INTERNATIONAL REPORTS

Borders

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Dear Readers,

As Europe became more unified, Germany made strides in overcoming the country's division and the processes of globalisation became all-pervasive, the last few decades have been characterised by increasingly disappearing boundaries. This development now seems to have stalled. The major migration movements of the last few years, the annexation of Crimea in contravention of international law, the Brexit vote, the proliferation of isolationist voices within and outside Europe – however different these phenomena may be in principle, they have one thing in common: they illustrate that borders and boundaries still have considerable significance.

In reference to the international system, policies of setting or reinforcing boundaries would have devastating consequences, particularly in economic terms, as David Gregosz interjects in this issue. He believes that Germany, in its role of one of the world's leading trading nations, has a responsibility to use its current presidency of the G20 to promote free global markets and encourage efforts to actively shape the globalisation process.

The wall U.S. President Trump plans to build along the border to Mexico acts as a potent symbol. However, as Victoria Rietig and Christian Bilfinger conclude in their article, strengthening border protection will definitely not be sufficient by itself to resolve the problem of illegal migration from Mexico and Central America. They believe it will take additional investment in Latin America, particularly aimed at addressing the causes of economic and refugee migration, in order to overcome the problem.

Securing its external borders is also a topic that is receiving greater attention in the European Union once again. It represents a prerequisite for being able to guarantee free movement and security in the Schengen Area even in times of mass migration and new potential threats. The latest challenges at the external EU borders have clearly illustrated the need to reform existing instruments, as Angelos Athanasopoulos explains in his article.

On the African continent, managing the internal borders plays an important role, as Kwesi Aning and John Pokoo explain in their article. The purpose of efficient border management is to reduce the conflict potential between neighbouring states and increase economic integration on the continent. This is all the more

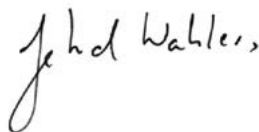important in Africa as border disputes have resulted in a large number of violent conflicts in the past.

In their article, Gabriele Baumann and Moritz Junginger demonstrate how borders can (yet again!) cause bloody conflicts in Europe as well. The principle of the inviolability of borders in Europe has been violated not just once but twice in the case of Ukraine: by Russia's annexation of Crimea and by the occupation of parts of the Donbas by pro-Russian separatists. Besides questions of foreign policy and geopolitics, which are usually at the center of attention in this context, the authors examine the everyday reality of the people living near the newly created "borders" – having to live their lives in the shadow of the ever-present danger of the conflict escalating.

There is also a potential for escalation in the foreseeable future in the dispute over sovereignty rights in the South China Sea, as David Arase explains in his article. The conflict illustrates that maritime boundaries are not fought over with less tenacity, particularly when there are rich fishing grounds, natural resources as well as geo-economic and geo-strategic interests at stake. In this case, China, intent on demonstrating its power, is facing a determination to guarantee freedom of navigation in the South China Sea for the future.

In conclusion, Frank Sauer considers two spaces that only appear to have no boundaries: outer space and cyberspace. He explains that here, too, there is and has to be deliberation over boundaries. After all, the following principle applies not only in outer space and cyberspace: however desirable the elimination of boundaries may be in many areas, in others they fulfil indispensable functions, be it in connection with averting danger, ensuring political and social order, or establishing useful identities.

I wish you a stimulating read.

Yours,

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Content

Borders

Interjection

Cross-Border Cooperation: Now More Than Ever!

David Gregosz

Providing Considered Leadership: Germany and the G20 Presidency

Roman Herzog, the recently deceased former Federal President, warned us twenty years ago: "Isolationism and expansion are paths of the past, and that is where retreading those paths would lead."[1] One can hardly repeat this admonition loudly enough today as concerns about a significant slowing of global trade, or even a "reversal of globalisation", and the emergence of new political conflicts characterise the international climate.

During this period of major political upheavals, the Federal Republic of Germany assumed the presidency of the group of the twenty most important industrialised and emerging economies (G20). The federal government chose the motto "Shaping an Interconnected World" for its term, thereby clearly setting itself apart from polarising nationalist-populist movements, whose main purpose is economic isolationism. In view of an increasingly critical attitude toward globalisation, free trade and an integrative global economy in some G20 countries, it will take a great deal of negotiating skill and persuasion to effectively promote the motto chosen by the federal government and deepen international cooperation. Particularly the economic course pursued by the new U.S. President Donald Trump, the long-term economic and political repercussions of Brexit for the UK and for the European Union as well as the threats from populist movements in France and Germany are making this undertaking more difficult.

There is a great deal at stake for Germany as a trading nation because national-populist isolationism strategies could have a noticeable negative impact on prosperity. Furthermore, there is a risk of political damage if states are pitted against one another. Thankfully, the summits of the G20 countries, which have been taking place regularly since 2008, offer a platform for negotiation on these issues. Whether it will be possible to resolve them jointly will depend greatly on the willingness of countries to compromise and their ability to find consensus on how to shape the globalisation process in the future.

This does not seem likely at the moment. Not only because protectionist measures between the G20 states have increased, but also because positions within the community of states that had been considered irrevocable for decades are undergoing change. While China's President Xi Jinping, whose country normally stands out on account of its protectionist policy, took to the stage as a promoter of free global trade at the World Economic Forum in Davos, the governments of some important Western states have recently begun to favour politically motivated industrial policies or the creation of bilateral alliances. This was brought home by the fact that the meeting of the G20 finance ministers in March 2017 did not conclude with a consensus on future global trade relations. There was no mention of a commitment to free trade and against protectionism in the final document of the summit. It appears that Germany's allies are repositioning themselves where trade policy issues are concerned. This "world turned upside down" urgently requires a more detailed analysis.

Globalisation – Yesterday's Megatrend?

In industrialised countries with a relatively poor export base, such as the USA, the UK and France, the process described by the term "globalisation" has come under criticism as a significant driver of job displacement, deindustrialisation and the upsurge of some emerging economies, which is perceived as a threat. Even in the export nation Germany, globalisation critics have been remarkably successful in popularising their ideas, most recently with the intention of scuppering the negotiations over the Transatlantic Trade and Investment Partnership (TTIP). There is a certain irony in the fact that it is actually a Republican US president who has dealt a potentially fatal blow to the hate project of the Left. The regional mega-agreements of the TTIP and the Trans-Pacific Partnership (TPP) have been put on ice for now.

What geopolitical damage this US decision will have for the West is not yet clear, but it definitely has had a serious effect on the globalisation process.

There is no doubt that the international division of labour intensified by globalisation has accelerated the structural changes underway in the Western economies, which have entailed off-shoring and job losses and which have affected individual industrialised countries to very different degrees because of their domestic economic and social policies. At the same time, the integration of developing countries and emerging economies in global trade has initiated positive economic and political developments in those countries. Never before has the world's population as a whole experienced greater rises in living standards than in the last two decades.

But when one looks at the overall impact, it is not only the poorer countries of the world that have benefited from trade and the international division of labour but the industrialised countries as well. However, there are significant differences between the developed countries themselves as well as between individual industries and groups of the population. The economic change has produced both winners and losers – a development that represents a constant of world trade history. Whenever free-market processes take effect, whether they were triggered by stronger global competition, technical progress or changed consumer habits, the most urgent task of the political decision-makers is to devise appropriate economic and social policies in response to the changes and to make provision to compensate for any negative impact through education and social policies. Some industrialised countries' efforts in this area were obviously not effective enough. These failures on the part of the powers that be have generally reinforced the impression that governments have "lost control" and strengthened a counter-movement, which very explicitly aims at the illusory goal of regaining national sovereignty.

Donald Trump's election victory in the USA, the narrow decision in favour of Brexit and the support for the French Front National are to a large degree due to the existence of groups among the population that are feeling uncertainty, at least economically, that partly share a feeling of being left behind and that are demanding a change of course from their governments. They reject "globalisation" because they generally associate the term with structural change, a loss of identity and waves of migration, and they call for their governments to take measures to protect the domestic economy. Interestingly, technical progress receives little attention as a significant driver of global upheavals. The tendency is for people to put the blame on a nebulous concept such as "globalisation".

The desire to keep jobs and capital within one's own national borders has led to numerous protectionist measures for quite some time now. This is a phenomenon that may well increase further in intensity. Recent statistics published by the World Trade Organization (WTO) indicate that the number of measures inhibiting trade has increased six-fold since 2010. By the autumn of 2016, there were close to 3,000 such measures in place around the world, either explicitly or implicitly giving preferential treatment to domestic manufacturers to the detriment of foreign suppliers. The isolationist measures sanctioned by the governments come in many forms. One way is to give preferential treatment to domestic suppliers in public procurement projects. There have also been increasing instances of domestic products receiving subsidies and of selective import or export duties being imposed. Frequently, unnecessarily complicated standards are introduced under the mantle of national security, public health or general consumer protection in order to disadvantage foreign competitors. Particularly for Germany as an export country, this is a dangerous situation as the introduction of such measures by one trading partner may provoke tit-for-tat measures by the other, prompting the risk of vicious circles of intervention and ultimately so-called trade wars.

The creeping change in the global trade situation that such measures produce resembles what happens in a crowded theatre. Because one person does not have a good view of the stage, they stand up. They may then have a better view for a time; but if all the others (are forced to) then stand up themselves, in the end no one has a better view than they had before, and everyone is forced to stand. The problem with these measures is therefore that they diminish overall economic activity and future economic growth potential. This would probably, like in the parable just described, set off a vicious circle. Germany's economy would be one of the hardest hit because it produces a huge trade surplus of around a quarter of a trillion euros and roughly every fourth job in the country depends on the export trade. To prevent this scenario, Germany should speak out against trade barriers and in favour of regulated globalisation.

Rather Global Regulatory Framework than National Bastion

Germany is integrated into the global value chain and goods flow more closely than most other countries and has therefore also been a clear beneficiary of globalisation. That said, the prevalent model of the international division of labour is currently being called into question in various countries. In this context, Germany's trade surpluses are regularly criticised without any mention whatsoever of the individual trading profits and benefits in terms of social prosperity that have arisen in other countries as a result. As many free trade critics see it, the era of cooperation based on the division of labour under the rules of the World Trade Organization is to give way to an epoch dominated by trade confrontation. Bilateral deals are to replace rule-based trading areas.

In collaboration with its partners, Germany must counter such endeavours and promote free global markets modulated by a global regulatory framework. The lack of regulation of the globalisation process is a legitimate cause for criticism, which has yet to be addressed. There need to be global rules for international

trade. This realisation had, in fact, crystallised among the G20 group after the financial crisis of 2007/2008 and was highlighted at the first meeting of this group of countries in November 2008, as was the rejection of protectionism. Work on producing a more robust global trade order has still not been completed, although progress has been made in some areas, such as financial market regulation, the fight against tax evasion and the battle against climate change. Instead of making efforts to consolidate what has been achieved so far, individual G20 states are now putting these goals into question.

Furthermore, the entire multilateral global trade order, which has been shaped substantially by the WTO, is under attack. Even relatively recently, the WTO had still been able to make the headlines with a diplomatic achievement. For the first time in over two decades, the 164 members had succeeded in agreeing on a multilateral deal, the Trade Facilitation Agreement (TFA), which envisages above all the elimination of bureaucratic barriers in cross-border goods trade. The measures are to do with reducing red tape, making national regulations more transparent and ensuring that the required infrastructure and human resources are in place to facilitate efficient trading activities that are as free from discrimination as possible. It remains to be seen whether this agreement can be implemented in full once the United States begin to tax imports and subsidise exports (Border Adjustment Tax), thereby embarking on a course of confrontation with WTO rules.

Conclusions and Recommendations

Germany's G20 presidency must aim at maintaining the results-focused dialogue among the most important industrialised countries and emerging economies and at encouraging measures to produce tangible results for the global regulatory framework. Any suggestions of renewed deregulation of the financial markets in particular should be rejected. A concerted effort will be required to prevent a potential dumping competition in the area of corporate taxation. Fighting tax evasion and profit shifting

should be in the interest of all G20 states, but will require persistent pressure. Efforts should also be made to further strengthen the World Trade Organization and reiterate the commitment to a multilateral trading policy. Bilateral talks on the fringes of the summit should be used to advance European free trade initiatives with parties such as Japan, Mexico and Mercosur. The European Single Market is of great interest to these partners, and strengthening it and networking with partners must remain at the forefront for Germany.

Germany should also make the point that aggressive foreign trade policies are generally damaging to all parties involved. Such an economic approach would not only diminish consumer choice and purchasing power, but also minimise companies' profit and investment base, potentially endanger jobs and thereby weaken the state's revenue base. In view of the German trade balance surplus, one should go some way to appease the critics, bearing in mind the facts of the situation: monetary and exchange rate policy is no longer in the German government's hands, so there is little it can do in that area. Nor can the state enforce higher pay across the board because of free collective bargaining. Large-scale investments in infrastructure paid for from the trade surplus hold no great promise seeing that there is little spare (construction) capacity. The most promising measure would therefore be a modest reduction in income tax for companies and private households as this would strengthen domestic demand and stimulate the import of consumer and capital goods. And surpluses in certain social insurance sectors could be used to stimulate domestic demand through reductions in contributions. These measures could go some way toward reducing Germany's current account surplus.

Apart from these economic considerations, the following realisation of Federal President Roman Herzog, who was quoted at the beginning, still applies: "Because we are mutually dependent on each other – economically and ecologically, the 'young' and the 'old' industrialised countries, North and South, East and West – we must exercise greater global coordination and consideration in international politics as well – in our own and in the common interest."[2] It is time to remind people of this connection!

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1 Herzog, Roman 1997: Einführungsstatement zum Thema "Interkultureller Dialog" vor dem Bonner Gesprächskreis des Deutschen Industrie- und Handelskammertages, speech, 7 Jul 1997, Bonn, in: https://goo.gl/d5gixS [22 Mar 2017].

2 Herzog, Roman 1997: Ansprache anlässlich des 27. Management Symposiums "Globaler Wettbewerb, globale Werte, globale Verantwortung – Neue Herausforderungen für die Politik", speech, 28 May 1997, St. Gallen, in: https://goo.gl/R3v0ht [22 Mar 2017].

Borders

Fortress Europe?

The Aegean Sea Frontier and the
Strengthening of EU's External Borders

Angelos Athanasopoulos

The refugee and migrant crisis has fundamentally tested the added value and legitimacy of the EU. Currently, a migratory realpolitik prevails as divisions among member states challenge solidarity and respect for European values. Against this backdrop, the main question remains as to whether the Union can provide more effective management of migration and offer reassurances to its citizens in times of heightened insecurity.

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The magnitude of migrant and refugee flows via the Eastern Mediterranean route during 2015 which continued in lower numbers in 2016 marked a significant watershed for the European Union (EU). It was the first time the integrity and the resilience of the Dublin system and subsequently the Schengen area were so severely tested. Actually, the refugee crisis of 2015 was a repetition of the European debt crisis which erupted back in 2010. The common pattern in both cases was that the existing structures proved insufficient for crisis management or crisis prevention. In 2010, the eurozone approached collapse as the necessary tools for preventing or managing the crisis were not available. In 2015, when close to two million illegal migrants and refugees were detected at EU's external borders, the Dublin system which had been put in place to safeguard freedom of movement in the Schengen area showed serious signs of cracking. In less than five years the EU was, for a second time, caught off guard as a crisis was developing and threatening its core.

The humanitarian aspect of providing protection to displaced people arriving to Europe's shores from countries such as Syria, Afghanistan or Iraq was only one part of the crisis. The security aspect was equally important as the terrorist attacks in France, Belgium and Germany have raised alarms that extremists possibly used the migratory flows as a cover to cross from Turkey to Greece and from there to the rest of Europe following the Balkan route. The phenomenon of foreign fighters fell under the same umbrella. This aspect but also the immense pressure on national asylum systems, which undertook the task of managing hundreds of thousands of asylum applications and the economic burden to provide food and shelter to the refugees tested EU's resilience like never before.

It was in this context that the EU and mainly Germany searched for solutions to a) improve burden sharing in managing the crisis and b) strengthen the protection of external borders and of the Schengen area. Initiatives like relocation (and resettlement) brought to the surface different views among member states concerning burden sharing which polarised and divided the Union. However, the management of the refugee crisis in the Aegean Sea (using the "hotspots approach"), the closure of the Balkan route and especially the signing of the EU-Turkey Statement in 18th March 2016 were the first steps in strengthening external borders' protection. They laid the foundation for two further steps in this front: first, the transformation of Frontex to a European Border and Coast Guard (EBCG) and, second, the implementation of a revised Smart Borders package (including the new Entry/Exit System) alongside a strengthened Schengen Borders Code (SBC), considered the pillars of integrated border management.

The Closure of the Balkan Route and the EU-Turkey Statement

Today, it is indisputable that 2015 was the *annus horribilis* concerning migration and refugee flows to Europe. The arc of geopolitical instability in Europe's neighborhood in the Middle East and North Africa (MENA) region, particularly

the civil war in Syria, was the principal reason for the huge numbers of illegal migrants and refugees which flooded the northeastern Greek islands in the Aegean Sea but also Italy. According to data collected by Frontex, 1,822,177 illegal border crossings were detected in EU's external borders. However, 885,386 of these detections took place on the Eastern Mediterranean route.[1]

The Eastern Mediterranean route was one of the hot spots of illegal border crossing.
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Greece became the focus of international media once again as families of Syrians and of other nationalities crossed from Turkey to the Eastern Aegean islands. However, there was no time for focusing on strengthening EU's external borders right away. Initially, the management of migratory flows had to be dealt with and the "hotspot approach" for the identification and registration of people was established. However, the bad state of Greek administration, combined with a) the absorption of the new coalition government in endless negotiations with European institutions and the International Monetary Fund on its economic programme and b) the profound delays in crafting a solid EU response, had as a consequence the loss of crucial time. Hundreds of thousands of migrants started their trip from Turkey and the Greek islands to the "paradise" of Germany, Austria or Sweden – just to name few of the favorable destinations of Syrian, Afghan or Iraqi refugees who wanted a better life away from their war-torn countries. The "Balkan route" was the main passage to Central and Northern Europe as Greece seemed unable to control who was coming in or going out of its territory.

This situation put a heavy strain on countries such as the Former Yugoslav Republic of Macedonia (FYROM), Serbia, Slovenia or Croatia. When Hungary decided to close its borders to prevent any more flows, the burden for FYROM and Serbia, which are not EU members,

became very heavy. However, according to EU diplomats who followed developments at that time very closely, it was not until October or November 2015 that the EU realised the magnitude of the crisis. The Western Balkans Summit in Brussels at the end of October 2015 was the first sign that something had to be done urgently in order to manage the uncontrollable flows.[2] By that time, the problem was not only humanitarian. Its security aspect was becoming more and more obvious and the deadly terrorists attacks in Paris on November 2015 was the crunch time for European decision makers as the concern that foreign fighters and Islamic extremists were using the migratory flows to move in and out of Europe was becoming excessively high.[3]

It had become obvious that two things were needed for the situation to be reversed. The first was the completion of a deal with Turkey, a key country from where most of illegal migrants and refugees were crossing to Greece. The second was the need to seal the Balkan route as Greece was unable to properly register migrants entering its territory and then crossing to the mainland, reaching its northern part and continuing their trip to the rest of Europe. It took four months of feverish and behind the scenes negotiations to achieve a deal with Ankara, culminating in the EU-Turkey Statement of March 2016.[4]

The agreement must be considered successful if official data is taken under consideration. There has been a dramatic fall in the number of crossings in the Aegean since the EU-Turkey Statement in March 2016, as more than 150,000 crossings were recorded during the first three months of 2016 compared to less than 22,000 in the remaining months of the year.[5] Although each loss of life is highly regrettable, "only" 68 fatalities and missing persons have been recorded in the Aegean Sea since the EU-Turkey Statement. This represents a substantial decline in the loss of life, as during the same period in 2015 the total number was close to 600.[6]

Deceptive bliss: In the last few years, escapes over the Mediterranean have cost the lives of thousands of people.
Source: © Yannis Behrakis, Reuters.

Nevertheless, shortcomings still exist. The five Greek hotspots remain overcrowded, the government has not yet formally appointed the hotspot coordinators and Standard Operating Procedures are still pending. Additionally, the detention capacity in the hotspots needs to be increased in order to strengthen security and speed up returns to Turkey.[7] Furthermore, the Turkish Coast Guard is actively patrolling in the Eastern Aegean waters. According to data from the Turkish Coast Guard website, during the period from 1 January to 17 February 2017, 23 irregular migrants' incidents took place and 716 people were saved, while four smugglers were apprehended.[8]

The Challenges of Greek-Turkish Cooperation

Angela Merkel was instrumental in engaging Turkey and its mercurial President Recep Tayyip Erdogan but also in creating, alongside European Council's President Donald Tusk, the necessary consensus among EU's member states for the conclusion of the EU-Turkey Statement. However, the success of this agreement required, as a sine qua non, the cooperation between Athens and Ankara. This is a very demanding task, as the relevant stakeholders have to include in their calculations very tricky and complicated Greek-Turkish relations. These

have been overburdened during the last 40 years by Ankara's continuous revisionist stance of the Aegean Sea legal status.

The decision of the Greek Supreme Court, on 26 January 2017, against the extradition of eight Turkish military personnel sought by Ankara over July's 2015 attempted coup on the basis that they may not have a fair trial in Turkey is the latest episode in Greek-Turkish affairs. Turkish Foreign Minister Mevlut Cavusoglu stated a few days later that his country might reconsider its overall relations with Greece, mentioning in particular the bilateral readmission protocol which is one of the pillars of the EU-Turkey Statement as there is no EU-Turkey readmission agreement. The bilateral protocol is needed so that irregular migrants and refugees are returned to Turkey and for Turkey to control its maritime boundaries with Greece, host millions of refugees on its soil and resettle Syrians to the EU on the "1 Syrian for 1 Syrian" formula.

The cooperation between Athens and Ankara is vital, but sensitive.

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The EU should take great care in managing the bilateral Greek-Turkish aspect of its dealings with Turkey. The deterioration of bilateral affairs could endanger the strategy to manage and control EU's external borders. The Greek Supreme Court decision was followed by a standoff between Greek and Turkish patrol boats and warships close to the Imia islets, which belong to Greece, in the Southeastern Aegean Sea. Turkey considers the sovereignty of these islets as "undetermined" according to its "gray zones theory".[9] It should be reminded that before the EU-Turkey Statement was signed, Greece, Turkey and Germany agreed to the presence of a small NATO maritime force in the Aegean[10] but Turkey has pushed for very strict rules, questioning even the names of Greek islands, while denying full access to

certain areas for NATO ships and calling repeatedly for the withdrawal of the maritime force. On the basis of private conversations held with European diplomats, it is obvious to this writer that most of them are now aware of the sensitivities in Greek-Turkish relations and the danger it could entail for the derailment of EU-Turkey cooperation.

The Protection of EU's External Borders in the Eastern Mediterranean Route and its Significance for the Schengen System

The preparation and signing of the EU-Turkey Statement, combined with the closure of the Balkan route, could only temporarily alleviate the pressure from migratory flows. These initiatives were not enough to cover the serious deficiencies concerning the protection of EU's external borders in the Aegean Sea. The huge numbers of people crossing the Aegean Sea under very adverse circumstances led, in December 2015, to the replacement of Frontex's Joint Operation "Poseidon Sea" with "Poseidon Rapid Intervention", providing Greece with additional technical assistance to strengthen border surveillance, identification and registration of migrants and refugees. The results have been mixed as Frontex could not operate in Turkish waters and at the same time the "background calls" by certain EU officials for joint Greek-Turkish patrols were wishful thinking because of the aforementioned tensions between the two NATO allies.

It was in this context that after Angela Merkel's visit in Turkey on 8 February 2016, she and then Prime Minister Ahmet Davutoglu agreed to propose to NATO the launch of a joint operation to patrol Aegean waters and help Greece and Turkey.[11] Athens was initially very cautious but in the end agreed to the idea during NATO's Defense Ministerial a few days later.[12] Greek and Turkish warships along with third countries' warships participating in the Standing Naval Maritime Group 2 (SNMG2), under a German flagship, started patrolling Aegean waters. In March 2016, NATO and Frontex agreed on a common understanding

to coordinate their actions and in April 2016 a Frontex liaison officer was deployed on NATO's flagship. In July 2016, Standard Operating Procedures were signed between EBCG and NATO Maritime Command, leading to a deepened cooperation in the form of a common situational picture, early warning, surveillance activities and sharing of operational information with the Greek and Turkish Coast Guards. The Alliance has also provided equipment to EBCG to access its regional restricted network and step up information exchange.[13]

It was, however, clear that Turkey would not let its bilateral disagreements with Greece on Aegean's legal status become hostage to NATO's Aegean activity (as the operation was "codified"). While Greek military officials were hoping for the biggest possible expansion of the operation, their Turkish counterparts limited their cooperation to just two out of the four operational areas (near the islands of Lesvos and Chios). Furthermore, third countries' ships have slowly withdrawn and NATO's operation, although still active, is losing ground.

Under these circumstances, it soon became obvious that Frontex under its old format had to be transformed to a more robust EBCG with a wider mandate in order to be able to intervene in emergency circumstances and to cooperate with third countries. However, this alone was not sufficient to promote the strengthening of external borders and the integrity of the Schengen area. In February 2016, the European Commission adopted a Report as a result of an unannounced evaluation visit which took place in mid-November 2015 at certain points of the land and sea borders of Greece. The Report concluded that there were "serious deficiencies" in the carrying of the external borders' control in Greece. Recommendations for remedial action were adopted by the Council on 12 February 2016.[14] Despite Greece's stated disagreement with the assessment of the evaluation Report, the Greek authorities presented an Action Plan to remedy the deficiencies in March 2016 and the process is moving smoothly forward in most aspects.

The remedy of the deficiencies remains crucial as a certain number of EU member states still have temporary internal border controls in place because of exceptional circumstances (Austria, Germany, Denmark, Sweden, plus Norway which is not an EU member state but an associate member in the Schengen area),[15] especially to avoid secondary movements. The terrorist attacks in France and Belgium and the fact that some of the perpetrators have been to or have passed from Greece while planning them have brought to the surface the urgent need to strengthen external border controls. In the Conclusions of the Justice and Home Affairs (JHA) Council of the EU on 20 November 2015, just one week after the heinous terrorist attacks in Paris on 13 November 2015, the member states undertook, among others, to implement immediately the necessary systematic and coordinated checks at external borders, including on individuals enjoying the right of free movement, to strengthen the security checks in the context of the current migration crisis, to update proposals on Smart Borders and to present proposals for the revision of the SBC. This debate produced, as a result, the proposals for the creation of an EBCG, presented in December 2015 and for the revision of the Smart Borders package, presented in April 2016.[16]

The "Twin Pillar" of European Border and Coast Guard and Smart Borders

There is no doubt that an effective protection of the EU's external borders is fundamental to the well functioning of free movement within the EU. In September 2015, the European Council called for stronger controls at those borders, including through additional resources for Frontex, EASO and Europol. In December 2015, it further highlighted the need to ensure systematic security checks at external borders with relevant databases and the use of new technologies.

One of the most visible proposals concerning the strengthening of external borders was presented by the European Commission in December 2015 on the revision and revamp of Frontex's mandate.[17] The Commission's

Discarded life vests: Since the controversial EU-Turkey deal, the number of Mediterranean crossings has decreased significantly. Source: © Alkis Konstantinidis, Reuters.

far-reaching proposal formed the basis of the Regulation (EU) 2016/1624[18] which establishes the EBCG Agency. According to the First Report on the operationalisation of the EBCG, published by the European Commission on 25 January 2017,[19] the Agency provides the biggest operational support in the frontline states member states that it has provided so far, as more than 1,550 members of the EBCG are deployed in regular joint operations at EU's external borders (760 in Greece, 600 in Italy, 130 in Bulgaria, 70 in Western Balkans).[20]

The Regulation includes some very interesting provisions which should be analysed further.[21] First, the EBCG will have "shared responsibility" with EU member states in the implementation of European integrated border management. As the authors of a report on the EBCG recently wrote, "for the first time, a piece of EU secondary legislation provides a definition of what 'integrated border management' is". It is actually comprised of three tasks: a) border control, b) search and rescue operations for persons in distress at sea and c) analysis of the risks for internal security and analysis of the threats that may affect the functioning or security of the external borders.[22]

Second, the Regulation converts Frontex into a European returns agency, as it can conduct joint return operations with national authorities aimed at expelling or removing illegal migrants, including the acquisition of travel documents. This issue is interlinked with the emphasis placed in the EBCG on working with third countries in the field of border management, including by deploying liaison officers to

third countries or launching joint operations on EU's territory or on the territory of third countries. EBCG is currently revising all the existing bilateral working arrangements with the Western Balkans countries, Turkey et al. in line with the new mandate. The Commission adopted on 22 November 2016 a model status agreement which serves as a blueprint agreement with third countries.[23] Two priority countries were selected, Serbia and FYROM.[24] However, cooperation with third countries does not exist in a vacuum. It involves interactions with third countries of strategic importance and exerting pressure on them may be counterproductive in concrete terms.

Third and most important, the Regulation gives to the EBCG a new competence on conducting vulnerability assessments of the member states' readiness to face challenges at their external borders. This competence should be viewed though in direct connection with the right of the Agency to intervene in a member state. The vulnerability assessment will help to identify measures to be taken and make recommendations to the relevant member state. Furthermore, the assessment by the EBCG will feed into the evaluation carried out in the scope of the so-called Schengen evaluation mechanism of the SBC.

In a case where a member state does not follow these recommendations, the Agency is granted a "right to intervene", especially when urgent action is needed when the member state is facing serious deficiencies in addressing migration pressures and is not able to carry out effective border controls, putting the functioning of the Schengen area in jeopardy. However, the initial Commission proposal, which was giving responsibility for the management of the external borders to the EBCG, was significantly watered down during the negotiations for the Regulation's adoption. The Commission is no longer in the driver's seat. It will now identify and propose to the Council the measures to be implemented by the EBCG and require the member state concerned to cooperate. It goes without saying that the power to take this decision is now in the hands of the Council because of the politically sensitive nature of the measures to be decided, often touching on national executive and enforcement powers. This means that the EBCG will still be dependent on EU member states' consent. It has to be also noted that decisions on conducting vulnerability assessments or on corrective measures will need to be adopted by a majority of two-thirds or EBCG's Management Board.[25]

The EU intends mandatory checks of non-EU citizens crossing external borders.
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The second pillar of the EU's strategy to strengthen external borders to ensure proper freedom of movement and security in the Schengen area is comprised of two initiatives. One was the proposal for amending Regulation No. 562/2006 (SBC) as regards the reinforcement of checks against relevant databases at external borders. Its aim was to introduce mandatory systematic checks for persons enjoying the right of free movement under EU law (EU citizens and members of their families who are not EU citizens) who cross external land, sea and air borders. Those persons would be checked against databases, such as the Interpol stolen and lost documents database (SLTD) and Schengen Information System (SIS), in order to verify their identity and that they do not constitute a threat to public order and internal security. The proposal stresses the need to verify biometric identifiers in passports, such as fingerprints and also obliges checks of all third-country nationals who are leaving the EU against relevant databases to ensure they pose no security threat.[26]

Furthermore, in April 2016, the Commission published its Smart Borders package, including a "Communication on Stronger and Smarter Information Systems for Borders and Security" and a "Regulation for the Establishment of an Entry-Exit System".[27] The proposed amendment

The new normal: After a number of major terrorist attacks, not only at the outer EU borders tightened security measures are making themselves felt. Source: © Yves Herman, Reuters.

to the SBC in order to integrate the technical changes needed for the Entry-Exit system was mentioned above. In general, the Smart Borders package aims to help member states deal with increasing traveller flows, without necessarily increasing the number of body guards and to promote mobility between the Schengen area and third countries in a secure environment, while contributing to the fight against terrorism and serious crime.

The Commission has insisted that the package is not a direct response to the refugee crisis. The purpose is to make better use of the opportunities offered by IT systems and technologies. It refers to three existing systems: Eurodac (to deal with the administration of asylum), VIS (for managing visa applications) and SIS (for sharing information on persons and objects for which an alert has been created). The new Entry-Exit System (EES) is planned to be established by 2020. EES will apply to third country nationals, both visa-required and visa-exempt travellers, admitted for a short stay (maximum 90 days in any 180 days period). All systems, with the exception of SIS, target third-country nationals.

Conclusion

The refugee and migrant crisis has fundamentally tested the added value and legitimacy of the EU. The controversial EU-Turkey Statement of March 2016 to send refugees arriving in Greece back to Turkey has raised concerns for many stakeholders. Realpolitik prevailed

Italy, challenges remain. However, the main question is whether the Union can bring about more effective management of the migration crisis and offer reassurances to its citizens that it can provide security against terrorism and other threats. In this regard, the amendments to the Dublin system currently discussed in order to create a Common European Asylum System (CEAS)[30] are of outmost importance in order to restore the proper balance between external borders management and asylum.

The EU needs to show effective management of the migration crisis and provide security to its citizens.

It seems though that the atmosphere on certain European capitals, mainly in Berlin and Paris, is focused primarily on preventive rather than inclusive measures concerning migration. The recent Franco-German Note entitled "A crisis-resistant Common European Asylum System"[31] includes very tough provisions as it actually proposes an indirect "Australian model" by sending people back in third countries with minimum legal guarantees. It appears that the European debate on migration, asylum and border management will stay with us for a long time.

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as divisions among member states (especially between those from Western Europe and those from Central and Eastern Europe, specifically the "Visegrád Four") challenged solidarity and respect for European values. This has been the reason that the relocation scheme[28] championed by the European Commission and Germany is still not functioning as its architects envisioned despite repeated calls. However, if this scheme does not work, the implementation of the EU-Turkey Statement will be in danger sooner than later, especially if migratory flows start rising again.

The Dublin system[29] came under severe pressure as did external border management. Meanwhile, as the influx of refugees continues mainly through the central Mediterranean route and

1 It is interesting to observe how the number of illegal border crossings has developed over the last few years. In 2016, the number dropped to 511,371 detections, which represented a 72 per cent drop compared to 2015. However, this number is still significantly higher than any yearly total between 2010 (104,060) and 2014 (282,933). Cf. Frontex 2017: Risk Analysis for 2017, p. 18, in: http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2017.pdf [27 Feb 2017].

2 The Meeting on the Western Balkans Migration Route took place in Brussels on 25 October 2015. The leaders of Albania, Austria, Bulgaria, Croatia, FYROM, Germany, Greece, Hungary, Romania, Serbia and Slovenia, alongside European Commission's President Jean-Claude Juncker agreed on a 17-point plan of action. Cf. European Commission 2015: Meeting on the Western Balkans Migration Route: Leaders Agree on 17-point plan of action, press release, 25 Oct 2015, in: http://europa.eu/rapid/press-release_IP-15-5904_en.htm [27 Feb 2017].

3 In October 2015, four men posing as migrants passed from the Greek island of Leros and using fake Syrian passports managed to continue their trip on the European continent. They were members of the Islamic State. Two of them were identified as bombers in the deadly terrorist attacks in France on 13 November 2015. For a detailed account of this story cf. Faiola, Anthony / Mekhennet, Souad 2016: Tracing the path of four terrorists sent to Europe by the Islamic State, The Washington Post, 22 Apr 2016, in: http://wapo.st/2lrlPbh [27 Feb 2017].

4 For the text of the EU-Turkey Statement, see European Council 2016: Press Release 144/16, in: http://europa.eu/!Uv88TM [27 Feb 2017]. For the Conclusions of the European Council in March 2016 when the Statement was adopted, see European Council 2016: European Council conclusions, 17-18 March 2016, in: http://europa.eu/!vg48yb [27 Feb 2017]. On the initial idea about a possible EU-Turkey deal in the Aegean Sea, see European Stability Initiative 2015: The Merkel Plan. Restoring control; retaining compassion – a proposal for the Syrian refugee crisis, 4 Oct 2015, in: http://bit.ly/1hR1A3M [27 Feb 2017].

5 European Stability Initiative 2017: On solid ground? Twelve facts about the EU-Turkey Agreement, 25 Jan 2017, in: http://bit.ly/2lYuZ2f [27 Feb 2017].

6 European Commission 2016: Communication from the Commission to the European Parliament, the European Council and the Council – Fourth Report on the Progress made in the Implementation of the EU–Turkey Statement, 8 Dec 2016, p. 2, in: http://bit.ly/2lnobZ7 [27 Feb 2017].

7 Ibid., pp. 6-7.

8 Turkish Coast Guard Command 2017: Irregular Migration Statistics in the Aegean Sea in 2017, in: http://bit.ly/2ptwX90 [27 Feb 2017].

9 For a brief overview of Greek-Turkish relations see Ministry of Foreign Affairs of the Hellenic Republic of Greece 2017: Issues of Greek-Turkish Relations, in: http://mfa.gr/en/issues-of-greek-turkish-relations [27 Feb 2017]. On the "Gray Zones Theory" see Ministry of Foreign Affairs of the Hellenic Republic of Greece 2017: Turkish claims, 19 Apr 2016, in: http://mfa.gr/en/issues-of-greek-turkish-relations/relevant-documents/turkish-claims.html [27 Feb 2017].

10 On NATO's deployment in the Aegean Sea see NATO 2016: NATO's Deployment in the Aegean Sea, Fact Sheet, Oct 2016, in: http://bit.ly/2mw3IBQ [27 Feb 2017].

11 For the results of the Merkel–Davutoğlu meeting see Zalán, Eszter 2016: Germany, Turkey want NATO help to police coast, EUobserver, 8 Feb 2016, in: https://euobserver.com/migration/132177 [27 Feb 2017].

12 NATO 2016: NATO Defence Ministers Agree on NATO support to assist with the Refugee and Migrant Crisis, 11 Feb 2016, in: http://nato.int/cps/en/natohq/news_127981.htm [27 Feb 2017].

13 European Commission, n. 6, p. 4.

14 For the Council's Recommendation to Greece, see Council of the European Union 2016: 5876/1/16 REV 1, 12 Feb 2016, in: http://data.consilium.europa.eu/doc/document/ST-5985-2016-INIT/en/pdf [27 Feb 2017]. For Greece's reservations, see Council of the European Union 2016: 5615/16 RESTREINT, in: http://data.consilium.europa.eu/doc/document/ST-5877-2016-REV-2/en/pdf [27 Feb 2017].

15 European Commission 2016: Commission recommends extending temporary internal border controls for a limited period of three month, press release, 25 Oct 2016, in: http://europa.eu/rapid/press-release_IP-16-3501_en.htm [27 Feb 2017].

16 For a detailed account see European Council 2015: Conclusions of the Council of the EU and of the Member States meeting within the Council on Counter-Terrorism, press release, 20 Nov 2015, in: http://europa.eu/!Wm64ct [27 Feb 2017]. See also European Council 2016: Strengthening the EU's external borders, in: http://europa.eu/!vf83JG [27 Feb 2017].

17 European Commission 2015: Communication from the Commission to the European Parliament and the Council. A European Border and Coast Guard and effective management of Europe's external borders, 15 Dec 2015, in: http://bit.ly/2m30Uiv [27 Feb 2017].

18 European Parliament / European Council 2016:Regulation (EU) 2016/1624, On the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/67/EC, 16 Sep 2016, in: http://frontex.europa.eu/assets/Legal_basis/European_Border_and_Coast_Guard.pdf [27 Feb 2017].

19 European Commission 2017: On the Operationalisation of the European Border and Coast Guard, 25 Jan 2017, in: http://bit.ly/2mwkm4t [27 Feb 2017].

20 Ibid., p.3.

21 For a thorough analysis on the EBCG see Carrera, Sergio et al. 2017: The European Border and Coast Guard: Addressing migration and asylum challenges in the Mediterranean?, Centre for European Policy Studies, 1 Feb 2017 in: http://bit.ly/2kRhw9h [27 Feb 2017].

22 Ibid., p.43, reference 104, concerning Art. 4 of the Regulation.

23 European Commission 2016: Model status agreement as referred to in Article 54(5) of Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard, in: http://bit.ly/2o5wMzX [27 Feb 2017].

24 European Commission 2017, n.19, p.10.

25 Art. 62(2c) of Regulation (EU) 2016/1624.

26 European Commission 2015: Proposal for a Regulation of the European Parliament and of the Council Amending Regulation No 562/2006 (EC) as Regards the Reinforcement of Checks Against Relevant Databases at External Borders, in: http://bit.ly/2nk9LvX [27 Feb 2017]. The proposal was recently adopted by the European Parliament Plenary Session.

27 Cf. European Commission 2016: Stronger and Smarter Information Systems for Borders and Security, 6 Apr 2016, in: http://bit.ly/2jFMZOb [27 Feb 2017]. See also European Commission 2016: Proposal for a Regulation 2016/0106, 6 Apr 2016, in: http://bit.ly/2nkb65R [27 Feb 2017].

28 European Union 2015: Council Decision (EU) 2015/1601 Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and Greece, in: http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A32015D1601 [27 Feb 2017]. The Council passed the decision by a qualified majority vote, bypassing Slovakia, Hungary, Romania and the Czech Republic. Poland's previous government which has been opposed to the quotas ultimately reversed course and sided with the majority. However, Slovakia and Hungary have challenged the Council Decision before the Court of Justice of the EU (cf. cases C-643/15 and C-647/15).

29 European Union 2013: Regulation (EU) 604/2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in one of the Member State by a Third-Country National or a Stateless Person, in: http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32013R0604 [27 Feb 2017].

30 On the ideas concerning CEAS see European Commission 2016: Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe, 6 Apr 2016, in: http://bit.ly/2mw41fY [27 Feb 2017]; European Commission 2016: Proposal for a Regulation Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in one of the Member States by a Third-Country National or a Stateless Person, in: http://bit.ly/2mwhdS0 [27 Feb 2017].

31 Cf. especially paragraphs 5-7 in Statewatch.org 2017: A Crisis-resistent Common European Asylum System (CEAS), France-Germany Note, in: http://bit.ly/2mz7Uoj [27 Feb 2017].

Borders

New "Borders" in Eastern Europe

Ukraine since the Annexation of Crimea and the
Outbreak of the Conflict in the Donbass

Gabriele Baumann / Moritz Junginger

The principle of border inviolability within Europe was put into question in 2014 with the Russian annexation of Crimea and the breakout of the conflict in Eastern Ukraine. These events created two new "borders" in Eastern Europe: one de-facto national border in the case of Crimea and a frozen frontline in the case of the occupied territories in the Donbass. Both came into being in contravention of international law and are negatively impacting people in Ukraine.

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This March, it will already be three years since Russia annexed Crimea. When "little green men" in unmarked uniforms occupied Simferopol International Airport and government buildings in Crimea, it dealt a blow to the European post-war order. The annexation of Crimea by Russian special units, whose deployment was initially denied by President Vladimir Putin but then publicly confirmed a year later, violated applicable international law and undermined Ukraine's territorial integrity. The annexation is also in violation of the fundamental principles that were defined in 1975 in the Final Act of the Conference on Security and Co-operation in Europe. This included the principle that the frontiers in the post-war European order are inviolable and that the territorial integrity of all states must be respected.[1]

In Russia, by contrast, the annexation was celebrated as the "return to the fold of the motherland" or as "accession". This perspective is bolstered by dubious historical claims and a campaign of glorification, meant to legitimise the annexation in the eyes of the Russian population. Under the control of the presidential "power vertical", Crimea was made part of the Southern Federal District of the Russian Federation in July 2016 with Rostov-on-Don as its capital. With this administrative move at the latest, the peninsula lost the special status of an autonomous region within Ukraine that it had enjoyed until 2014. Western sanctions have officially banned political and economic relations with Crimea since the annexation, which means the peninsula is now isolated to a large extent. Water supplies from the Ukrainian mainland were cut off as well.

By January 2015, Ukraine and Russia had established a border regime that closely resembles what constituted a national border in the times of the Cold War. Many Crimean Tatars, representatives of Ukrainian NGOs and journalists who had to leave Crimea during the previous few years no longer dare to come visit relatives and friends on the peninsula. The human rights situation in Crimea, arbitrary arrests and political repression, such as the banning of the Mejlis, the executive-representative body of the Crimean Tatars, confirm that this caution is justified. The Ukrainian population living near the border is experiencing significant hardships; the loss of jobs based in Crimea for one has posed considerable challenges to the region.

The fact that borders can become uncontrollable and "permeable" can be seen along the Russian-Ukrainian border in the Donbass. Since the beginning of the conflict in Eastern Ukraine in the spring of 2014, over 400 kilometers of the Ukrainian border with Russia have no longer been under the control of the government in Kiev. This is allowing weapons, heavy military hardware, Russian soldiers and volunteers to enter the occupied part of the Donbass unhindered from Russia. As the Organization for Security and Co-operation in Europe (OSCE) only has access to two border crossings, it is finding it virtually impossible to document, let alone prevent, illegal entry and weapons deliveries.[2]

Source: © Taras Ibragimov, QirimInfo.

Since the summer of 2014, the occupied territories have consequently experienced an increasing amalgamation with Russia and extensive disconnection from Ukraine. Civil servants and military personnel in the territories receive their pay from Moscow, the Russian rouble has displaced the hryvnia as means of payment, and the separatist leaders in the administrative bodies of the self-styled "people's republics" take their political orders from the Kremlin. The education and healthcare systems are drifting apart. People living in Ukrainian areas adjoining the occupied territories no longer have access to the hospitals there, which is still causing massive healthcare shortages. Educational qualifications gained in the separatist territories, where Russian curricula now dominate the teaching, are no longer compatible with the Ukrainian ones.[3]

The Ukrainian army and the separatists supported by Moscow confront each other at a distance of sometimes only a few hundred meters along a frontline referred to as the "contact line" in OSCE parlance. While there are now fewer reports in the German media on the

place. Even though the newly adopted economic blockade prohibits trade with the occupied territories, people continue to cross the contact line. The five border crossings are very busy, used by some 20,000 people every day. In 2016, eight million people crossed the contact line. These are predominantly people who go to collect their monthly pension payment in Ukraine.[4]

While the checkpoints at both new "borders" are manned by border officials and soldiers, there are some differences between the two border regimes. In the case of Crimea, a de-facto national border has developed, constituting a violation of international law but an everyday reality for the people; the contact line, on the other hand, is more a frozen frontline than a border. This is clearly illustrated by occasional shelling of the checkpoints and roadside mines. But what the two new "borders" have in common is the fact that they became established in violation of international law and are having a serious impact on the affected people as well as Ukrainian society as a whole. They separate Ukrainian citizens from each other, cut economic ties, encourage corruption and have the potential to spark new outbreaks of violent conflict at any time.

To summarise: two new "borders" have come into being in Eastern Europe since 2014, which effectively cut off pieces of Ukrainian territory. That said, the remainder of this article will not focus on the high-level questions of foreign policy or geopolitical matters that the violations of international law have raised. Instead, it will concentrate on describing the currently less well-known realities on the ground and how these affect people's everyday lives and on analysing the concrete repercussions of the new "border regimes". In a first step, the authors will explain – first for Crimea and then for the occupied territories – how the "border regimes" came about, what the situation at the crossing points looks like and how these are used. This will be followed by an examination of the consequences with respect to the freedom of movement, economic relations, corruption and the security situation.

conflict in Eastern Ukraine than there had been following the high numbers of casualties of the battle of encirclement at Ilovaisk in the summer of 2014 and of the clashes to control Donetsk Airport in the spring of 2015, the static warfare is continuing with heavy losses on both sides. The humanitarian situation of people living along the contact line or in no-man's-land, the "grey zone" between the positions, is intolerable.

However, the occupied territories are not totally isolated as is the case for Crimea. Until March 2017 some economic relations had remained in

From Administrative Boundary Line to De-Facto National Border

Unlike the situation in Eastern Ukraine, Crimea's new dividing line runs along the administrative boundary line between the Ukrainian Autonomous Republic of Crimea and the adjoining Kherson region. Before the Russian annexation, the administrative boundary line was comparable to the borders between the German federal states (*Bundesländer*); judging from its current attributes, it has since become a de-facto national border. After the referendum in Crimea held on 16 March 2014, which was not recognised by the international community, and the annexation by Russia two days later, Moscow declared the administrative boundary line an international border. Russian border troops under the control of the FSB, Russia's secret service, have been stationed along the line ever since. Roughly during the same period, the Ukrainian government increasingly lost control over parts of the Donbass. In response to the tense situation, the Ukrainian parliament Verkhovna Rada passed a law on the rights and freedoms of citizens in the temporarily occupied territories in mid-April 2014, which grants Ukrainian nationals free and unhindered entry on the basis of a valid passport.[5]

According to the OSCE, over 20,000 people, half of them Crimean Tatars, left Crimea within a year of the annexation.[6] Others estimate the number of internally displaced persons from Crimea to be between 40,000 and 50,000. While it was initially relatively easy to slip into and out of Crimea unnoticed, now every traveller must cross at one of the three official crossing points. Fences have been erected along the administrative boundary line. Russian forces have also been accused of laying mines.[7] Since the beginning of 2015, the Ukrainian side itself has enforced rules that apply to the regular Ukrainian national borders.[8] Ukrainian border officials now check people and vehicles. Ukrainian customs agents perform checks to ensure that people adhere to the restrictions of what can be taken across, such as a 50 kilograms limit for food and personal belongings. Bread and potatoes are allowed, confectionary is not. A personal laptop can be taken along, but pets cannot.[9]

Train and bus links to Crimea were discontinued completely by December 2014.[10] A few days before the New Year, the unannounced suspension of public transport resulted in chaos at the administrative boundary line, with traffic jams kilometers long building up shortly before the festivities. There has been no direct public transport from and to Crimea since. Trains terminate in the city of Kherson over 100 kilometers from the administrative boundary line or in the small town of Novooleksiivka, almost 30 kilometers from the nearest crossing point. People then have to take a bus or taxi to the Ukrainian checkpoint. Between the Ukrainian and the Russian checkpoints there is a further two kilometers of "neutral zone" to cover. Officially, the three crossing points along the administrative boundary line can only be crossed on foot or in one's own vehicle. Unofficially, drivers transport travellers through the neutral zone for a fee. Those who can afford it pay for a minibus to take them all the way from Kiev to Sevastopol in Crimea. It is said that the border guards accept bribes to turn a blind eye. The official ban on public transport therefore affects mainly the elderly and the socially disadvantaged.

> **Public transport from and to Crimea was discontinued entirely at the end of 2014.**
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In June 2015, the rules were tightened further. Many parents with children found out the hard way directly at the Ukrainian checkpoints when they tried to travel from and into Crimea. Some were turned back because their child did not have a Ukrainian passport, or the border guards stopped them because one parent had stayed at home. What the parents did not know was this: they needed a notarised letter of authorisation from their partner. Such a simple-sounding requirement entails a great deal of effort and

Checkpoints along the contact line in Eastern Ukraine (as of November 2016). Sources: Own illustration based on UN OCHA 2016: Ukraine: Checkpoints – Humanitarian Snapshot, https://goo.gl/G2p7Sf [1 Mar 2017]; Natural Earth ☺, http://naturalearthdata.com [1 Mar 2017].

expense for people living in occupied Crimea. This is because the notarisation must be obtained from a recognised notary resident in Ukrainian controlled territory. All happy new parents have a true bureaucratic Odyssey ahead of them; to obtain a Ukrainian birth certificate they need to take the new-born from Crimea to the neighbouring Kherson region. If they don't make this effort and endure the long waiting times involved, their child would not be able to apply for a Ukrainian passport later on.

Ukrainian border officials will not let anybody with a Russian passport issued in Crimea pass. To be able to travel to Kherson or Kiev, a Ukrainian passport is therefore essential. Russian passports from Crimea are not recognised internationally either. This means a Crimean resident could fly from Sevastopol to Moscow, but the international destinations to which they could

fly from there can be counted on the fingers of one hand. Only Afghanistan, Cuba, Kyrgyzstan and Nicaragua have recognised the annexation of Crimea as legitimate. This is another reason that , just within the first year from the annexation, there were over 40,000 occasions on which Crimean residents made use of the Ukrainian passport or other administrative services in the Kherson region or Kiev.[11]

Crossing the Border in Disputed No-Man's-Land

While the new de-facto national border with Crimea reflects the original administrative boundary line, the contact line in Eastern Ukraine corresponds to the frontline. Shortly after the war broke out in 2014, the situation was chaotic. The trains were no longer running reliably and long queues built up for coaches.

Many private car owners gave lifts to people flee-ing the area, either driving through the disor-derly scenes at the checkpoints along the official escape corridors maintained by the Ukrainian army or surreptitiously via back roads.[12] Some-times documents were checked; at other times, people were just waved through. Pro-Ukrainian activists feared checks by separatists. Anyone who had called the "wrong" number or had the "wrong" app on their mobile phone came immediately under suspicion. Even Twitter was considered a risky app to have.

The Ukrainian government became increasingly concerned about the uncontrolled movement of people to and from the occupied territories. In January 2015, the Ukrainian Secret Service, which coordinates the so-called Anti-Terrorist Operation of the Ukrainian army, issued a tem-porary order on the transportation of people and cargo in the Donetsk and Luhansk regions.[13] Now, the contact line can only be crossed at offi-cial checkpoints and permits are required. Ini-tially, the new system caused long delays with queues stretching for kilometers. People were waiting overnight in freezing temperatures to be allowed to pass. OSCE observers com-plained that Ukrainian soldiers had turned back travellers even though they had valid permits.[14]

Crossing the contact line is arduous, yet border traffic has increased considerably of late.
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These days, the system is working relatively well. Permits can be applied for electronically. There are currently four checkpoints along the contact line with the occupied Donetsk region and just one checkpoint with the Luhansk region, which is only open to pedestrians. Unlike the situa-tion in Crimea, public transport to and from the occupied areas was not suspended until 2016.[15] Freight transport had been allowed to a limited degree until March 2017, when an economic blockade on all trade was announced. Neverthe-less, the number of people crossing the contact

line is rising continuously. While it was four million in 2015, the number of crossings doubled to over eight million in 2016.[16]

Crossing the contact line is arduous and time-consuming. People travelling to the occupied territories must leave the bus at the Ukrainian checkpoint to undergo the pass-port and customs checks. Then they must take a second bus that will pass through the no-man's-land of the "grey zone" and across the zero line, on either side of which the conflicting parties frequently stand within eyeshot of each other, up to the separatists' checkpoint. There, the travellers are once again asked to leave the bus to undergo checks by the separatists. Then they take a third bus to travel on to their destination. Once again, private vehicle owners offer their services to drive people conveniently and directly from Kiev to Donetsk, thereby circumventing the official ban on public or commercial passenger transportation to and from the occupied areas.

Anyone who wishes to cross the contact line must have a great deal of patience. Long queues are the norm, with average wait-ing time now amounting to three hours; in exceptional circumstances people wait over five hours. International aid agencies have set up toilets at the checkpoints as well as heated tents in winter. Around half the travellers undertake the arduous journey once a month, some of the younger ones every week,[17] mainly to visit relatives, buy food or withdraw money. Pensioners must endure the long trip in order to receive their Ukrainian pension.[18] They can only apply for and receive their pension in Ukrainian-controlled territory. The same applies to administrative matters. Roughly one in ten travellers crosses the contact line to make arrangements for a new passport or a birth certificate, because the documents issued in the occupied territories are only recognised by Russia.[19] Only five per cent travel with the intention of leaving the occupied territories for good.

Source: © Taras Ibragimov, QirimInfo.

Restricted Freedom of Movement

Freedom of movement is not only enshrined in the Ukrainian constitution as the right of every citizen, it is also a human right.[20] However, the checks and transitional provisions restrict citizens' freedom to move and travel freely within Ukraine. That said and in view of the situation in Crimea, even aid organisations confirm that the Ukrainian border regime is not a disproportionate response to the new situation.[21] To ensure security within its territory, the Ukrainian government is entitled to conduct checks as long as these are appropriate and commensurate. The observers do, however, criticise the restrictions resulting from the suspension of the bus and train connections, long waiting times, complicated checking procedures and instances of inappropriate actions by Ukrainian officials.[22]

On the Russian side of the border, Crimean Tatars, human rights activists and journalists in particular risk being detained or arrested without explanation. In March 2015, the father of a Crimean Tatar who had been arrested disappeared without a trace after crossing the border into Crimea.

The situation along the contact line is also difficult. Although the system of permits was introduced to facilitate control of the movement of people, the chaotic way it was first implemented resulted in massive restrictions of Ukrainian citizens' freedom of movement. Aid organisations also complain that the temporary order imposed by the Ukrainian secret service remains in force and that there is still no legal basis for the system of permits.[23]

One positive aspect worth mentioning is that the Ukrainian border protection forces and local authorities are cooperating with NGOs and international organisations. There is, for instance, a mobile phone app from a Ukrainian foundation available for travellers to report problems they are experiencing at the checkpoints to the occupied territories, and this information is passed on to the responsible authorities. However, not all recommendations are implemented immediately. The UN High Commissioner for Refugees, for example, is still urging for public transport to be once again permitted to cross the checkpoints.

Economic Blockade and Interrupted Coal Shipments

The economic links with Crimea and with the occupied areas are diminishing more and more. After Crimean Tatars had blocked the most important road links to Crimea in September 2015 and power lines to Crimea had been brought down by explosions in November of that year, people living on the peninsula suffered large-scale food shortages and weeks of power cuts. One of the Crimean Tatars' objectives had been to get the Ukrainian government to declare an official economic blockade against Crimea, which Kiev finally agreed to in January 2016. Since that time, Crimea has been isolated economically from the rest of Ukraine apart from some limited supplies of electricity.[24]

Even after the economic blockade with Crimea came into effect, no similar policy was expected for the occupied territories. The delivery of coal from the occupied territories by cargo trains crossing the contact line illustrated the relative permeability of the line until March 2017. Ukrainian power plants are dependent on the special type of coal from the regions across the line; any shortfall has to be made up by imports from South Africa, which are very costly. In 2015, almost 16 million tons of coal were delivered from the occupied territories. Large companies, in the steel industry for instance, continued operating in the occupied territories and were allowed to bring their goods across the contact line as long as they continued paying taxes to Kiev.

But the Ukrainian government was increasingly coming under pressure from a coalition of opposition parties and volunteer battalions for allowing a "trade in blood" that benefits the de-facto authorities in the occupied territories.[25] Calls for a blockade were proliferating and activists, including fighters from Ukrainian volunteer battalions, disrupted railway links in January 2017. Shortly after, the separatists began nationalizing the remaining Ukrainian companies in the occupied territories. Following protests and a public outcry against the government's attempts to dissolve the volunteers' blockades, surprisingly to many observers Ukrainian President Petro Poroshenko on 15 March 2017 officially announced a temporary trade embargo against the occupied territories. The embargo prohibits all trade except humanitarian aid with the occupied territories until the separatists return nationalized enterprises under Ukrainian control and stop violating the ceasefire of the Minsk agreement.

New Sources of Corruption

The poorly regulated economic and trading relations with the occupied territories encouraged corruption on a large scale. The trade in coal from the occupied territories had spawned a number of corrupt practices. Some parliamentarians are thought to have benefited handsomely from allowing coal from the occupied territories to be relabelled as South-African coal, with the energy produced being sold to consumers at high profits. Some imports from Russia were also channelled through the occupied territories and found their way into Ukraine along dubious routes across the contact line.[26]

Corruption is rife at the new "borders".
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But there is also wide-spread low-level corruption. There have been reports about bribes being paid to border officials at the checkpoints to both the occupied territories and Crimea.

Even the Archbishop of the Ukrainian Orthodox Church in Crimea was asked to pay the equivalent of ten euros in March 2015, which resulted in criminal proceedings being opened against the official involved. Allegedly, it takes large bribes for soldiers to be deployed at one of the checkpoints to the occupied territories. It is said that this "investment" pays off thanks to bribes offered to those manning the checkpoints for faster processing or for allowing goods through. The status quo thus benefits small groups of people on both sides as the new border regimes have opened up new illegal sources of revenue.

Escalation Possible at Any Time

While no actual fighting took place along the administrative boundary line with the Autonomous Republic of Crimea, unlike the situation in Eastern Ukraine, that does not mean that tensions cannot escalate at any time. On 7 August 2016, without warning, Russian border troops closed all crossing points to Crimea, the Russian military concentrated units along the border and advanced into the neutral zone in some places. Kiev responded by putting its troops on alert. Three days later, the Russian secret service

Source: © Taras Ibragimov, QirimInfo.

Source: © Taras Ibragimov, QirimInfo.

tried to justify the action by alleging that there had been an attempt to mount a terror attack in Crimea. This incident shows how easily provocations along the de-facto border can escalate.

The conflict in Eastern Ukraine remains unresolved. It has cost almost 10,000 lives since April 2014. The frontline has hardly moved at all since the battles for Donetsk Airport and the transport hub of Debaltseve in February 2015. According to Ukrainian estimates, the 69,000 soldiers of the Ukrainian army along the 500-kilometer front face some 30,000 separatists and 5,500 Russian soldiers on the other side.[27] OSCE observers say openly that the conflicting parties are capable of controlling the intensity of the conflict. After the most heated clashes for a year in August 2016, the ceasefire violations briefly all but stopped after new negotiations. But the bloody battles for the towns of Avdiivka and Makiivka and in the vicinity of Donetsk at the end of January 2017 once again

illustrated that the situation can escalate again at any time. The OSCE recorded an unprecedented number of ceasefire violations.[28] Even though the checkpoints to the occupied territories increasingly resemble those of a national border, Ukrainian soldiers and separatists are facing one another directly at the front and the conflict keeps flaring up in some places.

Long Road to Reintegration

Over the last several months, there have been repeated calls for the government to bring about a resolution to the conflict in Eastern Ukraine. However, there are no indications that the government is formulating any medium or long-term strategies with regards to Crimea or the occupied part of the Donbass, although a government department dedicated to the occupied territories was set up in 2016.

As Russia categorically rules out any negotiations on Crimea, such as a "Geneva plus" format including the U.S. and EU, the question of how to restore Ukrainian territorial integrity with regards to Crimea continues to be unaddressed and its return remains a distant prospect. One of the recommendations has been to initially leave Crimea out of the picture and not conflate it with the Donbass. However, such proposals have been impossible to implement for political reasons, as the ultimate aim, namely the restoration of the territorial integrity of all of Ukraine, is fundamentally not up for debate and is also what the great majority of Ukrainians want to see. The more far-reaching demand for "painful compromises", whereby "Crimea should not become a hindrance to an agreement to end the war in the East", as recently put forward by Ukrainian oligarch Viktor Pinchuk in the Wall Street Journal, is not helpful and has elicited vehement criticism.[29]

At the same time, various scenarios for the occupied territories have been floated in the public discussion. An expert study on Eastern Ukraine from autumn 2016 outlined four scenarios ranging from "complete isolation", to "limited isolation" and "partial normalization", to

a "limited re-integration".[30] The idea of completely isolating and "sealing in" the occupied territories was already voiced in 2014.[31] Former Ukrainian Prime Minister Arseniy Yatsenyuk advocated for complete isolation and the building of a wall as early as September 2014. But experts warn against such a course of action as it would cut the last remaining links between Ukrainian citizens on each side of the contact line. On the other end of the spectrum, "limited reintegration" seems not a viable option for the government in Kiev. Restoring economic and social relations with the occupied territories would only be possible with concessions to the de-facto authorities and Russia, which would hardly be acceptable to Ukrainian politicians and the general public.

In early 2017 it still seemed as if Kiev largely followed expert guidance to move towards a "partial normalisation" by way of practical step-by-step measures.[32] A Cabinet of Ministers Action Plan published in January 2017 has set the first milestones for a reintegration of the occupied territories.[33] A separate action plan is being drafted for Crimea. According to the action plan, the reintegration of the territories in the Donbass are not meant to involve military action to reconquer the region. Instead, the government intends to rely on concrete steps in the areas of education, culture and business. Students from the occupied territories, for instance, are to be given free access to university courses throughout Ukraine. There are also plans to improve the facilities and accessibility at the crossing points along the contact line and to fight corruption. People from the occupied territories are also to be allowed access to medical facilities on the other side of the line. Such an approach could bring the populations living in the separatist areas closer to Ukraine.[34]

However, the Ukrainian government's policy towards the occupied territories most recently took a turn towards "limited isolation". The newly adopted trade blockade calls into question the ambitious action plan for reintegration. While the crossing points remain open to the people moving across the contact line,

the last economic ties were effectively cut as of 15 March 2017.[35] The blockade could lead to an energy crisis if coal imports and alternative power generation cannot substitute halted coal deliveries from occupied Donbass. In February 2017, the government announced a state of emergency in the national energy sector and asked citizens to save energy. The economic impact of the blockade should also not be underestimated: experts expect a contraction of GDP of up to 1.6 per cent.[36] Moreover, the occupied territories might even further amalgamate with Russia, as transportation of cargo is now only possible through the uncontrolled Russian-Ukrainian border.

But even if the Ukrainian government chooses to implement its action plan and to adopt step-by-step measures that benefit the Ukrainian citizens in the occupied territories, there are many obstacles ahead on the long road to reintegration. Among others, the issue of funding has yet to be settled. The costs of rebuilding the infrastructure are estimated to be at least 1.5 billion U.S. dollars.[37] Ultimately, any solution will require political will on all sides: on the Ukrainian, the separatists' and, of course, on the part of the Russians, without whom the conflict in Eastern Europe would not have arisen in the first place.

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The images in this article are part of a photo report by Taras Ibragimov on QirimInfo. They depict the everyday life along the new de-facto border between Ukraine and annexed Crimea. The entire photo report is online at: http://krymsos.com/en/news/v-ocheredi-k-moryu-fotoreportazh.

1   Cf. Article 3 of CSCE Final Act: "The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe [...]".
2   The OSCE Observer Mission at the Russian Checkpoints Gukovo and Donetsk has no mandate to monitor the entire border currently not under control of the Ukrainian government. However, the OSCE Special Monitoring Mission should be allowed access to other border sections, but particularly near Luhansk, its personnel is regularly prevented from going right up to the border.
3   International Crisis Group 2016: Russia and the Separatists in Eastern Ukraine, 5 Feb 2016, in: http://bit.ly/2lCnXR4 [13 Feb 2017].
4   Foundation.101 2016: Crossing the Line of Contact in Eastern Ukraine August and September 2016, 15 Oct 2016, in: https://foundation101.org/en/news/20161015 [13 Jan 2017].
5   Verkhovna Rada 2014: Law No. 1207-VII (in Ukrainian), 15 Apr 2014, in: http://zakon3.rada.gov.ua/laws/show/1207-18 [13 Feb 2017].
6   OSCE 2015: Freedom of movement across the administrative boundary line with Crimea, 19 Jun 2015, p. 3, in: http://osce.org/ukraine-smm/165691 [13 Feb 2017].
7   Landmine and Cluster Munition Monitor 2014: Ukraine Country Profile, 30 Nov 2014, in: http://archives.the-monitor.org/custom/index.php/region_profiles/print_profile/1015 [11 Jan 2017].
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9   CrimeaSOS 2016: What are people allowed to take across the administrative boundary line? (in Russian), 16 Mar 2016, in: http://bit.ly/2lHHBaw [13 Feb 2017].
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16 In 2015, only two checkpoints were generally open at any one time. Cf. Foundation.101 2016: Four Million People Crossed the Contact Line in 2015, 9 Feb 2016, in: https://foundation101.org/en/news/20160209 [13 Feb 2017]; Foundation.101 2017: 8 Million People Crossed the Contact Line in 2016, 2 Feb 2017, in: https://foundation101.org/en/news/20170202 [13 Feb 2017].

17 Foundation.101 2016, n. 4.

18 As some pensioners also receive pensions from the self-proclaimed "people's republics", the Ukrainian government has begun to check the lists for recipients who are registered as internally displaced persons, but live in the occupied territories. While restricting the practice would benefit the Ukrainian pension funds, it could cut one of the last remaining links with the Ukrainian citizens in the occupied territories.

19 Since 18 February 2017 Russia has officially recognised documents issued by the de-facto authorities in the occupied territories. Germany, France and the U.S. heavily criticized this recognition.

20 Cf. Article 33 of the Ukrainian Constitution and Article 12 of the International Covenant on Civil and Political Rights.

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22 There have, for example, been reports of instances where Ukrainian border officials purposefully searched travellers for Russian passports issued in Crimea and then went on to destroy them. Without a Russian passport, people living in Crimea have no access to social security benefits or healthcare services. Cf. OSCE 2015, n. 6, p. 7.

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37 The World Bank 2015: Ukraine Recovery and Peacebuilding Assessment. Analysis of Crisis Impacts and Needs in Eastern Ukraine, 1 Mar 2015, in: https://goo.gl/gBaVBq [13 Feb 2017].

Borders

Walls Against Migration?

About Perceived Truth in the U.S. Migration Debate
and the Effectiveness of Border Protection Measures

Victoria Rietig / Christian Bilfinger

Donald Trump's plan to build a wall along the U.S.-Mexico border shines a spotlight on the issue of border protection. This article investigates how effectively walls and border control measures reduce unwanted migration flows, compared to efforts to fight root causes, and analyses as to why new migration trends in the United States and Mexico are being neglected in the U.S. debate.

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1. Introduction

"They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people."[1] These are the words new U.S. President Donald Trump used in the election campaign to warn against allegedly unchecked illegal immigration from Mexico. This warning is surprising insofar as illegal migration from Mexico to the United States is at a historic low, and for more than ten years, more Mexicans have been moving from the United States to Mexico than vice versa.[2]

The solution proposed by Donald Trump appears no less bizarre: "I would build a great wall, and nobody builds walls better than me, believe me [...] I will build a great, great wall on our southern border. And I will have Mexico pay for that wall."[3] Long stretches of the 3,000 kilometers U.S.-Mexican border are already protected by border fortifications which have been erected gradually since the 1990s – but migration experts view their effects critically. Meanwhile, leading Mexican politicians agree that Mexico will have no part in its neighbour's wall-building endeavour.[4]

Trump's quotes reflect a fundamental trend: the migration discourse in the United States is increasingly divorced from facts. This article analyses this discourse and offers responses to three questions: First, how has the migration dynamic between the U.S. and Mexico changed in recent years? What do the statistics say? Second, why are basic migration facts ignored in the political debate in the United States? What reasons explain this phenomenon? Third, how

sensible are solutions currently under discussion in the U.S. (and increasingly also in Germany)? How effective are walls and border protection in reducing unwanted migration compared with efforts to fight root causes? This article aims to dissect the U.S. debate to highlight parallels with Europe and lessons for Germany.

2. New Migration Dynamics – Fewer Mexicans, More Central Americans

The engrained narrative of Mexican immigrants who are entering the United States illegally and whose number rises continuously has been outdated for some time.

Mexican Migration: A Downward Trend

Illegal migration from Mexico is currently at a historic low. While over a million undocumented Mexicans were arrested at the border in 2005, it was fewer than 200,000 ten years later.[5] At the same time, an increasing number of Mexicans return home from the United States. Net migration between the U.S. and Mexico, i.e. the difference of immigration and emigration levels, has been negative for a number of years now. Between 2009 and 2014, one million Mexicans left, while only some 870,000 arrived.[6] Since 2013, China and India have been the main countries of origin of new U.S. immigrants, while Mexico only ranks third. According to data from the Census Bureau, around 125,000 Mexicans immigrated into the U.S. in 2013, compared to 147,000 Chinese and 129,000 Indians.[7]

Rapid: In recent years the number of illegal immigrants from Central America has doubled.
Source: © Eliane Aponte, Reuters.

Reasons for the decline of Mexican immigration are manifold. The 2008 recession in the U.S. and simultaneous improvements in Mexico's job market play as much a role for returnees as the desire to reunite with their families. The falling birth rate and aging population in Mexico also reduces the number of potential new emigrants. And increased U.S. border protection and rising deportations further lowers the motivation to migrate.[8]

Despite reduced migrant flows in the last few years, the Mexican migrant stock in the U.S. continues to be large. The Mexican diaspora has remained constant at close to twelve million for

a number of years, accounting for almost a third of all foreign-born in the United States. Around half of Mexican immigrants – some six million people – live in the U.S. in an irregular status.

These impressive statistics are the result of decades of continuous legal and illegal immigration. Starting in 1942, many Mexicans came to the U.S. legally on temporary work visas via the so-called *Bracero* Program. When the program came to an end in the mid-1960s, many Mexican guest workers maintained the close relationships they had established with their U.S. employers and continued to travel to the U.S. to work, albeit now illegally. Legal migration from

Mexico also increased as a revision of U.S. migration legislation in 1965 introduced generous rules on family unification. While fewer than one million Mexicans lived in the U.S. in the 1970s, their number had more than doubled to 2.3 million by 1980 and then increased exponentially, reaching 11.7 million in 2010, where it has stabilised with modest fluctuations ever since.[9]

*Migration from Central America:*
An Upward Trend

While the number of Mexicans coming to the U.S. is falling, the number of Central American migrants is rising steadily. Hundreds of thousands of people from El Salvador, Guatemala and Honduras, the "Northern Triangle" of Central America, set out for the U.S. every year and cross Mexico as transit migrants.

As figure 1 illustrates, particularly illegal migration from Central America has increased. While some 110,000 Central American migrants

attempted to cross into the U.S. illegally in 2006, that number had more than doubled by 2016. In conjunction with the strong decline in illegal migration by Mexicans, this means that the proportion of Central Americans among those apprehended soared in this period, from tento 54 per cent. The fact that today more Central Americans attempt to cross the border than Mexicans is all the more impressive when you consider that these three countries alone have a combined population of around 30 million – just a quarter of Mexico's population.

Northward migration from the Northern Triangle also goes back a long way. In the 1970s, many Central Americans were drawn to the U.S. from their home countries, partly due to civil war and political unrest at home, partly to find work in the U.S., or to join members of their family living there.[10] The Central American diaspora in the U.S. consequently expanded from fewer than 200,000 in 1980 to almost three million in 2015 (cf. fig. 2).

Fig. 1: U.S. Border Patrol Apprehensions from Mexico and Other Than Mexico, 2006–2016
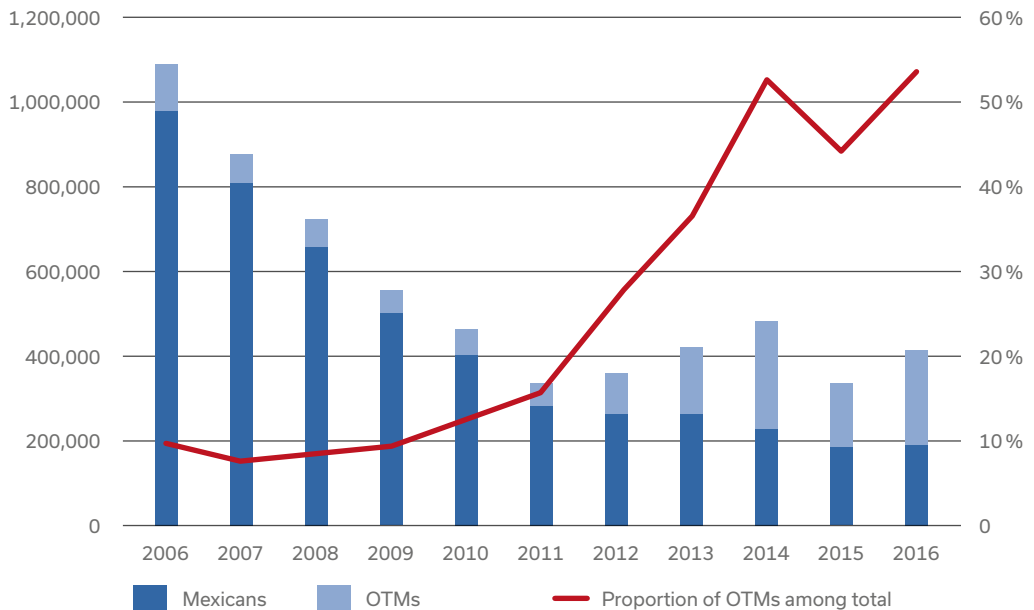
Note: Customs and Border Protection (CBP) classifies apprehensions as "Mexicans" and "Other than Mexicans (OTMs)", whereas the great majority of the OTM migrants originate from the Northern Triangle. Source: Own Illustration based on U.S. Customs and Border Protection (CBP) 2016, pp. 2–3, n. 5.

Today, the region is still fragile and mired in a multitude of problems. People suffer from extreme levels of violence, with murder rates between 30 and 75 murders per 100,000 inhabitants (in Germany the rate is below 1).[11] Poverty and unemployment are wide-spread and a quarter of all young people are so-called ninis, who are neither in work nor in education.[12] Massive corruption exacerbates increasing social inequalities, and weak institutions are eroded further by the overwhelming influence of gangs.

Central American migration to the U.S. made headlines especially in 2014, when over 68,000 unaccompanied minors, travelling without a parent or guardian, were apprehended at the border. Three quarters of these children came from El Salvador, Guatemala and Honduras. Compared to the previous year 2013, their number had jumped from some 20,000 to 50,000, while the number of Mexican children remained relatively stable (cf. fig. 3).

President Obama called the situation at the southern U.S. border a "humanitarian emergency". Despite this assessment and a number of awareness campaigns and anti-smuggling initiatives, the reaction of the U.S. and Mexico to the crisis was largely limited to enhancing their border control. In the summer of 2014, Mexico's President Enrique Peña Nieto launched the so-called *Plan Frontera Sur* (Southern Border Plan), an extensive border protection program on Mexico's southern border with Guatemala, which resulted in skyrocketing numbers of arrests and deportations of Central American migrants from Mexico.[13] Mexico's migration agency INM (*Instituto Nacional de Migracion*) deported over 175,000 migrants into the Northern Triangle in 2015 – two-thirds more than the previous year.[14]

However, the number of Central American children reaching the U.S. border declined only briefly in 2015 as a result. It rose again in 2016 to 47,000, nearly reaching the levels of the 2014

Fig. 2: Central American Migrants to the U.S., by Country of Birth, 1960–2015
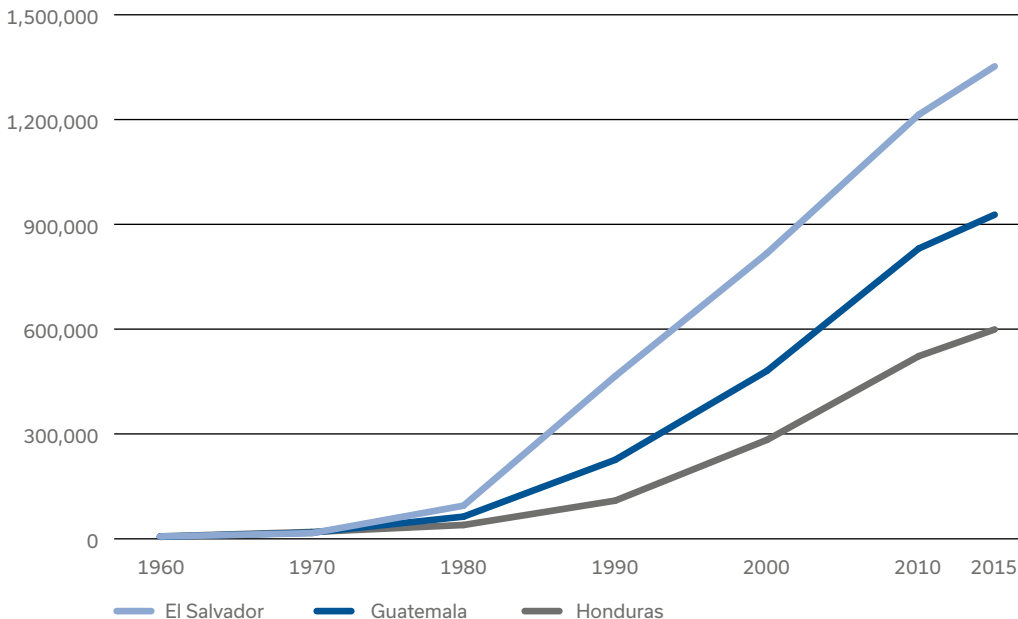
Source: Own illustration based on Migration Policy Institute 2016: Largest U.S. Immigrant Groups over Time, 1960-Present, in: http://bit.ly/2myHqmT [24 Mar 2017].

Fig. 3: Unaccompanied Alien Children at the U.S. Border, by Country of Origin, 2010–2016
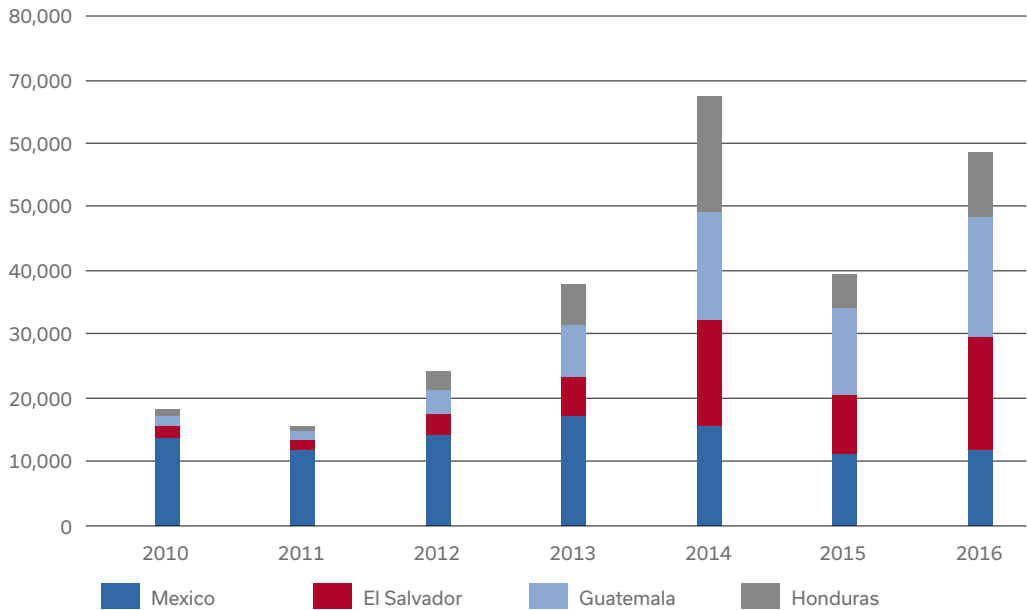
crisis year. To many observers, this development was no surprise as the causes of child migration from Central America – violence, poverty, family ties in the US, and sophisticated smuggling services – remain unchanged. It is therefore likely that Central American children and adults, despite deterrent measures and rising investments in border protection, will continue in the coming years to attempt to leave their home countries and travel north.

3. "Perceived Truth" and Political Calculation: Why the U.S. Political Discourse Avoids Basic Migration Facts

Put bluntly, migration from Mexico to the U.S. is old hat. The statistics described here – declining Mexican and simultaneously rising Central American migration – is clear. But they go largely unmentioned in the current public and political debate in the US.[15] President Donald Trump's assertion that it is necessary to build a wall to deter illegal immigrants from Mexico disregards the fact that illegal migration across the southern U.S. border reached a 40-year low in 2015.[16]

What explains this disregard of fundamental migration facts in U.S. political discourse? Four factors are involved.

First, migration "perceived" at the local level is not determined by statistics and the actual number of migrants. People do not experience immigration at the national level but at the local level in the form of concrete circumstances, such as the ethnic mix at the school their children attend or the people they see every day on the streets in their communities or cities. The subjective perception of the migration situation in a country can therefore differ greatly depending on whether someone lives in the city or in the countryside, or whether the neighbourhood is traditionally ethnically diverse as in New York City or homogenous as in Salt Lake City.

Second, it is not so much the number of migrants but the speed with which migrants change the demographics of a place that determines how migration is perceived. Immigrants to the U.S. increasingly no longer settle only in the traditional immigration states of California,

Texas, and New Mexico, but also in areas where locals previously had little experience with immigrants. The proportion of migrants arriving in South Carolina, for example, rose by 87 per cent between 2000 and 2012; the figure was 83 per cent for Alabama and 77 per cent for Tennessee.[17] The faster migration changes the demographics of a place, the more likely people are to respond with scepticism. There are parallels to this phenomenon apparent in Europe. The Brexit vote several months ago indicated that voters in areas with large numbers of migrants were more likely to vote in favor of remaining in the EU (and for the freedom of movement for EU migrants this entails), while voters in areas where there had been particularly rapid demographic change through migration over the last few years were more likely to vote against remaining in the EU.[18] Fear of migration appears thus more widespread where the number of migrants rises suddenly, while a slower pace of change seems to cause less anxiety.

A third reason why U.S. voters continue to be concerned about this issue despite the historically low level of illegal immigration is the contrast between so-called flows and stocks. As explained earlier, over eleven million people are living in the U.S. illegally, including six million Mexicans. Even though the number of Mexicans attempting to enter the country illegally (flows) is declining in recent years, the overall number of Mexicans already living in the country illegally (stocks) is so high that it continues to perpetuate the engrained narrative of undocumented Mexicans.

Fourth and last, Donald Trump's election shows that it can be politically opportune to avoid certain facts. Trump and his advisors succeeded in purposefully stoking the issue of illegal immigration to generate political capital. Here too, there are obvious parallels in Europe. Anti-immigration slogans and xenophobic rhetoric are among the basic tools used by many (albeit not all) populist parties in Europe.[19] Populism presents a simplified view of the world, in which corrupt elites on the one side and honest people on the other side are pitted against each other, and complex problems can be solved through simple common-sense solutions. In this world view, immigrants represent the ideal scapegoats as they can be depicted as both not being part of the people and supposedly easy to get rid of – be it through entry bans, deportations or, in this case, walls.

Cult of the Dead: Mexican traditions like the "Dias de los Muertos" (Day of the Dead) have long been celebrated in the United States as well. Source: © Mario Anzuoni, Reuters.

4. The Future: Approaches Between Building Walls And Fighting Root Causes

Discussions on immigration in the U.S., Germany, and other popular destination countries regularly revolve around a key question: what approaches and policies are useful and effective in curbing unwanted or illegal migration flows?

Two frequently opposing political camps and philosophies answer this question differently. Proponents of extensive border protection measures, including wall construction, frequently get into heated arguments with proponents of investments in countries of origin and fighting root causes of immigration and refugee flows. Which approach dominates the debate in

the U.S. and what do we know about the effectiveness of these two approaches?

Wall Construction and Border Protection in the U.S.

Border protection has been high on the political agenda in the U.S. since the 1990s and even more so since 9/11.[20] The annual Border Patrol budget increased nine-fold between 1994 and 2015, from 400 million to 3.7 billion U.S. dollars (cf. fig. 4).[21] The number of border patrol agents also rose sharply in the same period, from some 4,000 to over 20,000.[22] Overall U.S. spending on enforcement of migration legislation to include border protection measures in 2012 is estimated at a whopping 18 billion.[23]

These massive investments are the result of decades of policies, supported by both Republicans and Democrats, that viewed enforcement as the main answer to waves of illegal immigration. Since the mid-1990s, the U.S. has constructed several walls and fences along the border. Some of these run through highly populated urban areas, others through barren countryside. The construction varies between concrete walls and iron bar fencing. The only thing all the border fortifications have in common is that they do not cover the entire border, but stop somewhere along its length.

Strengthening border protection has always been seen as a way to hopefully curb illegal immigration.

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*How Effective Are Walls and Border Protection?*

Building walls is an extreme form of border protection, but countries use a variety of means of protecting their borders. Typical border protection measures include identity checks at entry points and in the vicinity of the border, which are carried out by border officials and/or electronic equipment at airports, ports, and other border crossings. Increasingly, this involves

technical devices such as cameras, ground sensors, motion detectors, and drones.

Walls and border protection measures function on two levels. For one, they can block existing migration flows; and secondly, they can act as deterrents to potential future migrants, which means that they can – at least in the short term – help push down migration figures. There are many examples of this dynamic. In the U.S., rising border protection investment in the 1990s occurred parallel to falling apprehensions of undocumented immigrants at the border (cf. fig. 4). And when more and more European countries introduced border controls and constructed walls along the Balkan route in recent years, the number of refugees and migrants arriving in Germany declined.

These examples suggest that walls can successfully curb illegal migration – but that is not necessarily the case. There are three factors making it difficult to obtain a clear picture about the true efficacy of walls and border protection. In the first place, the effect of walls cannot be measured unequivocally. Even if apprehensions of undocumented migrants decline following wall construction and investments in border protection (as happened in the U.S. in the 1990s), other circumstances may have played a role, such as an economic recession (like the 2008/09 recession in the U.S.) or changing living conditions in the countries of origin (for instance in Mexico in recent decades). Other factors, such as the setting up of legal migration routes, for instance by granting temporary work or student visas, can also influence the flow of undocumented migrants to a country, as can changes to the border protection regimes of other countries in the region. Second, a fundamental dilemma for border protection is that more border patrol agents can conduct more arrests even if the number of border crossing attempts remains relatively constant. Paradoxically, greater investment in border patrol personnel can even create the impression of more rather than less illegal immigration as more arrests are recorded. Thirdly, illegal immigration is not necessarily linked merely to illegal entry. As illustrated by the numerous

Fig. 4: Border Patrol Budget and Border Apprehensions, 2000–2016 in Thousand

Border Patrol Budget (in U.S. dollars)   Border Apprehensions
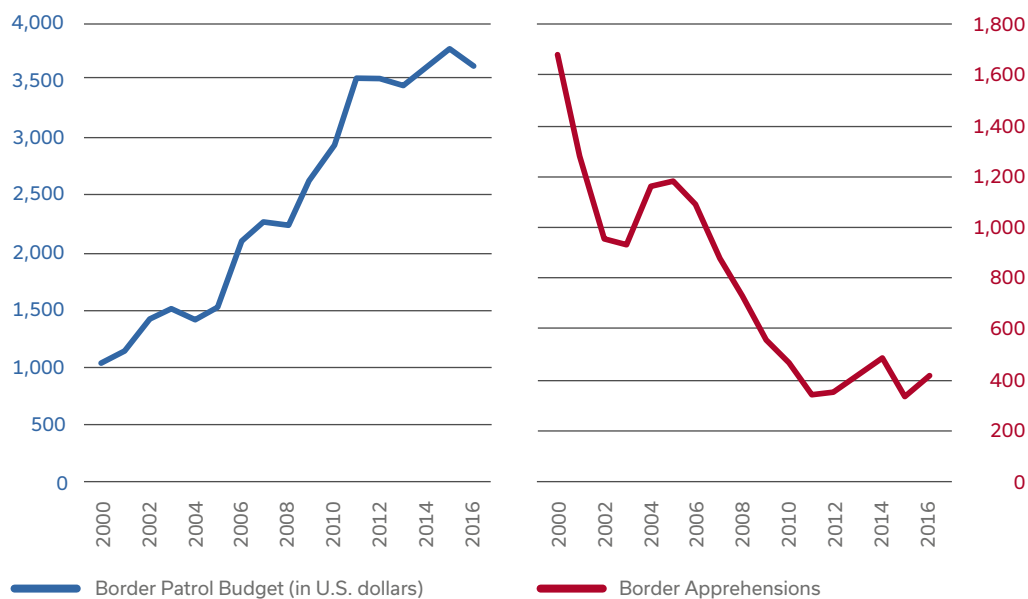
Source: Own illustration based on CBP 2016, n. 21; idem 2016, pp. 2–3, n. 5.

so-called visa overstays in the U.S., migrants can enter a country legally, for instance on a tourist or temporary work visa, and then stay on in the country once the visa has expired. Border protection and wall construction have no effect whatsoever on this form of illegal immigration.

Walls and enhanced border protection measures also bring with them a number of problems and unintended side effects. For one, there are ways to bypass walls, particularly if they only cover part of the border as is the case in the United States. More or less creative solutions range from tunnels, ladders and ropes to ramps, catapults, and drones (e.g. for smuggling drugs).

Second, more border protection makes migration more dangerous. Even if walls are successful in blocking migration flows in the short term, they tend to displace rather than decrease them in the medium to long term. Border protection frequently moves migration routes to more hostile terrain – in the case of the U.S. to the desert. Here, the number of deaths per year rose from below 100 in the early 1990s to almost 500 in

2005.[24] A similar dynamic can be witnessed in the Mediterranean in recent years. While the number of migrants trying to cross the Mediterranean in 2016 was much lower than at the height of migration flows the previous year (some 360,000 in 2016 compared to over a million in 2015), the number of fatalities rose from just under 3,800 to over 5,000 in the same period.[25] Data from the UNHCR show that the roughly ten kilometer long sea route from Turkey to Greece, the main route in 2015, claimed substantially fewer lives than the considerably longer and more hazardous route from Libya to Italy, which was used much more frequently the following year.

Greater border protection can also result in smugglers increasing their prices and adapting their business model. According to estimates, the average price for a migrant to be smuggled from Mexico to the U.S. of around 500 U.S. dollars in the 1980s had risen to almost 2,500 U.S. dollars by the mid-2000s. [26] In addition, people smugglers in Central America increasingly offer their clients three illegal entry attempts for the

price of one. If a migrant is apprehended and deported back to his or her home country, he or she has another two attempts left without incurring additional financial cost – a business model that further exacerbates the so-called revolving door problem (of migration, deportation and remigration).[27]

A fourth side effect of border protection is that it can cause circular migration to turn into permanent migration. For decades, Mexican immigration was characterised by seasonal or circular labor migration; but the more difficult it became to cross the border, the more Mexicans and their families felt inclined to settle in the U.S. permanently. In 2014, eight out of every ten undocumented Mexican immigrants had already been in the U.S. for over ten years.[28]

As this analysis shows, walls and border protection can indeed be effective symbols of deterrence, shift flows of migration, and therefore help to temporarily curb migration – but they do not resolve the problem of illegal immigration in the long term or completely, and entail considerable problems and undesirable side effects.

How Effective Are Measures to Fght Root Causes?

On the other side of the debate is the approach of fighting root causes of migration. Seeing that many migrants around the world do not leave their home country voluntarily, but because they feel compelled to do so due to destitution or armed conflict, fighting root causes and providing development aid for countries of origin seem to be a logical strategy for reducing migrant flows.

Mexico is, in fact, an excellent example of a country where improved economic conditions have contributed to a strong decline in emigration. Mexico's gross domestic product (GDP) has grown by an average of 2.5 per cent over the last ten years.[29] Between 2001 and 2011, the proportion of Mexicans belonging to the middle class increased by close to nine percentage points, with over ten million Mexicans rising up into the middle class.[29] Over the

same period, annual apprehensions of undocumented Mexican migrants dropped from 1.2 million to 290,000.[31] Surveys show that Mexicans report increasing levels of satisfaction with their lives in their country; in 2015, a third of surveyed Mexicans stated that life in Mexico was neither better nor worse than life in the U.S. – a rise of ten percentage points compared to 2007.[32]

Improved economic conditions in Mexico have contributed to a strong decline in emigration.
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So, does the development of origin countries stop migration? Not necessarily. Despite the example of Mexico, the idea that economic progress in a country automatically reduces migration from that country is a classic migration myth – widespread but wrong. Studies show that for poor countries with a low GDP (below approximately 6,000 to 8,000 U.S. dollars) the rule of thumb is in fact as follows: the richer they become the more this stimulates migration. Why is this the case? One reason for this phenomenon is that people with more disposable income are more likely to have the necessary resources to emigrate – because it is often not the poorest who migrate but those who are in a position to save up starting capital and/or travel and potential smuggler costs. Furthermore, as countries develop, their child mortality rates decline, which means the pool of potential future emigrants increases.[33]

It also has to be said that investments in a country's development are, of course, not always successful, and even when they are, their effect may only be felt in the long run – a classic dilemma of development cooperation. The U.S. has been investing in the development of Central America for decades, but deep-rooted problems such as corruption, poor education systems, the power of gangs, and the extreme poverty of large parts of the population still act as strong drivers of migration. It remains to be

seen to what extent the latest development program for Central America, the so-called Alliance for Prosperity, which was presented by El Salvador, Guatemala and Honduras in 2014 in response to the child migration crisis and which the U.S. supports with close to 750 million U.S. dollars, can achieve a breakthrough.[34] In any event, positive effects will take a long time in developing – as opposed to the short-term achievements expected of politicians.

In sum, fighting root causes can reduce unwanted migration flows, but it can only be effective over the long term and not necessarily in every case; in particularly poor countries, it may even stimulate migration.

5. Conclusion: From Zero Sum Game to Compromise Solution

Political discussions focusing on the extremes suggest (both in the U.S. and Germany) that border protection and the fight against root causes are fundamentally different approaches to reducing migration. Some advocates of border protection consider the fight against root causes a "soft" approach that is neither promising nor urgent, while conversely some advocates of fighting root causes argue that border protection is unethical and that walls are ineffectual in any case.

This analysis has shown that this dichotomy does not match the facts. Walls and border protection can only represent short-term and partial ways of curbing migration flows; investments in root causes, on the other hand, only have long-term and partial effects. Genuine solutions are therefore policies that combine both approaches – compromise solutions. Sustainable migration policies entail both border protection measures and efforts to fight root causes, and treat the two concepts not as a zero sum game but as necessary components of effective migration policies.

Neither the best border protection measures nor the best efforts to address root causes can fully stop unwanted migration flows. Mature migration policies must therefore be capable of balancing and merging both approaches.

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Borders

Between Conflict and Integration

Border Governance in Africa in Times of Migration

Kwesi Aning / John Pokoo

In Africa, Border governance plays an important role in conflict management as well as economic integration. However, despite increasing recognition of the need to effectively manage and govern borders, the efforts undertaken to date at the multilateral level have been undermined for various reasons.

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Borders in Africa are contested spaces that impact state and human security. Additionally, intra-regional cross-border migration predates colonialism in Africa. However, new post-colonial national borders and by inference the exclusive definitions of citizenship, ensured that African states resorted to mass expulsions of migrants considered to be foreigners or aliens as tools for managing national migration issues even as late as the 2000s. This strategy of mass expulsions of migrants as a means for controlling populations in some instances led to the exploitation of intra-communal and inter-community dynamics, and in the worst cases further strained already tense inter-state relations where border disputes previously existed.[1]

West Africa has a long history of designing sub-regional approaches to managing issues related to borders and migration since 1979. Although on paper and in theory West African states have sought after harmonious relations with varied levels of progress, mass expulsions of migrants by individual states have routinely occurred until the 2000s.[2] In spite of these setbacks, substantial progress has been achieved in the sub-region since the Economic Community of West African States (ECOWAS) was established in May 1975, particularly regarding the 90-days visa-free regime and the right to residence by ECOWAS Member States citizens.[3] While these policy interventions create an impression of the efficacy of ECOWAS's supranational influence, national governments remain at the center of border governance with virtually no roles for local government entities across borders. This conceptual and operational lacunae as to where and who controls border bedevils border management strategies and

by extension migration policies and responses. However, the involvement of national governments in border governance in Africa has not resulted in national level legal reforms to harmonize international border and migration provisions with domestic policies. Operational agencies are, therefore, compelled to operate in the context of legal and procedural incoherence occasioned by a state of disharmony between national and international legal frameworks on borders and migration issues.

Border disputes directly affect the territorial dimension upon which sovereign authority is exercised, hence, the use of force by states dealing with such disputes. Furthermore, with just about a quarter of borders in Africa effectively demarcated and weak national capacity to control borders,[4] there are vast border spaces that are still not under legitimate sovereign control in the context of combatting transnational organized crime and illicit trade in small arms and light weapons (SALW), narcotics and fake medicines. In addition, curbing human trafficking and minimizing the existence of safe havens for recruitment towards radicalization, extremism and terrorism becomes difficult. While national border demarcation and control is important in ensuring effective sovereign control over specific border areas, transitional cooperative arrangements among local government entities located along national borders in Africa is equally critical in facilitating the attainment of a better quality of life for people through reduced cost of trade and economic growth in border regions.

The purpose of this paper is to explore the issue of border governance in Africa in times of migration. It highlights existing mechanisms

employed by the African Union (AU) and its regional economic communities (RECs) – particularly, the Economic Community of West African States (ECOWAS), for managing border relations and by extension security on the continent. The premise of the paper is that unlike Europe and parts of Asia where cross-border governance has helped to deepen integration and economic development, cross-border governance in Africa projects a twin approach; on the one hand for managing conflicts, and for the promotion of economic integration on the other. Border-related disputes tend to undermine trust relations among states and impede the quest for borderless areas that facilitate the attainment of economic integration.

The paper begins with a brief discussion of the challenges associated with borders in Africa. This is followed by a discussion of the concept of cross-border governance. The remaining sections focus on cross-border governance strategies for managing conflicts in Africa and for promoting economic integration which includes a sub-regional approach on migration in cross-border governance in Africa.

Border Disputes in Africa

The issue of borders has become a recurrent source of conflicts and disputes on the continent. This is because the national territorial boundaries presently in existence in Africa were drawn up during the scramble and partition of Africa by rival European colonizers. Therefore, borders in Africa do not reflect African political and cultural identities, realities and lived experiences.[5] However, the post-colonial independent African states maintained the 1884 Berlin conference boundaries, without any discernible alterations, a move which in the longer-term has come at a cost that continues to undermine and threaten security in Africa.

In fact, several border-related wars have occurred throughout the post-independence period. For example, in North Africa, the border wars or skirmishes between Algeria and Morocco began in 1963 and continue to affect relations between the two countries to date. This is evidenced by the construction of a border wall by Morocco along parts of its border with Algeria. In East Africa, Somalia and Ethiopia were engaged in border-related battles in 1961, 1964, and from 1977 to 1978. Additionally, Ethiopia and Eritrea clashed from 1998 to 2000. In West Africa, Mali and Burkina Faso had their border-related wars in 1975 and from 1985 to 1986. Again, Nigeria and Cameroon contested the Bekasi Peninsular from the mid-1970s through the mid-1990s; also, Nigeria and Chad clashed in a similar vein in 1983. Senegal and Mauritania fought from 1989 to 1990[6] and Ghana and Côte d'Ivoire are currently contesting ownership of oil and gas deposits along their maritime border.[7] Most of the border-related conflicts have been worsened by the discovery of strategic natural resources that stretch across international boundaries.

Most of the border-related conflicts have been worsened by the discovery of strategic natural resources that stretch across boundaries.

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Over time, the issue of borders has become an important discursive factor in African peace and security politics. This can be seen by the acknowledgment of the insertion of Article 3 of the Charter of the defunct Organization of African Unity (OAU); Article 4c of the African Union Constitutive Act (2000) and the special focus on the issue in the Cairo Declaration of July 1964. Despite the recognition of the importance of borders in Africa's international relations, challenges abound. In 2007, when the AU discussed its new border program, it established that only a quarter of the boundaries on the continent had been effectively demarcated. An AU Executive Council endorsement of the above-mentioned AU Border Programme (AUBP), initially established 2012 as the target year by which all of its borders would have been demarcated. This

Colonial: Not only in terms of border demarcation, colonialism has left its traces. Source: © Finbarr O'Reilly, Reuters.

deadline was extended to 2017, but that aim by all indications will not be achieved in 2017.[8]

Cross-Border Governance

Border governance expresses the cooperative relationships among local government entities co-existing along national borderlines in furtherance of their mutual development.[9] The cooperative relationship can be bilateral but also multi-lateral – involving several local government entities in a border region. Proponents of cross-border governance argue that reduction of trade costs across borders stimulates trade and growth on both sides of a common border though several factors affect the distribution of the effects.[10] By targeting local government entities as focal institutional actors, the concept places territorial spaces beyond the immediate borderline environment under *one* geographical zone to pursue common economic development objectives.[11]

Furthermore, the strategy highlights inter-state cooperation at the local government level within border regions with decreased importance of national state governments. By promoting this kind of cooperation, cross-border governance also provides transparent and cooperative tructures – often involving national actors – that steer such cooperation. In this regard, Deppisch (2012) establishes five factors that influence governance capability in cross-border regions. First, is the extent to which the border region becomes both financially and politically autonomous in responding to its own needs rather than reacting to decisions driven from the respective national capitals. From this perspective, the influencing factors for effective cross-border governance include: the actors involved in making and implementing decisions including local political and administrative actors, but also power brokers, the manner in which the relationships between the actors are managed in a way that generates trust among local

government entities across borders, the rules of engagement that identifies the strengths of each local government entity and shapes the relationships between the participating entities, the cooperation and decision-making processes and spatial institutional features which highlights among many other things shared interests across borders, external interests in cross-border governance and funding possibilities.

In Africa, as a result of historically contested borders, border governance is conceived as a dual strategy, first, for managing conflicts, and second, for deepening integration on the continent. However, due the historical, strategic and political importance of borders, the potential conflict-generating aspects of border management have placed it squarely under the purview of national governments rather than local government entities. Elements of cross-border governance for managing conflicts in Africa include the use of binding legal instruments and protocols which among many other deliverables, have inspired the setting up of several joint national boundary commissions. This also includes the adoption and implementation of the AU Border Programme (AUBP) in 2007 which outlines implementation modalities for effective cross-border governance in Africa.[12]

Elements of cross-border governance for economic integration in Africa include the use of the regional economic communities (RECs) and Member-States of the AU to champion, i.e. varieties of cross-border cooperation and migration management regimes expressed in the form of regional protocols on refugee and migrant workers' rights as well as on free movement of persons across national borders. These latter strategies aim at introducing shared norms that could guide national level cross-border governance including migration management.

Cross-Border Governance as Conflict Management

Before 2007 when the AU Border Programme (AUBP) became operational,[13] five critical AU legal instruments underpinned cross-border governance among African states. These were:

the 2000 Constitutive Act of the AU which respected existing national borders; Resolution AHG/Res.16(I) on border disputes between African States, adopted in July 1964; Resolution CM/Res.1069(XLIV) on peace and security in Africa through negotiated settlement of boundary disputes, adopted in July 1986; Decision

CM/Dec. 666(LXXVI), adopted in July 2002, which provides for the delineation and demarcation of African boundaries by 2012; and Decision of the 8th Ordinary Session of Heads of State and Government of the African Union, adopted in January 2007, which encouraged the Commission to pursue efforts towards the structural prevention of conflicts, especially through the implementation of the AUBP.

The AUBP broadly aims at ensuring structural prevention of conflicts and deepening the integration processes of the AU through the pursuit of specific objectives. These objectives include

Escape: For various reasons, including a large number of armed conflicts, millions of people are on the run in Sub-Saharan Africa. Source: © Siegfried Modola, Reuters.

the delimitation and demarcation of African boundaries where borders are yet to be demarcated, reinforcing the integration process within the framework of the RECs and other large-scale cooperation initiatives, local cross-border cooperation, building up the capacities of member states in border management, as well as in border studies and research, and advising the Commission and other organs of the African Union on border-related matters.

The AUBP is inclusive of an implementation modalities which consist of assistance to Member-States, working with local stakeholders through the RECs and seeking to mainstream cross-border issues in further external assistance to Africa, as well as assistance to African countries to develop their capacities in the areas of border delimitation, demarcation and management and carrying out an inventory of African institutions that offer related training, forging partnerships of local, state and international partners that have records on African boundaries, and helping to mobilize resources for implementing the AUBP.[14]

Border Security[15]

Border security is a factor of border management. International borders are a security issue for all governments. States are recognized under international law by their capability to maintain their boundaries, secure their territories, and protect their citizens. The ability to secure national borders is one of the criteria used to classify states as strong, weak and failed. According to Wafula Okumu, border security can imply several things, which include but are not limited to border control, border management, border monitoring, and border protection. Usually, border security has been used to mean border control, which seeks to facilitate or limit the movements of people, animals, plants, and goods in and out of a country. Border control is divided into two main categories: securing borderlines (activities along the boundary), and controlling ports (harbors, border posts and airports) of entry.

> **The cooperation between border security agencies, border communities and border officials is still very weak in Africa.**
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For the purposes of the discussion, Wafula's arguments are particularly germane, in the sense that such border security seeks to ensure "territorial sovereignty by enforcing the boundary" and by protecting "it through permanent surveillance.... Border enforcement and surveillance include also the systems that allow the state to trace the movement and use of goods and data and especially the actions of people once they are in the national territory."[16] However, in most parts of Africa, there are unanswered questions about the capabilities of states to secure national borders by balancing the need to facilitate the transfer of legitimate goods and movement of persons with the prevention of cross-border crime. Inter-agency cooperation among border security agencies such as customs, immigration, police, intelligence agencies etc. is weak in Africa. There is also the additional challenge of poor cooperation between border officials and border communities. Linked to the perennial challenges of poverty in border regions and extensive but unmanned border-lines, criminals rather endear themselves to border communities in order to outwit national border security officials. There is no doubt that, any discussion of border security in Africa must also recognize what elsewhere has been termed as the usage of "securitization" processes, first for fortifying of borders and tightening of controls; and using such processes also for responding to cross border security dilemmas.[17]

Additionally, the need to recognize the potential unintended insecurities that may arise from the manner in which border security issues are managed. Overall, several factors contribute to this, not least the low level of investment in "national" security priorities and the negligence

of border security and poor, or lack of, management of African borders. These weaknesses have all largely contributed to a prevalence of threats involving cross-border crimes, such as violent extremism, narcotics and human trafficking, and the proliferation of small arms and light weapons.

Cross-Border Cooperation and Governance

Local cross-border cooperation has only just begun developing in Africa. The AU adopted the African Union Convention on Cross-Border Cooperation on 14th June 2014. This Convention defines cross-border cooperation as "any act or policy aimed at promoting and strengthening good-neighborly relations between border populations, territorial communities and administrations or other stakeholders within the jurisdiction of two or more States, including the conclusion of agreements and arrangements useful for this purpose."[18] The objectives of the Convention are to promote cross-border cooperation at local, sub-regional and regional levels; seize the opportunities arising from shared borders and address the related challenges; facilitate the delimitation, demarcation and reaffirmation on intestate borders, in conformity with mechanisms agreed upon by the parties concerned; facilitate peaceful resolution of border disputes; ensure efficient and effective border management; transform border areas into catalysts for growth, socio-economic and political integration of the continent and promote peace and stability through the prevention of conflicts.[19]

The Convention was immediately open for signature after it was adopted. It requires a minimum of 15 State party ratifications to enter into force. However, only Niger had submitted its instrument of ratification to the Chairperson of the AU so far. This failure by AU member states to deposit the ratified instruments relating to this Convention reflects a much wider malaise faced by the AU in getting its member states to ratify and deposit the legal instruments that member states have voluntarily agreed to implement.

That said the Convention provides a continental framework for local government entities located along national borders to establish cooperative arrangements that anchor the development of specific border regions. Once again, State Parties are required by the Convention to lead in taking a number of measures including national level legal reforms incorporating provisions of the Convention into national law and sensitizing local government administrations along national borders to access the opportunities provided under the Convention. The Convention also clarifies that activities pertaining to cross-border cooperation will be undertaken by local territorial communities or authorities defined by the domestic laws of state parties. The areas of cooperation as set forth by the Convention cover joint mapping and geographical information, including survey, as well as dimensions of socio-economic development such as transportation, communication, trade, agro pastoral activities, handicrafts, energy resources, industry, health, sanitation, drinking water, education and environmental protection. Additionally, border territorial communities could also cooperate in the areas of cultural activities and sports. The same can be said of security, especially, combatting of cross-border crime, terrorism, piracy and other forms of crime, as well as de-mining of border areas and institutional development in all areas.[20] Furthermore, the Convention establishes a Border Programme Fund to finance cross-border cooperation initiatives on the continent.

> **Bilateral cross-border cooperation has proven more successful than efforts undertaken at the multilateral level**
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Although the above-mentioned Convention has not yet entered into force, bilateral cross-border cooperation in Africa predates the Convention. For example, Communes in Benin such as Adjara and Ifangni in the Department of L'Oueme, headquartered in Porto Novo, has a

Migration: Two per cent of all Africans live as migrants in other African countries. Source: © Radu Sigheti, Reuters.

Treaty on Trans-Border Cooperation with the local government in Ogun State headquartered in Abeokuta, Nigeria with the endorsement of the two State parties.[21] An interesting region is the Liptoka / Tillabéri region where a great deal of cross-border activities exist between Niger, Mali and Burkina Faso.

Free Movement of Persons

Intra-regional migration management policies in West Africa were prompted by a spate of mass expulsions of migrants by countries in the sub-region prior to 1979 when the first set of ECOWAS protocols on free movement of persons, residence and establishment was adopted. As stated, these expulsions of migrants were underpinned by exclusionary definitions of citizenship and the need to control national populations. Prior to 1979, Côte d'Ivoire expelled non-Ivoirians in 1958 and 1964. Senegal followed suit in 1967. Ghana expelled Nigerians in 1969. Sierra Leone and Guinea-Conakry did the same in 1968.[22] Sub-regional migration management policies, however, did not immediately abate the feature of mass expulsions of migrants

in the sub-region. Among many other incidents in the sub-region, Ghana closed its borders with Togo in September 1982. Nigeria expelled nearly 1.5 million migrants in 1983 and 700,000 Ghanaians in 1985. Côte d'Ivoire also expelled 10,000 Ghanaians in 1985 while Senegal deported 500,000 Mauritanians in 1990.[23]

In spite of the above, West Africa has the highest rate of intra-regional migration in Africa. Approximately three per cent (i.e. 7.5 million) of West Africans are migrants.[24] Two per cent of Africans reside in other African countries as migrants.[25] The two broad factors that underpin intra-African migration in West Africa are discriminatory policies around issues of citizenship, as well as conflicts that combine to cause refugee and internally displaced persons (IDP) situations; and the existence of economic opportunities, particularly, in the agriculture and extractive sectors that combine to attract migrants. In both cases, Côte d'Ivoire expels and also attracts migrants. Among many other factors, its introduction of the concept of "ivorite" in the 1990s which excluded citizenship rights to migrants and their descendants was linked to the series of post-elections-related violence that bedeviled that country. At the same time, Côte d'Ivoire is the world's leading producer of cocoa alongside its neighbor, Ghana. Thus, cocoa and coffee and the oil boom in Nigeria combine to attract migrants into Nigeria, Ghana and Côte d'Ivoire.

Furthermore, intra-regional migration in West Africa is anchored by introduction of policies of ECOWAS to deepen its integration agenda concerning migration, citizenship and safe tax havens for products originating from its member-states.[26] Cast in the context of deepening economic integration, these policies discussed below seek to ensure among many other things, the creation of a single market, a borderless sub-region, abolition of visas and entry permits, introduction of ECOWAS travel certificates, introduction of harmonized immigration and emigration forms, and the establishment of national committees to monitor ECOWAS programmes on free movement of persons.

On 29 May 1979, ECOWAS adopted the protocol relating to free movement of persons, residence and establishment which provided a 15-year time frame within which all obstacles to free movement in the sub-region should be removed.[27] Two subsequent protocols in 1986 and 1990 granted the right to residence[28] and establishment[29] respectively to citizens of ECOWAS member-states. In relation to the above, in 1985, ECOWAS again adopted the code of conduct for implementing the protocols on free movement of persons, residence and establishment. The three protocols mentioned enjoins member-states to among many other things, grant 90 days visa-free access to citizens from other ECOWAS member-states, establish migrant services to deal with migrant issues and recognize the right of other ECOWAS nationals to carry out economic activities in the territory of a member-state. Additionally, in 1982, ECOWAS adopted the citizenship code and followed up with a decision in the same year to amend its founding Treaty of 1975 to link the citizenship code to the Treaty and for that matter, grant community citizenship to nationals of all its 15 member-states.

These protocols unlocked a series of norms in the sub-region though some fundamental challenges remain. For example, the 90-days visa-free requirement is operational in all Member States along with a uniform passport regime which became fully operational in 2015. However, varied and in some cases, cumbersome procedures still exist regarding access to the right to residence and establishment. Member States are yet to introduce the required measures to allow for other nationals to exercise their right to residence and establishment. As a related study on Ghana[30] shows, clear national policies on migration are missing which allows for ad hoc handling of migrant issues. Additionally, there is weak coordination among ministries and government departs involved in managing migration issues which often results in duplication of efforts. Moreover, there is lack of accurate data on migration at the national level.

Despite progress relating to free movement of persons, residence and establishment, fundamental challenges remain.

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In the face of these challenges, ECOWAS adopted the Common Approach on Migration at its 33rd Session of the Authority of Heads of State and Governments in Ouagadougou on 18 January, 2008. The Common Approach on Migration refers to Article 59 of the revised ECOWAS Treaty (1993) which states that "citizens of the community shall have the right of entry, residence and establishment and Member States undertake to recognize these rights of community citizens in their territories in accordance with the provisions of the protocols thereto." In addition, the ECOWAS Common Approach on Migration refers to a number of related regional and international legal instruments on migration, refugee rights, the rights of migrant workers and the ECOWAS General Convention on Social Security. However, while the prescriptions of these other regional and international legal instruments have become binding on Member States as a result of their direct endorsements of same or their endorsements to the Common Approach on Migration, minimal legal reforms have taken place at the national level to harmonize the international provisions with existing national laws, putting further pressure on operational agencies that manage migration issues on a daily basis. There is lack of harmony between national legislation on one hand, and the array of related regional and international norms. The emerging disharmony creates gaps for exploitation by migrants on hand, and abuse by national law enforcement agencies, on the other. Conflict-related refugee situations and intra-regional migration cases are managed within these complicated legal and procedural framework.

Conclusion

Governing Africa's borders in a manner that draws on the advantages of cross-border activities at the local level remains a topic for the future. There is still an over centralization of governance and management strategies and planning taking place from the center devoid of the operational and experiential realities of local communities far removed from the center. Though there is an increasing recognition by Africa's multilateral institutions, namely the ECOWAS and AU about the need to manage and govern their inherited borders in a manner that reduces tensions and conflicts, several issues seem to undermine the efforts undertaken at multilateral levels. The first is the notion of the "national" and the perception that national must trump the "multilateral" leading to very low levels of accession and compliance with official instruments. Second is the increasing securitization of cross border challenges as necessarily posing existential threats to states. Third are the lacunae between the decisions taken and their implementation and the levels of citizen involvement in the implementation of such decisions. With over a hundred international boundaries on the continent, governing and managing Africa's borders in a manner that reduces tensions and conflicts and exploits the opportunities for deepening integration processes will continue to occupy African states in their bilateral dealings and also at the regional and continental levels.

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Borders

Showdown Ahead?

Border Conflicts in the South China Sea and
the Struggle to Shape Asia's Destiny

David Arase

The struggle over the South China Sea is a matter of international peace and prosperity. China claims sovereignty over some 90 per cent of the South China Sea with the nine-dash line and is therefore a threat to peace and free trade in the region. This article sheds light on how recent developments such as the ruling by the Permanent Court of Arbitration and the presidency of Donald Trump might impact the status quo.

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Three developments in the second half of 2016 have reconfigured the South China Sea conflict. First, in July 2016, the Permanent Court of Arbitration (PCA) ruled that, inter alia, China's historically-based nine-dash line (NDL) claim had no legal validity. Second, the inauguration of Rodrigo Duterte as president of the Philippines on June 30, 2016 repositioned his country in the South China Sea conflict. Finally, the election of Donald Trump to the U.S. presidency in November 2016 promised a more confrontational U.S. approach to China's expansive claims of territorial and governance rights in the South China Sea. Any one of these developments would be enough to unsettle matters in the South China Sea; converging as they do, they are likely to sharpen U.S.-China strategic rivalry, encourage greater involvement by external stakeholders, and further polarise the region.

The Importance of the South China Sea

The South China Sea (SCS) is a shallow semi-enclosed sea in the heart of maritime Southeast Asia that is critically important to economic and geopolitical order at national, sub-regional, macro-regional, and global levels. Its marine life supplies ten per cent of the world's annual fishing catch; it has large undeveloped undersea gas deposits needed by nearby energy importing economies; and it has rare and valuable marine biodiversity that is threatened by accelerating economic and land reclamation activity.

Geo-economically speaking, the SCS is a critical maritime crossroads that sustains Indo-Pacific integration and global economic growth. It not only connects Southeast Asian economies to Northeast Asian markets, but also links the economies of the Pacific Rim and the Indian Ocean/Persian Gulf littorals via the Malacca and Sunda Straits. The Asian portions of the combined Indo-Pacific macro-region alone account for 40 per cent of global GDP in PPP terms. The integration of South Asia into established East Asian logistical and production networks via the SCS is creating growth that is expected to lead the global economy in coming decades. Already over 40 per cent of India's trade transits the SCS, and the fact that over one trillion of the five trillion dollars of trade carried in the SCS involves the U.S. illustrates the global significance of freedom on navigation (FON) in the SCS.

Geopolitically, maintenance of FON in the SCS engages the interests of the global community. The right of all states to transit the sea and airspace there in a free and unhindered fashion sustains Southeast Asian, Indo-Pacific, and global economic growth. It also ensures the security and political stability of states that are critically dependent on food, energy, and trade delivered through the SCS. In fact, whoever or whatever governs the right to transit the SCS controls the security, prosperity, and independence of almost all East Asian states, and it materially affects the entire Indo-Pacific region. The issue of freedom of navigation on the high seas, which, as explained below, is engaged in the SCS, affects the legal foundation of the existing global order. Therefore, today's struggle over control of the SCS vitally concerns Asia and draws the interests of the global community.

Fig. 1: The South China Sea with Adjacent States and Territorial Claims

Maximum extent of territorial claims by the People's Republic of China
Exclusive economic zone according to United Nations Convention on the Law of the Sea (UNCLOS)
Disputed islands independent from UNCLOS

Sources: Own illustration based on Wikipedia, https://de.wikipedia.org/wiki/Territorialkonflikte_im_
Chinesischen_Meer [30 Mar 2017]; © Natural Earth Data, http://naturalearthdata.com [30 Mar 2017].

The Freedom of Navigation (FON) Question

China's ongoing effort to claim national sovereignty and establish exclusive control over the SCS has led China to construct seven artificial islands located in the heart of the SCS since 2014. This development together with Chinese assertions of a sovereign right to determine who and what may freely transit the SCS led the U.S. Navy to begin freedom of navigation operations (FONOPS) there in 2015.[1]

FONOPS signal that the U.S. does not recognize China's national sovereignty in the SCS, and that the U.S. Navy will defend freedom of navigation rights in the high seas there as provided under international law.

China is vigorously objecting to this U.S. position, and in 2016 China built weapons emplacements on some of its artificial islands with an eye toward enforcing its claims and defending its claimed sovereignty over the SCS.

Undeterred, the U.S. sent an aircraft carrier battle group into the SCS in February of this year.[2] Thus, it would seem that China and the U.S. are moving closer to armed confrontation over whether international law or Chinese national interests provide controlling SCS governance norms.

This question of FON in the SCS is different from the question of title over local islands or the question of exclusive rights over economic resources that involve China and neighboring South China Sea coastal states. The nexus of these disputes is China's expansive claim of national sovereignty inside its NDL. As China's ever more clearly expressed claim of sovereign authority shifts attention from land and economic disputes in the SCS to the FON issue, other states with a stake in free passage across the high seas may begin to pay more attention to the SCS disputes.

In the past few years Japan, India, and Australia have expressed clear support for internationally guaranteed freedom of navigation rights in the SCS, and have conducted naval operations there.[3] And in 2016, both Britain and France pledged to send their respective naval vessels through the SCS to demonstrate their interest in the matter.[4]

The Permanent Court of Arbitration Award

Philippine efforts to negotiate with China over ownership and fishing rights in Scarborough Shoal, called by China Huangyandao, only led to China's unilateral and coercive takeover of this shoal in 2012. Scarborough Shoal is only 230 kilometers from the Philippines coastline of Luzon – well within its 370 kilometers exclusive economic zone (EEZ). But it lies some 870 kilometers distant from China's nearest coastline on Hainan Island.

The government of the Philippine's president Benigno Aquino asked the PCA in January 2013 to execute compulsory and binding arbitration with China as provided by the UN Convention of the Law of the Sea, which both countries had signed and ratified. The Philippines asked the PCA to review the conflict over maritime boundaries and rights claims around Scarborough Shoal and in the Spratly Islands created by the overlap between the Philippines coastal EEZ claim and China's NDL claim. This move drew wide attention because the Philippines' complaint parallels the concerns of other SCS coastal states whose EEZ claims are overlapped by China's NDL claims.

The PCA agreed to arbitrate the Philippine case, and this resulted in an award that nullified China's NDL, i.e., the PCA ruled that the NDL has no basis in existing international law. China responded by angrily denouncing the ruling and vowed to ignore it. This legal finding and China's subsequent reaction indicate how different China's sense is of how regional relations should be ordered in a new era of Chinese predominance.

China's NDL sovereignty claims undermine the rights claims of other coastal states in the SCS.

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The Extensive NDL Delimitation

China's NDL as indicated on a map it provided to the UN in 2009 encompasses Scarborough and passes only 70 kilometers from the Philippine coastline[5]. The NDL runs similarly close to the coasts of Brunei, Malaysia, Vietnam, and the Natuna Islands of Indonesia. The latter are some 1,600 kilometers south of China's Hainan Island coastline. The NDL therefore encompasses some 90 per cent of the South China Sea.

In interpreting the relevant provisions of UNCLOS, the PCA found, inter alia, that China's historical case for the nine-dash line has no legal validity; that no land feature in the Spratly group is a natural island that can generate an EEZ; that only some land features are rocks with rights

Resistance: Before Duterte took office, the Philippines' stance towards Chinese claims to power was abundantly clear. Source: © Eric De Castro, Reuters.

to a twelve nm territorial zone; that China has no right to construct artificial islands on reefs or shoals in the EEZ of another state; and that China may not use the NDL claim to obstruct or usurp a coastal state's economic rights inside its own EEZ (PCA).

The Significance of Scarborough Shoal

The PCA award did not address the question of who actually owns Scarborough Shoal or other South China Sea land features because such ownership questions are not governed by UNCLOS. But the PCA did rule that Scarborough is inside the Philippines EEZ, so China cannot lawfully turn Scarborough into an artificial island without Philippine permission. The PCA also ruled that Scarborough Shoal is not a natural island (i.e., it is not capable in its natural state of sustaining a permanent human community), so it is not entitled to an EEZ. At most the shoal (which is a high-tide elevation) gives its owner a twelve nm territorial zone. But regardless of who owns the shoal, the PCA ruled that both parties have traditional fishing rights there.[6]

Given China's defiant reaction to the PCA ruling, legal approaches to managing the SCS conflict might appear to be pointless. But such approaches are needed to maintain international legal norms. And the ruling seems to have changed China's approach to claiming ownership of the SCS, if not its abiding aims and behavior. In a Chinese white paper on national security issued after the PCA ruling, no mention of the NDL was made. Instead, Chinese claims in the SCS now seem to rest on delimitations and rights based on ownership of land features. Though China's claimed delimitations and rights have not substantially changed, they are now more in line with the UNCLOS principle that "land dominates the sea".

Aside from ownership of land and economic resources in the SCS, China has also been advancing a right to regulate international navigation in the SCS, but it is now shifting the basis of this right from owning the NDL delimitation to owning land features in the SCS. By claiming EEZ and territorial seas that attach to natural islands for all its claimed land features in the Spratlys – where the PCA found none that

qualify as natural islands – China still asserts "indisputable sovereignty" over the SCS. By warning off, obstructing, and at times endangering U.S. military vessels transiting the high seas in the SCS, China demonstrates its continuing claim of a sovereign right to freely determine whether and how other states may navigate the vitally important SCS air and sea lanes.

The Election of Rodrigo Duterte

The country best placed to take advantage of the PCA ruling and pressure China to move its SCS claims further in line with UNCLOS norms is the Philippines. However, it appears that the opportunity to press its advantage is being traded away by the new Philippine president Rodrigo Duterte in return for promises of Chinese economic assistance.

Duterte won the 2016 Philippine presidential election by promising to end a scourge of drug-related social ills by any means necessary. After taking office, he encouraged the extrajudicial killing of drug dealers and criminals as he had done when serving as mayor of Davao City in Mindanao. Less expected was Duterte's reversal of Aquino's approach to relations with the U.S. and China. Whereas Aquino embraced closer diplomatic and defense cooperation with the U.S. and challenged China's expansive NDL claims, Duterte has reviled the U.S. and embraced closer economic and security cooperation with China.

Soon after taking office, Duterte made his new approach known by insulting the U.S. ambassador and president Obama, questioning the need for strategic partnership with the U.S., and cutting back defense cooperation under the Enhanced Defense Cooperation Agreement signed by Aquino in 2014. Duterte also abandoned Aquino's demand that China strictly abide by the PCA's arbitration award. Instead, he requested from China such things as railways in Mindanao; work permits for Philippine citizens currently working in China illegally; cessation of Chinese citizen involvement in the shipment to and sale of narcotics in the Philippines; and

non-interference with Philippine fishing activity in the South China Sea. In return for Duterte's willingness to table sovereignty disputes, China pledged 13.5 billion U.S. dollars in economic assistance to the Philippines during Duterte's aid-seeking visit to Beijing in October 2016.

Duterte's brand of populism appeals to the Philippine public. He was elected with 39 per cent of the vote in a three-way election contest, but he enjoyed a 92 per cent public approval rating by the time he visited China in October 2016 and his approval rating averaged 83 per cent in the last quarter of 2016.

> **Duterte's diplomatic deals with China have hamstrung the realization of the PCA award over sovereignty in the SCS.**
> ⸺

Duterte's antipathy toward a U.S. military presence in the Philippines will complicate the ability of the U.S. to access platforms in the Philippines if international navigation rights in the SCS needed U.S. military protection. Moreover, his willingness to ignore the PCA award allows China to deflect international scrutiny of its ambitions in the SCS. It also suggests that a region more polarised by U.S.-China strategic tension could ultimately benefit China.

Accommodation over Scarborough Shoal

During his visit to China, Duterte worked out an informal understanding over the Scarborough Shoal dispute. In return for Duterte allowing China to continue to claim sovereignty there, China is allowing Philippine fishermen to freely access fishing grounds around the shoal. China has surveyed the shoal as it did in the land features it occupied in the Spratlys before building seven artificial island bases atop them. This suggests that China's aim in taking over Scarborough Shoal in 2012 involved China's strategic ambition to control the SCS more than its desire for fish.

The disputed shoal's location close to the deep water Bashi Channel in the Luzon Strait would allow China to control this vital chokepoint between the South China Sea and the Western Pacific. China would like to control U.S. naval access to the South China Sea at this chokepoint, as well as guarantee its Hainan naval fleet safe passage into the Western Pacific Ocean.[7] The Hainan fleet includes four newly operational ballistic nuclear missile submarines that must access the Pacific Ocean in order to bring the U.S. within range of its missiles, and China's second aircraft carrier will join the Hainan fleet after its completion. If Duterte permits China to build a new base atop Scarborough Shoal, the ability of the U.S. to guarantee FON in the SCS and the future of the Philippine-U.S. alliance would be in question.

The New Trump Administration

The Trump Administration signaled a particularly confrontational mindset when Secretary of State Rex Tillerson said during his Congressional confirmation hearing that he could envision blocking Chinese access to its artificial islands in the SCS. Nothing as harsh has been articulated since then, but there have been substantial indications that there will be a more assertive FONOPS program forthcoming perhaps even in cooperation with other like-minded states.

Donald Trump represents a new populist and nationalist orientation in U.S. foreign policy that contrasts with the liberal internationalist orientation of the Obama Administration. He believes that China is a threat to important U.S. interests that must be confronted to stop its undesired behaviours in respect to a wide range of issues. His advisers believe that China's economic advance has come at the expense of U.S. manufacturing industries, wages and employment, intellectual property rights, and trade balance. They also believe that China's growing military power and ambition challenge U.S. predominance in Asia and threaten important national security interests. And unlike previous U.S. administrations since that of Richard Nixon, the predisposition of the Trump Administration is that the U.S. does not need to offer concessions to gain warmer and more intimate relations with China.

It is possible that U.S. actions will not match the tone of Trumps words, but early actions show that the new direction in U.S. policy is unmistakable. The close relationship developing between Trump and Japanese prime minister Shinzo Abe, who have met twice already since Trump's election, is notable, as well as the fact that the first overseas visit of U.S. Defense Secretary Mattis was to South Korea and Japan. In contrast, there has been limited high-level contact between the U.S. and China only by way of an exchange of perfunctory letters and phone calls between Trump and Chinese president Xi Jinping. This suggests that the U.S. will value its relationship with Japan and other U.S. allies in Asia more than the relationship with China and it dispels fears created by Trump's criticism of the low defense effort on the part of South Korea and Japan during his campaign that he would disengage from Asian security commitments.

Trump did call Xi Jinping just before he met Abe in February to reassure him that he would respect the "one China policy" of previous Administrations. This policy has never been in agreement with China's "One China Principle". The U.S. "one China policy" merely "acknowledges" that Chinese in Taiwan and China agree that there is but one China. It also states a U.S. desire for a peaceful resolution of this question. This formulation has been useful to paper over differences that otherwise could lead to armed conflict over Taiwan. But it contains no legally binding commitments – as does the Taiwan Relations Act of 1979, which requires the U.S. president to oppose any use of force to resolve the Taiwan question, and to assist Taiwan's self-defense efforts until the question can be resolved peacefully between Taiwan and China.

Thus, Trump's phone call to Xi was not a concession to China as much as a pragmatic move to maintain a relationship with China while acting

in other ways to show that China's status was downgraded in U.S. policy thinking. The key to the future of U.S.-China relations under Trump will be the understanding that comes out of the first serious meeting between Trump and Xi Jinping.

After Obama's Strategic Rebalancing, What Comes Next?

The recent visits to Northeast Asia by Secretary of Defense James Mattis and Secretary of State Rex Tillerson signal that abiding U.S. strategic interests in Asia remain as important as ever, but the Trump administration will not be bound by the policies that defined the Obama Administration's Asia strategy. The elements of the Trump approach to Asia have yet to be fully fleshed out but it likely will be more narrowly self-interested and realist in both method and aim.

For example, the Tillerson visit to Tokyo, Seoul, and Beijing in mid-March showed that Obama's policy of "strategic patience" toward North Korean denuclearization is dead. With the quick deployment of THAAD in South Korea in March 2017 and a three-week deployment of the Carl Vinson carrier battle group in the South China Sea in February-March 2017, the Trump administration signaled that it is looking to act more assertively in cooperation with like-minded states to defend regional stability and U.S. interests in Asia.

> **The visits of U.S. Secretary of State Tillerson mark the end of Obama's policy of "strategic patience" toward North Korea.**
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In economic affairs, Trump has repudiated the Trans-Pacific Partnership (TPP). But this does not mean that targeted market-opening measures, including bilateral and regional trade liberalization agreements, will not be a part of a new U.S. strategy in Asia. There are strong advocates for such a course in the new administration, and Japanese prime minister Abe is exploring a bilateral FTA with Trump that, if it follows the already negotiated TPP terms, may be quickly concluded and then opened to third parties using accession terms similar to what was already agreed under the TPP. Thus, a high-quality 21st century multilateral Asian trade liberalization agreement anchored by the U.S. and Japan may yet be possible. The prospects should be known by the next APEC meeting in November 2017.

Adjusting Bilateral Relations with China

Concerned by Trump's growing closeness to Japanese prime minister Shinzo Abe State Councillor Yang Jiechi visited the U.S. at the end of February and paid Trump a courtesy call after talking with his advisers. Yang succeeded in arranging an informal two-day meeting between Trump and Xi to be held at the beginning of April in Florida.

Subsequently, Secretary of State Rex Tillerson included Beijing in the itinerary of his trip to Tokyo and Seoul in mid-March where the main topic of discussion was North Korea's emerging ability to threaten others with nuclear weapons. This threat has been provisionally countered by South Korea's agreement to deploy the THAAD anti-ballistic missile defense system – a move that China has bitterly opposed and for which South Korea is being punished by a variety of Chinese economic penalties.[8]

Tillerson pleased his hosts in Beijing by publicly describing the U.S.-China relationship with words favored by China, but few observers doubt that in private Tillerson presented the Chinese side with new directions in U.S. Asia policy that will not be welcomed in Beijing. To have a successful informal U.S.-China leadership meeting one might expect China to announce additional token UN-authorized sanctions against North Korea, to be followed by a meeting between the two leaders in Florida where intense discussions will begin to shape the future direction of the bilateral relationship.

The Nature of Strategic Rivalry in the SCS

Sovereignty is an exclusive, zero-sum concept of coercive state power and political authority that gives the state assured security. For China, placing the SCS under its sovereignty improves its security and is a critical step toward unquestioned dominance in Asia. Sovereignty in the SCS means that China can legitimately exclude any other state, including the U.S., if it serves a Chinese national interest. Thus, China would gain leverage over all other states that rely on or benefit from access to the SCS. Finally, effective sovereign control gives the Chinese navy and merchant fleet secure access to the Indian and Pacific Oceans.

The rise of Chinese military power does not mean that strategic rivalry with the U.S. is inevitable. If both the U.S. and China agreed on the rules that would govern each other and all other states, their military power could grow and work together in harmony.

Strategic rivalry arises not so much from equal power capabilities as it does from differing concepts of international order. If states seek fundamentally different international arrangements, they will be tempted to develop and use military power to settle their differences when all else fails. In the SCS, divergent visions of regional governance are the root cause of strategic rivalry.

FON in the SCS is a key national interest of the U.S. The international rule of law and FON are pillars of free trade and the liberal international order that the U.S. built after WW II and seeks to maintain today. Without the ability of the U.S. Navy to access and patrol the SCS, the U.S. will be unable to maintain the security and well-being of key allies such as Japan, South Korea, the Philippines, Australia, and Thailand, or for that matter, any other state that relies on safe and reliable air and sea transport through the SCS.

When China says that it, too, desires FON in the SCS, it quickly adds that FON must be in accordance with China's sovereign dictates, i.e.,

in accordance with its domestic laws. When the U.S. says it defends FON, it means FON as provided by international legal norms and decided by impartial international legal authorities. This difference seems rather theoretical, but in the SCS it can have momentous implications that states may fight over.

Conclusion

The PCA award has shown that China's NDL claim is without legal merit; its actions to secure exclusive economic rights and construct artificial islands in the EEZs of other states is illegal; and its artificial islands create no new territorial or EEZ rights for China. Thus, the PCA award undercuts Chinese sovereignty claims and indirectly supports U.S. efforts to defend FON in the SCS. All this is clearly a setback for China.

Strategic balance in the SCS is dependent on future interactions between three political actors: China, the U.S., and the Philippines.
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However, the willingness of Duterte to set aside the PCA ruling and devalue the strategic alliance with the U.S. supports China's effort to stage a unilateral and coercive Chinese "nationalization" of the SCS in three ways. First, it distracts from the fact that the PCA has ruled that China's behaviours and the historico-legal rationalizations that China uses to support its SCS campaign are unlawful. Second, it undermines the legal norms and political will among the Southeast Asian claimant states that have supported their resistance to China's bullying. Finally, if Duterte permits China to reclaim and militarize Scarborough Shoal, this new fait accompli added to the seven artificial islands already constructed by China in the Spratlys could hamper U.S. ability to defend FON in the SCS as well as its ability to defend the security of the Philippines.

Finally, the Trump administration promises a new and more assertive approach to the defense of U.S. interests in Asia. In the South China Sea this will include more FONOPS and a more concerted diplomatic effort to rally like-minded states in defense of the liberal rules-based order, even if the Philippines under Duterte backs away from previous alliance commitments. Though the meaning of each of these developments is clear enough when viewed in isolation, what they mean altogether for the future of the SCS is less clear.

Other SCS claimant states will wait to see how far Duterte goes in repositioning himself between China and the U.S. If Duterte moves into China's strategic and economic orbit, the U.S. will lose access to military bases in the

Twittering Trump: The U.S. President stands for a foreign policy that is new in many respects, populist and markedly more nationalist. Source: © Jon Woo, Reuters.

Prospect: The Trump administration is likely to take a new and more self-assertive stand with regard to U.S. interests in Asia. Source: © Aly Song, Reuters.

Philippines, which in turn tips the local strategic balance. But if China fails to deliver on its promises, then Duterte will have foolishly alienated the U.S. and given national strategic and maritime assets to China for nothing.

The strong PCA ruling and more assertive actions by the U.S. may persuade some local states and external stakeholders to get more involved in defending FON. This could induce China to bring its ambitions into greater accord with international norms at a time when it seeks to present itself as a responsible global leader interested in advancing globalization as the U.S. under Trump retreats from the defense of multilateral institutions as such. But China may in fact respond by pressing its narrowly nationalistic demands even more aggressively

to quickly achieve its full aims in the SCS, thus precipitating a regional showdown. If the U.S. and China cannot reach some kind of strategic accommodation, they will continue to move toward this outcome. Meanwhile, other stakeholders may be forced to choose sides if or when a confrontation materializes.

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From Cyberspace
to Outer Space

International Politics in
Seemingly Boundless Spaces

Frank Sauer

The earth has not been a suitable projection screen for the idea of boundlessness for some time. In humanity's search for spaces without boundaries, our eyes turn to the stars on the one hand and to the virtual world on the other. But to what extent are these spheres really free of boundaries?

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Introduction

"Space: the final frontier. These are the voyages of the starship Enterprise. Its five-year mission: to explore strange new worlds, to seek out new life and new civilizations, to boldly go where no man has gone before." These are the words at the start of the opening credits of the 1960s TV series Star Trek. Broadcast in an era when Western-themed shows attracted the largest viewing audiences, Star Trek confounded people's low expectations by not only successfully transferring the settler motif of the adventurous covered wagon train, which is part of the U.S. foundation myth, into space, i.e. pushing the boundaries not towards the terrestrial west but towards the stars. The TV fiction also succeeded in overcoming political and social boundaries – from the first TV kiss between a white man and an African-American woman to the peaceful collaboration between Russians and Americans aboard the Enterprise. Space as a domain free of conventional earthly restrictions and boundaries – this vision if nothing else, is what made Star Trek so popular.

But outer space is not the only projection screen for the idea of limitlessness. Cyberspace is one as well. The term cyberspace, coined by science fiction writer William Gibson and still somewhat obscure in the 1980s, has experienced a meteoric rise in usage since the 1990s and in parallel with the proliferation of the Internet infrastructure. Today, "cyber" is not only a common term, it almost seems as if life would be impossible without the virtual information space established by networked computers and software that envelops practically every area of people's lives in the OECD world and is being used by almost half the global population. Does

this mean that there is now a second boundless space besides outer space, created by humankind itself?

Reality is more mundane and significantly more complex, as this essay will demonstrate. The author will attempt to illustrate some illuminating parallels, in broad brush strokes and with no claim to completeness. As will become apparent, the main conclusion is that both spaces are less boundless than it first appears – or than had been hoped. In both spaces, boundaries have been and still are being fought over continuously and by rigorous means, either to set them or to eliminate them. Boundaries are being shifted, new boundaries are being set, and old ones are being blurred.

Shifting Boundaries

… in Cyberspace

Cyberspace is expanding. For instance through the World Wide Web, which has developed as an additional usage layer atop the Internet infrastructure. Today, the WWW provides access not only to websites as in the beginning of the Internet era, but also to many more – and novel – web-based services that, for example, enable and facilitate communication and consumption in the online world in all manner of ways. Then there are of course email and the innumerable other services available via computers and smartphones, which all rely on packet-based data transmission via the Internet.

Another factor boosting the expansion of cyberspace is the soaring number of connected devices. These have become so numerous that the address range made available with Internet

Protocol v4 (IPv4) – a fundamental technical pillar of the Internet – has become too small. Almost all of the some four billion possible IPv4 addresses have already been allocated. So in order to be able to connect and network more phones, vehicles, traffic lights, TV sets, refrigerators, washing machines, door bells and the like, i.e. make them "smart" and go "online", changeover to IPv6 is currently taking place, which should provide the coming Internet of Things (IoT) with around 340 sextillion addresses – thereby offering sufficient scope for cyberspace to keep expanding its external boundaries for the foreseeable future. The Internet of Things will open up many new opportunities to make life more comfortable, but also create new vulnerabilities – a subject to which we will return later.

Self-driving means of transport and autonomous weapons systems have made the transition from science fiction to reality long since.

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The importance of cyberspace will also continue to increase, becoming embedded ever more deeply in people's lives and everyday experiences. Current developments in the fields of machine learning and artificial intelligence as well as robotics make it likely that the link between networked infrastructures, learning algorithms and the use of Big Data will have effects in many social spheres that will be both fundamental and ambivalent: Self-driving, networked means of transport, which can transport goods and people more efficiently and promise to dramatically reduce the number of accidents, but at the same time destroy the jobs of millions of people who currently earn a living by driving vehicles; personal care robots, which close supply gaps, but lack a human touch and cannot give affection; autonomous weapons systems run by algorithms that make life and death decisions on

the battlefield, possibly more accurately than humans could but at the price of the total loss of meaningful human control. There are plenty of other examples that could be cited.

As cyberspace grows and increases in significance, the way people perceive and experience it will change as well. Virtual reality headsets, that can now be bought by anyone for a few hundred

Kiss in space: The television series Star Trek overcame societal boundaries in the 1960s.
Source: © PictureLux, picture alliance.

euros as a peripheral for a PC or a games console, were still in the realm of science fiction in the 1980s. The outer boundary of cyberspace has thus not only drawn nearer within the horizon of our experience, it is now also more permeable so that becoming immersed in it has not only turned into an ever simpler and more mundane but also – with the aid of virtual reality – more intense experience.

... in Outer Space

The boundaries of outer space are not static either. According to the currently accepted theory of the Big Bang as the origin of the universe as well as the analysis of light from very distant cosmic objects, which match the prevailing interpretations of the cosmic background radiation, one must assume that the universe

is not only expanding, but that this expansion is continuously accelerating. What we can still only speculate about is what the universe and space-time as we know it is expanding into: literally nothing or some kind of hyperspace as a medium that itself hosts other universes?

An easier idea to grasp is that the human horizon of understanding in this our known universe has undergone a breathtakingly rapid expansion within an astonishingly short period of time considering the length of human evolution. There were only a few centuries between the Copernican Revolution and the development of the Hubble Space Telescope, which is taking us closer to objects over 13 billion light years away and thereby allowing us to look far back in time, into the very early universe. Very much in the spirit of the Enterprise, we have thus extended our curiosity and visual capability far into the depth of space and are seeing things that no human has seen before.

On a cosmologically far smaller scale, namely within our own solar system, humanity is once again keen to expand its sphere of action. New missions to the moon, but above all further unmanned and manned trips to Mars have gone

Ambivalent progress: Technological developments, such as in the field of robotics, are often thought to be both a blessing and a curse. Source: © Michael Buholzer, Reuters.

back on the agenda since private actors, particularly from the USA, have injected fresh momentum into manned space travel – #gyatm (get your ass to Mars) is one hashtag in this vein, popularised by Buzz Aldrin on Twitter. The entrepreneur Elon Musk with his company SpaceX has even more ambitious plans; he wants to use the window of opportunity that is currently opening up in human history to establish a permanent human presence on Mars, making humanity a multi-planetary species – before a natural or manmade catastrophe may cause humanity to drop back to a lower level of technology.

> **Particularly in the USA, private actors are injecting fresh momentum into manned space travel.**
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The limits of what is technically possible in space are also shifting. Just to mention the most recent example, there have been increasing indications of the technical feasibility of electromagnetic drives lately, which would need no chemical propellant but only a power source such as solar cells, thus opening up entirely new space travel opportunities due to a lack of fuel no longer being an issue. Finally, it has become easier than ever before to overcome the most immediate limiting factor for space travel, namely the earth's gravitational pull, and enter earth orbit. Microsatellites are allowing teams of students from numerous European universities to take part in project Space Travel with projects of their own. But the themes of overcoming and shifting are not the only ones we encounter with respect to the limits and boundaries in outer space and cyberspace.

Setting Boundaries

… in Cyberspace

In the beginning, packet-based data transmission via the Internet was purely a research project, and all the scientists involved knew each other personally. Even a few years later, all the people connected to the Internet could still be listed in a type of telephone directory and identified. In this young ecosystem, security was consequently not an issue; the infrastructure on which the Internet is built was never designed for all the sensitive types of information that are routinely exchanged online these days. The Internet therefore needed to have several layers added to it, for instance for the encryption of connections. The fact that laborious and costly "security by design" played no role when the Internet was first set up made for rapid popularisation and democratisation, but it also had some negative consequences manifesting in its commercialisation and militarisation. Today's cyberspace is therefore characterised by extreme ambivalence.

Technically, the Internet would have made it possible to offer any artistic product to the general public online, but that would have required new, alternative remuneration models to be set up. Instead, the (payment) boundaries have been drawn in a considerably more conventional manner; users are finding themselves in a disjointed landscape of incompatible streaming services and subscription models, including concepts such as geo-blocking, with which Internet companies seek to limit the availability of their content to certain regions, totally against the original concept of an open Internet. Today, anyone looking at the Internet from a commercial perspective sees anything but a space without boundaries where content is freely available to all; instead we see walls, namely the paywalls of the major content providers.

Conversely, the fact that sensible payment models were lacking for too long and users quickly became used to having access to online media for free has led to an underfunding of quality journalism, whose considered and well-balanced output based on solidly researched fact we now miss so badly among the cacophony of the social networks, twitter bots and fake news generators in the democratic public sphere. And it is the majority of these users in particular who not only relinquish their privacy to social

network platform providers, but also set the boundaries of their filter bubbles so narrowly that they effectively enter an echo chamber of opinions and never leave their comfort zone. This is in contrast to the originally envisaged scenario where people were expected to open up the online newspapers of this world in the morning with an unprejudiced mind, seeking to participate in a global debate that was conducted openly and widely among the citizens of the world. There is no doubt that the advent of cyberspace has accelerated business, the flow of information and communication and opened up innumerable new possibilities. But after an initial Wild West phase, many of the familiar boundaries from the offline world are now re-emerging in cyberspace.

Cyberspace presents an extremely ambivalent picture where security and commerce are concerned.

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Cyberspace presents an extremely ambivalent picture not only from the commercial but also from the security perspective. On the one hand, citizens have a legitimate interest in government protection from the dangers emanating from cyberspace – one case in point is the protection of critical infrastructures that are indispensable for the functioning of modern societies, such as the power grid. Thus there is an understandable interest in boundaries being set up and protected – they are more akin to protective barriers in this case. On the other hand, excessive state monitoring in cyberspace jeopardises fundamental civil rights and has a chilling effect on the free expression of opinion. Silenced dissidents in Russia or Facebook's kowtow to the Chinese Internet censorship apparatus bear witness to the fact that cyberspace is no longer a sphere of limitless freedom of opinion, if it ever was. And online communication did not only help to spur on the Arab Spring in countries like Egypt, but also made it easier for state organisations to identify and crack down

on demonstrators. In fact, it is oftentimes – and ironically – the power of the nation state, which many had prematurely declared obsolete, that is setting and enforcing boundaries in "boundless" cyberspace after all.

… in Outer Space

National governments are also eying up space once again with greater determination; not only out of scientific enthusiasm, but also because there are solid commercial interests at stake, as illustrated by recent news headlines from the USA. The 2015 U.S. Commercial

Cyber warriors? Devastating attacks, for instance on an adversary's critical infrastructure, are now theoretically possible from a single laptop. Source: © David Gray, Reuters.

Space Launch Competitiveness Act gives private actors the right to prospect in space. There are already some U.S. commercial enterprises such as Moon Express and Planetary Resources that are hoping to mine for water and other raw materials on the moon or on other celestial bodies such as asteroids. Whether such national legislation can be reconciled with the international Outer Space Treaty that came into force in 1967 is a highly controversial question. Put simply, that treaty declares outer space a commons. States cannot claim ownership of or in celestial bodies. But the treaty does envisage their use for peaceful purposes, potentially also by private actors. One thing that has not been conclusively determined is whether the new U.S. law can grant private companies the right to act in space in analogy with what applies to fishing in international waters on earth. According to the U.S. government's legal viewpoint, it is entitled to unilaterally assign commercial ownership in resources extracted from celestial bodies, if not ownership in the bodies themselves. But this interpretation of current international law is not shared outside the USA; and with the curious exception of Luxembourg, no other state is following a similar course.

Future battlespace? In order to balance the U.S.'s dominant position in space, China has now also positioned itself militarily. Source: © NASA Visible Earth, NASA/JSC.

The simultaneous development of very different, partly opposing trends in cyberspace – for instance online censorship and mass surveillance on the one hand, abuse of the freedom of speech in the form of fake news and hate speech on the other – is indicative of the lack of direction in humanity's search for the right course. And the attempt to stake claims in outer space is also a development whose outcome remains to be seen. One danger affecting both spaces, however, is already clearly written on the wall: the erosion of certain boundaries that are currently still in place, whose disappearance – or even just blurring – will entail considerable security risks.

Blurring Boundaries

… in Cyberspace

As the Pentagon had done back in 2011, the German Federal Ministry of Defence has recently declared cyberspace a separate domain of warfare, meaning that it is treated on a par with land, sea, air and space. For the Bundeswehr, this entails extra investments of a billion euros and setting up a new cyber force comprising 13,500 soldiers and civilians beside the Army, Navy, Air Force, Medical Service and the Joint Support Service responsible for logistics.

This build-up of capabilities is described as a defensive measure. However, policy guideline documents indicate that the Bundeswehr does maintain some offensive capabilities as well. There have been reports of the Bundeswehr having gained unauthorised access to the network of an Afghan telecommunications provider on one occasion already, which some observers criticised as illegitimate, offensive conduct. Developing protective and defensive capabilities clearly represents an urgent duty for state institutions. But where the future approach to the potential military use of "effectors" in cyberspace is concerned, particularly those that can have a physical (or "kinetic") impact, German security and defence policy is still in flux. While the new White Paper treats cyberspace as a key area to focus on, relevant practices, rules and limitations are yet to be established and exercised.

Against this backdrop, one needs to bear in mind one specific pitfall, which could result in no-holds-barred confrontations in cyberspace, potentially undermining international stability and jeopardising the safety and wellbeing of the civilian population in particular, namely the impending blurring of the boundary between the civilian and military spheres. Dropping graphite bombs on a substation to interrupt the electricity supply could serve a military purpose, but would have a disproportionate impact on the civilian population – which would then at the very least prompt open criticism and a political backlash. The same effect could now, in fact, be achieved from cyberspace – anonymously and without any risk to one's own armed forces. Anonymously because the so-called attribution problem means that the origin of activities in cyberspace can almost never be pinpointed with certainty.

The implications of the attribution problem are threefold. Deterrence is mostly ineffectual in cyberspace because it is unclear to whom the threat of retribution should be addressed. Self-defence becomes more difficult because, under international law, this needs to take place directly after the attack to be able to distinguish

it from illegal retribution. And finally, and most importantly, anonymity and deniability of responsibility may well increase the temptation to embark on the proverbial slippery slope and include critical infrastructure, such as power grid components, as targets of military strikes, with corresponding negative consequences for the civilian population.

Indications of a threatening militarisation of space are proliferating.
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In line with a responsible policy compliant with international law, the only possible response for now is for each country to focus on the resilience of its own networked systems and to act with prudence and restraint towards other countries. In light of this challenge, the principle of distinguishing between the civilian and the military spheres and the proportionality of military means enshrined in international law will need to be confirmed and strengthened to fend against military operations potentially crossing the line and to reinforce the rules of the modern laws of war, which are generally held to apply in cyberspace as well.

... in Outer Space

Humankind is one step ahead where space is concerned, at least in terms of the legal situation. The parties to the Partial Test Ban Treaty of 1963 agreed not to conduct any nuclear weapons testing in space. As early as 1959, the Committee on the Peaceful Uses of Outer Space had been founded at the United Nations level. Its work produced the above-mentioned Outer Space Treaty in 1967, which bans all weapons of mass destruction in space and generally condones only peaceful use of space. Nevertheless, indications of a threatening militarisation of space are proliferating.

The USSR and the USA already experimented with space weapons, i.e. weapons whose reach

extends into earth orbit or could be aimed at terrestrial targets from there, back in the days of the Cold War. In 2007, China shot down one of its own satellites with a missile almost 900 kilometers above the earth. This gave a clear political signal: the "People's Liberation Army" considers space weapons a balancer to the USA's superiority in space and a means to safeguard China's regional and global ambitions and its One China policy. Statements by high-ranking U.S. military representatives confirm that without support from its satellite network the U.S. military would, in fact, be virtually disabled. Concerns about a potential loss of the U.S. military space capabilities run so deep that U.S. Navy cadets have recently had to start practicing using a sextant for navigation again – in preparation for a potential failure of the GPS system. The USA responded fairly swiftly to the Chinese shooting down their satellite by "removing" a U.S. spy satellite that had veered out of control with a U.S. Navy missile in 2008. Due to the lower orbit of that satellite, the space junk produced by the strike burnt up more quickly than that from the Chinese strike, but it once again brought home the problem of space debris in earth orbit resulting from military activities as one of the main dangers of space militarisation.

Debris is a dangerous threat to space travel. Due to their enormous velocity, even the smallest particles can penetrate satellites or other man-made objects in orbit. Particles larger than one centimeter can cause critical damage, and those measuring ten centimeters or more would totally destroy a spacecraft such as the Space Shuttle. The only possible course of action to overcome the problem besides shielding and hardening is the accurate locating and tracking of the pieces of space debris and taking evasive action to get out of the way of objects on a dangerous trajectory. There have been a number of occasions when the International Space Station has had to make these kinds of evasive manoeuvres in the past. Space debris, such as that produced by the Chinese and U.S. missile strikes on the satellites, remains in space for 25 years or more and will therefore represent a danger to the use of space for the foreseeable future. But

life without the peaceful use of space is virtually unimaginable in the modern age: communication, transportation, trade, navigation – not only the U.S. military but large parts of civilian life on earth would grind to a halt were the satellite systems to fail.

Against this backdrop, experts have been warning for years against a discourse that portrays the militarisation of space as a virtually unavoidable extension of the terrestrial security dilemma. After all, judging from the current state of technology, such a stance is not justified. Instead, there is still sufficient time for preventive arms control measures; taking such measures would be a sensible course of action and very much in the interest of particularly those nations engaged in space exploration.

Concluding Thoughts

There is no absence of boundaries either in cyberspace or in outer space. Boundaries are a permanent human legacy. But deciding how these are to be established in the two spaces in concrete terms, which new boundaries are to be drawn and which existing ones may disappear will require a continuous process of political negotiation. Would the total absence of boundaries actually be desirable? This essay has put forward the view that some boundaries can be good and beneficial. The boundaries set by international humanitarian law, for instance, learnt from history and hard-won, are worth keeping to preclude unfettered military action in wartime.

That some boundaries are worth having applies particularly as outer space and cyberspace are indispensable to humanity as well as more fragile than ever. These days, with cyberwar and space weapons having moved from science fiction to reality, peaceful use of these two spaces demands greater attention and political backing. The risk of an escalation in space and the consequences of excessive quantities of space debris run counter to the interests of all of humanity, which is dependent on the use of space. And with the advent of the Internet of

Things, we are entrusting the functioning of key parts of our societies – just think of "Industry 4.0" for business or "digital voting" for our political system – to a digital infrastructure that is becoming ever more vulnerable to disruption. In that respect, many experts saw the massive attack by the Mirai botnet consisting of IoT devices in October 2016 as a portent of things to come.

Against this backdrop, the key actors involved in the political negotiation processes concerning boundaries in outer space and cyberspace would be well advised to exercise greater military restraint and great prudence with regard to business and Internet governance policies. After all, it is of paramount importance to retain and expand access to both spaces as well as ensuring their continued effective functioning for the benefit of the whole of humankind. As an inspiration for further exploration of this vision you could do worse than to take another look at the Star Trek universe.

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Other Topics

Government Formation by Consensus?

Monarchy, Democracy and Political Islam
in Morocco

Helmut Reifeld

Since the constitutional reform and 2011 elections, Morocco's political reform course has continued to stabilise. However, is there any democratic foundation for this stability? Do the political parties form a democratic force that could lead the population through a necessary transformation process? And how "moderate" are the Islamists who were in power during the last election period?

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On 7 October 2016, at the end of a normal legislative period, the seats were reallocated in Morocco's House of Representatives. As the leader of the moderate Islamist Justice and Development Party (PJD), which again won a majority of the seats, King Mohammed VI followed the constitutional guideline to invite the former Prime Minister, Abdelilah Benkirane, to form a new government.

Over a period of more than five months, Benkirane unsuccessfully attempted to honour this invitation during tough coalition negotiations. The disagreements primarily centred around the leading position, which the liberal National Rally of Independents (RNI) demanded, and the marginalisation of the nationalist conservative Istiqlal Party, which Benkirane would have preferred to be included in the new government. However, the Istiqlal Party had largely manoeuvred itself to the sidelines due to the remarks of its Secretary-General, Hamid Chabat, who almost triggered a national crisis on 26 December by declaring that not only the "south provinces" (Western Sahara) but also Mauritania belonged to Morocco. The negotiations were finally considered a failure when the RNI leader and billionaire, Aziz Akhannouche, gave Benkirane an ultimatum on top: either to form a coalition government with the two liberal reform parties, the Popular Movement (MP) and Constitutional Union (UC) as well as the social-democratic Socialist Union of Popular Forces (USFP) and excluding Istiqlal, *or* not to form a government at all.

For Benkirane, this crisis came to a head with the King's decision to request the new parliament to elect a president, even without a new government in office in order to be capable of taking action. Thus, on 13 January 2017, (with the abstention of the PJD), Habib El Malki was elected by the USFP as the new parliamentary president.[1] This may be viewed as a highly pragmatic solution, however, many observers also treated it as a "coup d'état" that contested the will of the electorate.[2]

This crisis came to an end on 17 March with the King's decision to withdraw once more from Benkirane the invitation to form a government, only to grant it to Saad-Eddine Othmani a few days later. This invitation to Othmani, who was also a PJD member and the first foreign minister in Benkirane's government from 2012 to 2013, was said to have been linked to a deadline of two weeks. However, thanks to the highly disciplined manner in which he conducted the coalition negotiations, Othmani achieved this in the space of ten days. The new coalition government, which started work on 5 April, comprised the PJD, RNI, UC, MP, PPS and USFP. The number of ministerial positions was reduced, while the proportion of women was increased from four to nine – the highest in Moroccan history.

On the Route to Democracy?

Regular elections are no novelty in Morocco. They were held for the first time in 1963, and have been held at fixed terms of about every five years since 1993. The timing of each election date is fixed by the Minister of the Interior.

Table 1: The Political Parties Represented in the First House of the Moroccan Parliament

PJD	**Justice and Development Party (Parti de la Justice et de Développement)** (moderate Islamist, regarded as largely uncorrupted), founded 1998
PAM	**Authenticity and Modernity Party (Parti Authenticité et Modernité)** (reformist party and initiative of an advisor to the King, technocratic and mainly secular), founded 2007
PI	**Istiqial Party (Parti Istiqlal)** (monarchist and conservative), independence party, founded 1956
RNI	**National Rally of Independents (Rassemblement National des Indépendants)** (social-liberal), founded 1978
MP	**Popular Movement (Mouvement Populaire)** (liberal-conservative), popular movement dated 1957
USFP	**Socialist Union of Popular Forces (Union Socialiste des Forces Populaires)** (social-democratic), founded 1975
UC	**Constitutional Union (L'Union Constitutionnelle)** (reform party, liberal), founded 1983
PPS	**Party of Progress and Socialism (Parti du Progrès et du Socialisme)** (older Communist party), founded 1974
MDS	**Democratic and Social Movement (Mouvement Démocratique et Social)** (liberal, socialist), founded 1996
FGD	**Federation of the Democratic Left (Fédération de la Gauche Démocratique)** (progressive, socialist), founded 2016
PGV	**Green Left Party (Parti de la Gauche Verte)** (green, socialist), founded 2015

Source: Author's compilation.

The elections took on a new quality when the new constitution was established in 2011. For the first time the basic principle of a division of competencies was recognised. As part of the scheduled parliamentary duties the parliamentary opposition is assigned specified tasks; moreover, it can call for parliament to debate its opposition motions and to make them public. The political parties, parliament and the transparency of the courts' jurisdiction should comply with democratic standards. In Article 47 the King specifically undertook to appoint the respective "head of government" from the ranks of the party that gained the most votes in the democratic elections. The King himself remains "commander of the faithful", however, his status is merely considered "sacrosanct" and no longer regarded as "holy", as it was previously. With specific regard to religious questions, yet also in policy areas concerning foreign, security and defence matters, and quite often in other political areas as well, the King always has the last word.

However, both the latest elections for the House of Representatives (in 2011 and 2016) can be regarded as an advancement of the country's democratisation and its foundation as a constitutional state. They emerge as a step forward to a new form of stability as well as to a state based on the rule of law that was achieved through reforms. Such reforms go hand in hand with new opportunities for participation, especially in the field of decentralisation. In a single legislative period, there have never been so many executive orders passed recently. Since then it has become increasingly common for anti-corruption measures to be adopted consistently and transparently in many areas of the administration, and the responsible parties are held

publicly accountable. Furthermore, for the first time there is also a legal basis for monitoring elections. This change is supported by most of the country's politicians as well as being positively received by the majority of the population.

However, with a view to the elections, the extremely low level of enthusiasm of the Moroccans for turning out to vote in the first place does not fit in with the newly democratised framework at all. Due to the lack of serious efforts made by the state, and compared with the growing number of those eligible to vote, electoral participation has hardly improved since the first 1963 elections. Moroccans who live abroad, or serve in the army or law enforcement agencies, and prison inmates are not eligible to vote. During the October 2016 election, 28.3 million Moroccans were eligible to vote, of which 21.5 million were registered, however, only 6.75 million actually voted. For example, despite all the precautionary measures taken, not a single citizen turned out to vote in the village of Agouray in the High Atlas Mountains, in addition to the practical problem that the election is only possible at the place of registration effectively, this reflects a basic mistrust of the politicians' actions as well as an underlying attitude of confidence in the King for almost everything, yet only scant trust in democracy.

The PJD, Parliament and the King

In comparison to the reign of Hassan II (1961 to 1999) when governments were still formed under the King's leadership, the political parties have improved their image significantly. Nonetheless, to this day, the political system continues to be dominated by the influences of the *makhzen* (i.e. the king's advisor along with all the traditional political supervisory authorities). Party-political interests also take second place to this. Nevertheless, since 1963 the parties' development is primarily influenced by the formation of political camps. The parties in the older camp form the so-called *koutla* (the monarchist Istiqlal Party and both the socialist parties, USFP and PPS). The younger camp comprises the "administrative" parties (in particular, the MP, RNI, UC and now PAM) which are primarily concerned with the stability of the structures and the formation of institutions. Since 1998, the Islamists have formed a separate camp along with the PJD. The relationship of each of the parties to the King is subject to constant change, and ultimately heavily dependent on the respective representatives.

The daily party political routine is hardly influenced by ideological but rather by pragmatic interests. Senior civil servants are not permitted to be party members. Party political programmes also only rarely fulfil the purpose of policy orientation, not even for the major PJD and PAM parties.[3] By contrast to PAM, which was first founded in 2008, the PJD had already fought to run for the elections in the 1990s. The party was first allowed to run for office in 2002 and won 42 (of 325) seats. It had to overcome numerous obstacles before it first took the winning position in 2011 and could therefore form the government. By contrast, the PAM almost seems to have had the red carpet rolled out for it, as from the very beginning it could be sure of support from the king's council, whose senior advisor, Fouad El Himma, founded the party as a counter-model to the PJD. While the PJD is taking the trouble to consolidate its close connection with ordinary Moroccans thanks to its deep and far-reaching roots and links with their everyday routines and lives, from its inception the PAM projected an image as the party with a stake in the future.

Daily party politics is hardly influenced by entrenched ideological battles. Pragmatic conflicts of interest dominate.
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In 2011, and more so in 2016, the PJD presented a less and less religious image and appeared as more pragmatic and willing to embrace compromise. Its role model in the early days was the

Taking to the streets: Like no other party in Morocco the PJD is skilled in mobilising its supporters, particularly via social media. Source: © Rafael Marchante, Reuters.

Turkish Justice and Development Party (AKP) whose success at that time was also thanks in substantial part to its members' social engagement. During the 2011 elections, the number of votes for the PJD was nominally 1.3 million, which roughly corresponds to the number of its members (including their families). More than any other party, the PJD has a strong core electorate that it also mobilised to vote again

in 2016. However, at the same time there is a dispute concerning the extent to which the PJD primarily represented the political interests of the whole country or whether it prioritised religious interests. For example, this is reflected in its approach to education policy: does it venture at all into this vacuum? Or, does it hand this matter over to the traditional Islamic clerics, the *ulema*? Furthermore, it is rather controversial as

From the outset, the PJD knew how to control social media more skilfully than any other party, and it also had an intelligent and efficient communication strategy. Furthermore, the election speeches of its leader Benkirane were a constant reminder of his originally militant Islamism from the 1990s. His style of public speaking, which has always connected with the common people and mostly uses colloquialisms, is only adopted in this form by the Secretary-General of the Istiqlal Party, Hamid Chabat. Benkirane unsuccessfully attempted to integrate the latter figure in the process of forming a government. While Benkirane also emerges today as a brilliant speaker, his speeches are increasingly regarded as erratic and unpredictable. In 1998, before he became a founder of the PJD, he had already established the Movement for Unification and Reform (MUR, *Mouvement Unicité et Réforme*), which does not appear as a political party. Rather, to this day, it forms a kind of ideological talent school for the PJD. MUR acts as a safety valve for the PJD by absorbing Islamist attitudes before these become harmful for the PJD.

Meanwhile, Benkirane personally embodies an authority that is not always primarily representative of the PJD when asserting political interests but rather charismatically draws on the PJD party machinery. In November 2011, when the King appointed him as Morocco's first "Islamist" governmental head of state, this seemed to many like an incalculable, balancing act: an Islamist as the supreme head of the executive under a King whose position also continues to be anchored in the new constitution as a "commander of the faithful". The headlines in several newspapers reported this as an "unprecedented combination" (*cohabitation inédite*). Subsequently, however, Benkirane carried out all assignments for his "boss", as he once called the King, punctually and regularly, and indeed even if they were as unpopular as the rise in the retirement age from 60 to 63 years, or the structural reform of the government's subsidies budget.

to which role it plays within the Muslim Brotherhood *(Organisation internationale des frères musulmans)*, of which it is a member, and the organisation is primarily supported by Qatar and the Turkish state. Here, Benkirane has been in a dilemma, since currently he is confronted with the expectations of the Muslim Brotherhood whose aims he has co-authored and represented in the past.

What the PJD achieved as Morocco's first party is the systematic and rigorous levy of membership contributions. Moreover, all those with a

senior position must pay the membership contribution. For government ministers this can be up to 20 per cent of their monthly income. Even students and unemployed persons must pay five euros per annum. The party machinery works well accordingly. All members are "brothers" because religion is the common frame of reference. As far as the interaction with power is concerned and the clear precedence of all "national matters", the PJD has been completely "normalised". Benkirane has long since mutated into a "statesman". He became a master of political "engineering" and the sole orchestrator of the PJD. He was well versed in the original ideological spectrum of the PJD and simultaneously understood how to harmonise it with other, modern instruments. If his successor, Othmani, could achieve in ten days what Benkirane had failed to manage in more than five months, then this was solely thanks to a new and significantly enhanced willingness to compromise. On the one hand, this was based on integration into the USFP, and on the other on acceptance of the dominant role of the President of the RNI, Aziz Akhannouche. Thus, Othmani faces two major tasks: he must re-establish the PJD as a reliable partner to the royal palace and at the same time prevent a split within the PJD.

PAM – A Second New "Mainstream Party"?

If Morocco ever had a mainstream party in terms of supporters, then since 2002 this has been the PJD. Since the elections in October 2016, however, a second party seems to have emerged: the Authenticity and Modernity Party, PAM. Theoretically, either of the two parties could initiate the formation of a government. Islam is the underlying framework of the PJD, and for the PAM it is latent, pragmatic anti-Islamism, and ultimately the proximity to the crown.
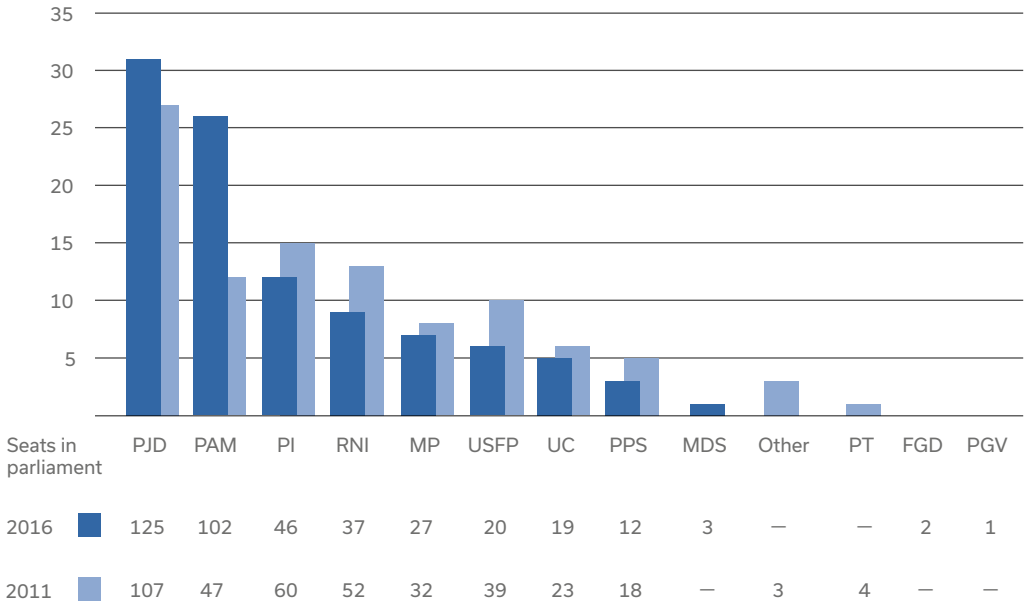
Evidently, the PAM, which lays claim to "authenticity and modernity", is increasingly winning over a majority of the population for its latent secular politics. For several years, the party has been fully immersed in creating a programmatic image that enables it to oppose the Islamists. It would not only be too little merely to be anti-Islamic, but it would also be too dangerous. PAM has emerged with the claim of overhauling the PJD through pragmatic and efficient political solutions. Furthermore, ultimately it stands for the highly challenging objective of a constitutional monarchy as part of a state under the rule of law. Both parties agree on only one point: that they are not ready to talk to each other, nor even to think about the option of a "grand coalition".

In the King's speech[4] in both houses of parliament on 14 October 2016, when he defended the multi-party system in Morocco, this seemed to be directed at all parties, however, realistically it primarily meant support for the PAM. The first parties emerged from the fight for independence in the mid-1950s under Mohammed V (his grandfather), in which in his day all population groups had participated, according to the King. By now, many of the adjustments could be implemented that were mainly necessitated on the basis of the 2011 constitution. However, the parties, parliament and trade unions in particular had to go to even greater lengths to rise to today's challenges on all political levels. The administrative structures would have to be modernised and improved in such a way as to be capable of reacting appropriately to the problems and concerns of the citizens. The King highlighted the particularly urgent need for a change of mentality and improvements in training opportunities for state civil servants to equip them with the skills required for the workplace (namely e-government). Equally, he made the fight against corruption on all levels a condition of transferring more power. In this sense, an efficient and properly functioning administrative apparatus was the condition for the broad interest in advancing decentralisation as a forthcoming reality.

The reactions to this speech dominated the media for days: the King had given elected officials and members of parliament a "box on the ears", was the verdict of *L'Economiste*. He had insisted more bluntly than ever that the

Fig. 1: Election Results of the Moroccan National Elections 2011 and 2016 in Per Cent

Seats in parliament	PJD	PAM	PI	RNI	MP	USFP	UC	PPS	MDS	Other	PT	FGD	PGV
2016	125	102	46	37	27	20	19	12	3	—	—	2	1
2011	107	47	60	52	32	39	23	18	—	3	4	—	—

official administration in Morocco was much too bureaucratic, incompetent and backward. The consequence of this had to be a reorganisation of public service across the board, and now this was the paramount task during the new legislative period.[5] PAM supporters particularly applauded this.

The King's speech on 14 October 2016 reflects the continued polarity of constitutional legitimacy and democratic legality that has increasingly characterised Morocco's political life since King Mohammed VI's accession to the throne in 1999. The last decade of the reform process exposes how the King intends to accomplish a longer-term transformation to a parliamentary monarchy. In this case, stability is no end in itself; moreover, the choice of the methods with which he controls the nature and pace of this transformation will remain flexible. If the PJD should continue to lag behind expectations, the PAM's share of the votes at the next elections could certainly increase.

Are the Islamists "Moderate"?

A characteristic of political discourse in Morocco is that major parts of society regard this balancing act between constitutional objectives and the parliamentary decision-making process as constructive. They are committed to the country's democratic advancement without the central monarchic guidelines being called into question. The crown guarantees for them stability as well as external and internal security.

This also applies to the representatives of the PJD, which is repeatedly described as "moderate". Since the formation of this party in 1998, its representatives were more concerned with politics than religion. They accepted from the outset that the party does not describe itself as "Islamist". Instead, it may only run for election "in referring to Islamist values". Their driving motivation was to combine religion and politics with each other in a new, socially just and, in principle, democratic way. Based on the

model of the original AKP in Turkey and in clear contrast to the Salafists, their focus is now the implementation of Islamic values in the context of a modern constitutional state and with the assistance of a democratically legitimised party. However, before this image of the PJD could emerge, dozens of Islamist groups and organisations had formed since the 1970s that were then either dissolved again or banned. However, in many cases their actors joined the PJD to progress to a certain extent "on a trajectory through the institutions". Today, they mainly present an overwhelmingly conservative, and, in some cases, socialist or liberal image. In fact, the PJD owed its success in both the 2011 and 2016 parliamentary elections to its numerous promises of putting religious values into practice in politics. Influenced by the aims of a socially just social and economic policy, its claim is that it also contributes the necessary decision-making authority in the other political fields.

Unlike the Salafists, the Islamists in Morocco are concerned with the implementation of Islamic values in the context of a modern constitutional state.

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The last five years have shown that the PJD has not been concerned with politicising religion, but rather the opposite. Its moral conservatism was to become suitable for political purposes and from the beginning this also meant tackling the secular daily routines of the democratisation process that was already under way in Morocco. There is a striking difference in the significance attributed to the religious themes in the election campaign and after the election. At the same time, nationalist oriented politics were again clearly reinforced following the formation of the government in January 2012. In fact, the PJD can demonstrate some modest successes from the previous legislative period. Most of the numerous executive orders, which were in the pipeline, continue to remain on the parliamentary schedule. This schedule has adapted to the stability of the existing political structures and has been successfully adopted.

However, the fact that ultimately this is a secular system simultaneously indicates a secularisation of political Islam and that the political dimension supersedes the status of religious matters. For example, no leading party member identifies with the demand for a reintroduction of the death penalty, as – in particular, in cases of apostasy – this is not only imposed by the Salafists, but also by parts of the *ulema*. The balance of power between the monarch and the head of government is continually put to the test. Apparently, only a small intellectual elite is interested in what may be understood from a constitutional perspective as secularism and as guaranteed individual rights to freedom. However, for the PJD, democracy and the recognition of human rights are also integrated into their understanding of political participation.

In contrast to the established power structures of the Moroccan monarchy, the "moderate" PJD – despite its governmental responsibility – has not attempted to assert any changes that would have called into question the basic political structures. Ultimately, it did not come to power in opposition to the monarchy, but rather thanks to the King's reform policy. The clear statement made by Benkirane that "The State is the King" ("L'Etat c'est le Roi") has a more affirmative tone than a resigned character. In fact, the PJD does not appear as a voice for religion against politics, but as a player that could also accept a leading role in future in the arena of power.

However, the *makhzen* continues to be the King's established means of power and control that presides over the continuation of the reform policies. It is difficult to assess what this means for the future of the PJD. Currently, it draws criticism from all sides, even the trade unions. Several observers assume that over the past five years the PJD has had its chance and has now "atoned for its guilt".[6]

Ubiquitous: Religion continues to shape Morocco's private and public life. Source: © Youssef Boudlal, Reuters.

The King as "Arbiter"

The most difficult area of tension for Benkirane to navigate during the past two years was over the crucial agreement with the King concerning religious questions, since the King continues to have a key position as far as the coherence of Islam in Morocco and its options for political organisation are concerned. Ever since the Alawite dynasty took power in 1631, the Moroccan kings have legitimised their rule as *cherifs*. In other words, they can rely on their descent from Hassan, son of Fatima, the Prophets' daughter, and thus on a direct line of succession. In turn, the title *Amir Al Mouminine* or "Commander of the Faithful" is derived from this. This title is now anchored in Article 41 of the new Moroccan constitution and gives the King the right to preside over all religious affairs by decree (*dahir*) both with prerogative and definitive power. Until now, this legal right was only publicly criticised by the *Al Adl* movement,

which played a dominant role in the daily demonstrations in 2010/11 and could definitely make a comeback.

With the benefit of reinsurance as "Commander of the Faithful", the King not only controls training of the imams, teaching the Koran, and Friday and fasting sermons. Frequently, he seems to be the only one with the capacity to be able to shape politics. The new constitution has undoubtedly introduced the country to more democratisation. It is the most comprehensive democratic constitution in the history of Morocco. It recognises the principle of the separation of powers, with a guarantee of fundamental rights and freedoms, strengthening both the rights of government as well as those of the parliamentary opposition and extends to all core areas of the political order. The King's powers of royal prerogative generally concern the areas of religion, foreign and security policy, and decisions concerning political and strategic policy orientation. However, the King not only holds power but also rules and directly intervenes in the decisions of the executive. At the time, the weekly newspaper Telquel coined the concept of a *monarchie exécutive* – the King was not only the arbiter, but also a co-participant and he generally always wins.[7]

The important aspect for the King's policy towards Islam is his direct control over the *Dar al-Hadith al-Hassaniya*, a respected research institute for religious studies with a reputation extending far beyond Morocco. King Hassan II commissioned the establishment of the institute in Rabat, not least as a counterweight for the traditionally independent university Islamic studies, especially in Fés. The Mohammadia League of Scholars *(Rabita Mohammedia des Oulémas)* are also under the King's directorship as a kind of theological think-tank, as well as the *Majliss Al Ilmi*, a training center for the *ulema* from the whole of Morocco. Both institutes are based in Rabat. Recently, a controversy arose concerning the Interior Ministry's re-opening of Salafist El Maghraoui's Quaranic schools in Marrakesh. Unlike in 2011, since El Maghraoui had not articulated any electoral recommendation for the PJD, it also joined in the official protest.

Political Islam on the Way to the Modern Era?

As in other Islamic-influenced states, in the preamble to the Moroccan constitution and in several subsequent articles, Islam is defined as the country's state religion. On the one hand, this regulation serves the purpose of withdrawing the freedom of the respective government over the decision-making authority in religious matters in order to exclusively transfer it to the sovereignty of the monarch. On the other hand, this by no means excludes the fact that questions concerning religion and politics can be distinguished from each other. While the Moroccan state is already defined in the preamble to the constitution as a "Muslim" state, it is also simultaneously described as a constitutional state which is established on the principles of participation, pluralism and good governance.

Furthermore, in the preamble – just as in several of the following articles – human rights are universally recognised as indivisible and universal. Today, the Islamic government is faced with the same problems in daily politics as would also be the case for every other government. Real secularism, which has influenced major areas of everyday life and political culture in Morocco for a considerable time, reinforces citizens' expectations for ongoing democratisation and sets limits on all Islamist ambitions. In foreign and European policy, as well as in economic and energy policy, many policy directions are fixed in such a way that most of the population would prefer not to see them given secondary status.

To this day, both public and private life in Morocco are heavily influenced by Islam, and for most people everything that is defined as secular still has a negative, unpleasant overtone. However, even in Morocco, secularism is pervasive. Without secular structures, the country's political and economic progress and its integration into the world economy would not be possible in the same way. Religious fundamentalism, which intended to reverse this integration, no longer has majority support. Basic and human rights, a ban on discrimination, and equality for

men and women based on a secular social order are integrated not merely into the 2011 constitution, but also appear in earlier constitutions. Ultimately, to this day, the majority culture of the Berbers is considered as more heavily influenced by individualist and therefore also pluralist elements than by orthodox religious aspects.[8]

Presumably, one of the key questions of political Islam throughout the entire region is whether in the Arab states of North Africa "modern", democratic and ultimately primarily pluralist political forms of government can exist without an underlying secular structure. Here, it is important specifically to evaluate the relationship of politics and religion in every state and every region according to the historic circumstances and current general conditions. In Morocco, one very quickly gains the impression that the strong influence of Islam in a social context also needs to be aligned with a corresponding influence in politics. There appear to be three primary positive conditions for this: firstly, there is a strong civil society, which is characterised by social engagement and the vital formation of communities. Secondly, there is widespread demand for freedom rights and an improvement of living standards. Thirdly, in the business sector especially, there is an openness to tackling the challenges of globalisation.

> **Religion has remained a constant part of public life, but religious education has increased, especially among women.**
> ⸺

Simultaneously, the discourse on religious subjects is held at all levels of Moroccan society. This not only applies to protest movements, but also to broad sections of the country's educated elite that sympathise in high numbers with the demonstrators, although they would be reluctant to join protests on the streets. While large

parts of this movement are religiously motivated, they are not prepared to use violence. Their motivation is not nurtured by religious fundamentalism, but most likely by the need for religious self-determination and the demand for participatory democracy. This represents a sign of democratisation as well as a transformation of the religious heritage.

As the analyses of El Ayadi, Rachik and Tozy show, Islam in Morocco, as in other North African states, has been influenced by two strong trends over the past two decades: on the one hand, by the state's renewed claim to power over religion, and on the other, by a growing fragmentation in many areas of religious life.[9] According to their analyses, religion has remained a constant part of public life, however, religious education has heavily increased, particularly that of women. At the same time, religious practice has become heavily individualised. There is a growing trend for pragmatism that is easily internalised and whose political opportunity is already reflected in many ways in public life. Moreover, this affects all age groups, even if the trend to dogmatism increases with an aging population. The authors call for understanding both for this structural change in the public face of Islam in general as well as for individuals' daily religious practice in the light of the process of secularisation.

With regard to most of the political changes in Morocco during the last decade, it is difficult to explain these in the light of religious or cultural concepts of Islam. The advances in the recognition and validity of human rights, the reforms of women's rights (*moudawana*) and, in particular, the implementation of the new constitution since 2011 proceeded decisively due to the King's initiative. They were not carried out by opposing the Islamist forces in the country, but through cooperation with them. Hence, all attempts to introduce orthodox policy demarcations on behalf of several Islamists therefore increasingly began to conflict openly with the influences of globalisation and the country's continual and advancing process of democratisation.

As far as the modern, cultural sphere is concerned, the Marrakech International Film Festival and the *mawazine*, a music festival in Rabat, feature as the top international events every year. Criticism of this from several Islamic groups falls far behind the general enthusiasm. This clearly shows that their cultural and political ideas are no longer capable of gaining a majority in metropolitan Morocco, and, at the same time, that an increasing number of areas in Morocco tend to follow the developmental lines of globalisation rather than those of a generally backward-looking Koran exegesis.

Recently, the French economist Jacques Ould Aoudia, who is highly respected in the Maghreb, indicated that Moroccan politics is influenced on the whole by a pronounced "culture of compromise" and pursues long-term development perspectives. However, when it came to the Islamists, they had major problems in dealing with secular policymaking. He justifiably regards any development like that of the Christian Democrats in Europe as unlikely.[10] If this were to be the case, the PJD – and this similarly applies to the other parties – would have to comply far more strictly with the political manifesto, image formation and objectives and to impose these consistently to substantiate its claim to power.

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1 This election was necessary so that parliament could approve Morocco's application for re-admission to the African Union.
2 Cf. TelQuel, 20 Jan 2017, p. 36.
3 Cf. Reifeld, Helmut 2016: Stabilität bestätigt, 12 Oct 2016, KAS Country Report, in: http://kas.de/wf/de/33.46638 [30 Mar 2017].
4 Cf. Moroccan Government 2016: Full text of HM the King's Speech at Parliament Opening, 17 Oct 2016, in: http://bit.ly/2nLB8jw [14 Mar 2017]
5 Cf. especially: L'Economiste and LesEco, 17 Oct 2016.
6 Cf. TelQuel 2017: Un nouvel épisode de la guerre Palais-PJD?, 20–26 Jan 2017, pp. 35–39.
7 Cf. TelQuel, 7 Jun 2013, p. 25; TelQuel, 28 Jun 2013, p. 22.
8 Cf. further: Oulhaj, Lahcen 2016: Propositions pour séculariser la société et normaliser l'Islam au Maroc, in: Abouddahab, Zakaria / Reifeld, Helmut (eds.): Pauvreté, religion et identité nationale. Les voies marocaine et indienne vers la démocratie, Rabat, pp. 125–153.
9 El Ayadi, Mohammed / Rachik, Hassan / Tozy, Mohamed 2013: L'Islam au Quotidien. Enquête sur les valeurs et les pratiques religieuse au Maroc, Casablanca, pp. 280–289.
10 Ould Aoudia, Jacques 2016: "Le Maroc possède une culture du compromis" (Interview), TelQuel, 4–10 Nov 2016, pp. 40–43.

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