine tensions and undermining […] turning the peshmergas into a professional, apolitical military force responding to a single chain of command" (ICG, 2015: i).

This was the case as weapons deliveries were distributed without having the Kurdish division along tribal confederations in mind. Western weapons, seen as a scarce resource, were hoarded and squabbled over as European powers delivered and distributed them in a largely uncoordinated and unequal manner: "[w]estern military aid […] provided to the Kurdistan Regional Government (KRG) [meant that] weapon deliveries from a variety of donors [came] unilateral, mostly uncoordinated and […] without strings attached regarding their distribution and use on the front lines" (ICG, 2015: if). Furthermore, western weapon deliveries "disproportionately benefited the KDP" as they were perceived to be the leading faction within the KRG and Iraqi Kurdistan, showcasing Europe's unfamiliarity with the Iraqi Kurdish political context (ICG, 2015: ii).

European powers' delivery of weapons in this manner caused "the fragile equilibrium among Kurds [to become upset]" (ICG, 2015: ii). Hence, Kurdish attention was drawn away from a desperately required united effort against IS and was invested into the rivalry over the distribution of the military resources for the divided Peshmerga armies. Stansfield notes that "[v]ery quickly, […] the threat posed by IS […] travelled down the list of issues of most importance to the leadership of the KR, with them focusing again far more intently on the political gaming" (Stansfield, 2016: 241). The weapons deliveries thus stoked inner-Kurdish rivalry resulting in increased levels of mistrust and threat between the KDP and PUK whereby each sought alliance with different regional partners as "each developed privileged political and economic ties with distinct regional partners – the KDP with Turkey, the PUK with Iran" (ICG, 2015: 5).

The result of the delivery of western military aid has thus been that the KDP and PUK, formal partners in a unity government, showed little inclination to distribute roles or mount joint operations, preferring competition over cooperation and thereby impeding a coherent and united effort against IS. This internal division even encouraged IS leadership that the Kurdish forces, despite superior western military equipment, could be overcome (Gunter, 2017: 180). In this manner, western military aid exacerbated the inherent intra-Kurdish conflict of interests over resources as "[w]estern aid to the Kurds, […] accelerat[ed] fragmentation of Iraqi Kurdish politics" (ICG, 2015: 4). As a result, Kurdish forces have been less effective in fighting IS than they could have been." (ICG, 2015: ii).

Conclusion

This article took a closer look at the Iraqi Kurds and the way EU external action affected the Kurdish struggle against IS in 2014/2015. By using the empiric case of EU weapons deliveries to the Kurds, the effects of EU member states' and EU external action on the ground were determined. The article thus sought to provide a case study investigating the adverse effect that EU member states' weapon deliveries to the Iraqi Kurds had on the Iraqi Kurds' fight against IS in 2014/2015. In applying the realistic group conflict theory by Campbell, this article thus began by introducing the Iraqi Kurds and how Iraqi Kurdistan has since decades been the site of conflicts of interest between the rivalling Kurdish parties/tribal confederations over wealth, power and security. In this environment of tribal competition and rivalry, western weapon deliveries sparked a new conflict of interest over the availability of these new scarce resource coveted by both parties. The unequal and disproportionate distribution of this vital and scarce resource caused increased tension, competition and rivalry between the two tribal confederations, and led to mistrust and a revival of a security dilemma. Cooperation between the two parties/confederations in combatting IS was thereby hindered and furthermore led to the formation of diverging alliance formations with regional and international actors. The research question asking why the weapons deliveries had a divisive effect on the Iraqi Kurds and how this impeded their struggle against IS in 2014/2015 can thus be answered in that western military aid resulted in increased Kurdish division between competing tribal confederations over economic and security interests, leading to a conflict of interest over the scarce resource of western weapon deliveries. This reignited and exacerbated inter-group rivalry, competition and perception of threat between the KDP and PUK, thus impeding and frustrating military cooperation and diplomatic unity in the face of IS. This specific case thus highlights the importance of in-depth knowledge of the local political context of its partners in order to achieve the desired effects of interventionist policies.

In reflecting upon the theoretical approach taken, one can ascertain that Realistic Group Conflict Theory (RCT) allows for a coherent analysis of the factors causing tension, rivalry, strife and disunity between groups. Hence, the competition for scarce resource, particularly in times of desperation, drive inter-group rivalry which in turn causes a conflict of interest, often leading to violence. Thereby RCT allows for the application of realist terminology and concepts such as the security dilemma and capabilities and interest. As RCT finds the causes for intergroup rivalry and conflict as lying within rational and realist factors, it also constitutes a concept of mixed epistemologies. This allows for a suitable application of RCT to the realities of Kurdish tribal politics as they share this rationalist-realist epistemological basis.

Looking further, this paper raises questions surrounding EU external action and western weapon deliveries to actors and groups engaged in violent conflict. Thus, further research can analyse potential EU policy-learning following this case and concerning similar policy decisions in the future. Furthermore, the question remains how these weapon deliveries may affect the post-IS situation in Iraq, as the Kurds and the Iraqi federal government are embroiled in a thus-far non-violent conflict of interest and identity surrounding the so-called disputed territories in Iraq. Western weapon deliveries have thus augmented Kurdish capabilities while also symbolically conveying and bestowing political legitimacy upon them as an actor in the Middle East. Therefore, the perennial question of western involvement in the Middle East remains of whether the west has again created a problem for the region and itself in the future.

Bibliography

America.aljazeera.com. (2014). *EU allows arms deliveries to Iraqi Kurds*. [online] Available at: http://america.aljazeera.com/articles/2014/8/15/iraq-eu-emergencymeeting.html [Accessed 20 Feb. 2019].

Aziz, Mahir A. (2015). The Kurds of Iraq: Nationalism and Identity in Iraqi Kurdistan. London: I.B. Tauris.

Baetz, J. and Hinnant, L. (2014). *EU okays arms deliveries to Kurdish forces combatting Islamic State*. [online] The Globe and Mail. Available at: https://www.theglobeandmail.com/news/world/seeing-horror-in-iraq-and-possibility-of-spillover-at-home-europe-reconsiders-its-reluctance/article20073188/ [Accessed 20 Feb. 2019].

Borger, J. (2014). *EU backs supply of arms to Kurdish fighters in Iraq.* [online]. Available at: https://www.theguardian.com/world/2014/aug/15/eu-backs-arms-kurdish-fighters-iraq [Accessed 20 Feb 2019].

Brown, Rupert / Capozza, Dora (2000). Social Identity Theory in Retrospect and Prospect. In: Capozza, Dora/ Brown, Rupert (Eds.) (2000): Social Identity Processes: Trends in Theory and Research. London: Sage. Pp. vii-xv.

Campbell, D.T. (1965). Ethnocentrism and other altruistic motives. In: LeVine, R.A. (ed.) (1965): Nebraska symposium on motivation, Vol 13. Lincoln: University of Nebraska Press.

Ciment, James (1996). The Kurds, State and Minority in Turkey, Iraq and Iran. New York: Facts on File, Inc.

Dw.com. (2014). *Germany to arm Kurdish forces fighting Islamic State in Iraq*. [online] Deutsche Welle. Available at: https://www.dw.com/en/germany-to-arm-kurdish-forces-fighting-islamic-state-in-iraq/a-17891859 [Accessed 20 Feb 2019].

Fisher, Ronald J. et al. (2013). Conflict Analysis and Resolution. The Oxford Handbook of Political Psychology. 2nd Edition. Oxford Handbooks online.

Fisher, Ronald J. (1990). The Social Psychology of Intergroup and International Conflict Resolution. New York: Springer-Verlag.

Gunter, Michael M. (2017). The Kurds – A Modern History. Princeton: Markus Wiener Publishers.

Herz, John H. (1950). Idealist Internationalism and the Security Dilemma. In: World Politics 2, 2, S. 171-201.

Holmes, J.G. / Grant, P. (1979). Ethnocentric reactions to social threat. In: L.H. Strickland (Ed.): Social psychology: East-West perspectives. Oxford: Pergamon.

International Crisis Group (ICG, 2015). Arming Iraq's Kurds: Fighting IS, Inviting Conflict. Middle East report N°158, 12.05.2015. Available at: [09.09.2018] https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/arming-iraq-s-kurds-fighting-inviting-conflict

Khalil, Hiwa Majid (2016). The Obstacles to Political Development in the Kurdistan Region 1992-2014. PhD Thesis. School of Social Sciences, College of Business, Law, Education and Social Sciences, Bangor University. Online. Available at: [07.09.2018] http://e.bangor.ac.uk/9786/1/Khalil%20PhD%202016.pdf

Khoury, Philip S. / Kostiner, Joseph (Eds.) (1990). Tribes and State Formation in the Middle East. Berkley and Los Angeles: University of California Press.

Kimball, S. (2014). *German weapons deliveries to Iraq's Kurdish region.* [online]. Available at: https://www.dw.com/en/german-weapons-deliveries-to-iraqs-kurdish-region/a-17892161 [Accessed 20 Feb 2019].

Kirisci, Kemal / Winrow, Gareth M. (1997). The Kurdish Question and Turkey: an example of a trans-state Ethnic Conflict. London: Frank Cass.

Lemke, Bernd (Publ.)(2016): Wegweiser zur Geschichte: Irak und Syrien. Paderborn: Verlag Ferdinand Schöningh.

LeVine, R.A. / Campbell, D.T. (1972). Ethnocentrism: Theories of conflict, ethnic attitudes and group behavior. New York: Wiley.

McDowall, David (1992). The Kurds: A nation denied. London: Minority Rights Publications.

Meho, Lokman I. (1997). The Kurds and Kurdistan: A Selective and Annotated Bibliography. Westport: Greenwood Press.

Perthes, Volker (2006). Orientalische Promenaden: Der Nahe und Mittlere Osten im Umbruch. München: Siedler Verlag.

Stansfield, Gareth (2016). Iraq. Second edition fully revised and updated. Cambridge: Polity press.

Taucher, Wolfgang / Vogl, Mathias / Webinger, Peter (Publ.) (2015). The Kurds: History, Religion, Language, Politics. Vienna: Austrian Federal Ministry of the Interior.

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International Relations

Abstract

Ever since its foundation in 1949 NATO has inextricably linked European and North American security. Yet the stresses and strains in transatlantic relations have increased considerably since the inauguration of Donald J. Trump in 2017. Serious allegations have been raised by the US president against European allies, at the head against Germany for not contributing to the alliance sufficiently. Since the NATO Wales Summit in 2014 every ally is expected to spend 2 percent of its Gross Domestic Product (GDP) on defence. But, does not reaching this target justify condemning other allies as harshly as president Trump has done recently? To answer this question, the 2 percent target itself has to come under scrutiny. That is why this essay examines the genesis of the 2 percent target and its theoretical background as well as the recent discussions surrounding it. Subsequently, the case of Germany is investigated and how its strategic culture of reticence is slowing down investments into defence expenditure. Finally, the untold flaws of the 2 percent target and thereby its hypocritical nature is revealed. This essay concludes that the 2 percent target alone does by no means justify condemning allies and doing so puts NATOs inner coherence at stake.

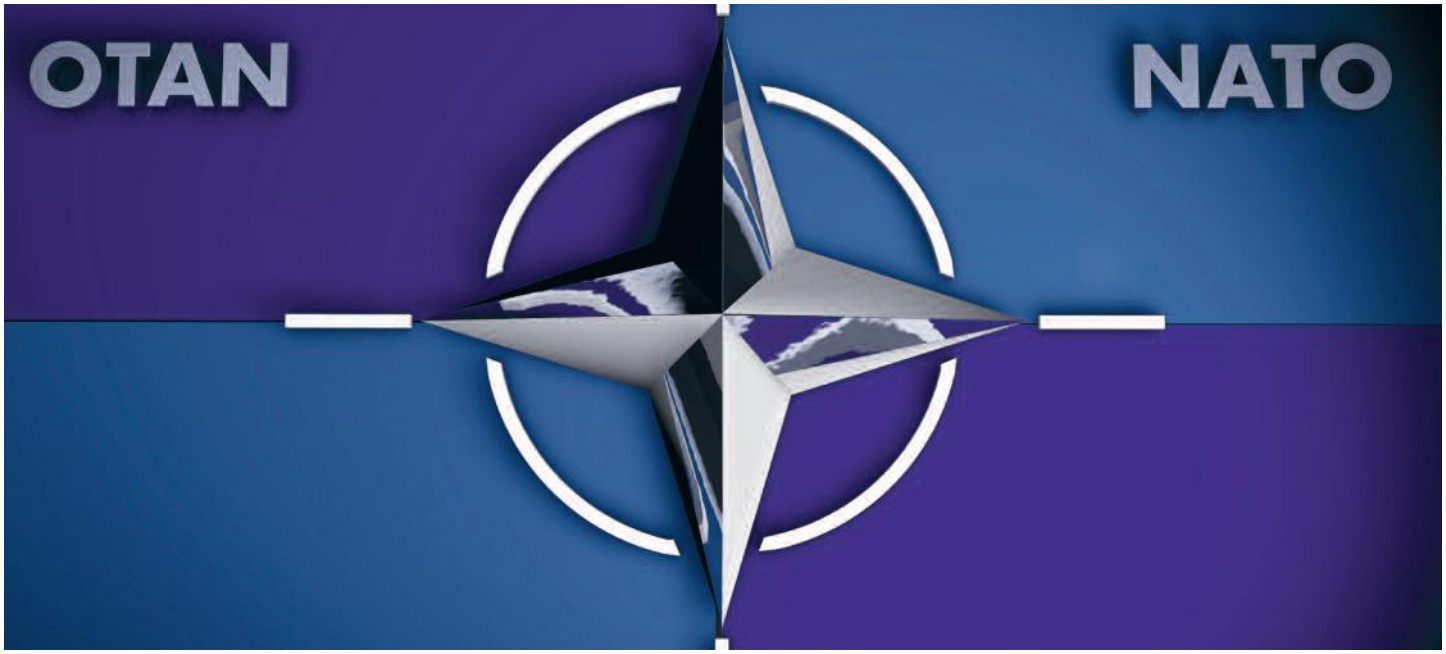
NATO's 2 Percent Target. Taking a Look Behind the Curtain: a German Perspective

Introduction

Since 1949 the North Atlantic Treaty Organization (NATO) has inextricably linked European and North American security. This link has rested ever since on Article 5 of the North Atlantic Treaty, in which all NATO allies pledge each other mutual assistance and solidarity in case of an attack on one of the allies. However, this link of solidarity is and has always been fragile and is anything but boundless. As early as during the drafting process of the North Atlantic Treaty, while agreeing to the principle of mutual assistance, the US refused to make the commitment of assisting all its allies automatically and immediately. Accordingly, the Treaty leaves it to each ally to determine the appropriate measures to take in case of the invocation of Article 5 (North Atlantic Treaty Organization, 2018). The very old conflict of interest between the US and its European allies is still reflected in today's discussions. Repetitively, the US has refused to carry the financial burden of collective defence all on its own and has urged its European allies to increase their shares of contribution. To balance the financial burden more equally, all allies agreed to spend 2 percent of their national Gross Domestic Product (GDP) on defence in 2014. On the Wales Summit allies pledged in the final statement to "halt any decline in defence expenditure; aim to increase defence expenditure in real terms as GDP grows; aim to move towards the 2% guideline within a decade with a view to meeting their NATO Capability Targets and filling NATO's capability shortfalls" (North Atlantic Council, 2014: 4). Thus, problem solved? By no means. A majority of allies, including Germany, is far from spending 2 percent of its GDP on defence and is unlikely to do so in the foreseeable future. Despite Germany being the largest economy in Europe its defence expenditure of 1.24% of GDP clearly fails to meet the target of 2%. But does the failure to meet the target of 2% classify Germany as someone who is taking advantage of the US? This article clearly rejects this notion as the 2 percent target is far too undifferentiated in order to depict an ally's contribution to the alliance appropriately and suggests moving towards more differentiated approaches.

The genesis of the 2 percent target

In order to understand the implications and approach of the 2 percent target, it is necessary to have a glance at its genesis. The 2 percent target itself is relatively new as it emerged on a NATO Summit in Prague in 2002 for the first time. Its emergence is linked to the establishment of the Membership Action Plan (MAP), which is a programme for countries that are interested in becoming a member of NATO. According to the MAP it is a precondition for every prospective member to spend 2 percent of GDP on defence in order to be eligible to join the alliance. To underpin the credibility of this demand and address the sharp decline in European allies' defence expenditure, on the same Summit the US proposed to extend the 2 percent rule to current members of the alliance. This proposal found support among other allies, yet it was not mentioned in the final summit statement (S.RES. DAV18C87, 2017). One and the same position was affirmed on the NATO Summit in Riga in 2006 by all Defence Ministers. Not before the Wales Summit in 2014 did allies mention the 2 percent target in a final summit statement, but since then the guideline is still not legally binding and remains a mere expression of political will (Wissenschaftlicher Dienst des Deutschen Bundestages, 2017).



While the 2 percent target is relatively new, the underlying discussion of burden-sharing in NATO, is anything but that. Indeed, it is almost as old as the alliance itself. Burden-sharing is a notion, that treats military alliances such as NATO as providers of the public good of collective security for its members (Hartley and Sandler, 1999). As other public goods and products of collective action, it faces the inherent problem of 'free-riding' (Olsen and Zeckhauser, 1966). 'Free-riding' in the context of NATO, refers to benefitting from the provision of collective security, which is guaranteed by the alliance's deterrence, without contributing to it, for instance in the form of deploying or not deploying troops. To reduce such 'free-riding' tendencies in the alliance, burden-sharing measures can be imposed on member states (Chalmers, 2001). This has been done several times throughout history, for instance in 1977 when NATO allies agreed to increase defence spending by 3 percent yearly, which was deemed necessary as an adequate response to large Soviet military investments. However, allies dropped this measure again in 1990 due to the improvement in relationships with the Soviet Union (S.RES. DAV18C87, 2017). Therefore, the 2 percent guideline is just the most recent of these burden-sharing measures and it remains to be seen how long it persists. While on the Wales Summit in 2014, the agreement was considered a promising step towards more burden-sharing between the US and its European allies, it thus far has turned out to be an empty promise as the map below depicting members expenditure in 2017 illustrates. Only 4 European allies, namely the UK, Poland, Greece and Estonia are reaching the threshold of 2% while all other countries are still not putting their money where their mouth is.

The stresses and strains in transatlantic relations

Imbalances in burden-sharing have been a frequently reappearing stumbling block straining the transatlantic relations. Yet in 1963, President John F. Kennedy pointed out, that the US "[…] cannot continue to pay for the military protection of Europe while the NATO states are not paying their fair share […] we have been very generous to Europe and it is now time for us to look out for ourselves […] We must exploit our military and political position to ensure that our economic interests are protected […] One of our big tasks is to persuade our colleagues in Europe to increase their defense forces " (Remarks of President Kennedy to

the National Security Council Meeting: 487). Such sentences sound surprisingly familiar and are remarkably close to president Donald J. Trump's current positions. Trump's recent allegations against European allies have added new fuel to the flames in the controversy about how the costs of NATO are shared. On the merits Trump did not deviate much from his immediate predecessors, since also George W. Bush and Barack Obama had prompted the European allies to increase their defence expenditure, loyally following the tradition of Kennedy and other presidents (Wilkie, 2018). Yet, Trump presented the request in a more provocative manner than any president before him, for instance, when he threatened to withdraw from the alliance and claimed that some allies 'owed' the US a considerable amount of money (Harding, 2018). Trump also suggested an increase in countries' defence expenditure from 2 to 4 percent of GDP (MacAskill and Crerar, 2018). Reactions to this proposal were understandably cautious among NATO allies, bearing in mind, that in 2017 only 4 European countries had reached the threshold of 2 percent, while none of them had even been coming close to the suggested 4 percent. In response to Trump's allegations, that were especially directed against the Federal Republic of Germany, the German minister of defence, Ursula von der Leyen, stated that Germany does not owe the US any money (Barigazzi, 2017). In a radio interview von der Leyen assured that the German government will raise the budget by 30 percent in real terms in 2019 and expects a real term increase of 80 percent by 2024 (Kelly, 2018). Indeed, the German government had announced increases in defence expenditure in its budget proposal, raising it from €38.5 billion in 2018 to €41.5 billion in 2019. Yet, this increase is planned to weaken in the subsequent years when defence expenditure is planned to rise to €41.7 billion in 2020, and eventually €42.7 billion in 2021 (Schnell, 2018). Despite these increases, all projections conclude that Germany's defence expenditure will be far from 2 percent in 2024, thus reneging on the legally not binding promise made on the Wales Summit in 2014. Even German Defence Minister von der Leyen publicly revised Germany's goal downwards from the initial 2 percent by 2024 to 1.5 percent by 2025, which still is the proclaimed government position (Riedel 2018). But at the end of the day the announced increases are insufficient to raise the German relative percentage far above its current 1.27%. Therefore, it seems likely that the government is not only failing to meet the 2 percent from the Wales agreement, but also the downwards adjusted goal of 1.5 percent (Böcking and Gebauer, 2018; Wiegold, 2018). This failure raises the question why Germany is reneging so bluntly on its promise and appears to have such difficulties to commit to significant increases in defence expenditure.

The German culture of reticence

There are several domestic reasons why Germany is not contributing as extensively as it is demanded by the US and other allies. These reasons can be captured by the concept of 'strategic culture', which deals with cultural or ideational beliefs, that either limit or enhance the application of military force or other forms of political activism (Snyder, 1977). Such beliefs are acquired by a society's citizens and elites through processes of socialisation and result in a certain view on the world, that is accompanied by a habitual action pattern, in citizens and political elite alike. The German culture has been fittingly described as a 'culture of reticence', which ultimately roots in the horrible experiences made in the two world wars (Malici, 2006). I argue in line with Berger (1998) on basis of three characteristics of German strategic culture, namely institutional arrangements, foreign policy traditions and public opinion, that the German strategic culture can convincingly explain Germany's reluctance to boost its defence expenditure.

First and foremost, the leeway of the German government with regards to foreign and security policy is largely restrained by the given institutional arrangements. The German Constitution restricts the use of military interventions in Article 87, where it is fixated that the German army can only be used for defence purposes (Basic Law). This hindered any kind of German military intervention for several decades until Article 87 was complemented by the German Constitutional Court in 1994 with Article 24. Through Article 24 Germany has received the opportunity to deploy its army beyond its territory within the framework of systems of collective security and defence. Yet, in 2005 another restriction was added, that every intervention has to be approved by the German parliament and this approval has to be renewed every 12 months. Thus, the German 'Bundeswehr" and the related budgetary process is not under control of a strong executive body such as the US president, but heavily restrained by the German parliament (Daase and Junk, 2012). Second, the German foreign policy tradition. Unlike other allies such as the US the German foreign policy is widely rejecting hard power politics and logically hesitates to use military means in order to promote security. Instead, German foreign policy is characterised by a commitment to multilateralism, restraint and moderation. Germany's focus lies on the building and integration of cooperative institutions, that are supervised by international law (Malici, 2006). Therefore, Germany predominantly uses diplomatic means in order to resolve conflicts peacefully and thus, does not rely on large military forces. Third, the attitude of the German public and elites towards military interventions, which lies at the heart of the German culture of reticence. The public German attitude is characterised by a profound scepticism and reservation towards military interventions. In an opinion poll conducted by the 'Körber-Stiftung' in 2014, 1000 German citizens were asked for their opinion about the German foreign policy. While this is undoubtedly a small sample, it reflects a general trend. 37 % of the 1000 respondents, compared to 62% in 1994, stated that Germany should engage more internationally, while 60%, compared to 37% in 1994, preferred German reservation on the international stage. This aversion against German international activism is directed mainly against military interventions and weapon deliveries, as 82% of respondents stated that Germany should engage less in such activities, while only 13% favoured more German commitment. However, interventions not containing military means, find more support in the German public, as 86% of respondents were in favour of more humanitarian aid, 85% of more diplomatic negotiations, and 80% of more projects that aim to strengthen civil societies and foster disarmament. For the respondents of the opinion poll deploying the German army is considered justified, when it is done in response to threats for peace and security in Europe (87%), serves humanitarian purposes (85%), prevents a genocide (82%) or impedes the distribution of weapons of mass destruction (77%). However, those interventions that comprise military means, for instance, to guarantee access to essential resources and trade routes or in order to implement an international economic embargo against an aggressor, only find support of 48% respectively 44% of respondents (Auswärtiges Amt, 2014).

Translating these findings into the language of international relations, it becomes evident that German citizens widely reject the use of hard power, which is using military or economic power to coerce other states to act in the country's own national interest (Wilson, 2008). Conversely, they are more receptive for the use of soft power, which abandons the notion of coercion and emphasises persuasion and attraction as a mean to change another state's behaviour (Nye, 1990). The public preference for antimilitarism bears potential for conflict because it stands in contrast to some German government officials, that are by trend more open to consider the use of hard power. This discrepancy became evident in May 2010, when Federal President Horst Köhler had to resign after he had received harsh criticism for his public statements about Germany's foreign and security policy. In an interview he said, that Germany as "A country of our size, with its focus on exports and thus reliance on foreign trade, must be aware that […] military deployments are necessary in an emergency to protect our interest – for example when it comes to trade routes, for example when it comes to preventing regional instabilities that could negatively influence our trade, jobs and incomes" (SpiegelOnline, 2010). These statements were essentially expressing the idea of hard power and leftist parties, such as "Die Linke", "SPD", and "Bündnis90/DieGrünen", did not hesitate to attack them heavily. They depicted Köhler's statements as an attempt to justify wars for economic purposes, which would not have been backed by the German Constitution. Despite Köhler's statements being slightly mistakable, they were mostly in line with the goals stated in the defence department's White Book from 2006 as well as the even more assertive CDU/CSU party line. Nevertheless, Köhler hardly received any support from Chancellor Angela Merkel and consequently cracked under the pressure of the leftist parties and the upset public (von Krause, 2015; Hintergrund.de, 2010). This example illustrates the conflict of opinion between German public and some of its leading politicians. In order to not lose electoral support, politicians necessarily factor in the public aversion against hard power and militarism. Therefore, anything related to militarism including the debates about military expenditure are contentious topics. Indeed, there is a wide consensus across political parties, which is underpinned by a study that did not find any correlation between government ideology and growth in military expenditure in the period from 1951-2011. Instead of risking the loss of electoral support by promoting increases in defence expenditure, German politicians focus on promoting social expenditure, which is more promising in the pursuit of electoral victory (Kauder & Potrafke, 2015). Regardless of these reasons, one might still be inclined to categorise Germany as an unembarrassed and irresponsible 'free-rider' of NATO. But, are these accusations sufficiently justified by referring to the 2 percent target?

The untold flaws of the 2 percent target

After having examined the reasons for Germany's reluctance, the final question is how accurately the 2 percent guideline depicts Germany's contribution to NATO and whether it justifies to label Germany and also other allies as 'free-riders'. Undoubtedly, the 2 percent target excels as a political tool as it allows politicians to simplify the burden-sharing debate into a simple numeric value, that is seemingly easy to determine (Techau, 2015). This simplicity is perfectly suited for US President Trump's populist style of governing. It enables him to create a powerful and seductive narrative that corresponds to the ideas of his US electorate by using a clear-cut dichotomy, i.e. classifying allies as either 'partners', i.e. those who pay the 2 percent (e.g. Greece, Poland, UK, Estonia) or 'free-riders', i.e. those who 'betray' the US taxpayers (e.g. Germany, Belgium). For the general public, though, the underlying conceptual flaws remain widely unseen. In fact, there is compelling evidence for the conceptual flaws of the guideline. First, it measures monetary input rather than military output, thus relying on a questionable assumption that more defence expenditure translates into more capabilities and eventually into more collective security for NATO. Conversely, the national defence expenditure does not provide any information about a country's contribution of capabilities towards NATO or about its willingness to engage in NATO activities. For instance, a country with a very high defence expenditure might not be willing to deploy its

military forces in common NATO activities. In addition, the determination of defence budgets is not as clear cut as claimed, since countries classify different budget points as defence expenditure, which leaves governments considerable room to shift budgetary items in order to adapt its defence expenditure. For instance, the UK government was criticised by several Members of Parliament in 2016 for including foreign aid and war pension schemes in its defence budget in order to overleap the 2 percent threshold set by NATO (Brown, 2016). Although the UK defence minister immediately rejected the accusations and declared that the budget shift had agreed to NATO guidelines, this incidence illustrates the complete arbitrariness of the concept. This is substantiated by the case of Greece, which received appraisal by US president Barack Obama in 2016 for reaching the 2 percent target, despite facing its tough domestic economic situation. The US president stated, that if Greece could reach the target, all allies should be capable of doing so (Daily Herald, 2016). What president Obama blended out, is the fact that the Greek GDP declined due to the country's economic crisis, while the Greek defence expenditure remained the same. Ceteris paribus, this resulted in a higher relative spending on defence, which led to Greece meeting the 2 percent target. Apart from that, almost 70 percent of the Greek defence budget is spent for personnel, thus resembles more of a governmental social policy programme boosting employment rather than a provision of useful capabilities to NATO (Major, 2015). The conceptual flaws of the 2 percent guideline are overwhelming. By no means can Germany or any other European ally be labelled as a 'free-rider' based on this criterion alone. Every politician who does so, is either unaware of the evidence presented or deliberately ignoring it in order to misuse the guideline as a political tool. Anyway, this practice puts the inner coherence of the alliance at stake and threatens its credibility against outer enemies. Such undifferentiated blaming will not suffice to move Germany towards more contributions since the German reluctance has more profound reasons.

Conclusion

The controversy about burden-sharing is anything but new and the 2 percent target is yet another chapter in this seemingly never-ending debate. For the German government the German strategic culture of reticence, constituted by institutional arrangements, foreign policy traditions and public opinion makes it exceedingly difficult to boost military expenditure significantly and thus reach the 2 percent target. Moreover, when considering the conceptual flaws of the guideline President Trump's 'free-rider' accusations against Germany and other European NATO allies fly in the face of reason. Neither Germany nor any other ally can be classified as a 'free-rider' based on the flawed 2 percent guideline alone. Massively defaming other allies is threatening NATOs inner coherence and ignores profounder reasons such as strategic cultures. Therefore, NATO should decide to abandon the flawed 2 percent guideline in its current form in order to move towards more differentiated approaches that take into consideration allies' domestic situation, strategic culture and further contributions to a greater extent.

Bibliography

Auswärtiges Amt. (2014). Review 2014. Krise-Ordnung-Europa. https://www.auswaertiges-amt.de/blob/269656/d26e1e50cd5acb847b4b9eb4a757e438/review2014-abschlussbericht-data.pdf. [Accessed 26 December 2018].

Barigazzi, J. (2017). Berlin strikes back against Trump claim that Germany owes 'vast sums' to NATO, US. Politico. https://www.politico.eu/article/trump-nato-spending-germany-response-ursula-von-der-leyen-news-gabriel/. [Accessed 12 December 2018].

Bennett, A., Lepgold, J., and Unger, D. (1994). Burden-sharing in the Persian Gulf War. *International Organization*, *48*(1), 39-75.

Berger, T. U. (1998). *Cultures of antimilitarism: National security in Germany and Japan*. JHU Press.

Böcking, D., & Gebauer, M. (27 April 2018). Deutsche Verteidigungsausgaben. Zahlen des Zorns. *Spiegel Online*. http://www.spiegel.de/wirtschaft/soziales/haushaltsentwurf-von-olaf-scholz-streit-um-die-verteidigung-a-1205266.html. [Accessed 12.12.2018].

Brown, L. (21 April 2016). Britain's 'defence spending' includes foreign aid and PENSIONS. Ministers accused of 'fiddling the books' to ensure UK meets Nato target. *Daily Mail*. https://www.dailymail.co.uk/news/article-3550904/Defence-spending-includes-foreign-aid-pensions-Ministers-accused-fiddling-books-ensure-Britain-met-Nato-target.html. [Accessed 26 December 2018].

Chalmers, M. (2001). The Atlantic burden sharing debate—widening or fragmenting? *International Affairs*, *77*(3), 569-585. doi: 10.1111/1468-2346.00207.

Daily Herald. (2016). The Latest. Obama praises Greece for NATO commitment. https://www.dailyherald.com/article/20161115/news/311159932. (Accessed 20 December 2018)

Foucault, M., & Mérand, F. (2012). The challenge of burden-sharing. *International Journal*, *67*(2), 423-429. doi: 10.1177/002070201206700211.

German Basic Law. https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0458. [Accessed 23 March 201].

Harding, L. (2018). Could Trump pull out of Nato and what would happen if he did? The US president has plunged the alliance into chaos with his threat to withdraw from Nato. *The Guardian*. https://www.theguardian.com/world/2018/jul/12/trump-nato-threat-withdraw-what-would-happen. [Accessed 28 December 2018].

Hartley, K., & Sandler, T. (1999). NATO burden-sharing: past and future. *Journal of peace research*, *36*(6), 665-680. doi: 10.1177/0022343399036006004.

Hintergrund.de. (31 May 2010). Horst Köhler. Sofortiger Rücktritt nach Äußerungen zur Rolle der Bundeswehr. *Hintergrund*. https://www.hintergrund.de/politik/inland/horst-koehler-sofortiger-ruecktritt-nach-aeusserungen-zur-rolle-der-bundeswehr/. Frankfurt am Main: Selbrund Verlag. (Accessed 26 December 2018).

Kauder, B., & Potrafke, N. (2015). The growth in military expenditure in Germany 1951-2011. Did parties matter? *Defence and Peace Economics 27* (24): 503-519. doi: 10.1080/10242694.2015.1050276.

Kelly, M. L. (2018). As President Trump Criticizes NATO, Germany's Defense Minister Calls for Solidarity. National Public Radio. https://www.npr.org/2018/07/11/628137922/as-president-trump-criticizes-nato-germanys-defense-minister-calls-for-solidarit. [Accessed 26 December 2018].

MacAskill, E. and Crerar, P. (2018). Donald Trump tells NATO allies to spend 4% of GDP on defence. *The Guardian*. https://www.theguardian.com/world/2018/jul/11/donald-trump-tells-nato-allies-to-spend-4-of-gdp-on-defence. [Accessed 26 December 2018].

Major, C. (2015). Time to Scrap NATO's 2 Percent Pledge? Carnegie Europe. http://carnegieeurope.eu/strategiceurope/59918. [Accessed 20 December 2018].

Malici, A. (2006). Germans as Venutians: The culture of German foreign policy behavior. *Foreign Policy Analysis*, *2*(1), 37-62.

North Atlantic Council. (2014). Wales Summit Declaration. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/351406/Wales_Summit_Declaration.pdf. [Accessed 12 December 2018].

North Atlantic Treaty Organization. (2018). Collective Defence – Article 5. https://www.nato.int/cps/en/natohq/topics_110496.htm. [Accessed 23/03/2019].

Nye, J.S. (1990). *Bound to lead. The changing nature of American power*. New York: Basic Books.

Olsen, M., & Zeckhauser, R. (1966). An economic theory of alliances. *The Review of Economics and Statistics, 48* (3): 266-279. doi: 10.2307/1927082.

Remarks of President Kennedy to the National Security Concuil Meeting. (1963). *Foreign Relations of the United States, 1961-1963. Volume XIII, Western Europe and Canada.* [Accessed 23/03/2019].

Riedel, D. (2018). 1,5 statt zwei Prozent vom BIP – Von der Leyen setzt sich eigenes Nato-Ausgaben-Ziel. *Handelsblatt*. https://www.handelsblatt.com/politik/deutschland/verteidigungsetat-1-5-statt-zwei-prozent-vom-bip-von-der-leyen-setzt-sich-eigenes-nato-ausgaben-ziel/22066854.html?ticket=ST-275556-QCubi7NAeUfFfcU30Db9-ap3. [Accessed 13 December 2018].

Schnell, J. (2018). Zum Verteidigungshaushalt im Finanzplan der Bundesregierung für die Jahre 2019 bis 2022. Vergleiche, Prognosen und Bewertung. https://www.unibw.de/militaeroekonomie/diskussionsbeitrag-zum-52-finanzplan-und-dem-verteidigungshaushalt-2019-bis-2022. [Accessed 25 March 2019].

Snyder, J. L. (1977). *The Soviet Strategic Culture. Implications for Limited Nuclear Operations* (Vol. 2154, No. AF). RAND CORP SANTA MONICA CALIF.

S. RES. DAV18C87. (2017). Emphasizing the importance of meeting NATO spending commitments. https://www.perdue.senate.gov/imo/.../NATO%20resolution.pdf. [Accessed 23/03/2019]-

Spiegel Online. (2010). Controversy Over Afghanistan Remarks. German President Horst Köhler Resigns. www.spiegel.de/international/germany/controversy-over-afghanistan-remarks-german-president-horst-koehler-resigns-a-697785.html. [Accessed 13 December 2018].

Techau, J. (2015). The Politics of 2 Percent. NATO and the Security Vacuum in Europe. Carnegie Europe. https://carnegieendowment.org/files/CP_252_Techau_NATO_Final.pdf. [Accessed 20 December 2018].

Von Krause, U. (2015). Bundeswehr und Außenpolitik. Zur Rolle des Militärs im Diskurs um mehr Verantwortung Deutschlands in der Welt. Wiesbaden: Springer-Verlag.

Von Krause, U. (2018). Das Zwei-Prozent-Ziel der NATO und Die Bundeswehr. Zur Aktuellen Debatte Um Die Deutschen Verteidigungsausgaben. Wiesbaden: Springer-Verlag.

Wiegold, T. (2018). Planung bis 2022. Steigender Verteidigungshaushalt, sinkende NATO-Quote. Augen Geradeaus! https://augengeradeaus.net/2018/07/planung-bis-2022-steigender-verteidigungshaushalt-sinkende-nato-quote/. [Accessed 26 December 2018].

Wilkie, C. (2018). Trump is pushing NATO allies to spend more on defense. But so did Obama and Bush. CNBC. https://www.cnbc.com/2018/07/11/obama-and-bush-also-pressed-nato-allies-to-spend-more-on-defense.html. [Accessed 26 December 2018].

Wilson III, E.J. (2008). Hard power, soft power, smart power. *The Annals of the American Academy of Political and Social Science*, *616*(1), 110-124. doi: 10.1177/0002716207312618.

Wissenschaftlicher Dienst des Deutschen Bundestags. (2017). Zur Entstehungsgeschichte und rechtlichen Bindungswirkung der Zwei-Prozent-Zielvorgabe der NATO für den Anteil der nationalen Verteidigungsausgaben am jeweiligen Bruttoinlandsprodukt. https://www.bundestag.de/blob/505886/.../wd-2-034-17-pdf-data.pdf. [Accessed 23/03/2019].

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Abstract

The present paper explores challenges and prospective to building a common European Union (E.U.)-United States (U.S.) cooperation for implementing the right to be forgotten. It first highlights major differences between the two: while the U.S. has focused on protecting citizens from the 'tyrant' (government), the E.U. has taken an inclusive approach, gathering both privacy from the government and from other citizens. Because of the global nature of Internet, however, both legislations have evolved and created extraterritorial effects, impacting each other. It reaches its climax as the right to be forgotten, that exists in the E.U., does not exist in the U.S. Legal clashes that arise then make law enforcement an inefficient way to implement and defend each's legislation and cultural approach on the matter. Drawing upon local examples' implementation of the right to be forgotten – California and France – the paper reveals common 'minimalist solutions' (Benett, S.C., 2012, p. 79). It therefore invites to cooperating on technical matters, by focusing on the content (type of information and actors involved), the methods (liability of the private IT sector, means for the individual to exercise its right) and implementation (scope of the decision, degree of law enforcement). Although the lowest common denominator, such cooperation would bring an international perspective for regulating a media that is borderless in its nature and would therefore create more opportunities for deepening such cooperation.

USA/EU Comparison: Challenges and Prospective for a Transatlantic Right to be Forgotten

Introduction

In *La Révolte du Pronetariat*, Joël de Rosnay describes Internet as a virtual space where citizens can challenge mass media and the capitalist system thanks to an extended margin of action (de Rosnay, 2006a). Indeed, even if the 'Empire is striking back', (de Rosnay, 2006b), the tools to controlling the Internet are unfit for purpose. He argues that Internet gives the political power back to the people thanks to, first, its potentially unlimited space, and second, its borderless characteristics. As a matter of fact, despite international coordination and agreements from authorities, Internet remains mostly regulated on a national basis. But as citizen can, in a few seconds, freely move from a French-based website to a United States (U.S.)-based website, laws differ, making it difficult for authorities to efficiently regulate.

However, it also complicates the online enforcement of fundamental rights, such as the right to be forgotten (R2BF) in Europe, that derives from the right to privacy. As R2BF is not conceived the same way in Europe as it is abroad, it is difficult to provide a universal definition. However, from a European perspective, it refers to the right of an individual to request to online operators (such as Alphabet's Google or Microsoft's Bing) the removal of direct linking to personal information. Thus, although the information does not disappear, it is less visible and easily accessible: Harvard Law School professor Jonathan Zittrain therefore argues that 'it's like saying the book can stay in the library, we just have to set fire to the catalog' (quoted in Roberts, J. J., 2015). In the EU, privacy is protected under articles 7 ('Respect for private and family life') and 8 ('Protection of personal data') of the European Union (EU) Charter of Fundamental Rights 1 (CFREU 2000/C 364/01, 2000). Adopted in 2000 by EU member states (and by the EU in 2009), the Charter already reveals how data protection and right to privacy are interlinked. It is asserted that individuals hold a right on their data, meaning they can access and have them rectified whenever they want. Those provisions paved the way to the R2BF, defined and clarified by the European Court of Justice2 in its Google Spain v. AEPD and Mario Costeja Gonzalez 2012 decision3. From this date, R2BF has applied to all EU member states and states under ECJ's jurisdiction. More important, in July 2017, the French *Conseil d'Etat4* has referred a case to the ECJ about the geographical limits to R2BF (*Le Monde*, 2017). Indeed, for now, if a French citizen requests to Google the removal of direct links to his personal information, and if such request is accepted by operators, then the links will be removed from all European platforms (Google.fr, Google.it, Google.de., etc.) but not from non-European ones (for instance: Google.com) if they are located outside of the EU. The ECJ has now to decide whether this removal should occur only within European borders or if it should be global.

Called extra-territoriality of the law, this process would mean European standards of R2BF would theoretically start to apply abroad, as for instance, in the U.S. (where Google servers, that also host Google.com, are located). On the new continent, however, R2BF has not even reached the policy-making process yet, and U.S. authorities are still far from implementing such a right. As this will be explored, European version of R2BF raises concerns on the other side of the Atlantic, particularly regarding freedom of expression. As a result, a Court decision in favour of a global R2BF would be challenging to implement.

Cultural and legal different approaches undermine direct law enforcement that would create extraterritorial effects and so legal clashes. Therefore, how do these challenges call for a transatlantic cooperation on technical matters regarding R2BF rather than law enforcement by the ECJ?

The Court already demonstrated that it tends towards a transnational interpretation of the R2BF, meaning it could be in favour of a global R2BF. Therefore, potential challenges to a global R2BF need to be analysed as such a decision sends the signal that EU laws can apply abroad. Indeed, the EU and the U.S. have two different cultures, especially regarding right to privacy and the freedom of expression. Cultural differences between the US and the EU have led to the emergence of two different legal cultures that consider R2BF differently (Part 1). As European and U.S. visions are too opposed to be merged, direct enforcement of EU law does not represent a solution. Therefore, experimentations of the R2BF will be explored in both the EU and the U.S. to draw a path for a transatlantic consensus on that matter (Part 2).

Findings suggest that different perceptions of right to privacy fundamentally impact the way R2BF is seen, whether as a threat to individual rights in the U.S., or as a new human right in the EU. Findings also reveal how these cultural differences created different legal systems, that either institutionalise R2BF (as in the EU), or intentionally leave a legal loophole on that matter (as in the U.S.) This is, however, the opportunity to explore some R2BF's component appear in U.S.' laws and what common grounds can be found with the EU on that matter. Finally, drawing upon California for the U.S., and France for the EU, the study reveals that agreements can be reached on peculiar points of the R2BF. It stresses the importance to work on a topic / case basis to reach a transatlantic agreement, rather than focusing on the conceptual principles that shape R2BF.

Methodology and sources

As a small-N study, the comparison is based on EU and U.S. approaches to a single sub policy area, i.e. R2BF. Choosing a limited number of cases and sticking to the same element of comparison indeed strengthen internal validity of the findings. Furthermore, the second part focuses on cases comparison between California in the U.S. and France in the E.U. While California has been chosen as it is the only U.S. local state that had implemented R2BF, France has been selected for its advanced legislation on the matter. Comparison therefore reveals that despite important differences, cooperation remains possible on technical matters.

Thus, process-tracing will be used to analyse the major steps that led to the emergence of such visions in the EU and the U.S. It is relevant to show how direct law enforcement of EU R2BF is unfit for purpose, and thus why cooperation remains better to potentially achieve a transatlantic R2BF.

Literature overview

Cultural and legal differences between the EU and the U.S. have already been explored in the light of freedom of expression *vis à vis* privacy (Benett, S. C., 2012; Bernal, 2013; Rustad and Kulevska, 2014), as well as the limits national / regional judicial instruments pose regarding a global virtual space (Tassis, and Peristeraki, 2014; Schwartz, 2012). Along analysis of conceptual differences, legal studies have grasped implementation and problems of international interoperability (Ambrose, 2014), especially regarding the form R2BF should take, should it be direct deletion of information or rather erasure of redirection URL (Ambrose and Ausloos, 2013).

However, major aspects have not yet been covered. Indeed, these studies focus primarily on how European and U.S. visions can be merged into one, at the central level. By doing so, they covered the main political aspects of both entities, but did not mention the diversity in R2BF implementation within them. Indeed, despite the absence of institutionalisation of R2BF in the U.S., California, for instance, has been implementing special forms of this right

(McNealy, 2012). The same occurs in Europe: even though the 2012 ECJ's decision applies to all member states, the application of R2BF differs in EU member states, and special forms of this right also start to emerge in Europe (Tambou and Bourton, 2018). Eventually, as online regulation evolves quickly, this study will provide latest legislative and updates on the matter.

Thus, while considering the recent developments on the matter, this study will also explore different local and national ways to implementing R2BF, and how these experiences create opportunities for a transatlantic convergence.

Development

Part 1: Cultural and legal challenges to extra-territoriality of EU R2BF

Does R2BF matter?

Although both U.S. and European citizens both acknowledge they have a right to privacy, they do not conceive it the same way (Stute, 2015). An historical insight allows to understand how privacy arouse on the political scene as a serious issue. During the Second World War, Europeans have known society surveillance. For instance, in France, the Gestapo has been established by the Vichy government to encourage and threaten people to denounce their neighbours to the Gestapo. The model was the same as other organisations created in all European territories occupied by the Nazis. Furthermore, following the collapse of the Nazi regime, Eastern and Central Europe has known mass surveillance under USSR domination. This period has created strong incentives for protecting individual privacy from both state intervention and other individuals. This led European organisations to start working on right to privacy early: already in the 1980s, the Organisation for Economic Cooperation and Development (OECD) disclosed its recommendations regarding protection of privacy (OECD, 1980). Along with the adoption by EU member states in 2000 of the Charter, right to privacy became a fundamental right recognised within all the EU. This explains why R2BF is strongly defended at the EU level nowadays, with former IT Commissioner Viviane Reding stating that 'all companies that operate in the EU must abide by our high standards of data protection and privacy' (Stute, D. J., 2015).

Within the U.S., however, privacy is considered differently. First, privacy is never mentioned as a right in the U.S. Constitution, although it is protected under the First (freedom of expression), Third (protection from governmental intrusion) and the Fourth (prevents governmental unreasonable seizures) (*U.S. of America: Constitution*, 1787). In the U.S., privacy refers more to liberty and freedom from the government: the culture focuses on how preventing the 'tyrant' from intervening in individuals' life: they therefore do not see R2BF as a priority (Whitman J. Q., 2004).

R2BF v. freedom of information and expression

As privacy is conceived differently, the R2BF is seen differently, and if it appears positive in Europe, it suffers more criticisms within the U.S. Indeed, under the First Amendment, U.S. citizens are concerned over censorship: they fear public interest information would be erased, leading thus to a re-writing of history (Ryan, 2011). These concerns, however, have started to be considered by the EU as well (European Commission, DG Justice, 2017). In its fact sheet on R2BF, the European Commission declared that R2BF is not 'trumping other fundamental rights, such as the freedom of expression or the freedom of the media', adding that 'a fair balance should be sought between the legitimate interest of internet users and the person's fundamental rights' (*Ibid.*, section 3). Thus, although the U.S. and the EU do not regard R2BF with the same sentiment, a first reconciliating step has been made by the EU.

As the EU and the U.S. have developed two different cultures, the R2BF is not institutionalised and regulated the same way. This, obviously, complicates further a direct law enforcement of the ECJ regarding extra-territoriality of EU R2BF.

Legal characteristics and regulation of the R2BF: between fundamental right and legal loophole

As previously stated, the EU already has a legal framework for the protection of data. Since 1995, however, the EU did not stop working on the R2BF, and has passed a new regulation called the General Data Protection Regulation (GDPR), that will enter into force in May 2018 (Regulation (EU) 2016/679). This new regulation imposes a stricter fines regime, eases access to personal information and data by individuals and reasserts the direct liability of data controllers in assessing the requests, first, and obtaining the consent of individuals before collecting their data, second. This strengthened R2BF becomes a right to erasure, which is a major change. Not only are direct links still targeted, but now third parties will also be liable for direct suppression of the content. To extend the metaphor made by professor Zittrain in the introduction, it is now not only about setting fire to the catalogue, but also to the books.

This new regulation contrasts with the U.S., where there is no national institutionalisation of the R2BF. Some elements of the R2BF, however, can be found in existing laws, such as in the Fair Credit Reporting Act (Federal Trade Commission, 1996, revised May 2016). This Act targets consumer reporting agency, i.e. 'entity that assembles reports on individuals for other businesses' (Hartley, 2011: 1). If insurance, banks, employers or other moral persons use these agencies, they cannot use information of an individual without his consent. For instance, if an employer uses an agency to do researches about a job candidate, he does not have the right to refuse to employ him on the basis of these researches without his consent. Another example is the facilitated access of patients to their medical records made by the Obama administration in 2016 (Pear, 2016). Although not directly linked to the R2BF, it shows that individuals hold a certain right on their data. If, before, doctors could refuse to give patients access to their medical records, this is not the case anymore. Thus, although the proper R2BF does not exist in U.S. national laws, components of it can be found in already existing laws, meaning the U.S. is not a stranger to it.

However, as there is no national recognition of R2BF in the U.S., it can be easily overridden if it would come to violate the U.S. Constitution. Indeed, in 2014 in Canada, Equustek Solutions requested to erase information on a firm that would be believed to advertise 'stolen proprietary technology via the search engine' (Walsh, 2017). In its ruling, the Canadian Supreme Court accepted Equustek's demand and ruled that R2BF apply globally. As the technology was still sold within the U.S. territory, the case was brought to the Federal Court of California, that overrode the Canadian ruling as it would be violating the First Amendment (*Ibid.*). Similarly, this is surely what would happen if the ECJ would rule in favour of a global R2BF.

Thus, direct law enforcement does not appear as a solution for a transatlantic R2BF. As a result, need to study different local experimentations in both the EU and the U.S. to figure out what could be the common grounds.

Part 2: Prospective for a future transatlantic R2BF

Part A: A 'normative power Europe' (Manners, I., 2002)

The soft power of the EU (i.e. influencing through culture and economics as opposed to military) has been extensively studied (see for instance Rifkin, 2004: 3; on the 'European dream' based on cultural and philosophical diversity, multilateralism and human rights). In that perspective, Ian Manners created the 'normative power Europe' concept (Manners, 2002 and 2006). He asserts thfat the EU relies on core values (peace, liberty, democracy and individual rights) protected by treaties (European Convention on Human Rights and the Charter). These values are then diffused on the international scene in all fields of cooperation (trade, environment, foreign policy, diplomacy): the EU sets norms that expand beyond its territorial boundaries. Considering how privacy is at core of European

fundamental rights, the EU exerts its normative power regarding one implementation of privacy, i.e. R2BF (see Flaton, 2015 for normative intent, action and impact of EU's external actions and relations regarding privacy).

Part B: The case of France and continental European privacy

Although the 2014 ECJ's ruling applies to all EU member states, the original directive 95/46/EC explored before is compulsory in its goals but not in its means (Union Européenne, n. d.). Therefore, the implementation of the R2BF differs in countries of Europe. Such as France taking an extreme position on the matter whereas the UK appears more reluctant.

In France: personal information as personal possession

The case of France is noteworthy. Indeed, it has been, so far, the leader of removal requests: in 2016, 377 000 requests have been made by French citizens, accounting for more than 1/5th of all European requests (Lausson, 2016). Thus, popular support for the French 'right to oblivion' leads to a strong law enforcement. Even before the GDPR, the country created the right to erasure, which is a significant step, making both data controllers and third parties liable for erasure of personal information (Eduscol.education.fr, n.d.).

Common grounds can however be found when looking at technical matters, such as the individual possession of personal information. Indeed, French R2BF clearly establishes that personal information belongs to the individual who is concerned by such data (*Ibid*). The medical records are a noteworthy case study: in 2017, Ministries of Economy and Health jointly released a statement on right to oblivion regarding medical records and insurance. Former cancer victims do not have to declare their medical records when subscribing to insurance after a period of 10 years, which is brought down to 5 years if the patient suffered from cancer before his majority (Rédaction d'Allodocteurs, 2017). Furthermore, the government developed a references grid that organises, for each sickness, the time by which the patient does not have to mention his sickness to insurances and cannot suffer any extra fees after a certain period (*Ibid*). Eventually, it appeals to the Obama administration's regulation on access by patients to their own medical records: because they possess their data, they can access them. This conception of individuals possessing their own data also appeals to the Fair Credit Reporting Act explored before. Just like employers cannot refuse employment on the basis of collected personal information without the consent of the data holder in the U.S., insurances cannot refuse patients on the same basis in France. As a result, in both regulations, individuals' data cannot be used without their consent. This reveals a common ground that could surely be used to cooperate on the R2BF.

Part C. In the U.S.: the Californian experimentation

As seen before, the R2BF has neither federal legal personality nor regulation within the U.S. It is thus important to focus on local states as they are considered as laboratory of innovation (McKay, 2013). Indeed, local states benefit from a double advantage compared to the central state. First, the differences between local cultures allow states to experiment new policies: indeed, whilst the central state has to take into account the culture of the U.S. as a whole, a local state can focus on its peculiar culture. Second, the smaller scale of implementation allows a smoother, easier and quicker decision-making (*Ibid*).

Californian experimentation: towards an American R2BF?

The edge of Internet impacted the U.S. culture of privacy in California. Indeed, as data started to be gathered on the web, the state considered it had to create a legal framework to protect American privacy online. For this reason, it passed in 2003 the Online Privacy Protection Act for all online services to disclose their privacy policies for Californian residents (Pasha, 2014). This regulation laid down the basis for a certain form of the RTBF and was amended in 2013 for online businesses to declare whether they comply with

Do Not Track notices. Those 'provide consumers a choice regarding the collection of personally identifiable information' online (Leg.: AB-370), i.e. online businesses must indicate whether they choose to perform a R2BF or not. These notices are a clear recognition by California that having online information erased does exist.

Along with European recognition of online R2BF, this explains why California passed a limited form of this right that became effective in 2015 (Segalis and Ross, 2015). This law grants Californian minors to request the removal of certain information they uploaded into any kind of online services (such as websites, social networks and media or mobile apps). Although limited, this version of R2BF may have been influenced by the early European developments regarding privacy – going back to the 1980s. Those have adapted to the Californian culture in order to promote a more balanced version between right to privacy and freedom of expression. Indeed, as in Europe, the U.S. regulation is extensive regarding the types of actor involved and, more interesting, those are directly responsible for responding to requests and, if positive, implementing it.

Thus, this experimentation draws a path for a possible transatlantic cooperation on that matter. Indeed, as seen, the freedom of expression v. privacy debate is not the way to reconcile both perspectives; it is therefore preferable to work on 'minimalist solutions' (Benett, 2012: 179), i.e. finding the lowest common denominator. The aim is then to be technical instead of being dogmatic, by focusing on the content (type of information and actors involved), the methods (liability of the private IT sector, exercise of the right by the individual directly) and the implementation (scope of the decision, degree of law enforcement).

Eventually, it shall be reminded that California remains only one state out of 50 in the U.S. and that the Californian culture is specific to California. But it shows, first, that thanks to its normative power, the EU is likely to influence the U.S. to cooperate on R2BF, and second, that technical strategies appear more efficient than conceptual debates.

Conclusion

The purpose of this study was to analyse how EU's and U.S.' different conceptual and legal approaches to R2BF make law enforcement rather inefficient, therefore calling for a closer cooperation between both entities. First, the study focused on what challenges a ECJ's decision in favour of extra-territoriality of R2BF could create, drawing upon the U.S. case. Second, and once those challenges have been identified, it aimed at demonstrating how direct law enforcement of EU R2BF in the US would be counter-efficient. As the Californian federal Court already overruled Canada on the matter, it is likely a U.S. federal Court would overrule the EU as well, especially as R2BF clashes with the First Amendment, that is at the top of the hierarchy of norms thanks to its constitutional value. Third, it proposed a new way to reconcile European and U.S. perspectives of R2BF, by focusing on local and national experimentations of it. Common grounds that arise create opportunities for a closer cooperation. In doing so, it has been argued that the ECJ has had an extensive interpretation of the R2BF, particularly in its scope as it impacts every EU member state. Therefore, such activism makes it possible for the Court to push for a global R2BF. However, a clear dichotomy appeared between the EU and the U.S. Indeed, whilst strong culture of privacy and fundamental rights in the EU led to institutionalisation of the R2BF, the First Amendment's freedom of speech has prevented any kind of regulation of the R2BF at the national level within the U.S. Common grounds can, however, be found, as implementation of this right differs at the local level, especially when looking at technical matters, such as minors' privacy. As a result, legal and cultural challenges to a transatlantic R2BF appear, at first, too extremely opposed to be any reconciled. The last part of the study, however, revealed that local experiences can lead the way towards concrete policy implementation. Therefore, it is better to explore mid-range positions through practical case work.

Internal validity

The small-N approach has been chosen to consider many specificities, thus increasing internal validity of the findings. Thus, the study focused on limited number of actors (the EU and the US) and a single policy area (R2BF). The last part considered local experimentations within both entities, therefore increasing internal validity.

External validity

The comparison was made to increase external validity, as it brings two different systems, thus choosing to analyse multiple approaches to the R2BF. It can therefore draw a pattern to explain the main challenges to global public policies, and not only on the R2BF. Indeed, the findings can be extended to other policies areas, especially the digital ones as they always deal with state sovereignty *vis à vis* borderless virtual space. It could be argued that details of this study only apply to the U.S. and the EU, but once again, it helps in understanding how different cultures and legal systems slow the regulation of Internet process down.

The study was based on a comparison between two different cultures, legal cultures and so legal systems. It did not include extensive analysis of the theoretical foundations of law extra-territoriality. Indeed, it is a different (yet related) topic that deserves a proper study: the sovereignty of the state *vis-à-vis* extra territoriality of the law considering international right principles and agreements. A study should be needed on the limits it poses, because indeed, sovereignty of the state remains a fundamental principle in international law. It could therefore further complicate the extra-territoriality of law. It would bring elements about the relevance of a Westphalian system regarding a global virtual space. Thank to those, such a study could be able to determine whether a global R2BF would appear under the auspices of international law, or on a bi/multilateral basis. Strategies could also arise in the private sector, especially data management enterprises and search engines such as Google or Bing. Indeed, as they operate in both the EU and in the US, they are at crossroads between the different legal systems and cultures explored before. Therefore, such a study could bring elements on how feasible a transatlantic R2BF would be.

Bibliography

(C-131/12). Brussels: European Commission. [online] Available at: [online] Available at: https://www.accuratebackground.com/JSP/appdocs/mkt/pdfs/WPUnderstandingFCRA0209.pdf [Accessed 19 Jan. 2018].

A05323, Section 1 [Leg.]. New York State Assembly: NY. [online] Available at: http://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A05323&term=&Summary=Y&Text=Y [Accessed 18 Jan. 2018].

A5232, Section 1 [Leg.]. New York State Assembly: NY. [online] Available at: AB-370, Section 1 [Leg.]. Consumers: internet privacy. [online] Available at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB370 [Accessed 18 Jan. 2018].

Ambrose, Meg L. (2014). 'Speaking of forgetting: Analysis of possible non-EU responses to the right to be forgotten and speech exception', *Telecommunications Policy*, Vol. 38(8-9): pp. 800-811.

Ambrose, Meg L. and Ausloos, J. (2013). 'The Right to Be Forgotten Across the Pond', *Journal of Information Policy*, Vol. 3: pp. 1-23.

Benett, S. C. (2012). 'Right to Be Forgotten: Reconciling EU and US perspectives', Berkeley.

Bernal, P. (2014). 'The EU, the US and Right to be Forgotten' in Leenes, R., Gutwirth, S. and De Hert, P. (eds), *Reloading Data Protection*.

De Rosnay, J., a. (2006). *La révolte du pronetariat – Des mass média aux média des masses*.

De Rosnay, J., b. (2006). [Itw.], La révolte du pronetariat. [online] Available at: http://culture.nextmodernity.com/archive/2006/01/18/la-revolte-du-pronetariat.html [Accessed 18 Jan. 2018].

Directive 95/46/EC of the European Parliament and of the Council [Leg.]. Protection of individuals with regard to the processing of personal data on the free movement of such

Eduscol.education.fr. (n.d.). Le droit à l'oubli – Internet responsable. [online] Available at: http://eduscol.education.fr/internet-responsable/ressources/legamedia/le-droit-a-loubli.html [Accessed 19 Jan. 2018].

European Commission, DG Justice (2017). Fact Sheet on the "Right to be Forgotten" ruling Fayard.

Federal Trade Commission (1996). *Fair Credit Reporting Act*. Revised May 2016. [online].

Flaton, Reinder (2015), *Privacy Power Europe*, *Protecting others by protecting ourselves*, Leiden University.

González (2014), Case C 131/12 (Court of Justice of the European Union). [online] Available at: http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&docid=152065 [Accessed 19 Jan. 2018].

Green, R. (2017), 'The "right to be forgotten" should be forgotten', Times Union. [online] Available at: http://blog.timesunion.com/rogergreen/the-right-to-be-forgotten-bill-should-be-forgotten/5552/ [Accessed 18 Jan. 2018].

Hartley, K. (2011). *White Paper on the Fair Credit Reporting Act*. Accurate Background, Inc.

Hinarejos, A. (2009). *Judicial Control in the European Union: Reforming Jurisdiction in the Intergovernmental Pillars*. Oxford Scholarship Online.

House of Lords, European Union Committee (2014), 'EU Data Protection law: a "right to be forgotten"?'. *London*: The Stationery Office Limited. [online] Available at: https://publications.parliament.uk/pa/ld201415/ldselect/ldeucom/40/40.pdf [Accessed 19 Jan. 2018].

Lausson, J. (2016). 'La France, toujours championne du droit à l'oubli en Europe', Numerama. [online] Available at: https://www.numerama.com/politique/220370-la-france-toujours-championne-du-droit-a-loubli-en-europe.html [Accessed 19 Jan. 2018].

Manners, I. (2002). Normative power Europe: a contradiction in terms?. *JCMS: Journal of common market studies*, *40*(2), pp.235-258.

Manners, I., (2006). Normative power Europe reconsidered: beyond the crossroads. *Journal of European public policy*, *13*(2), pp.182-199.

McKay, D. (2013). *American Politics and Society*, Wiley-Blackwell: 8th Edition.

McNealy, J. E. (2012). 'The Emerging Conflict Between Newsworthiness and the Right to be Forgotten', *Northern Kentucky Law Review*, Vol. 39 (2): pp. 119-135.

Organisation for Economic Cooperation and Development (1980). *Recommendations of the Council Concerning Guidelines Governing the Protection of Privacy and Trans-Border Flows of Personal Data*.

Pasha, N. (2014). 'Is the "Right to be Forgotten" on the Horizon in California?', PashaLaw. [online] Available at: https://www.pashalaw.com/right-to-be-forgotten-california/ [Accessed 18 Jan. 2018].

Pear, R. (2016). 'New Guidelines Nudge Doctors to Give Patients Access to Medical Protection Report. [online] Available at: https://www.dataprotectionreport.com/2015/01/california-enacts-right-to-be-forgotten-for-minors/ [Accessed 18 Jan. 2018].

protection/files/factsheets/factsheet_data_protection_en.pdf [Accessed 18 Jan. 2018].

Records', *New York Times*. [online] Available at: https://www.nytimes.com/2016/01/17/us/new-guidelines-nudge-doctors-on-giving-patients-access-to-medical-records.html [Accessed 19 Jan. 2018].

Rédaction d'Allodocteurs (2017). Protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). [online] Available at: http://ec.europa.eu/justice/data-protection/reform/files/regulation_oj_en.pdf [Accessed 19 Jan. 2018].

Roberts, J. J. (2015). 'The right to be forgotten from Google? Forget it, says U.S. crowd', Fortune. [online] Available at: http://fortune.com/2015/03/12/the-right-to-be-forgotten-from-google-forget-it-says-u-s-crowd/ [Accessed 18 Jan. 2018].

Ryan, T. (2011). *The Right To Be Forgotten: Questioning The Nature Of Online Privacy*.

Schwartz, Paul M. (2013). 'The EU-U.S. Privacy Collision: A Turn to Institutions and Procedures', 126 *Harvard Law Review*.

Segalis, B. and Ross, S. (2015). 'California enacts "Right to be Forgotten" for Minors', Data

Stute, D. J. (2015), 'Privacy Almighty – The CJEU's Judgment in Google Spain SL. AEPD', *36 Mich. J. Int'l L. 649*.

Syzmanski, M. and M.E. Smith, M.E. (2005). 'Coherence and Conditionality in European Foreign Policy: Negotiating the EU-Mexico Global Agreement', Journal of Common Market Studies, 43(1): 171-92.

Tambou, O. and Bourton, S. (2018). *Le droit à l'oubli en Europe et au-delà*, University of West England UWE (United Kingdom).

Tassis, S. and Peristeraki, M. (2014). 'The Extraterritorial Scope of the "Right to Be Forgotten" and how this Affects Obligations of Search Engine Operators Located Outside the EU', *European Networks Law & Regulation Quarterly*, Vol. 2(3): 244-252.

Union Européenne. (n.d.). *Règlements, directives et autres actes législatifs – Union Européenne – European Commission.* [online] Available at: https://europa.eu/european-union/eu-law/legal-acts_fr [Accessed 19 Jan. 2018].

United States of America: Constitution (1787). National Legislative Bodies and National Authorities.

Vaas, L. (2017). 'New York's "unconstitutional" right to be forgotten bill sparks concern', Naked Security. [online] Available at: https://nakedsecurity.sophos.com/2017/03/22/new-yorks-unconstitutional-right-to-be-forgotten-bill-sparks-concern/ [Accessed 18 Jan. 2018].

Volokh, E. (2017). 'N.Y. bill would require people to remove "inaccurate", "irrelevant", "inadequate" or "excessive" statements about others', The Washington Post. [online]

Walsh, R. (2017). 'Right To Be Forgotten Not Global US Court Decides', *BestVPN*. [online] Available at: https://www.bestvpn.com/privacy-news/right-to-be-forgotten-not-global-google/ [Accessed 19 Jan. 2018].

Whitman, J. Q. (2004). *The Two Western Cultures of Privacy: Dignity Versus Liberty*. 133 Yale L.J. 1551, 1160.

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