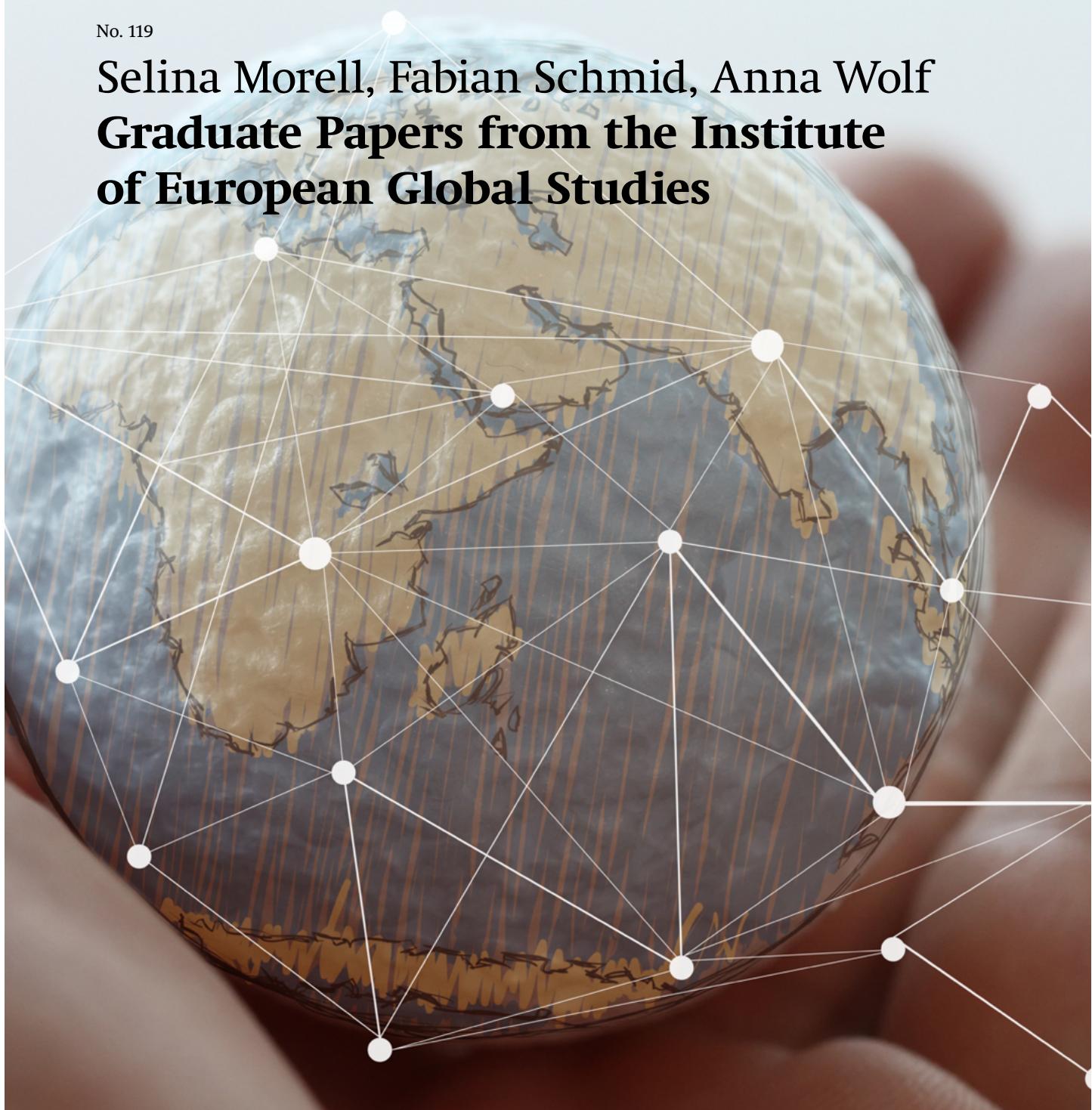


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Selina Morell, Fabian Schmid, Anna Wolf
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Selina Morell

A Legal Conquest of the Arctic? China, the European Nordic Countries and Multilateralism

Abstract: China published its first White Paper on the Arctic region in 2018, announcing its vision of integrating it as a Polar Silk Road under its Belt and Road Initiative framework. This marked the beginning of an increasingly assertive Chinese presence in the Arctic and indicated that the region has gained strategic significance in Beijing's foreign policy agenda. This master's thesis examined whether the inclusion of the Arctic in the framework of China's Belt and Road Initiative has influenced the Chinese foreign policy approach towards the Arctic countries. If the inclusion of the Arctic did indeed have an impact, this could help to assess the overall influence of the Belt and Road Initiative on China's foreign policy and gain a better understanding of how China operates in its context.

Key Words: China, Foreign Policy, Arctic, International Law, Multilateralism

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Introduction

Covered by thick layers of ice and snow, the Arctic region was for many years a remote place, inaccessible due to extreme climatic conditions. But these days the Arctic region is transforming; the warmer temperatures are eroding the ice and reshaping the polar landscape. In 2012, far away from the Arctic, Xi Jinping assumed leadership over China. Just one year later, he announced the launch of an ambitious infrastructure project designed to connect China more closely with Asia, Europe and Africa. This endeavor became known as the Belt and Road Initiative (yidai yilu—一带一路). In the original blueprints for the Belt and Road Initiative was no reference to the Arctic. This has recently been corrected: In 2018, Beijing published its first White Paper¹ on the world's northernmost region and announced its vision of integrating it as a Polar Silk Road under the framework for the Belt and Road Initiative. Such a polar shipping route would connect Chinese ports by crossing the Arctic Ocean with northern European ports and could significantly reduce transport time compared to other more popular shipping lanes such as the southern routes through the Suez Canal and the Strait of Malacca. In the White Paper, China highlights the importance of international law and cooperation between different stakeholders for Arctic governance. It also stresses that international law grants non-Arctic countries certain rights in the region. China's argumentation is noteworthy, because so far it has generally preferred bilateral rather than multilateral strategies when expanding its influence abroad.² Also interesting is that China has adopted a modest and hesitant stance on Arctic affairs and regularly downplayed its ambitions in the region.³ This changed with the publication of the 2018 White Paper and implies that China feels increasingly confident about taking a public role in Arctic matters. It also indicates that the region has gained strategic significance in Beijing's foreign policy agenda.⁴

This master's thesis examined whether the inclusion of the Arctic within the framework of China's Belt and Road Initiative has influenced the Chinese approach towards the Arctic countries. It did so by focusing on five countries as a subcategory of a total of eight Arctic states. The five Nordic countries Denmark, Finland, Iceland, Norway and Sweden were selected. They differ from the remaining Arctic countries Canada, Russia and the USA: most visibly by their size, but beyond that they also form a sub-regional group with similar languages, a common history, a comparable

1 "China's Arctic Policy," The State Council Information Office of the People's Republic of China, January 2018, accessed on 23 April 2020, http://english.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm.

2 Shicun Wu, Mark Valencia, and Nong Hong, eds., *UN Convention on the Law of the Sea and the South China Sea* (Farnham: Routledge, 2015), 283, 303; Gilbert Rozman, "Chinese Strategic Thinking on Multilateral Regional Security in Northeast Asia," *Orbis* 55, no. 2 (2011): 309, 311.

3 Marc Lanteigne, "'Have You Entered the Storehouses of the Snow?' China as a Norm Entrepreneur in the Arctic," *Polar Record* 53, no. 2 (2017): 119; Camilla Tenna Nørup Sørensen, "China is in the Arctic to Stay as a Great Power: How China's Increasingly Confident, Proactive & Sophisticated Arctic Diplomacy Plays into Kingdom of Denmark Tensions," in *Arctic Yearbook 2018 – China and the Arctic Special Section*, eds. Lassi Heininen and Heather Exner-Pirot, 2018, 46.

4 Nørup Sørensen, "China," 46.

level of development and similar cultural and political concepts such as the liberal-democratic social model.⁵ This makes them relatively well suited for comparison.

Although China's Arctic approach, as documented in the 2018 White Paper, could provide important insights into Beijing's overarching foreign policy strategy under the Belt and Road Initiative scheme, it has so far remained relatively unexplored. This thesis was an attempt to address this gap. The guiding research question was: *Did China's policy approach towards the Nordic countries change as a result of the Arctic's incorporation into the Belt and Road Initiative?* If it did indeed have an impact, this could help to assess the overall influence of the Belt and Road Initiative on China's foreign policy and gain a better understanding of how China operates in its context. The empirical contribution to answering this question consisted in analyzing the 2018 White Paper and extracting the main themes by means of a qualitative document analysis. As the text of the White Paper highlights international law in general and the 1982 United Nations Convention on the Law of the Sea (UNCLOS)⁶ in particular, the importance of these legal systems for Beijing's Arctic strategy was further explored. Based on this, the Chinese approach towards the Nordic countries was assessed by looking at three different levels: the bilateral, the multilateral as well as the scientific and non-governmental relations between China and the Nordic countries. The decision to focus on these three dimensions stems from a comprehensive examination of the relevant literature on the subject. Analyzing the dynamics within all three domains, which were also presented schematically, eventually made it possible to answer the research question. An interdisciplinary research approach was required for this thesis as a research question that would normally be considered to belong to the field of international relations, namely China's Arctic policy, was examined by taking into account aspects of international law.

The Belt and Road Initiative

With Xi's presidency China not only began to openly question Western ideas but also to promote its own concepts and institutions.⁷ This process has been accentuated in particular with the

5 E.g. Joanna Grzela, "Nordic Model of Subregional Co-Operation," *International Studies. Interdisciplinary Political and Cultural Journal* 20, no. 1 (2017): 13–29.

6 "United Nations Convention on the Law of the Sea," UN, 10 December 1982, accessed on 23 April 2020, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

7 Marc Lanteigne, *Chinese Foreign Policy* (New York/London: Routledge, 2016), 38; Jinghao Zhou, "China's Core Interests and Dilemma in Foreign Policy Practice," *Pacific Focus* 34, no. 1 (2019): 31–54.

launch of the Belt and Road Initiative.⁸ Xi first proposed this initiative in a speech in Kazakhstan in 2013.⁹ Originally, China identified five routes as components of the initiative.¹⁰ The Silk Road Economic Belt comprised three routes: One from Northwest and Northeast China to Europe and the Baltic Sea, via Central Asia and Russia; the second from Northwest China to the Persian Gulf and the Mediterranean Sea, passing through Central and West Asia; and the last from Southwest China through the Indochina Peninsula to the Indian Ocean. The 21st-Century Maritime Silk Road was envisioned with two major routes: One starting from Chinese ports, crossing the South China Sea, the Strait of Malacca, the Indian Ocean and leading to Europe; and the other extending to the South Pacific.

The overarching aim of the Belt and Road Initiative is to promote regional and global connectivity and economic growth through major infrastructure projects along these routes. So far, the initiative appears to be a collection of several interrelated elements grouped together under a broad framework rather than a clearly defined policy.¹¹ Wang argues that China's approach to its Belt and Road Initiative is "less institutionally-focused", "not treaty-based" and "proactive".¹² The initiative consists of a network of largely non-binding bilateral agreements such as memorandums of understanding.¹³ As it has no constituting treaty, the initiative lacks both a legal basis and an overarching institutional structure.¹⁴ Even though the Chinese government has published several policy documents on the Belt and Road Initiative, many issues concerning the initiative remain vague and unclear, such as dispute settlement mechanisms or definitions of key concepts.¹⁵

8 Andrew Chatzky and James McBride, "China's Massive Belt and Road Initiative," *Council on Foreign Relations*, 21 May 2019, accessed on 23 April 2020, <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative>; Rush Doshi, "Hu's to Blame for China's Foreign Assertiveness?", *Brookings*, 22 January 2019, accessed on 23 April 2020, <https://www.brookings.edu/articles/hus-to-blame-for-chinas-foreign-assertiveness>; Thomas S. Eder, "China's New Foreign Policy Setup," *Merics Blog – European Voices on China*, 1 August 2018, accessed on 23 April 2020, <https://www.merics.org/de/blog/chinas-new-foreign-policy-setup>.

9 "President Xi Jinping Delivers Important Speech and Proposes to Build a Silk Road Economic Belt with Central Asian Countries," Ministry of Foreign Affairs of the People's Republic of China, 7 September 2013, accessed on 23 April 2020, https://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpfwzsysesgtfhshzzfh_665686/t1076334.shtml.

10 See: "Building the Belt and Road: Concept, Practice and China's Contribution," Office of the Leading Group for the Belt and Road Initiative, 10 May 2017, accessed on 23 April 2020, <https://eng.yidaiyilu.gov.cn/wcm.files/upload/CMSydylyw/201705/201705110537027.pdf>.

11 Lau Øfjord Blaxekjaer, Marc Lanteigne, and Mingming Shi, "The Polar Silk Road & the West Nordic Region," in *Arctic Yearbook 2018*, eds. Lassi Heininen and Heather Exner-Pirot, 2018, 437–455; Lanteigne, *Chinese Foreign Policy*, 11; Heng Wang, "China's Approach to the Belt and Road Initiative: Scope, Character and Sustainability," *Journal of International Economic Law* 22, no. 1 (March 2019): 29–55.

12 Wang, "China's Approach," 31.

13 Donald J. Lewis and Diana Moise, "One Belt One Road ("OBOR") Roadmaps: The Legal and Policy Frameworks," in *The Belt and Road Initiative. Law, Economics, and Politics*, eds. Julien Chaisse and Jędrzej Górska (Leiden: Brill Nijhoff, 2018), 17–58.

14 Wang, "China's Approach," 29, 32.

15 Wang, "China's Approach," 31, 49, 54f.; also see the website "Belt and Road Portal," accessed on 23 April 2020, <https://eng.yidaiyilu.gov.cn>.

The overall characteristic of the initiative is arguably its flexibility: It allows China to avoid the constraint that an institution could impose, and enables it to retain the elasticity and flexibility to adapt its approach depending on the partner or issue.¹⁶

China in the Arctic

In no way does China border the Arctic. The shortest distance between the most northern point of China (Mohe County, 漠河县 Heilongjiang Province, located at 53° 33' North) and the Arctic Circle is more than 1,400 kilometers.¹⁷ The Arctic Circle surrounds the Earth at 66° 33' North and delimits the northernmost region of the world to the South. The Arctic Ocean is the world's smallest ocean. It is surrounded by land belonging to five states, also known as the Arctic coastal states: Canada, Denmark (with Greenland), Norway, Russia and the USA (with Alaska). These countries, together with Finland, Iceland (Grimsey Island) and Sweden, are commonly known as the Arctic states, as their territory extends into the Arctic region. The region has been particularly severely affected by climate change. Due to global warming, the temperature is rising twice as fast as in the rest of the world, causing the permanent sea ice to melt.¹⁸ This development not only has serious impacts on the fragile Arctic ecosystem, but also affects the rest of the world, for example in terms of weather volatility or rising sea levels. However, a changing Arctic also offers economic opportunities. According to the US Geological Survey, about 13 percent of the world's undiscovered oil and 30 percent natural gas reserves are located above the Arctic Circle.¹⁹ The region is also rich in uranium, rare earth metals, gold, and zinc among other things.²⁰ Up to now, these resources have been almost impossible to access due to the thick ice cover and the extreme weather conditions. However, the steady retreat of sea ice makes exploration and extraction easier. Also, the Arctic shipping industry is benefiting from the warming climate. Although navigation in the waters of the Arctic Ocean was already possible, shipping remained

16 Wang, "China's Approach," 53f.

17 Marc Lanteigne, "China's Emerging Arctic Strategies: Economics and Institutions," *Institute of International Affairs, Center for Arctic Policy Studies*, 2014, accessed on 23 April 2020, http://ams.hi.is/wp-content/uploads/2014/11/ChinasEmergingArcticStrategiesPDF_FIX2.pdf; Timo Koivurova et al., "China in the Arctic; and the Opportunities and Challenges for Chinese-Finnish Arctic Co-operation," *Institutional Repository for the Government*, February 2019, accessed on 23 April 2020, http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161371/8-2019-China_Arctic_andFinland.pdf, 52.

18 Paul Arthur Berkman, Alexander N. Vylegzhanin, and Oran R. Young, "Governing the Bering Strait Region: Current Status, Emerging Issues and Future Options," *Ocean Development & International Law* 47, no. 2 (2016): 186–217.

19 Donald L. Gautier et al., "Assessment of Undiscovered Oil and Gas in the Arctic," *Science* 324, no. 5931 (2009): 1175–1179; e.g. Anne-Marie Brady, *China as a Polar Great Power* (Cambridge: Cambridge University Press, 2017); Michael Byers, *International Law and the Arctic* (Cambridge: Cambridge University Press, 2013).

20 Jane Nakano, "China Launches the Polar Silk Road," *Center for Strategic and International Studies*, 2 February 2018, accessed on 23 April 2020, <https://www.csis.org/analysis/china-launches-polar-silk-road>.

challenging, expensive and highly dependent on the season. As the ice melts, the Arctic sea routes will increasingly become accessible and eventually more attractive. Shipping on Arctic sea routes would shorten the journey between the ports of China and Northern Europe by 40 percent compared to the current main routes through the Suez Canal or the Strait of Malacca, which translates into a reduction in transit time of 10 to 15 days.²¹



Map of the Arctic region ©Central Intelligence Agency from Washington, D.C.
Public Domain, <https://commons.wikimedia.org/w/index.php?curid=54284912>

21 Michelle Wiese Bockmann, "Arctic Ship Cargoes Saving \$650,000 on Fuel Set for Record High," *Bloomberg*, 13 June 2012, accessed on 23 April 2020, <https://www.bloomberg.com/news/articles/2012-06-13/arctic-ship-cargoes-saving-650-000-on-fuel-set-for-record-high>; Gang Chen, "China's Emerging Arctic Strategy," *The Polar Journal* 2, no. 2 (2012): 361; also see: Jean-Paul Rodrigue, Claude Comtois, and Brian Slack, *The Geography of Transport Systems* (London: Routledge, 2020).

The Arctic White Paper

China was already active in the region prior to the publication of its 2018 White Paper. In 1992, China embarked on its first scientific research expedition in the Arctic Ocean.²² In 2013, a senior Chinese official publicly stated that China's goal of becoming a great polar power was a key component of Beijing's maritime strategy. Xi officially confirmed in 2014 China's desire to become a "polar superpower" in a speech he gave during a visit to Hobart, Australia.²³ In 2017, China stated for the first time in a written document that the Arctic should be included in the Belt and Road Initiative framework as a "blue economic passage".²⁴ Hence, the Arctic White Paper was not the start of China's Arctic policy; instead it rendered an already existing strategy for the first time visible in a comprehensive document. According to the text, Beijing's policy goals in the Arctic are: "to understand, protect, develop and participate in the governance of the Arctic, so as to safeguard the common interests of all countries and the international community in the Arctic, and promote sustainable development of the Arctic".²⁵ The document is ten pages long and begins with a foreword describing the Arctic as a region of increasing global importance that is severely affected by global warming. It goes on to state that a changing Arctic has global implications and therefore requires global cooperation. China considers itself an "active participant, builder and contributor in Arctic affairs".²⁶ This preface is followed by four chapters that present China's views on the legal framework for Arctic affairs, discuss its important role in the Arctic, and present its policies and positions on Arctic affairs.

A qualitative document analysis of the White Paper revealed several key themes. The most frequently mentioned topic was characterized as China's self-description. It was divided into five different sub-categories, presenting China either as: (1) involved in Arctic governance and Arctic affairs, (2) actively contributing to the common good, (3) law abiding, (4) affected by the Arctic, or as an (5) active participant in the Arctic. The second most mentioned theme captured China's description of the Arctic. The region is portrayed as being in transition due to climate change. It is stressed that this process has global implications and that the cooperation of the international community is necessary to address them. In addition to these two main topics, another theme was identified, involving the different interests China brings to the region. They were divided into four different categories:

22 Olga Alexeeva and Frédéric Lasserre, "China and the Arctic," in *Arctic Yearbook 2012*, ed. Lassi Heininen, 2012, 81.

23 Brady, *China as a Polar Great Power*, 3.

24 Brady, *China as a Polar Great Power*, 3; China Daily, "China Proposes 'Blue Economic Passages' for Maritime," *China Daily*, 21 June 2017, accessed on 23 April 2020, https://www.chinadaily.com.cn/business/2017-06/21/content_29825517.htm.

25 The State Council Information Office of the People's Republic of China, "China's Arctic Policy," 2018.

26 Ibid.

(1) Conducting scientific research and participating in environmental protection of the Arctic
China argues that scientific research is necessary to understand environmental changes in the Arctic and to identify appropriate solutions. Compared to other activities, Beijing considers scientific research as a suitable strategy for expanding its presence in the Arctic without alerting the Arctic states.

(2) Participating in economic opportunities of the Arctic

The various economic opportunities arising from a changing Arctic are mentioned far less frequently than scientific research. China, as a non-Arctic state, does not want to be perceived by the Arctic community as a greedy intruder, as a ‘China threat’. However, Arctic resources, especially oil, gas and minerals, and the commercial opportunities they can offer Chinese companies are still pointed out in the White Paper. In the future, the Arctic could become an attractive energy supplier for China’s growing energy needs. Reference is also made to the potential of sustainable tourism or fishing opportunities, to which, however, far less importance is attached.

(3) Securing access and participation in the development of Arctic shipping routes

China also hopes to be involved in the development of Arctic shipping and refers to Arctic sea lanes as important transport routes for future trade. They would offer China a shorter alternative to the existing routes and, in particular, would reduce its current dependence on the Strait of Malacca.

(4) Participating in Arctic affairs and governance

China is determined to be an integral part of the further development of Arctic governance and is clearly in favor of an international law framework: “China maintains the current Arctic governance system with the UN Charter and UNCLOS at its core”.²⁷ The invocation of international law occurs under the overarching narrative of the Arctic as a global sphere that requires international cooperation to address the changes caused by climate change.

27 The State Council Information Office of the People’s Republic of China, “China’s Arctic Policy,” 2018.

The Value of International Law for China's Arctic Strategy

With regard to the research question, it is of interest to examine how China intends to pursue its goals and interests in the Arctic as identified in the 2018 White Paper. Apart from the frequent references to certain ‘joint’ actions and ‘cooperations’ between different actors on Arctic issues, there is no concrete statement in the document on how China intends to proceed. Nevertheless, a strategy can be derived from the wording of the White Paper: as it portrays the Arctic as a global sphere that is of equal concern to the entire world, it follows that it should also be managed by the global community. In this context, China stresses the importance of the international law regime, which currently governs the Arctic, as the best option for Arctic governance “with the UN Charter and the UNCLOS as its core”, calling for “law-based governance and international cooperation” in the Arctic.²⁸ It can thus be assumed that China seeks to improve its access to the region by strongly endorsing international law. The United Nations Conventions of the Law of the Sea (UNCLOS), which was adopted in 1982 and entered into force in 1994, is one of the most important international agreements for the Arctic region, which is in large parts dominated by the Arctic Ocean.²⁹ UNCLOS has been ratified by all Arctic states, with the exception of the USA, which accepts the majority of the rules as customary international law.³⁰ China ratified UNCLOS in 1996. The convention divides the ocean into several maritime zones and defines the spatial boundaries as well as rights and obligations of the various categories of actors for each zone. Much of the Arctic Ocean falls under the jurisdiction of the five Arctic coastal states. According to UNCLOS, China is considered a third state in relation to the Arctic Ocean, as it has no coastal border with its waters. UNCLOS grants third states certain rights and freedoms that are attractive in the context of China’s Arctic interests. This includes rights regarding maritime navigation, marine scientific research or natural resources. While China pledges to respect “the sovereignty, sovereign rights, and jurisdiction enjoyed by the Arctic States”, it also reiterates “respect [for] the rights and freedom of non-Arctic States to carry out activities in this region in accordance with the law”.³¹ With its reference to the legal framework of UNCLOS, China not only seeks to position itself as a legitimate actor in the region, but also to make use of the advantages resulting from it. UNCLOS, which was negotiated at the international level and intends to take into account the

28 Ibid.

29 Michael Byers, “Arctic Region,” in *Max Planck Encyclopedia of Public International Law*, last updated March 2010, accessed on 23 April 2020, <https://opil.ouplaw.com>; Yoshifumi Tanaka, *The International Law of the Sea*, (Cambridge: Cambridge University Press, 2015), 3; also see UN, “United Nations Convention on the Law of the Sea.”

30 Rob Huebert, “Multilateral versus Unilateral Actions: Balancing the Needs for International Governance in the New Arctic,” Position Paper for the 5th NRF Open Assembly, Anchorage, Alaska, USA, 24–27 September 2008, accessed on 23 April 2020, https://www.rha.is/static/files/NRF/OpenAssemblies/Anchorage2008/a/5th_nrf_anc_2008_huebert_multilateral_vs_unilateral_actions_arctic.pdf; Robin Churchill, “The 1982 United Nations Convention on the Law of the Sea,” in *The Oxford Handbook of the Law of the Sea*, 2015, accessed on 18 May 2020, <https://opil.ouplaw.com/view/10.1093/law/9780198715481.001.0001/law-9780198715481>.

31 The State Council Information Office of the People’s Republic of China, “China’s Arctic Policy,” 2018.

rights of a variety of actors in different maritime regions, presumably offers China more rights than it would receive under a regional framework negotiated among the Arctic states.

China and the Nordic Countries

An analysis of the 2018 White Paper strongly suggests that China is committed to strengthening its presence in the Arctic. In addition to highlighting the role of international law for Arctic governance, the White Paper also emphasizes the importance of relations with the Arctic states. This master's thesis examined whether such an increased interest has already become visible in China's policy towards the Nordic countries. The research findings suggest that, overall, there has been a steady increase in exchanges between China and the five countries since the new millennium. This trend affects all studied levels of relations and can be broadly divided into two main phases. When China entered the region, it joined existing institutions and concentrated on exploring the different dimensions of the Arctic and its governance. Then, in a second phase which started around 2013, China became more confident and systematic, diversified its relations and even started to promote its own platforms for Arctic cooperation. While the first phase was dominated by scientific and bilateral relations, the second phase also saw an increase in non-governmental and multilateral cooperation.

All along, Beijing has been careful to avoid the impression that it is planning to challenge the existing governance framework in the Arctic. Scientific research was a key element in this endeavor. While spearheading China's first steps into the region, it remains at the heart of its Arctic policy. By means of research activities and newly created platforms such as the China-Nordic Arctic Research Center (CNARC)³² China tries to legitimize its overall increasing Arctic presence.³³ Over time, this approach has become more nuanced and China has acquired a considerable amount of data and advanced research technologies. It has evolved from a novice to a major scientific player in the Arctic with whom other countries are keen to collaborate. In its 2018 White Paper, China pledges that scientific research remains at the heart of its Arctic strategy and actively encourages other countries to cooperate in this domain. In addition, China has also strengthened cultural and non-state cooperation with the Nordic countries. Beijing has regularly

³² The China-Nordic Arctic Research Center (CNARC) is a network of eleven Member Institutes, five Chinese and six Nordic, which all have capacities to influence and coordinate Arctic research.

³³ Camilla Tenna Nørup Sørensen, "Belt, Road, and Circle: The Arctic and Northern Europe in China's Belt and Road Initiative," in *China's Belt and Road Initiative: Changing the Rules of Globalization*, eds. Wenxian Zhang, Ilan Alon, and Christoph Lattemann (Cham: Springer International Publishing, 2018), 98.

used conferences such as the Arctic Circle³⁴ to present its Arctic policy to the public. It has also called for a “multi-tiered Arctic cooperation framework” which would include non-Arctic states and interests, and exist on local, regional and global levels at the conference in 2015.³⁵ The exchanges at the non-state level have proven particularly important for China’s Arctic ambitions.

With the launch of the Belt and Road Initiative and China’s accession as observer to the Arctic Council 2013,³⁶ Beijing also began to expand its Arctic cooperation into new areas. Previously, its multilateral engagement in Arctic affairs has been cautious and mainly focused on securing a seat at the table and studying the functioning of Arctic governance. But now distinct efforts towards a closer sub-regional cooperation between Beijing and the Nordics have become visible, for example in the form of a so called “5 + 1” partnership. Since the five countries have by and large supported an increased Chinese presence in the region and also proven to be valuable partners during Beijing’s campaign to gain an observer role at the Arctic Council, strengthening this cooperation for the time to come made sense. China has presumably used bilateral relations as a stepping-stone into the Nordic region but prefers in future that the five countries all collaborate together as one sub-region with China.

The evolution of a closer bilateral engagement between China and the Nordics started in the late 2000s and gradually became more pronounced. With China’s application for membership in the Arctic Council in 2007, bilateral contacts to the five Nordic countries increased. Both Norway and Iceland started negotiations with Beijing on a Free Trade Agreement, and all Nordics saw high-level state visits increasing, especially before and after China’s formal admission as an observer to the Arctic Council in 2013. China has conducted bilateral talks on Arctic issues with all eight Arctic countries, but its efforts towards the Nordics was particularly visible. While Chinese officials used to evade clear positioning and remained ambivalent when asked whether a Chinese Arctic strategy existed, this changed with Xi’s presidency. Shortly afterwards, China presented its ideas concerning the Arctic at the Arctic Circle conference 2015. Although the Arctic White Paper was not published until three years later, it was clear from this point at the latest that

34 The Arctic Circle is an annual conference founded in 2013. It has become an important platform for Arctic and non-Arctic stakeholders to debate Arctic affairs.

35 Marc Lanteigne, “Not Stopping Cold: China’s Emerging Strategies in the Arctic,” *Asia Centre*, 16 December 2016, accessed on 23 April 2020, <https://centreasia.eu/en/not-stopping-cold-chinas-emerging-strategies-in-the-arctic-marc-lanteigne-2/>; Lanteigne, “Have You Entered the Storehouses of the Snow?”, 120, 124; e.g. “Keynote Speech by Vice Foreign Minister Zhang Ming at the China Country Session of the Third Arctic Circle Assembly,” Embassy of the People’s Republic of China in the Republic of Iceland, 17 October 2015, accessed on 23 April 2020, <http://is.china-embassy.org/eng/zbgx/11307016.htm>.

36 The Arctic Council (AC) is the main international cooperation forum for Arctic affairs, with full membership of all eight Arctic states. Other states can apply for observer seats. Switzerland has been an observer since 2017.

China did indeed have an Arctic strategy. A lively bilateral exchange between China and all Nordic countries continued in the following years, with the exception of a seven-year diplomatic freeze between Norway and China over the award of the Nobel Peace Prize to Chinese human rights activist Liu Xiaobo. Beijing's strong stance vis-à-vis Norway is a prime example of the more assertive Chinese foreign policy.³⁷ Compared to 1989, when the Nobel Peace Prize was awarded to the Dalai Lama, the Chinese reactions were not yet as strong.³⁸ In the working report of the 18th Party Congress in 2012, which outlined the strategy of the Chinese Communist Party for the next five years, the Party committed itself "never to yield to external pressure" and "to protect China's legitimate rights and interests abroad".³⁹ The case of Norway not only shows a growing Chinese confidence in its international role, it also offers the opportunity to observe its multi-channel strategy in the Arctic. When the government-to-government relationship was put on hold, China and Norway were still able to communicate via alternative channels, including multilateral formats and non-governmental platforms. China's variable, experimental and flexible foreign policy approach in the Arctic has proven to be very useful: with its harsh reaction to Norway, China sent a strong signal in defense of its core interests without compromising its long-term strategic interests in the region.

In summary, the Chinese approach to the Nordic countries has evolved considerably in the new millennium. Initially, China made substantial efforts to develop strong bilateral relations and research cooperation with all Arctic states. An analysis of the different layers of relations confirmed that over time, China has gradually expanded and diversified its engagement into cultural, multilateral and non-governmental fields.⁴⁰ Without boycotting existing institutions such as the Arctic Council, China has explored ways to introduce its own institutional framework in the region, such as the China-Nordic Arctic Research Center or a "5 + 1" partnership format with the Nordic countries. It seems that as long as the position of the observers in the Arctic Council is not upgraded, China will further strengthen or even create alternative forums for Arctic governance, where it has more influence.

³⁷ Jerker Hellström, "China's Political Priorities in the Nordic Countries: From Technology to Core Interests," *Policy Brief of the Norwegian Institute of International Affairs* 12 (2016), accessed on 23 April 2020, <https://nupi.brage.unit.no/nupi-xmlui/handle/11250/2387468>.

³⁸ See "The Nobel Peace Prize (1989)," The Nobel Prize, accessed on 23 April 2020, <https://www.nobelprize.org/prizes/peace/1989/summary/>.

³⁹ "Full text of Hu Jintao's report at 18th Party Congress," Embassy of the People's Republic of China in the United States of America, 27 November 2012, accessed on 23 April 2020, http://www.china-embassy.org/eng/zt/18th_CPC_National_Congress_Eng/t992917.htm.

⁴⁰ Nørup Sørensen, "Belt, Road, and Circle," 98.

Conclusion

The research question guiding this thesis was whether the Arctic's inclusion under the Belt and Road Initiative framework had an impact on China's approach towards the Nordic countries. As described above, China's relations with the Nordics have indeed expanded and become more distinct, coinciding with both the launch of the Belt and Road Initiative and China's acceptance as observer in the Arctic Council in 2013. Not only have bilateral contacts between Beijing and the five countries increased since then, but also the exchange in non-governmental, cultural and multilateral fields. When China presented its Arctic policy at the 2015 Arctic Circle conference, it anticipated many of the issues later raised in the 2018 White Paper. It can be expected that the Chinese government already considered linking the Arctic with its Belt and Road Initiative some years prior to the publication of the White Paper and aligned its foreign policy approach towards all Arctic countries accordingly.⁴¹ It is noteworthy that China has begun to address the Nordic countries as a group since 2013 (creation of China-Nordic Arctic Research Center). Nevertheless, the possibility cannot be ruled out that other factors not addressed in this thesis also had an impact on these developments. No official confirmations have been discovered that show a direct relationship between the incorporation of the Arctic in China's Belt and Road Initiative and a more distinct approach to the Nordic countries. Therefore, it can only be argued that China's increasingly comprehensive foreign policy approach towards the Nordics coincided with the inclusion of the Arctic in the Belt and Road Initiative.

In conclusion, it can be noted that there are indeed clear links between the Belt and Road Initiative, China's Arctic ambitions and its approach to the Nordic countries, with the strongest feature being that China has started to adopt a more assertive and visible Arctic policy: Only from 2013, coinciding with the introduction of the Belt and Road Initiative, did China begin to openly declare its Arctic intentions and take a more strategic approach towards their implementation, whereas previously it had regularly denied having an Arctic agenda. Along with the launch of the Belt and Road Initiative, China also explored new strategies to expand its presence in the Nordic region, such as creating non-governmental platforms or the promotion of multilateral cooperation. The research question can thus be answered by stating that China's policy approach towards the Nordic countries has indeed become more nuanced since the inclusion of the Arctic in the Belt and Road Initiative. It seems that the initiative encouraged public confirmation of China's Arctic intentions and thus stimulated both the deepening and broadening of relations with the Nordic countries. The Belt and Road Initiative could therefore be qualified as a label or a point of reference for Beijing's Arctic policy, aligning it with Beijing's broader foreign policy agenda and rendering its strategy concerning the region more assertive.

41 See: Lanteigne, "Not Stopping Cold."

Bibliography

Documents

- Embassy of the People's Republic of China in the Republic of Iceland. "Keynote Speech by Vice Foreign Minister Zhang Ming at the China Country Session of the Third Arctic Circle Assembly." 17 October 2015, accessed on 23 April 2020. <http://is.china-embassy.org/eng/zbgx/t1307016.htm>.
- Embassy of the People's Republic of China in the United States of America. "Full text of Hu Jintao's report at 18th Party Congress." 27 November 2012, accessed on 23 April 2020. http://www.china-embassy.org/eng/zt/18th_CPC_National_Congress_Eng/t992917.htm.
- Koivurova, Timo et al. "China in the Arctic; and the Opportunities and Challenges for Chinese-Finnish Arctic Co-operation." *Institutional Repository for the Government*, February 2019, accessed on 23 April 2020. http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161371/8-2019-China_Arctic_andFinland.pdf.
- Ministry of Foreign Affairs of the People's Republic of China. "President Xi Jinping Delivers Important Speech and Proposes to Build a Silk Road Economic Belt with Central Asian Countries." 7 September 2013, accessed on 23 April 2020. https://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpfwzysiesgjtfhshzzfh_665686/t1076334.shtml.
- Office of the Leading Group for the Belt and Road Initiative. "Belt and Road Portal." Accessed on 23 April 2020. <https://eng.yidaiyilu.gov.cn>.
- Office of the Leading Group for the Belt and Road Initiative. "Building the Belt and Road: Concept, Practice and China's Contribution." 10 May 2017, accessed on 23 April 2020. <https://eng.yidaiyilu.gov.cn/wcm.files/upload/CMSydylyw/201705/201705110537027.pdf>.
- The Nobel Prize. "The Nobel Peace Prize (1989)." Accessed on 23 April 2020. <https://www.nobel-prize.org/prizes/peace/1989/summary/>.
- The State Council Information Office of the People's Republic of China. "China's Arctic Policy." January 2018, accessed on 23 April 2020. http://english.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm.
- UN. "United Nations Convention on the Law of the Sea." 10 December 1982, accessed on 23 April 2020. https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

Literature

- Alexeeva, Olga, and Frédéric Lasserre. "China and the Arctic." In *Arctic Yearbook 2012*, edited by Lassi Heininen, 81–91. 2012.
- Berkman, Paul Arthur, Alexander N. Vylegzhanin, and Oran R. Young. "Governing the Bering Strait Region: Current Status, Emerging Issues and Future Options." *Ocean Development & International Law* 47, no. 2 (2016): 186–217.

- Blaxekjær, Lau Øfjord, Marc Lanteigne, and Mingming Shi. “The Polar Silk Road & the West Nordic Region.” In *Arctic Yearbook 2018*, edited by Lassi Heininen and Heather Exner-Pirot, 437–455. 2018.
- Brady, Anne-Marie. *China as a Polar Great Power*. Cambridge: Cambridge University Press, 2017.
- Byers, Michael. *International Law and the Arctic*. Cambridge: Cambridge University Press, 2013.
- Byers, Michael. “Arctic Region.” In *Max Planck Encyclopedia of Public International Law*, last updated March 2010, accessed on 23 April 2020. <https://opil.ouplaw.com>.
- Chatzky, Andrew, and James McBride. “China’s Massive Belt and Road Initiative.” *Council on Foreign Relations*, 21 May 2019, accessed on 23 April 2020. <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative>.
- Chen, Gang. “China’s Emerging Arctic Strategy.” *The Polar Journal* 2, no. 2 (2012): 358–371.
- China Daily. “China Proposes ‘Blue Economic Passages’ for Maritime.” *China Daily*, 21 June 2017, accessed on 23 April 2020. https://www.chinadaily.com.cn/business/2017-06/21/content_29825517.htm.
- Churchill, Robin. “The 1982 United Nations Convention on the Law of the Sea.” In *The Oxford Handbook of the Law of the Sea*, 2015, accessed on 18 May 2020. <https://opil.ouplaw.com/view/10.1093/law/9780198715481.001.0001/law-9780198715481>.
- Doshi, Rush. “Hu’s to Blame for China’s Foreign Assertiveness?” *Brookings*, 22 January 2019, accessed on 23 April 2020. <https://www.brookings.edu/articles/hus-to-blame-for-chinas-foreign-assertiveness>.
- Eder, Thomas S. “China’s New Foreign Policy Setup.” *Merics Blog – European Voices on China*, 1 August 2018, accessed on 23 April 2020. <https://www.merics.org/de/blog/chinas-new-foreign-policy-setup>.
- Gautier, Donald L. et al. “Assessment of Undiscovered Oil and Gas in the Arctic.” *Science* 324, no. 5931 (2009): 1175–1179.
- Grzela, Joanna. “Nordic Model of Subregional Co-Operation.” *International Studies. Interdisciplinary Political and Cultural Journal* 20, no. 1 (2017): 13–29.
- Hellström, Jerker. “China’s Political Priorities in the Nordic Countries: From Technology to Core Interests.” *Policy Brief of the Norwegian Institute of International Affairs* 12 (2016), accessed on 23 April 2020. <https://nupi.brage.unit.no/nupi-xmlui/handle/11250/2387468>.
- Huebert, Rob. “Multilateral versus Unilateral Actions: Balancing the Needs for International Governance in the New Arctic.” Position Paper for the 5th NRF Open Assembly, Anchorage, Alaska, USA, 24–27 September 2008, accessed on 23 April 2020. https://www.rha.is/static/files/NRF/OpenAssemblies/Anchorage2008/a/5th_nrf_anc_2008_huebert_multilateral_vs_unilateral_actions_arctic.pdf.
- Lanteigne, Marc. “‘Have You Entered the Storehouses of the Snow?’ China as a Norm Entrepreneur in the Arctic.” *Polar Record* 53, no. 2 (2017): 117–130.

- Lanteigne, Marc. *Chinese Foreign Policy*. New York/London: Routledge, 2016.
- Lanteigne, Marc. "Not Stopping Cold: China's Emerging Strategies in the Arctic." *Asia Centre*, 16 December 2016, accessed on 23 April 2020. <https://centreasia.eu/en/not-stopping-cold-chinas-emerging-strategies-in-the-arctic-marc-lanteigne-2/>.
- Lanteigne, Marc. "China's Emerging Arctic Strategies: Economics and Institutions." *Institute of International Affairs, Center for Arctic Policy Studies*, 2014, accessed on 23 April 2020. http://ams.hi.is/wp-content/uploads/2014/11/ChinasEmergingArcticStrategiesPDF_FIX2.pdf.
- Lewis, Donald J., and Diana Moise. "One Belt One Road ("OBOR") Roadmaps: The Legal and Policy Frameworks." In *The Belt and Road Initiative. Law, Economics, and Politics*, edited by Julien Chaisse and Jędrzej Górska, 17–58. Leiden: Brill Nijhoff, 2018.
- Nakano, Jane. "China Launches the Polar Silk Road." *Center for Strategic and International Studies*, 2 February 2018, accessed on 23 April 2020. <https://www.csis.org/analysis/china-launches-polar-silk-road>.
- Nørup Sørensen, Camilla Tenna. "Belt, Road, and Circle: The Arctic and Northern Europe in China's Belt and Road Initiative." In *China's Belt and Road Initiative: Changing the Rules of Globalization*, edited by Wenxian Zhang, Ilan Alon, and Christoph Lattemann, 98–113. Cham: Springer International Publishing, 2018.
- Nørup Sørensen, Camilla Tenna. "China Is in the Arctic to Stay as a Great Power: How China's Increasingly Confident, Proactive & Sophisticated Arctic Diplomacy Plays into Kingdom of Denmark Tensions." In *Arctic Yearbook 2018 – China and the Arctic Special Section*, edited by Lassi Heininen and Heather Exner-Pirot, 43–58. 2018.
- Rodrigue, Jean-Paul, Claude Comtois, and Brian Slack. *The Geography of Transport Systems*. London: Routledge, 2020.
- Rozman, Gilbert. "Chinese Strategic Thinking on Multilateral Regional Security in Northeast Asia." *Orbis* 55, no. 2 (2011): 298–313.
- Tanaka, Yoshifumi. *The International Law of the Sea*. Cambridge: Cambridge University Press, 2015.
- Wang, Heng. "China's Approach to the Belt and Road Initiative: Scope, Character and Sustainability." *Journal of International Economic Law* 22, no. 1 (March 2019): 29–55.
- Wiese Bockmann, Michelle. "Arctic Ship Cargoes Saving \$650,000 on Fuel Set for Record High." *Bloomberg*, 13 June 2012, accessed on 23 April 2020. <https://www.bloomberg.com/news/articles/2012-06-13/arctic-ship-cargoes-saving-650-000-on-fuel-set-for-record-high>.
- Wu, Shicun, Mark Valencia, and Nong Hong, eds. *UN Convention on the Law of the Sea and the South China Sea*. Farnham: Routledge, 2015.
- Zhou, Jinghao. "China's Core Interests and Dilemma in Foreign Policy Practice." *Pacific Focus* 34, no. 1 (2019): 31–54.

Fabian Schmid

Zwischen „fremden Händeln“ und der „Weltpolizei“.

Der Diskurs um die Beteiligung der Schweiz an friedenserhaltenden Operationen nach 1945

**Between “fremde Händel” and “Weltpolizei”.
The Discourse on Swiss Participation in Peacekeeping Operations after 1945**

Abstract: After initially supporting selected peacekeeping missions as a means of distancing itself from the UN as an institution, Switzerland slowly adopted a more progressive position during the Cold War, which led to an increase in participation in the 1990s. The source material – parliamentary protocols since 1945 – shows that among the political parties in Switzerland, the political right was oftentimes the lone opponent to more involvement in such missions, as there was relatively little other opposition to an intensification of traditional peacekeeping activities. However, attempts to relativize national neutrality concepts met broad resistance, as did attempts by the government to take too many (or too large) steps at once. The examined parliamentary discussions focus on obligations under international law, national legal provisions and political priorities – and the famous Swiss neutrality is used in both political and judicial terms as an argument by all sides.

Keywords: Peacekeeping, 20th Century Swiss History, Swiss Foreign Policy, Neutrality, European Global Studies

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Einleitung

„Wer im Sicherheitsrat sitzt, kann für sich keine neutrale Position mehr in Anspruch nehmen. Der Einsatz hat zum Zweck, die Weltpolitik in Bezug auf Krieg und Frieden mitzustalten, ansonsten ist eine Teilnahme im Sicherheitsrat sinnlos. Die [...] Absicht, eine Mitgliedschaft anzustreben, widerspricht dem jahrhundertealten Neutralitätsprinzip der Eidgenossenschaft diametral.“¹

Im Sommer 2020 wird die Schweiz die Schlussphase ihrer Kandidatur für einen nicht-ständigen Sitz im UNO-Sicherheitsrat für die Jahre 2023/24 einläuten. Im Falle einer Wahl könnte sich die Schweiz dann unter anderem an der Beschlussfassung von friedenserhaltenden Operationen, eben der Mitgestaltung von Krieg und Frieden, beteiligen. Dies wurde im Schweizer Parlament wiederholt kritisiert, immer wieder – wie im obigen Zitat – mit Verweis auf die Neutralität. Der Kontext eines Einsitzes im Sicherheitsrat mag zwar ein neuer sein, Fragen der Beteiligung der Schweiz an der Friedenssicherung der Vereinten Nationen haben hingegen eine lange Tradition. Das vorliegende Paper, welches die Haupterkenntnisse einer 2019 am Europainstitut angenommenen Masterarbeit zusammenfasst, beschäftigt sich mit den bisherigen Teilnahmen der Schweiz an ebensolchen friedenserhaltenden Operationen, genauer gesagt mit dem Diskurs im Schweizer Parlament und den Argumenten für und wider derartige Beteiligungen nach 1945.²

Fragestellung, Methodologie und Quellenkorpus

Diese historische Analyse wurde eingebettet in eine Betrachtung der Entwicklung der friedenserhaltenden Operationen und deren völkerrechtlichem Stellenwert sowie Verhandlungen des Zusammenspiels zwischen völkerrechtlicher Neutralität und Schweizer Landesrecht. In der Verbindung einer geschichts- mit einer rechtswissenschaftlichen Herangehensweise kann diese interdisziplinäre Arbeit eine Lücke in der akademischen Auseinandersetzung mit Schweizer Beteiligungen an friedenserhaltenden Operationen schliessen. So existieren bereits historische Untersuchungen einzelner Schweizer Engagements und gewisser Zeitspannen sowie

1 Aus der Motion 18.4123 „Verzicht auf eine Kandidatur für den UNO-Sicherheitsrat“ vom 29. November 2018, eingereicht von der Fraktion der Schweizerischen Volkspartei.

2 Der Titel des Papers verweist auf immer wieder bemühte Argumente aus diesem Diskurs. So referiert der erste Teil auf die mythisch stilisierte Figur des Bruders Klaus aus dem 15. Jahrhundert, dem die Warnung zugeschrieben wird, sich nicht „in fremde Händel“ einzumischen – eine bis heute populäre neutralitätspolitische Enthaltungsmaxime (siehe dafür z.B. ein Votum von Ständerat Bächtold (LdU), zitiert aus dem Amtlichen Bulletin des Ständerates 1962, S. 246; fortan wird die Abkürzung AB verwendet). Der zweite Teil des Titels steht für eine in den 1990er Jahren aufkommende völkerrechtliche Überzeugung, wonach die UNO nicht Kriegspartei, sondern eine Art Weltpolizei ist (siehe stellvertretend Frick (CVP), AB 2001, S. 443).

rechtswissenschaftliche Arbeiten bezüglich Schweizer Beteiligungen.³ Es fehlt jedoch noch eine ausführliche und bis in die Gegenwart reichende Behandlung des Themas, welche die Entwicklung des Diskurses nachzeichnet. Die Anwendung einer interdisziplinären Linse vermochte aufzuzeigen, wann mit welchen Argumenten operiert wurde. Der interdisziplinäre Fokus auf die Quellenbasis legte offen, in welchen Momenten sich Argumentationen veränderten und wann das Recht der Politik vorauselte (und umgekehrt). Quellentechnisch stehen die Beratungen relevanter Botschaften und Berichte des Bundesrates in National- und Ständerat im Fokus. Der Zugang via parlamentarische Debatten geschah im Wissen darum, dass die Bundesversammlung in der Schweiz nicht die Stossrichtungen der Aussen- oder Sicherheitspolitik festlegt. Sie hat jedoch einerseits die Möglichkeit, Debatten überhaupt anzustossen und andererseits findet in den Beratungen die inhaltliche Auseinandersetzung mit dem vom Bundesrat Vorgelegten statt.

Im Diskurs um friedenserhaltende Operationen konnten fünf Phasen ausgearbeitet werden, zwischen denen sich die Haltung der Landesregierung veränderte und die Räte zu reagieren hatten. Weil die Trennlinien zwischen sich schwächer und stärker überlagernde Phasen gesetzt werden, sind die den Unterkapiteln in Klammern beigefügten Jahreszahlen unterschiedlich strikt zu interpretieren.

Phase 1: Reaktionäre Solidarität (1945–1967)

Noch in den 1940er-Jahren führte die UNO erste friedenserhaltende Operationen durch. Die Schweiz wurde erstmals 1951 von den USA angefragt, sich an internationalen neutralen Kommissionen in Korea zu beteiligen. Trotz einiger Skepsis bejahte die Schweiz die Anfrage – gemäss Schwarb „zähnekirschen“, war doch einerseits sicher, „dass eine Absage [...] ihre neutrale Politik mit einer schweren Hypothek belasten würde“, während andererseits abzusehen war, „dass die Durchführung der Mission schwierig und die Wirksamkeit [...] bescheiden sein

³ Für Ersteres siehe z.B. Marius Schwarb, *Die Mission der Schweiz in Korea: ein Beitrag zur Geschichte der schweizerischen Aussenpolitik im kalten Krieg* (Bern/New York: Peter Lang, 1986) oder Reinhold Hohengartner, *Schweizerische Neutralität und Vereinte Nationen, 1945–1981: die Problematik des schweizerischen UNO-Beitrittes im Spannungsfeld zwischen Bundesrat und Parlament* (Wien: VWGÖ, 1993). Für Zweiteres siehe etwa Gabriela Küpfer, „Völkerrechtliche, staats- und verwaltungsrechtliche Grundlagen und Rahmenbedingungen militärischer Sicherheitskooperation der Schweiz, insbesondere Partnerschaft für den Frieden“ (Dissertation, Universität St. Gallen, 2002) oder Adrian A. Schaub, *Neutralität und kollektive Sicherheit: Gegenüberstellung zweier unvereinbarer Verhaltenskonzepte in bewaffneten Konflikten und These zu einem zeit- und völkerrechtsgemässen modus vivendi* (Basel/Frankfurt a.M.: Helbing & Lichtenhahn, 1995).

werde“.⁴ Im gesamten Verlauf des Korea-Engagements kam dem Parlament eine marginale Rolle zu. Bundesrat⁵ Petitpierre berichtete mehrmals über den aktuellen Stand der Verhandlungen und legte 1955 einen Bericht über die Arbeit in Korea vor. Einige Redner gaben sich in dessen Beratung Mühe, das Korea-Engagement ins Narrativ einer Schweizer Tradition zu integrieren. So hielt etwa NR Huber fest, „[d]ieser Beitrag knüpft an an beste Traditionen unserer Neutralitätspolitik; sie knüpft an an die guten Dienste, welche die Schweiz je und je als neutrale Schutzmacht für andere Staaten geleistet hat.“ Kritische Stimmen bemängelten zwar, „dass wir eigentlich nie die Möglichkeit besassen, uns grundsätzlich zu der Frage der Koreadelegation auszusprechen. [...] Wir leben ja in der Schweiz nicht in einem autoritären Staat“, doch die Mehrheit hielt dagegen, „il faut laisser au Conseil fédéral son entière liberté d'action“.⁶

Zu den weiteren frühen, punktuell erfolgenden Engagements gehörte die Zurverfügungstellung von Swissair-Maschinen an die UNO-Einheiten während der Suez-Krise 1956 und der Einsatz von zivilen Experten und Ärzten aus der Schweiz in einer UNO-Mission im Kongo (1960). Kreis folgend werden diese Engagements „nicht als Annäherung an die UNO, sondern als Mittel zur Distanzierung und als Alternative zur obligatorischen Teilnahme an militärischen Zwangsmassnahmen [...] und als Beitrag, der die fragwürdige Nichtmitgliedschaft weniger angreifbar machte“ verstanden.⁷ Die ausgewählten Beschäftigungen mit Engagements an sich riefen in den Räten kaum Kritik hervor. Gewarnt wurde aber wiederholt vor der Gefahr zukünftiger Verpflichtungen. Während des Kalten Krieges sollten bis 1988 nur wenige weitere friedenserhaltende Operationen der UNO möglich sein. Aus der Schweizer Politik verschwand das Thema allerdings nicht.

Phase 2: Der Kalte Krieg: Katastrophenkorps und UNO-Beitrittsfrage (1965–1986)

1965 erkundigte sich NR Hubacher in einer Interpellation über die zukünftige Stossrichtung in der Aussenpolitik. Zwar stellte er keine explizite Forderung nach Friedenstruppen, doch dem

4 Die von der kommunistischen Seite entsandten „Ost“-Neutralen Polen und Tschechoslowakei agierten selten unparteiisch, was dazu führte, dass die schwedischen und Schweizer Kommissionsvertreter häufig als parteiische „West-Neutrale wahrgenommen wurden. Schwarb, *Die Mission der Schweiz in Korea*, 9, 302.

5 Fortan werden die Abkürzungen BR (Bundesrat), NR (Nationalrat) und SR (Ständerat) verwendet.

6 Protokoll BVers, Ordentliche Sommersession 1955, N, 8. Juni 1955, zitierte Voten auf den Seiten 151 (Zitat Huber), 159 (Schmid und de Courten).

7 Zumal nach dem UNO-Beitritt des neutralen Österreichs (1955) und der dadurch noch einmal gewachsenen Isolation der Schweizer Position. Georg Kreis, *Kleine Neutralitätsgeschichte der Gegenwart: Ein Inventar zum neutralitätspolitischen Diskurs in der Schweiz seit 1945* (Bern: Haupt, 2004), 135.

Interpellanten schien, „[d]ie UNO-Aktionen hätten im Laufe der Zeit einen anderen Grundgehalt angenommen. [...] UNO-Friedenstruppen üben ja zudem eigentlich weniger eine militärische Funktion als vielmehr eine politisch-diplomatische Funktion aus“.⁸ BR Wahlen ergänzte in derselben Diskussion:

„Sollte es den Vereinten Nationen gelingen, [...] klare Grundlagen für friedenserhaltende Aktionen zu schaffen, so könnte die Frage an uns herantreten, ob wir ähnlich wie Schweden und Österreich solche Unternehmen mit Truppenkontingenten unterstützen sollten, da die Mitwirkung neutraler Kleinstaaten in solchen Fällen besonders wertvoll ist.“⁹

In der Folge wurde eine interdepartementale Studiengruppe ins Leben gerufen, welche eine unparteiische und gewaltlose Wiederherstellung oder Aufrechterhaltung des Friedens als vereinbar mit dem Haager Neutralitätsrecht¹⁰ beurteilte und Beteiligungen an friedenserhaltenden Aktionen deshalb unter Einhaltung gewisser Bedingungen für möglich hielt.¹¹ Die Departemente konnten sich jedoch nicht auf ein Vorgehen einigen und die Idee wurde wieder fallen gelassen. Stattdessen wurde einer Motion von NR Kurt Furgler (CVP) folgend ein Bericht über die mögliche Schaffung eines Katastrophenhilfekorps vorgelegt. Obschon darin erstaunlich viele Parallelen zum Peacekeeping der Zeit gezogen und überhaupt nur vage Aufgaben formuliert wurden, verliefen die Beratungen im Parlament geradezu harmonisch. Verzichten durfte man gemäss einem Votum etwa auf „einen allzu grossen Perfektionismus in der Anfangsphase des Aufbaues“¹² – erstaunlich, hatte BR Graber die Abkehr von der Blauhelmidee in derselben Debatte doch begründet mit dem fehlenden „statut exact des hommes qui servent sous le casque bleu et de l'incertitude [...] de leur engagement“.¹³ Mit null (SR) respektive sieben (NR) Gegenstimmen passierte der Bericht die Räte und bereits 1973 nahm eine erste Schweizer Delegation in der Sahelzone die Arbeit auf. Fast scheint es, als ob die Neutralität und internationales Engagement per se anders beurteilt wurden, wenn sie in vermeintlich grössere Distanz zur UNO gesetzt wurden.

Die Frage eines möglichen Beitritts der Schweiz zur UNO prägte die Debatte eines darauffolgenden Zeitraums, der hier als „lange 1970er-Jahre“ bezeichnet werden soll. Dieser begann mit

8 Votum von NR Hubacher (SP), zitiert aus dem Amtlichen Bulletin des Nationalrates 1965, Seite 552. Nachfolgende Zitierweise: Hubacher (SP), AB 1965, N, 552.

9 BR Wahlen, AB 1965, N, 556f.

10 Auf der zweiten Haager Friedenskonferenz von 1907 geschah die umfangreichste Kodifikation von Neutralitätsrecht.

11 Namentlich die Zustimmung aller Konfliktparteien, das unparteiische Verhalten der UNO-Truppen, eine Rückzugsmöglichkeit im Falle der Unmöglichkeit unparteiischen Verhaltens und das Vorliegen eines UNO-Sicherheitsrats-Mandates.

12 Ketterer (LdU), AB 1971, N, 1491.

13 BR Graber, AB 1971, N, 1497.

der Publikation des ersten UNO-Berichts des Bundesrates 1969 und führte über dessen parlamentarische Diskussion im selben Jahr zum zweiten (Publikation 1971; Beratungen 1971/72) und dritten Bericht (1977; Beratungen 1977/78) und schliesslich zur Botschaft über den UNO-Beitritt (1981; Beratungen 1984, Volksabstimmung 1986). Es ging in diesen Debatten um den Beitritt sowohl hinsichtlich neutralitätsrechtlicher als auch neutralitätspolitischer Überlegungen. Die rechtliche Perspektive warf primär Fragen zur Vereinbarkeit der Schweizer Neutralität mit der UNO-Charta generell und dem Mittragen von Zwangsmassnahmen (vor allem den militärischen) im Speziellen auf. Die politische Seite der Debatten beinhaltete neben grundsätzlichen Zu- und Absagen an den Internationalismus die Frage der geeigneten Ausgestaltung der aussenpolitischen Solidaritätsmaxime der Schweiz.

Die friedenserhaltenden Operationen spielten in diesen Debatten konkret kaum eine Rolle, ihr Kontext jedoch umso mehr. Die Bereitschaft einer Prüfung „vermehrte[r] Beteiligung einzelner Personen“ (erster Bericht) verflog beim Bundesrat zunehmend und endete beim vagen Votum „vorläufig davon ab[zu]sehen, der UNO militärische Kontingente zur Verfügung zu stellen“ (Botschaft zum UNO-Beitritt).¹⁴ Sichtlich versuchte man, die Beitrittsvorlage „von unnötigem Ballast“ zu befreien.¹⁵ Als in der nationalrätslichen Diskussion der UNO-Botschaft dann zwei Redner doch noch auf die Blauhelme zu sprechen kamen, wies sie der neue Aussenminister Aubert zurecht, „[v]ous venez nous parler de l'envoi de casques bleus, sujet qui ne fait pas l'objet de la discussion actuelle!“¹⁶ Letztlich stimmten die Räte für die bundesrätliche Botschaft zum UNO-Beitritt (mit einer einseitigen, auslegenden Neutralitätserklärung, aber keinem Neutralitätsvorbehalt). Die Landesregierung hatte sich im Verlauf der 1970er Jahre der UNO immer mehr angenähert und ihr progressiveres Neutralitätsverständnis fand auch im Parlament zunehmend Unterstützung, hatte im Volk jedoch viel weniger Rückhalt: Mit 75 Prozent Nein-Stimmen scheiterte der erste Versuch zum UNO-Beitritt 1986 in einer Volksabstimmung.¹⁷

14 Bundesblatt von 1969, Band 1, Heft 28, Seite 1583, nachfolgende Zitierweise: BBl. 1969 I, 28, 1583 und BBl. 1981 I, 11, 558.

15 Robert Diethelm, *Die Schweiz und friedenserhaltende Operationen 1920–1995* (Bern: Haupt, 1997), 217.

16 BR Aubert, AB 1984, N, 226.

17 Die Analysen sollten später bestätigen, dass im Volk Neutralitätsfragen besonders ausschlaggebend waren und ein Grossteil der Nein-Stimmenden von der Unvereinbarkeit von Neutralität und UNO-Beitritt sowie einer Schwächung der Neutralität im Beitrittsfalle überzeugt waren, siehe Kreis, *Kleine Neutralitätsgeschichte*, 158.

Phase 3: Strategien für die Zukunft (1987–1996)

Mit dem Ende der Blockade des UNO-Sicherheitsrates ergab sich ab 1987 schlagartig ein neuer Elan für Aktivitäten der Vereinten Nationen: Bis 1992 sollten insgesamt 14 UNO-Operationen gestartet werden – gleich viele, wie zuvor während der gesamten Dauer des Kalten Krieges. Schon im Januar 1988 verabschiedete der Bundesrat – gestützt auf ein neues Rechtsgutachten neutralitäts- und verfassungsrechtlicher Aspekte – ein Grobkonzept über den Ausbau schweizerischer Beteiligungen an friedenserhaltenden Operationen. Im Bereich des Neutralitätsrechts wurden darin wie schon 1967 (siehe Phase 2) keine Schwierigkeiten mit peacekeeping-Engagements festgestellt, solange ein allfälliger Waffeneinsatz nur zur Selbstverteidigung oder zur Durchsetzung des Mandates erfolgen würde. Daneben wurden ein aussen- und sicherheitspolitischer Nutzen für die Schweiz vorausgesetzt. Der Bundesrat vergrösserte, auf den Bericht sowie eine neue Verordnung gestützt, innert kurzer Zeit zivile Beteiligungen an UNO-Operationen.¹⁸ Die darauf folgenden Jahre waren zweifellos diejenigen, in denen innenpolitisch am bisher intensivsten über friedenserhaltende Beteiligungen diskutiert wurde – und zwar in sich zum Teil überschneidenden Debatten um (i) einen neuen sicherheitspolitischen sowie (ii) einen aussenpolitischen Bericht des Bundesrates, (iii) um die gesetzliche Schaffung Schweizer Blauhelme und (iv) um die Reformierung des Armeegesetzes.

Der neue sicherheitspolitische Bericht¹⁹ des Bundesrates von 1990 (SIPOL B 90) formulierte als neues Ziel die „Friedensförderung durch Kooperation und Hilfeleistung“, indem

„wir [...] gemeinsam mit anderen Ländern an internationalen friedenserhaltenden Aktionen teilnehmen. Neben der materiellen Unterstützung solcher Operationen und dem Einsatz von Beobachtern soll dazu in Zukunft auch die Entsendung von Truppenverbänden (Blauhelmen) gehören.“²⁰

Diese Aufbruchstimmung, von einem Votanten als „neuer Geist“²¹ in der Sicherheitspolitik bezeichnet, wurde von vielen Ratskollegen affirmativ quittiert und der Bericht wurde mit grosser Mehrheit angenommen. Drei Jahre später wurde im neuen aussenpolitischen Bericht (APB 93), respektive im angehängten „Bericht zur Neutralität“, ein neues Neutralitätsrechtsverständnis dargelegt. Gestützt auf die neuere völkerrechtliche Literatur wurde argumentiert, dass

¹⁸ Für einen Überblick der einzelnen Einsätze siehe Jon A. Fanzun und Patrick Lehmann, *Die Schweiz und die Welt: Aussent- und sicherheitspolitische Beiträge der Schweiz zu Frieden, Sicherheit und Stabilität, 1945–2000* (Zürich: Forschungsstelle für Sicherheitspolitik der ETH Zürich, 2000), 112f.

¹⁹ Sicherheits- und aussenpolitische Berichte erlangten zwar keine rechtliche Verbindlichkeit, aber deren Kenntnisnahme durch das Parlament bedeuteten zumindest die politische Legitimation für die weitere Regierungs- bzw. Planungstätigkeit und lösten immer wieder Überarbeitungen des Rechts aus.

²⁰ BBl. 1990, 3, 46, 875f.

²¹ Huber (CVP), AB 1991, S. 740.

die Gleichbehandlungspflicht des Neutralitätsrechts durch die höherrangige Pflicht zur Diskriminierung eines Aggressors derogiert werde.²² Gemäss APB 93 handelte es sich bei militärischen Sanktionen der UNO ausserdem

„gar nicht um einen neutralitätsrechtlich relevanten Krieg, sondern um legale Massnahmen zur Durchsetzung von Beschlüssen des im Namen der Staatengemeinschaft handelnden Sicherheitsrates. Dieser sowie alle Staaten, die von dessen Ermächtigung zur Gewaltanwendung Gebrauch machen, handeln nicht als Kriegsparteien, sondern als Organ der internationalen Rechtsdurchsetzung. Daher können dauernd neutrale Staaten an Zwangsmassnahmen der UNO teilnehmen.“²³

Darauf gestützt formulierte der APB 93 neu das aussenpolitische Ziel der „Wahrung und Förderung von Sicherheit und Frieden“ und erwähnte die Möglichkeit des Einsatzes von Blauhelmen. In den Beratungen im Parlament fand diese Akzentuierung der Aussenpolitik von der Ratslinken bis weit nach rechts Unterstützung. Dabei wurde mal die Kooperation mit der UNO oder der KSZE betont, mal die Notwendigkeit unterstrichen, nach dem Wegfall der Nischenpolitik der Guten Dienste eine neue Solidaritätsform zu finden.²⁴ Allerdings dienten die Guten Dienste auch als Gegenargument einer äusseren Ratsrechten, welche jegliche Form der Kooperation mit der UNO ablehnte, um die „für Vermittlertätigkeiten notwendige Unbescholtenheit und Unparteilichkeit“ nicht aufzugeben.²⁵

Zwischen die Beratungen sowie Kenntnisnahmen der sicherheits- und aussenpolitischen Berichte fiel die Behandlung der Botschaft des Bundesrates über die gesetzliche Schaffung von Schweizer Blauhelmtruppen. Schon 1988 hatte sich NR Ott nämlich über die „politische Wünschbarkeit und die notwendigen rechtlichen Voraussetzungen für die Stellung von Blauhelmkontingenten aus der Schweizer Armee“ erkundigt.²⁶ Der Bundesrat war dem Anliegen positiv gesinnt, sollte doch

22 BBL 1994 I, 3, 229. Siehe diesbezüglich auch Adrian Schaub, „Aktuelle Aspekte der Neutralität,“ *Schweizerische Zeitschrift für internationales und europäisches Recht* 6, no. 3 (1996): 369f.; Daniel Thürer, „UN Enforcement Measures and Neutrality. The Case of Switzerland,“ *Archiv des Völkerrechts* 30, no. 1 (1992): 72, 81; Dietrich Schindler, „Kollektive Sicherheit der Vereinten Nationen und dauernde Neutralität der Schweiz,“ *Schweizerische Zeitschrift für internationales und europäisches Recht* 2, no. 4 (1992): 452 sowie Rainer J. Schweizer, „Staats- und völkerrechtliche Aspekte des schweizerischen Engagements in der auswärtigen Sicherheitspolitik,“ in *Das Recht in Raum und Zeit. Festschrift für Martin Lendi*, hg. v. Alexander Ruch, Gérard Hertig und Urs Christoph Nef (Zürich: Schulthess Polygraphischer Verlag, 1998), 502.

23 BBL 1994 I, 3, 230.

24 Die Thematik der Friedensförderung wurde im Bericht jedoch insgesamt überschattet vom formulierten Ziel des Schweizer EU-Beitritts und der erwähnten Neuinterpretation der Neutralität, welche nur „solange ein aussen- und sicherheitspolitisches Instrument bleiben [soll], als sie besser als andere Konzepte zur Verwirklichung der nationalen Interessen zu dienen vermag.“ Alleine im NR kam die Neutralität in 32 der 78 Voten zur Sprache. AB 1994, N, 174–227 und AB 1994, S, 241–271.

25 Steinemann (Autopartei), AB 1994, N, 199.

26 Postulat 88.864 „Schweizerische Blauhelme“ vom 15. Dezember 1988, eingereicht von Heinrich Ott, gedruckt in: AB 1989, N, 600.

so neben die eben geschaffene Verordnung eines unbewaffneten Friedensförderungsdienstes mit einem neuen Gesetz die Möglichkeit bewaffneter Einsätze gestellt werden. Die Regierung legte im August 1992 die Botschaft zur Schaffung von Blauhelmtruppen vor. Darin wurde die Vereinbarkeit von Blauhelmen mit den Rechten und Pflichten des Neutralen ebenso bejaht wie die Verfassungsmässigkeit solcher Einsätze. Blauhelme wurden als neutralitätspolitisch unbedenkliche, ja als sinnvolle Umsetzung des SIPOL B 90 dargestellt und als „zeitgemäss Form der Guten Dienste im Rahmen der Solidarität und der Disponibilität“.²⁷

Die rechtlichen Argumente hinterliessen Wirkung: Von mehreren Befürwortern wurden in den rätlichen Diskussionen entsprechende Passagen aus der Botschaft zitiert. Auch das Argument der zeitgemässen Form Guter Dienste wurde von Befürwortern aufgegriffen, genau wie der in der Botschaft wieder einmal vorgerechnete finanzielle Aufholbedarf gegenüber anderen neutralen Staaten. Vielfach wurde der Unterschied zwischen peacekeeping und peace enforcement hervorgehoben, der Erfolg der Blauhelme in jüngeren Einsätzen betont, sowie deren Gewinn des Friedensnobelpreises im Jahr 1988 erwähnt.²⁸ Eindrücklich ist zu erkennen, wie sich der Diskurs mit diesem Geschäft von einer Grundsatzdiskussion der Institution UNO zu einer fokussierten Beschäftigung mit einem Teilaспект der Vereinten Nationen verschoben hatte. Im Kontext dieser thematischen Einengung wurde generell sachlicher argumentiert, wodurch auch der vielseitig interpretierbare, aber häufig schwammig verwendete Neutralitätsbegriff kaum mehr eine Rolle spielte. Mehr noch: In der Detailberatung wurde eine Passage aus dem Gesetzesentwurf gestrichen, wonach Einsätze „nur wenn neutralitätspolitisch unbedenklich“ hätten möglich sein sollen – mit der allgemeinen Begründung, die Rechtslage sei klar genug und der Verweis nun wirklich nicht nötig.²⁹ Hatten die Blauhelmgegner in dieser Diskussion offenbar akzeptiert, dass sie auf rechtliche Argumente verzichten mussten, fiel der Vorwurf umso häufiger, der Bundesrat ignoriere den in der Ablehnung des UNO-Beitritts geäussernen Volkswillen.³⁰ Der Gesetzesentwurf passierte die Räte trotzdem mit komfortablen Mehrheiten, woraufhin die politische Rechte das Referendum ergriff und das Blauhelmgesetz im Sommer 1994 in einer Volksabstimmung zum Scheitern brachte.³¹ Dennoch intensivierte der Bundesrat in den Jahren 1995/96 das – nun halt weiterhin unbewaffnete – Engagement. Einerseits geschah dies in einer operationellen Dimension (unter anderem im erstmaligen Entsenden Schweizer Gelbmützen als logistische

27 BBL 1992 V, 40, 1143.

28 AB 1993, N, 1109–1139 sowie AB 1993, S, 51–69.

29 AB 1993, N, 1134.

30 So etwa Steinemann (Autopartei), AB 1993, N, 1121.

31 Für eine Abstimmungsanalyse inklusive der Bedeutung der UNO-Operation in Bosnien und der humanitären Intervention in Somalia im Vorlauf der Abstimmung siehe u.a. Kreis, *Kleine Neutralitätsgeschichte*, 170.

Unterstützung der OSZE-Mission in Bosnien-Herzegowina), andererseits institutionell mit dem Beitritt zum NATO-Programm Partnerschaft für den Frieden (PfF).³²

Phase 4: Rechtliche Nachführarbeiten (1997–2002)

Um die Jahrtausendwende erfolgte mit mehreren Reformen und Neuaufgleisungen zuvor abgelehnter Ideen eine Art Nachführung auf gesetzlicher Ebene. So wurde bei der Totalrevision der Bundesverfassung im Bereich der Friedensförderung übernommen, was in den Neupositionierungen der Jahre zuvor erfolgt war: Der neu formulierte Bundeszweck „Einsatz für eine friedliche und gerechte internationale Ordnung“ folgte der aussen- und sicherheitspolitischen Öffnung der 1990er Jahre. Die fünf aussenpolitischen Ziele von Art. 54 Abs. 2 der neuen BV – die Neutralität ist keines davon – deckten sich zu grossen Teilen mit jenen, welche schon im APB 93 formuliert worden waren. Die erstmalige Festschreibung der Aufgaben der Armee in der Verfassung (Art. 58 BV) übernahm etliche direkte Formulierungen aus der soeben erfolgten Revision des Militärgesetzes, in welcher die Einsatzart des (unbewaffneten) Friedensförderungsdienstes ihrerseits erstmals gesetzlich verankert worden war.

Eben dieses Militärgesetz (MG) sollte allerdings schon bald erneuter Diskussionsgegenstand in den Räten werden. Eine Folge der aussen- und sicherheitspolitischen Öffnungen der vergangenen Jahre bestand in der Entsendung von 160 Armeeangehörigen (die sog. Swiss Company oder SWISSCOY) an die Nato-Operation in Ex-Jugoslawien.³³ Dieser Einsatz führte (erneut) zu einer Militärgesetzreform, um die Truppen im Ausland zum Selbstschutz bewaffnen zu können. Eine Mehrheit in beiden Räten verwies in der Beratung der entsprechenden Botschaft mit Blick auf die bereits entsandte SWISSCOY auf die aktuelle Notwendigkeit dieser Reform, den sicherheitspolitischen Vorteil sowie – einen Punkt der Botschaft aufgreifend – auf den asylpolitischen Nutzen.³⁴ In der Detailberatung einigte man sich auf die Voraussetzung eines völkerrechtlichen Mandats der UNO oder der OSZE für bewaffnete Einsätze im Friedensförderungsdienst. Der Entwurf passierte beide Räte und am 10. Juni 2001 folgte das Volk mit 51 Prozent Ja-Stimmen Bundesrat und Parlament und

32 Während Ersteres innenpolitisch kaum umstritten war und keinen Vorstoss zwecks Abbruchs provozierte, verlangten zwei Parlamentarier (und 60 Mitunterzeichnende) bei der PfF vergebens einen Entscheid der Räte und allenfalls der Bevölkerung. AB 1996, N, 1707–1722.

33 Seit der ursprünglichen Entsendung der SWISSCOY in den Kosovo wurde deren – seit 2001 bewaffnetes – Mandat bis heute sieben Mal verlängert. In den diesbezüglichen Beschlüssen folgte die Bundesversammlung dem Bundesrat jedes Mal.

34 Siehe z.B. Zwygart (EVP), AB 2000, N, 201: „Wenn es nämlich gelingt, die Zahl der Vertriebenen, der Flüchtlinge aus Krisengebieten, klein zu halten, ist das ein Beitrag zur Innenpolitik.“

nahm die Reform an, wodurch sieben Jahre nach dem Blauhelm-Nein doch noch die Möglichkeit bewaffneter Truppen im Friedensförderungsdienst geschaffen wurde.

Interessanterweise wurden in diesen jüngsten rätlichen Debatten der MG-Reform, abgesehen von spärlichen Einzelvoten, weder Blauhelme noch die Vereinten Nationen grundsätzlich kritisiert, obschon ein Bezug zur UNO wiederholt erfolgte. Es zeigte sich ausserdem eine im Vergleich zu 1994 verstärkte Anerkennung der Kooperationsnotwendigkeit – dem „Leitmotiv“ des neuen sicherheitspolitischen Berichts mit dem Titel „Sicherheit durch Kooperation“.³⁵ Dieser Bericht war im Juni 1999 erschienen und in den Räten kurz vor der MG-Reform diskutiert worden. Entwicklungen innerhalb der UNO folgend wurde die Friedensförderung hier als umfassendere Aufgabe verstanden, welche neben den militärischen

„vermehrt auch auf darüber hinausgehende Mittel zurück[greift], namentlich auf personelle und materielle Mittel der Aussenpolitik [...], Zivilpolizei, humanitäre Aktionen und Wiederaufbauhilfe sowie sicherheitspolitische und militärtechnische Expertise und Material verschiedenster Art.“³⁶

Gemäss Goetschel verschoben sich mit diesem Bericht die Prioritäten klar von der militärischen Landesverteidigung hin zur Friedensunterstützung und Krisenbewältigung.³⁷ Der Bericht fand in der Ratsmitte und weiten Teilen der Linken Unterstützung, stiess aber bei Grünen, einzelnen Sozialdemokraten und in der Ratsrechten auf vehementen Widerstand. So fürchteten mehrere linke Ratsmitglieder, die Schweiz könnte „eine Hilfstruppe der Nato werden“ und forderten eine grundsätzliche Umverteilung der finanziellen Mittel von der militärischen (friedensfördernden) Seite zur zivilen.³⁸ Aus der SVP wurde eine Bewaffnung derweil hauptsächlich aus neutralitäts-politischen Gründen abgelehnt und grobe verfassungsrechtliche Verletzungen festgestellt.³⁹ Letztlich beschlossen beide Räte trotz grösserer Minderheiten die *zustimmende Kenntnisnahme*.

2002 beschloss die Schweizer Stimmbevölkerung ausserdem im zweiten Anlauf den Beitritt zur UNO. Für den Kontext des vorliegenden Papers stellt dieser Entscheid tatsächlich eine eher untergeordnete Rolle dar: Während sich im Vergleich zu 1986 die notwendigen Positionsverschiebungen

35 BBI. 1999, 38, 7660.

36 BBI. 1999, 38, 7688.

37 Laurent Goetschel, Magdalena Bernath und Daniel Schwarz, *Schweizerische Aussenpolitik: Grundlagen und Möglichkeiten* (Zürich: Verlag Neue Zürcher Zeitung, 2002), 135.

38 Ersteres: Rechsteiner (SP), AB 1999, N, 2655, Letzteres u.a. Cuche (Grüne), AB 1999, N, 2653.

39 Erstes Argument: Schlüter (SVP), AB 1999, N, 2661; Zweites u.a. Fehr (SVP), AB 1999, N, 2664. Eine Kommentierung der Vorwürfe in Fabian Schmid, „Zwischen ‚fremden Händeln‘ und der ‚Weltpolizei‘“ (Masterarbeit, Universität Basel, 2019), 66.

in anderen Bereichen vollzogen hatten, wurden Friedensförderungsdienst und peacekeeping in den Räten nur von einem einzigen SVP-Vertreter direkt kritisiert, der sich negativ über misslungenen Blauhelmoperationen der UNO äusserte.⁴⁰

Phase 5: Friedensförderung: zivil vs. militärisch (2003–2019)

Der Bundesrat verschrieb sich mit einem ebenfalls im Jahr 2000 vorgelegten, neuen aussenpolitischen Bericht (APB 2000) nach „Jahrzehnten eine[r] Haltung des Zuwartens“ fortan einer „Politik des aktiven Engagements für den Frieden“.⁴¹ Dazu arbeitete er bis 2003 ein Gesetz aus, auf dessen Grundlage mehrjährige Rahmenkredite für die zivile Friedensförderung⁴² gesprochen werden sollten. Nach der Annahme des Gesetzes und der ersten Genehmigung eines zivilen Friedenkredits im Jahr 2003 wurden für die Perioden 2008–12, 2012–16 und 2017–20 neue derartige Rahmenkredite gesprochen. Die Genehmigung der Kredite durch die Räte – also jene Momente, in denen sich die Bundesversammlung zur zivilen Friedensförderung äussern konnte – erfolgte stets erst nach längeren Debatten, durch die der vom Bundesrat geforderte Betrag mittels Anträgen nach oben oder unten korrigiert werden sollte. Die grundsätzlichen Haltungen waren in dieser Phase weder neu noch veränderten sie sich stark: Linke und Bürgerliche unterstützten die Kredite zu grossen Teilen und verwiesen in ihren Begründungen oft darauf, dass mit der zivilen Friedensförderung mehrere der aussenpolitischen Ziele von Art. 54 BV erfüllt würden. Auch in diesen Geschäften wurde häufig auf die Leistungen anderer Länder wie Schweden und Österreich geschielt und wiederholt die Neutralität als Grund aufgeführt, warum die Schweiz sich für Experten- und Mediationsmandate besonders eigne. Ausserdem wurde – genau wie beispielsweise in den SWISSCOY-Debatten – die zivile Friedensförderung in der Ratslinken wiederholt in ein Konkurrenzverhältnis zur militärischen gesetzt und dieser vorgezogen.⁴³ Auf der anderen Seite wehrte sich hauptsächlich die SVP gegen jeden neuen Kredit. Neben finanzpolitischen Begründungen monierte die Volkspartei – einzelne Vertreter wie NR Mörgeli waren hierbei besonders aktiv – mal, dass mit diesen Geldern auch militärische Engagements finanziert

40 Wenger (SVP), AB 2001, S. 451.

41 BBL. 2001, 6, 325.

42 Als Teil der zivilen Friedensförderung werden nun neben einem neu geschaffenen zivilen Expertenpool, aus dem seither jedes Jahr rund 200 Experten und Expertinnen im internationalen Einsatz sind, auch Bereiche wie „Menschenrechtsförderung, Entwicklungs- und Ostzusammenarbeit, Aussenwirtschafts- und Migrationspolitik, humanitäre Hilfe, Sicherheitspolitik einschliesslich der Rüstungskontroll- und Abrüstungspolitik“ verstanden. BBL. 2002, 51, 7979.

43 Exemplarisch: NR Baumann (Grüne), AB 2003, N, 480.

würden, mal, die Kredite würden keinen Erfolg (verstanden als rückläufige Asylzahlen) generieren oder die Friedensforschung und Menschliche Sicherheit wurden als grundsätzlich schwämige Konzepte bezeichnet.⁴⁴

Die militärische Friedensförderung wurde in der neuen, „integrierten“ Strategie zunehmend mit zivilen Aktionen abgestimmt.⁴⁵ Die Schweiz unterstützte fortan UNO-Feldmissionen in unregelmässigen Abständen mit kleineren Kontingenten (Offiziere, Militärbeobachter und weitere Experten). Nach dem SWISSCOY-Einsatz erfolgte die zweite Entsendung eines bewaffneten Kontingents 2004 nach Bosnien in eine EU-Operation (was für die Schweiz seit dem APB 2000 kein Hindernis einer Beteiligung mehr darstellte).⁴⁶ Seither sind in Bosnien maximal 20 zum Selbstschutz bewaffnete Armeeangehörige im Einsatz. Zum dritten und vorläufig letzten bewaffneten Engagement gehörten vier Stabsoffiziere in einer Mission in Afghanistan (2004–2007). Auch deren Entsendung wurde hauptsächlich von einer SVP-Minderheit in Frage gestellt. Die Regierung zog die Offiziere nach Motionen der Grünen und SVP jedoch zurück, nachdem der friedenserhaltende Einsatz in eine Operation zur Bekämpfung aufständischer Gruppen übergegangen war. Dass neben diesen Engagements keine weiteren vergleichbaren erfolgt sind, liegt auch an einer Neuausrichtung der militärischen Friedensförderung. Die sicherheitspolitischen Berichte von 2010 und 2016 formulieren zwar beide als Ziel eine Intensivierung der militärischen Friedensförderung, setzen den Fokus jedoch – neben finanziellen Beiträgen an friedensunterstützende Operationen – auf eine „qualitative Steigerung“⁴⁷ und nicht etwa, wie vom Sprecher der sicherheitspolitischen Kommission in der Beratung gewünscht, die Leitung eines grösseren internationalen Einsatzes.⁴⁸ Die militärische Friedensförderung muss ausserdem im Kontext einer generellen Reduktion der Armeebestände gesehen werden. So erteilte BR Maurer beispielsweise einer Beteiligung an der UNO-Mission in Haiti 2012 mit Verweis auf den Sparauftrag der Armee eine Absage.⁴⁹

Seit die Friedensförderung und somit auch die Beteiligung an internationalen Operationen im

44 Alle Argumente vorgetragen von NR Mörgeli, siehe AB 2008, N, 32; AB 2011, N, 1779; AB 2015, N, 937.

45 BBI. 2002, 51, 7982, 7987, 8016.

46 Die Bundesversammlung folgte dem Entwurf der Regierung, rügte diese im Nationalrat jedoch dafür, dass sie die Schweizer Truppen schon nach dem grünen Licht des Stände-, allerdings noch vor jenem des Nationalrates und vor dem Vorliegen der entsprechenden UNO-Sicherheitsrats-Resolution entsandt hatte. AB 2004, N, 2159.

47 D.h. die „Konzentration auf die Bereiche Lufttransport, terrestrische Logistik- und Transportleistungen sowie Nischenleistungen in Sanität, Nachrichtendienst und im Sicherheitsbereich“, siehe BBI. 2010, 30, 5180.

48 Frick (CVP), AB 2010, S, 1303.

49 Laurent Goetschel, „Die Friedensförderung ist keine Priorität der Schweiz,“ Neue Zürcher Zeitung, 21. September 2012, aufgerufen am 3. April 2020, <https://www.nzz.ch/meinung/debatte/diefriedensfoerderung-ist-keine-prioritaet-der-schweiz-1.17631796>.

21. Jahrhundert fest etabliert ist, geht es in der untersuchten Debatte vor allem um finanzpolitisches Tauziehen zwischen Ideologien, Parteien und Departementen um den Umfang möglicher Beteiligungen. Insgesamt ist auf Goetschel zu verweisen, der sagt, „[d]ie Schweiz leistet somit viel für den Frieden, und trotzdem kann Friedensförderung nicht als Priorität bezeichnet werden. Damit dem so wäre, müssten deutlich mehr Ressourcen in die Friedensförderung fliessen.“⁵⁰

Fazit

Seit der ersten Debatte um friedenserhaltende Operationen haben sich gewisse Argumente erstaunlich lange und teilweise bis heute im Diskurs gehalten. Dazu zählen auf der Einsätze befürwortenden Seite die Mahnung vor der schwindenden internationalen Rolle der Schweiz. Während aus der Ratslinken eine Intensivierung ausserdem häufiger aus Gründen der Solidarität und Disponibilität verlangt wurde, betonte das bürgerliche Lager öfter die Notwendigkeit der Kooperation aus sicherheitspolitischen Gründen. Auf der Gegenseite finden sich neben grundsätzlichen Absagen immer wieder Forderungen der Stärkung der humanitären Leistungen generell oder des Internationalen Komitees vom Roten Kreuz im Speziellen. Die unabhängig von der Schweiz agierende internationale Organisation scheint sich besonders zu eignen, sowohl als fremder Akteur bezeichnet, als auch in einem Atemzug mit schweizerischen aussenpolitischen Verdiensten und Bemühungen genannt und richtiggehend einverleibt zu werden.

Weiter werden die Guten Dienste in erstaunlicher Konstanz seit den 1960er Jahren von beiden Seiten als Argument benutzt. Die Befürworter interpretieren die Friedensförderung seltener als Alternative zu den verschwindenden Guten Diensten und häufiger als positive, moderne Form ebendieser in einem neuen, globalen Umfeld. Die Gegner von peacekeeping-Aktionen stellen diese wiederum oft als negative, die Neutralität missachtende oder gefährdende Alternative zu Guten Diensten dar. Die neutralitätsrechtlich formulierten Gegenargumente verschwanden mit der Zeit fast vollständig aus dem Diskurs; auf die Entwicklung des Rechts wurde nunmehr vor allem von Befürwortern hingewiesen.

Quellentechnisch passend soll mit einem Satz aus einer längst vergessenen nationalrätselichen Debatte geschlossen werden. Berichterstatter Hubacher hielt 1993 fest, „dass die Neutralität nicht eine Art Invalidenausweis sei, der uns im Eisenbahnzug der Geschichte einen bevorzugten

50 Goetschel, „Die Friedensförderung ist keine Priorität der Schweiz“.

Sitzplatz sichere.“⁵¹ Dem ist 27 Jahre später wenig hinzuzufügen. Sich abzuschotten und nicht in vermeintlich fremde Händel einzumischen, bedeutet, zu erkennen, dass die fremden Händel meist auch die eigenen sind. Und diese aktiv mitzugestalten, scheint ganz grundsätzlich sinnvoller, als sich auf längst überholte und wenig hilfreiche Neutralitätsvorstellungen zu berufen.

51 Hubacher (SP), AB 1993, N, 1109.

Bibliografie

Quellen

- Bundesblatt der Schweizerischen Eidgenossenschaft, Schweizerisches Bundesarchiv Digitalbestand*
(<https://www.admin.ch/gov/de/start/bundesrecht/bundesblatt.html>)
- BB1. 2010, 30, 5133–5222 (Bericht des Bundesrates an die Bundesversammlung über die Sicherheitspolitik der Schweiz).
- BB1. 2002, 51, 7975–8058 (Botschaft über einen Rahmenkredit für Massnahmen zur zivilen Konfliktbearbeitung und Menschenrechtsförderung).
- BB1. 2001, 6, 261–358 (Aussenpolitischer Bericht 2000. Präsenz und Kooperation: Interessenwahrung in einer zusammenwachsenden Welt).
- BB1. 1999, 38, 7657–7734 (Sicherheit durch Kooperation. Bericht des Bundesrates an die Bundesversammlung über die Sicherheitspolitik der Schweiz SIPOL B 2000).
- BB1. 1994, I, 3, 153–242 (Bericht über die Aussenpolitik der Schweiz in den 90er Jahren).
- BB1. 1992, V, 40, 1141–1184 (Botschaft betreffend das Bundesgesetz über schweizerische Truppen für friedenserhaltende Operationen).
- BB1. 1990, III, 46, 847–904 (Schweizerische Sicherheitspolitik im Wandel. Bericht 90 des Bundesrates an die Bundesversammlung über die Sicherheitspolitik der Schweiz).
- BB1. 1981, I, 11, 497–696 (Botschaft über den Beitritt der Schweiz zur Organisation der Vereinten Nationen (UNO)).
- BB1. 1969, I, 28, 1449–1623 (Bericht des Bundesrates an die Bundesversammlung über das Verhältnis der Schweiz zu den Vereinten Nationen).

- Amtliches Bulletin der Bundesversammlung, Schweizerisches Bundesarchiv Digitalablage ab 1999*
- AB 2015, N, 936–940 (Massnahmen zur Förderung des Friedens und der menschlichen Sicherheit 2012–2016. Weiterführung): https://www.parlament.ch/centers/documents/de/NR_4919_1506.pdf.
- AB 2011, N, 1775–1783 (Massnahmen zur Förderung des Friedens und der menschlichen Sicherheit. Weiterführung): https://www.parlament.ch/centers/documents/de/NR_11_09.pdf.
- AB 2010, S, 1301–1312 (Sicherheitspolitik der Schweiz. Bericht): https://www.parlament.ch/centers/documents/de/SR_10_12.pdf.
- AB 2008, N, 31–37 (Massnahmen zur zivilen Friedensförderung und Stärkung der Menschenrechte. Weiterführung): https://www.parlament.ch/centers/documents/de/NR_08_03.pdf.
- AB 2004, N, 2157–2161 (Einsatz von Schweizer Armeeangehörigen in der EUFOR in Bosnien-Herzegowina. Bundesbeschluss): https://www.parlament.ch/centers/documents/de/NR_04_12.pdf.
- AB 2003, N, 479–484 (Massnahmen zur zivilen Friedensförderung und Stärkung der Menschenrechte. Bundesgesetz): https://www.parlament.ch/centers/documents/de/NR_03_03.pdf.

AB 2001, S, 442–462 (Für den Beitritt der Schweiz zur Uno. Volksinitiative): https://www.parlament.ch/centers/documents/de/SR_01_06.pdf.

AB 2000, N, 192–219 (Militärgesetz. Änderung): https://www.parlament.ch/centers/documents/de/NR_00_03.pdf.

AB 1999, N, 2647–2669 (Sicherheitspolitik der Schweiz): https://www.parlament.ch/centers/documents/de/NR_99_12.pdf.

Amtliches Bulletin der Bundesversammlung, Schweizerisches Bundesarchiv Online-Amtsdruckschriften (1891–1999)

(<https://www.amtsdruckschriften.bar.admin.ch/showHierarchyDate.do>)

AB 1996, N, 1707–1722 (Sammeltitel Nato-Partnerschaft für den Frieden. Persönliche Vorstösse).

AB 1994, S, 241–271 (Aussenpolitik der Schweiz in den neunziger Jahren).

AB 1994, N, 174–227 (Aussenpolitik der Schweiz in den neunziger Jahren).

AB 1993, N, 1109–1139 (Schweizerische Blauhelmtruppen. Bundesgesetz).

AB 1993, S, 51–69 (Schweizerische Blauhelmtruppen. Bundesgesetz).

AB 1991, S, 739–759 (Sicherheitspolitik. Bericht 1990).

AB 1989, N, 600 (Postulat 88.864 „Schweizerische Blauhelme“ vom 15. Dezember 1988, Heinrich Ott).

AB 1984, N, 213–230 (UNO. Beitritt der Schweiz).

AB 1971, N, 1490–1500 (Katastrophenhilfe im Ausland. Freiwilligenkorps).

AB 1965, N, 550–574 (Interpellation Furgler. Richtlinien der schweizerischen Aussenpolitik).

AB 1962, S, 240–251 (UNO. Beteiligung an der Anleihe).

Protokolle der Bundesversammlung, Schweizerisches Bundesarchiv Digitalbestand

(<https://www.amtsdruckschriften.bar.admin.ch/showHierarchyDate.do>)

Protokoll BVers, Ordentliche Sommersession 1955, N, 8. Juni 1955, 133–210 (Korea-Bericht).

Geschäftsdatenbank der Bundesversammlung

Motion 18.4123 „Verzicht auf eine Kandidatur für den UNO-Sicherheitsrat“ vom 29. November 2018, Schweizerische Volkspartei, <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20184123>.

Literatur

Diethelm, Robert. *Die Schweiz und friedenserhaltende Operationen 1920–1995*. Bern: Haupt, 1997.

Fanzun, Jon A., und Patrick Lehmann. *Die Schweiz und die Welt: Aussen- und sicherheitspolitische Beiträge der Schweiz zu Frieden, Sicherheit und Stabilität, 1945–2000*. Zürich: Forschungsstelle für Sicherheitspolitik der ETH Zürich, 2000.

- Goetschel, Laurent. „Die Friedensförderung ist keine Priorität der Schweiz.“ *Neue Zürcher Zeitung*, 21. September 2012, aufgerufen am 3. April 2020. <https://www.nzz.ch/meinung/debatte/die-friedensförderung-ist-keine-priorität-der-schweiz-1.17631796>.
- Goetschel, Laurent, Magdalena Bernath und Daniel Schwarz. *Schweizerische Aussenpolitik: Grundlagen und Möglichkeiten*. Zürich: Verlag Neue Zürcher Zeitung, 2002.
- Hohengartner, Reinholt. *Schweizerische Neutralität und Vereinte Nationen, 1945–1981: die Problematik des schweizerischen UNO-Beitrittes im Spannungsfeld zwischen Bundesrat und Parlament*. Wien: VWGÖ, 1993.
- Kreis, Georg. *Kleine Neutralitätsgeschichte der Gegenwart: Ein Inventar zum neutralitätspolitischen Diskurs in der Schweiz seit 1945*. Bern: Haupt, 2004.
- Küpfer, Gabriela. „Völkerrechtliche, staats- und verwaltungsrechtliche Grundlagen und Rahmenbedingungen militärischer Sicherheitskooperation der Schweiz, insbesondere Partnerschaft für den Frieden.“ Dissertation, Universität St. Gallen, 2002.
- Schaub, Adrian. „Aktuelle Aspekte der Neutralität.“ *Schweizerische Zeitschrift für internationales und europäisches Recht* 6, no. 3 (1996): 353–372.
- Schaub, Adrian. *Neutralität und kollektive Sicherheit: Gegenüberstellung zweier unvereinbarer Verhaltenskonzepte in bewaffneten Konflikten und These zu einem zeit- und völkerrechts-gemässen modus vivendi*. Basel/Frankfurt a.M.: Helbing & Lichtenhahn, 1995.
- Schindler, Dietrich. „Kollektive Sicherheit der Vereinten Nationen und dauernde Neutralität der Schweiz.“ *Schweizerische Zeitschrift für internationales und europäisches Recht* 2, no. 4 (1992): 435–480.
- Schmid, Fabian. „Zwischen ‚fremden Händeln‘ und der ‚Weltpolizei‘.“ Masterarbeit, Universität Basel, 2019.
- Schwarb, Marius. *Die Mission der Schweiz in Korea: ein Beitrag zur Geschichte der schweizerischen Aussenpolitik im kalten Krieg*. Bern/New York: Peter Lang, 1986.
- Schweizer, Rainer J. „Staats- und völkerrechtliche Aspekte des schweizerischen Engagements in der auswärtigen Sicherheitspolitik.“ In *Das Recht in Raum und Zeit. Festschrift für Martin Lendi*, herausgegeben von Alexander Ruch, Gérard Hertig und Urs Christoph Nef, 477–516. Zürich: Schulthess Polygraphischer Verlag, 1998.
- Thürer, Daniel. „UN Enforcement Measures and Neutrality. The Case of Switzerland.“ *Archiv des Völkerrechts* 30, no. 1 (1992): 63–85.

Anna Wolf

Soft Law in EU Migration Cooperation with Associated Countries – A Comparative Perspective

Abstract: The war in Syria transformed the temporary stay of refugees in Turkey, Jordan and Lebanon into a protracted situation. These countries represent strategic partners to the EU in the governance of transit migration. The EU adopted three non-binding bilateral arrangements: The Turkey Statement, the Jordan Compact and the Lebanon Compact. This thesis pursued the following research question: What are the legal effects of the Turkey Statement, the Jordan Compact and the Lebanon Compact on the relations between the EU and these three associated countries in terms of migration and how do they impact the situation of Syrian refugees¹ hosted in these countries? The Compacts had facilitating and strengthening legal effects on the association links with the EU. In contrast, the Turkey Statement had transformative and multilevel legal effects that contributed to an informalization of relations. This study provided one approach to the lack of legal research on the external dimension of EU governance.

Key Words: Soft Law, Migration, EU External Governance, EU Association Law, Turkey Statement

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¹ The term ‘refugee’ as used in this thesis describes displaced persons who fled their country of origin due to armed conflict or persecution. UNHCR, “UNHCR Viewpoint: ‘Refugee’ or ‘Migrant’ – Which is Right?” 2018, accessed 24 September 2018, <https://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html>.

Introduction and Research Question

Since the outbreak of the conflict in 2011, Syria has become the world's largest displacement crisis.² Its neighboring countries host over five million Syrian refugees, with Turkey, Jordan and Lebanon accommodating over 90 percent.³ This protracted situation requires new responses.⁴ EU migration cooperation with third countries takes place under the New Partnership Framework (NPF).⁵ The NPF refers to the creation of 'compacts' (comprehensive partnerships) as "key components of the overall relationships between the EU and third countries of origin and transit of migrants."⁶ In 2016, the EU adopted three new approaches towards key host and transit countries: the Turkey Statement⁷, the Jordan Compact⁸ and the Lebanon Compact⁹. Both the Turkey Statement and the Jordan Compact are considered an inspiration or a blueprint for arrangements with other third countries.¹⁰ These instruments embody tendencies towards experimenting with legal frameworks in the EU's external dimension. They may represent a reference point for future EU migration cooperation. Legal research on the external dimension of EU governance is largely missing. Cardwell is among the few researchers working on a legal perspective on this issue.¹¹ Similarly, Dawson's work has contributed to the taking up of the concept of governance in legal scholarship on the EU external dimension.¹² This thesis puts the Turkey Statement, the Jordan Compact and the Lebanon Compact into a comparative perspective as part of an EU governance approach towards the consequences of the war in Syria in associated countries.

2 "Enhancing Resilience and Self-Reliance in Communities. End of Year Report 2017," UNHCR, 2017, accessed 25 April 2020, <https://www.unhcr.org/sy/end-of-year-reports-a-year-in-review>, 3.

3 "Syria Regional Refugee Response," UNHCR, accessed 24 September 2018, <https://data2.unhcr.org/en/situations/syria>.

4 Veronique Barbelet, Jessica Hagen-Zanker, and Dina Mansour-Illie, "The Jordan Compact: Lessons Learnt and Implications for Future Refugee Compacts," *Overseas Development Institute*, February 2018, accessed 24 April 2020, <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12058.pdf>.

5 "Communication from the European Commission on Establishing a New Partnership Framework with Third Countries Under the European Agenda on Migration. COM(2016) 385 final," European Commission, 7 June 2016, accessed 25 April 2020, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf.

6 European Commission, COM(2016) 385 final, 6.

7 "EU-Turkey Statement. Press Release, 144/16," European Council, 18 March 2016, accessed 25 April 2020, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf>.

8 Decision No 1/2016 of the EU-Jordan Association Council of 19 December Agreeing on EU-Jordan Partnership Priorities (2016/2388), OJ 2016 L355/31, 2016.

9 Decision No 1/2016 of the EU-Lebanon Association Council of 11 November 2016 Agreeing on EU-Lebanon Partnership Priorities (2016/2368), OJ 2016 L350/114, 2016.

10 European Commission, COM(2016) 385 final, 3; Manuel Schubert and Imke Haase, "How to Combat the Causes of Refugee Flows. The EU-Jordan Compact in Practice," *International Reports of the Konrad-Adenauer-Stiftung* 34, no. 1 (2018): 103; Arne Niemann and Natascha Zaun, "EU Refugee Policies and Politics in Times of Crisis: Theoretical and Empirical Perspectives," *Journal of Common Market Studies* 56, no. 1 (January 2018): 9.

11 Paul James Cardwell, "Rethinking Law and New Governance in the European Union: The Case of Migration Management," *European Law Review* 41, no. 3 (2016): 363.

12 Mark Dawson, "New Modes of Governance," in *A Companion to European Law and International Law*, eds. Dennis Patterson and Anna Södersten (Chichester: John Wiley & Sons, 2016), 119–135.

The research question reads as follows: What are the legal effects of the Turkey Statement, the Jordan Compact and the Lebanon Compact on the relations between the EU and these three associated countries in the field of migration and how do they impact the situation of Syrian refugees hosted in these countries? For the purpose of this article the second part of the research question is only marginally touched upon in the conclusion.

Methodology

EU relations with third countries in the field of migration are characterized by a patchwork of instruments: legally binding Association Agreements (AA), Readmission Agreements (RA) and Visa Facilitation Agreements, as well as legally non-binding Mobility Partnerships (MP).¹³ A context-embedded analysis of each soft law instrument is applied to investigate its legal effects. The three instruments are each compared and contrasted with the respective binding agreements (AAs and RAs) as well as non-binding arrangements (Action Plans (AP) and Accession Partnership). The EU's multilevel structure requires an analysis of how they are related to supranational hard law and soft law frameworks.

Theoretical Framework

The Concept of Governance

Governance represents a modification or complement of the state government that goes beyond governmental institutions.¹⁴ Legal scholarship started to incorporate this concept using the notion of ‘new modes of governance’ (NMG).¹⁵ NMGs are framed as “an alternative means of delivering EU law and policy”.¹⁶ Hence, NMG are used to reach the same objectives, however, outside the legislative process. EU external governance is conceptualized as taking place “when parts of the *acquis communautaire* are extended to non-member states.”¹⁷ The field of association

¹³ Sergio Carrera, Raluca Radescu, and Natasja Reslow, “EU External Migration Policies. A Preliminary Mapping of the Instruments, the Actors and their Priorities,” *Transnational Migration in Transition*, (2015): 1–74.

¹⁴ Christoph Möllers, “European Governance: Meaning and Value of a Concept,” *Common Market Law Review* 43, no. 2 (2006): 316.

¹⁵ See for example: Dawson, “New Modes of Governance”; Anne Peters and Isabella Pagotto, “Soft Law as a New Mode of Governance: A Legal Perspective,” Edoc, the Institutional Repository of the University of Basel, 22 September 2016, accessed 25 April 2020, <http://edoc.unibas.ch/42734/>, 1–35.

¹⁶ Dawson, “New Modes of Governance,” 120.

¹⁷ Sandra Lavenex, “EU External Governance in ‘Wider Europe’,” *Journal of European Public Policy* 11, no. 4 (2004): 683.

of neighborhood countries has served as an arena for experimentation with NMGs.¹⁸

The Concept of Soft Law

Due to divergent understandings of the relations between law and governance, a clear-cut definition of soft law is missing. Snyder defines soft law as “rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects.”¹⁹ This definition was later complemented with “legal effects.”²⁰

EU hard law is subsumed under the term *acquis communautaire*.²¹ Whereas regulations and directives are binding acts, recommendations and opinions “shall have no binding force” (Art. 288 TFEU).²² Hence, they are the only non-binding instruments recognized in the Treaties. In 2007, the European Parliament (EP) issued a resolution on the use of soft law.²³ Its understanding of soft law is based on the definition by Senden.²⁴ It holds that the purpose of soft law was to “alleviate a lack of formal law-making capacity and/or means of enforcement”.²⁵ EU case law indicates that soft law is not considered void of any legal effect. In the *Grimaldi* case, the Court of Justice of the EU (CJEU)²⁶ ruled that “the measures in question cannot be regarded as having no legal effect”, meaning that national courts are “bound to take recommendations into consideration”.²⁷

Legal Effects of Soft Law

The conceptual framework by Peters and Pagotto is used as a point of departure for the clustering of legal effects.²⁸ Soft law can have so-called law-plus effects. It forms the “interpretative context”

18 Stefano Bartolini, “New Modes of European Governance. An Introduction,” in *New Modes of Governance in Europe. Governing in the Shadow of Hierarchy*, eds. Adrienne Héritié and Martin Rhodes (Basingstoke: Palgrave Macmillan, 2011), 15.

19 Francis Snyder, *Soft Law and Institutional Practice in the European Community* (San Domenico di Fiesole: EUI, 1993), 32.

20 Oana Andreea Stefan, “European Union Soft Law: New Developments Concerning the Divide Between Legally Binding Force and Legal Effects,” *The Modern Law Review* 75, no. 5 (2012): 880.

21 Thomas Oppermann, Dieter Classen, and Martin Nettesheim, *Europarecht. Ein Studienbuch* (München: C.H.Beck, 2016), 22.

22 Treaty on the Functioning of the European Union, OJ 2016 C 202.

23 “European Parliament Resolution of 4 September 2007 on Institutional and Legal Implications of the Use of ‘Soft Law’ Instruments, 2007/2028(INI),” European Parliament, 4 September 2007, accessed 25 April 2020, <https://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2007-0366>.

24 European Parliament, “European Parliament Resolution of 4 September 2007,” see letter K; For the definition see Linda Senden, “Soft Law, Self-Regulation and Co-Regulation in European Law: Where Do They Meet?” *Electronic Journal of Comparative Law* 9, no. 1 (January 2005): 23.

25 European Parliament, “European Parliament Resolution of 4 September 2007,” see letter L.

26 The CJEU consists of two separate courts: The European Court of Justice (ECJ) and the General Court. The CJEU observes the application of the Treaties of the EU and Member States’ compliance. In contrast, the ECJ is responsible for preliminary rulings, annulments and appeals (Art. 19 TEU).

27 Judgment of the Court of 13 December 1989, case C-322/88, para. 18.

28 Anne Peters and Isabella Pagotto, “Soft Law as a New Mode of Governance,” 22ff.

for hard law²⁹ and serves as an “aid in judicial interpretation”.³⁰ This is especially relevant for the European Courts since they are obliged to take soft law into consideration.³¹ The legal literature emphasizes that soft law can produce commitment,³² also referred to as “*de facto* persuasiveness”.³³ This effect is particularly strong in long-term relations between the parties.³⁴ However, soft law can also have negative legal effects. If it contradicts hard law, soft law may weaken the legitimacy of legal provisions.³⁵ This can ultimately undermine existing legal norms and weaken the impact of hard law.

Soft law can have pre-law effects if soft instruments are established where a binding agreement with a third country is absent and not viable.³⁶ Thereby, soft law functions as a substitute. In EU migration governance, soft law tools may prepare the ground “for the negotiation and conclusion of future EU readmission agreements.”³⁷ One of the dominant legal effects of soft law as a substitute is therefore the precursor effect.³⁸

The establishment of soft law facilitates the negotiation of a legally binding agreement. However, the existence of soft law does not always lead to subsequent codification.³⁹ If an issue is already governed by soft law, the states may lack incentives to legislate in the same policy area. Soft law can delay or block the creation of legally binding provisions.⁴⁰ This is conceptualized as a pre-empting effect.

29 Bart van Vooren and Ramses A. Wessel, *EU External Relations Law. Texts, Cases and Materials* (Cambridge: Cambridge University Press, 2014), 53.

30 Snyder, Francis, *Soft Law and Institutional Practice in the European Community*, 463.

31 C-322/88, para. 18.

32 Vooren and Wessel, *EU External Relations Law*, 53.

33 Linda Senden, “Soft Post-Legislative Rulemaking: A Time for More Stringent Control,” *European Law Journal* 19, no. 1 (2013): 66.

34 Anne Peters and Isabella Pagotto, “Soft Law as a New Mode of Governance,” 28.

35 Christine Chinkin, “The Challenge of Soft Law: Development and Change in International Law,” *International & Comparative Law Quarterly* 38, no. 4 (1989): 866.

36 Paul James Cardwell, “Tackling Europe’s Migration ‘Crisis’ Through Law and ‘New Governance’,” *Global Policy* 9, no. 1 (2018): 72.

37 “Council Conclusions on the Return and Readmission of Illegally Staying Third-Country Nationals, JAI 554 MIGR 112 COMIX 439,” Council of the European Union, 9 June 2016, accessed 25 April 2020, <http://data.consilium.europa.eu/doc/document/ST-10020-2016-INIT/en/pdf>, 4.

38 Daniel Thym, “Towards International Migration Governance? The European Contribution,” in *The EU’s Role in Global Governance: The Legal Dimension*, eds. Bart van Vooren, Steven Blockmans, and Jan Wouters (Oxford: Oxford University Press, 2013), 300; Anne Peters and Isabella Pagotto, “Soft Law as a New Mode of Governance,” 22.

39 Thomas Gammeltoft-Hansen et al., “What is a Compact? Migrants’ Rights and State Responsibilities Regarding the Design of the UN Global Compact for Safe, Orderly and Regular Migration,” *Raoul Wallenberg Institute of Human Rights and Humanitarian Law*, 2017, accessed 25 April 2020, https://rwi.lu.se/app/uploads/2017/10/RWI_What-is-a-compact-test_101017-senaste-1.pdf, 10.

40 Ibid.

Soft law is often experimental in design and may entail creative, new approaches.⁴¹ It can be consulted during the creation of hard law. Thym also considers soft law instruments as a “laboratory for cooperation”.⁴²

Multilevel effects are distinctive to the EU’s governance structure. Soft law created at the supranational level can have effects at the national governance level of either the Member States or associated third countries. EU soft law can impact the Member States⁴³ and possibly also the associated countries’ legal practice.

For the purpose of this thesis, soft law is understood as a legally non-binding mode of governance that is used to induce a particular behavior in the associated third country and can produce legal effects.

The Association Process

Based on Article 217 TFEU, “the Union may conclude with one or more third countries or international organizations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.” In the *Demirel* case, the CJEU specified the significance of AAs as “creating special, privileged links with a non-member country which must, at least to a certain extent, take part in the Community system.”⁴⁴ AA provisions are often worded similarly or identically to EU law.⁴⁵ The legal literature refers to this privileged relationship as “integration without membership”, because the third country becomes involved with the “EU legal space”.⁴⁶ The European Court of Justice (ECJ) concluded in the seminal *Haegeman* case that it was entitled to give preliminary rulings on the interpretation of AA provisions.⁴⁷ EU law includes the so-called association *acquis* (comprised of the AA, any court judgments on the AA, Additional Protocols and Decisions of the AC).⁴⁸ Member States are bound by AAs based on EU law.⁴⁹

⁴¹ Charles F. Sabel and Jonathan Zeitlin, “Learning From Difference: The New Architecture of Experimentalist Governance in the EU,” in *Experimentalist Governance in the European Union. Towards a New Architecture*, ed. Charles F. Sabel and Jonathan Zeitlin (Oxford: Oxford University Press, 2010), 1.

⁴² Thym, “Towards International Migration Governance,” 294.

⁴³ Senden, “Soft Post-Legislative Rulemaking,” 66.

⁴⁴ C-12/86, *Demirel v Stadt Schwäbisch Gmünd*, ECLI:EU:C:1987:232, para. 9.

⁴⁵ Christa Tobler, “Context-related Interpretation of Association Agreements. The Polydor Principle in a Comparative Perspective: EEA Law, Ankara Association Law and Market Access Agreements between Switzerland and the EU,” in *Rights of Third-Country Nationals under EU Association Agreements*, ed. Daniel Thym and Margarite Zoeteweij-Turhan (Leiden: Brill Nijhoff, 2015), 101.

⁴⁶ Vooren and Wessel, *EU External Relations Law*, 64.

⁴⁷ C-181/73, *Haegeman v Belgium*, ECLI:EU:C:1974:41, para. 5–6.

⁴⁸ Daniel Thym, “Constitutional Foundations of the Judgements on the EEC-Turkey Association Agreement,” in *Rights of Third-Country Nationals under EU Association Agreements*, eds. Daniel Thym and Margarite Zoeteweij-Turhan (Leiden: Brill Nijhoff, 2015), 13.

⁴⁹ Vooren and Wessel, *EU External Relations Law*, 42.

In association relations, an Accession Partnership is established with potential candidates for accession, a non-binding political agreement building on the AA.⁵⁰ It determines in detail the issues to be discussed during the pre-accession process.⁵¹ Accordingly, the EU agrees upon a non-binding Action Plan (AP) with other associated countries.⁵² APs represent the main soft law instruments guiding the association relations with Jordan and Lebanon. The Accession Partnership represents the equivalent for Turkey.

Overview of the Bilateral Relations with Turkey, Jordan and Lebanon

The EU and Turkey have pursued a pre-accession strategy for decades. Since 2005, accession negotiations are ongoing. In contrast, the relations with Jordan and Lebanon take place under the European Neighborhood Policy (ENP) and further evolved through APs and Association Council (AC) Decisions. Turkey is a signatory to the Geneva Convention⁵³ without the 1967 Protocol. Neither Jordan nor Lebanon has signed the Geneva Convention.⁵⁴

EU-Turkey Cooperation on Migration

The EU and Turkey concluded an RA in 2014, which regulated the modalities of irregular transit migration through Turkey.⁵⁵ The RA was preceded by the 2002 bilateral RA between Turkey and Greece.⁵⁶ In June 2018, the Turkish Foreign Minister announced the unilateral suspension of the RA with Greece.⁵⁷ On 18 March 2016, the Council of the EU published the Turkey Statement in

50 Elsa Tulmets, “Experimentalist Governance in EU External Relations: Enlargement and the European Neighbourhood Policy,” in *Experimentalist Governance in the European Union. Towards a New Architecture*, eds. Charles F. Sabel and Jonathan Zeitlin (Oxford: Oxford University Press, 2010), 308.

51 Council Decision of 18 February 2008 on the Principles, Priorities and Conditions Contained in the Accession Partnership with the Republic of Turkey and Repealing Decision 2006/35/EC, OJ 2008 L51/4, 2008, Rec. 1.

52 European Commission, “Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours,” COM(2003) 104 final, 2003, accessed 25 April 2020, <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A5-2003-0378+0+DOC+PDF+V0//EN>, 16.

53 “Convention and Protocol Relating to the Status of Refugees,” United Nations General Assembly, Geneva 28 July 1951, United Nations, Treaty Series, vol. 189, 1951.

54 Ibid.

55 Agreement between the European Union and the Republic of Turkey on the Readmission of Persons Residing without Authorisation, OJ 2014 L 134/3, 2014.

56 Sarah Wolff, “The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey,” *European Journal of Migration and Law* 16, no. 1 (2014): 90.

57 Ali Kucukgocmen and Karolina Tagaris, “Turkey Suspends Migrant Readmission Deal with Greece: Anadolu,” Reuters, 7 June 2018, accessed 8 November 2018, <https://www.reuters.com/article/us-turkey-security-greece/turkey-suspends-migrant-readmission-deal-with-greece-hurriyet-idUSKCN1J31OO>.

a press release.⁵⁸ From 20 March 2016 onwards, all irregular migrants arriving from Turkey to Greek islands were to be returned to Turkey.⁵⁹ For every returned Syrian, another Syrian would be resettled from Turkey to the EU (para. 2).⁶⁰ The Statement promised to accelerate the implementation of the EU-Turkey Visa Liberalization Roadmap and the resumption of accession negotiation chapters.⁶¹

EU-Jordan Cooperation on Migration

Migration is exclusively regulated through soft law in EU-Jordan relations. The main objective of the MP from 2014 was the simultaneous negotiation of a binding RA together with a visa facilitation agreement.⁶² In December 2016, the Jordan Compact was adopted.⁶³ It set quantifiable goals: Jordan committed to create up to 100,000 jobs for Syrian refugees.⁶⁴ The EU pledged to provide financial assistance and simplify Rules of Origin requirements for products from 18 Special Economic Zones for a period of ten years.⁶⁵ The AC decided that the Jordan Compact replaced the 2012 AP.⁶⁶

EU-Lebanon Cooperation on Migration

Migration in the EU-Lebanon cooperation is exclusively regulated through soft law. The 2013 AP restated the goal of negotiating an RA.⁶⁷ Up until now, neither an RA nor an MP has been adopted. In November 2016, the AC adopted the Lebanon Compact.⁶⁸ Lebanon committed to simplifying domestic regulations of labor market access for Syrian refugees.⁶⁹ The EU committed to job creation for young Lebanese and Syrians, including through new Technical Vocational Education and Training (TVET) programs.⁷⁰

58 Council of the EU, *EU-Turkey Statement*, press release 144/16.

59 Ibid., para. 1.

60 Ibid., para. 2.

61 Ibid., para. 8.

62 Council of the European Union, 10055/3/14.

63 EU-Jordan Partnership Priorities and Compact, OJ 2016 L355/31.

64 Ibid., OJ 2016 L355/46.

65 Ibid., OJ 2016 L355/46.

66 Ibid., OJ 2016 L355/31, Art. 2.

67 Action Plan for EU-Lebanon Partnership and Cooperation 2013–2015, 2013/0149 (NLE), 28.

68 EU-Lebanon Partnership Priorities and Compact, OJ 2016 L350/114.

69 Ibid., OJ 2016 L350/121.

70 Ibid., OJ 2016 L350/124.

The Legal Effects of the Soft Law Instruments

Association Relations

The Jordan Compact and the Lebanon Compact were adopted by decision of the respective AC. Art. 217 in conjunction with Art. 218(9) TFEU formed the legal basis.⁷¹ Hence, they were closely integrated into the association process. Although the Turkey Statement's provisions were linked to aspects of the accession relations, it was adopted outside of the legal association framework. The General Court ruled that the Turkey Statement was not concluded under Art. 218 TFEU.⁷² The Compacts' main legal effect was facilitating the achievement of the goals set out in the AA. This corresponds to Cardwell's concept of soft law coexisting with hard law by forming part of an established legal framework.⁷³ The Compacts operated within the legal space of the AA. The Statement did not advance the accession negotiations.

With the Compacts, migration continues to be governed exclusively by soft law. In contrast to the preceding APs, the Compacts interlink different policies as a tailor-made response to the consequences of the war in Syria. This interconnection is especially pronounced in the Jordan Compact, where the relaxation of Rules of Origin was directly tied to a minimum quota of refugee labor.⁷⁴ The NPF conceptualized Compacts as embedded in existing partnerships.⁷⁵ The EU made use of its association relations with Jordan and Lebanon to implement specific soft law on migration.

Migration Arrangements

The Turkey Statement addressed amongst other aspects the readmission of third-country nationals, which had already been regulated in the EU-Turkey RA. The Turkey Statement is thus not a precursor to hard law. A limited assessment of law implementation showed that neither the Greece-Turkey RA nor the third-country national clause of the EU-Turkey RA was effectively applied. Current EU documentation has revealed that the Turkey Statement in effect covered for returns itself. Binding law did not achieve the objective of readmission between Turkey and Greece. Thus, a non-binding arrangement with the same goal was adopted. This corresponds to the concept of NMGs as "regulatory alternatives"⁷⁶ which pursue the same objectives in an extra-legal way. This finding is relevant as it shows how the procedural safeguards defined in Art. 218 TFEU were circumvented. Given that the Turkey Statement currently covers the largest

71 European Commission, JOIN(2018) 35 final, 2018/0406 (NLE), 3.

72 T-192/16, *NF v European Council*, para. 70.

73 Cardwell, "Tackling Europe's Migration 'Crisis' Through Law and 'New Governance'", 72.

74 EU-Jordan Partnership Priorities and Compact, OJ 2016 L355/31.

75 European Commission, COM(2016) 385 final, 5.

76 Anne Peters and Isabella Pagotto, "Soft Law as a New Mode of Governance," 15.

migration movements between Turkey and EU territory, this could further delay the application of the binding third-national clause of the EU-Turkey RA, as the EU, the Member States and Turkey might lack incentives to advance its effective application. Soft law can have a de-legitimizing and weakening effect if coexisting with hard law. Also, it can have a pre-empting effect if binding regulation is lacking. The results showed how these two theoretical dimensions could be valuably brought together to apply to the field of law implementation. If a binding regulation exists but is not applied in practice, soft law might not replace it legally, but rather substitutes its practical function. In turn, this might block the full implementation of the binding rule.

Obligations under the Turkey Statement went further than under the EU-Turkey RA. The Statement expanded the readmission scheme to persons arriving irregularly from Turkey to Greece in search of international protection. The Statement as an informal RA currently represents the only basis upon which Syrian refugees can be returned from Greece to Turkey. The dimension of this effect is not limited to the relations between the Member States and Turkey. Readmission under the EU-Turkey RA was not based on the concept of ‘safe third country’.⁷⁷ In contrast, the Statement stipulated the return of irregular migrants including those seeking international protection. Hence, the Statement transformed Turkey’s legal status. In a broader sense, one has to question what this means for the scope of Art. 38(1) APD. The ‘safe third country’ concept provides for the return of persons seeking international protection in the EU to a third country, if protection is in line with the Geneva Convention and the 1967 Protocol.⁷⁸ Turkey upheld the geographical limitation to the Convention, which raises doubts regarding protection levels. The fact that Turkey became considered a ‘safe third country’ by means of an informal arrangement weakened this legal concept. In future migration cooperation, this might lead to a more yielding application of the ‘safe third country’ concept. The legal effects of the Statement go beyond bilateral relations and might change EU legal practice regarding a key concept of its readmission policy.

The concept of EU external governance is understood as extending parts of the *acquis* to third countries.⁷⁹ However, theory does not account for the reverse process. The Turkey Statement showed that soft law can weaken a supranational legal concept. In a broader sense, this finding illustrates how hard law and soft law as a means of governance mutually interact, not only complementing but also transforming each other.

77 Within the meaning of Art. 38(1) Asylum Procedure Directive, OJ 2013 L180/60.

78 Art. 38(1) Asylum Procedure Directive, OJ 2013 L180/60.

79 Lavenex, “EU External Governance in ‘Wider Europe’,” 683.

EU Measures

The Jordan and the Lebanon Compact transformed the EU governance approach to migration in third countries. The negotiation of a binding RA represented a priority on the association agenda with both countries. The EU-Lebanon AA provided a readmission clause that was found to not be directly applicable, as the implementation of a readmission scheme would require the adoption of an RA.⁸⁰ Interestingly, the Jordan and the Lebanon Compact not only omit the negotiation of an RA, they also lack an informal readmission arrangement. This finding illustrates how the Compacts reorient the EU's governance of migration in its relations with third countries. In line with the NPF⁸¹, the new focus lies on support for the integration of Syrian refugees close to their origin. The Jordan and the Lebanon Compact were the first compacts concluded under the NPF. They will potentially inspire future compacts with third countries.

In contrast, the Turkey Statement had an inspirational effect at the level of binding supranational law. Elements of the Turkey Statement are about to become codified into the *acquis*. In particular, the expedited procedure of the Turkey Statement was integrated into a legislative proposal for a new EU regulation on resettlement.⁸² The expedited procedure entails that rapid resettlement could be conducted without assessing refugee status, only evaluating the eligibility for subsidiary protection.⁸³ Further, the Statement prioritizes migrants for resettlement who have not previously entered or tried to enter the EU irregularly.⁸⁴ The Commission's legislative proposal transformed this provision into a condition for non-eligibility, explicitly excluding these persons from resettlement.⁸⁵ If this proposal were adopted, existing vulnerability criteria for resettlement would be complemented with a questionable condition on previous migration behavior originating in the Turkey Statement. This finding reveals the reach of the legal effects of a soft law instrument that was adopted outside of formal association relations.

The Legal Effects on the Relations with Turkey, Jordan and Lebanon

Despite the high level of legal integration between the EU and Turkey, the Member States and Turkey resorted to soft law outside of the EU institutional framework. This was justified as an emergency measure. However, the Statement's legal effects considerably exceeded bilateral

⁸⁰ This condition was established by CJEU practice. Oppermann, Classen, and Nettesheim, *Europarecht*, 667.

⁸¹ European Commission, COM(2016) 385 final, 4.

⁸² European Commission, *Proposal for a Regulation – Establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council*, COM(2016) 468 final, 2016, 2.

⁸³ Ibid., 13.

⁸⁴ EU-Turkey Statement, para. 2.

⁸⁵ European Commission, COM(2016) 468 final, 12.

relations and were found to contradict its original purpose of an emergency measure.

The Compacts' main legal effect was facilitating the implementation of the AAs. The Jordan Compact in particular deepened association relations by increasing Jordan's participation in the EU trade regime. In contrast, the Turkey Statement substituted binding readmission provisions in practice, had a transformative effect on the EU 'safe third country' concept and an inspirational effect on proposed EU secondary legislation. The Statements' provisions did not advance accession negotiations. Ott's multilayer framework proves useful in explaining this finding.⁸⁶ The informalization of the readmission scheme advances EU-Turkey relations in the third legal layer, however, not in the second layer of accession. The relations thus rather develop towards a 'privileged partnership' than towards membership. The Turkey Statement had multilevel legal effects reaching beyond the bilateral relations, whereas the effects of the Compacts were limited to the respective association relations.

Institutional factors explain this finding to some extent. Decisions adopted by the AC are bound by the AA, which in turn is based on Art. 217 TFEU. This limited the Compacts to conforming to this institutional setting. The adoption of the Turkey Statement outside an institutionalized framework allowed integrating provisions not necessarily in line with the AA and the *acquis*, which ultimately produced more far-reaching legal effects. The insights from the case-based approach pursued in this thesis developed the new hypothesis that soft law adopted outside of the association relations rather produces transformative and multilevel legal effects, whereas soft law adopted within the association relations generates law-plus effects.

Conclusion

The conceptual lens of soft law as a means of governance applied in this thesis allowed a new perspective on recent EU migration cooperation with associated countries. The Jordan and the Lebanon Compact were found to mainly have law-plus effects. They facilitated the implementation of the AA provisions. In contrast, the Turkey Statement was adopted outside of the accession relations and steered EU-Turkey relations towards an informal partnership. Beyond that, it had far-reaching inspiration and transformation effects at the supranational level. Most importantly,

⁸⁶ Andrea Ott, "EU-Turkey Cooperation in Migration Matters: a Game Changer in a Multi-layered Relationship?" *Centre for the Law of EU External Relations*, 2017, accessed 15 September 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3118921.

it changed Turkey's status to a 'safe third country'. At the individual level, the instruments impacted refugees' migration patterns, their livelihood and the precariousness of their stay in the host country. The adherence to the legally non-binding commitments means that all three arrangements produced 'de facto persuasiveness'. The insights resulted in a new hypothesis: soft law adopted outside of the institutional setting of association relations has the potential to generate multilevel transformation effects, whereas soft law adopted within association relations rather produces law-plus effects.

This thesis situates itself in research on EU external governance. Legal scholarship uses the concept of governance to analyze the interactions between binding and non-binding arrangements. However, a legal perspective on the external dimension of EU governance is missing. Leading legal scholars engaging with governance primarily focus on the internal dimension. This thesis tied in with Cardwell's argument that the concept of governance might provide a useful tool for analyzing EU relations with third countries. It contributed new insights of how soft law interacts with hard law within the setting of association relations. Apart from soft law's facilitating effects on hard law, also mutually transforming processes were identified.

Further, this thesis illustrated that soft law has far-reaching impacts on refugees residing in host countries and sometimes – in line with Cardwell – these effects are even stronger than the effects of hard law. The design and adoption of soft law instruments therefore requires a careful and critical evaluation of the effects at the individual level as well as a localized understanding of refugee protection in host countries.

Migration will remain high on the EU's agenda, and related challenges in external relations are increasingly met with soft law approaches. Hence, further research on the legal dimension of EU external governance is necessary to advance the understanding of how soft law interacts with hard law and whether this in fact embodies – as argued by Dawson and Cardwell – a new paradigm beyond the prevalent idea of 'integration through law'.

Bibliography

Primary Law

Treaty on European Union, OJ 2016 C 202.

Treaty on the Functioning of the European Union, OJ 2016 C 202.

United Nations General Assembly. “Convention and Protocol Relating to the Status of Refugees.”

Geneva 28 July 1951, United Nations, Treaty Series, vol. 189, 1951.

Secondary Measures

Secondary Law

Agreement between the European Union and the Republic of Turkey on the Readmission of Persons Residing without Authorisation, OJ 2014 L 134/3, 2014.

Directive 2013/32/EU on common procedures for granting and withdrawing international protection, OJ 2013 L180/60.

Soft Law

Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006/35/EC, OJ 2008 L51/4.

Council of the European Union. “EU-Turkey Statement”, press release 144/16, 2016, accessed on 29 April 2020. <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf>.

Council of the European Union. “Joint Declaration establishing a Mobility Partnership between the Hashemite Kingdom of Jordan and the European Union and its participating Member States.” 2014, 10055/3/14.

Decision No 1/2016 of the EU-Jordan Association Council of 19 December agreeing on EU-Jordan Partnership Priorities (2016/2388), OJ 2016 L355/31.

Decision No 1/2016 of the EU-Lebanon Association Council of 11 November 2016 agreeing on EU-Lebanon Partnership Priorities (2016/2368), OJ 2016 L350/114.

EU-Jordan Association Council. “EU-Jordan Action Plan.” 2016, UE-RHJ 3301/05.

EU-Jordan Association Council. “European Neighbourhood Action Plan.” 2012, UE-RHJ 3302/12.

EU-Lebanon Association Council. “Action Plan for EU-Lebanon Partnership and Cooperation 2013–2015.” 2013, 2013/0149 (NLE).

Judgements of the CJEU

Order of the General Court of 28 February 2017, T-192/16, *NF v European Council*, ECLI:EU:T:2017:128.

Judgement of the Court of 13 December 1989, C-322/88, *Grimaldi v Fonds des maladies professionnelles*, ECLI:EU:C:1989:646.

Judgement of the Court of 30 September 1987, C-12/86, *Demirel v Stadt Schwäbisch Gmünd*,

ECLI:EU:C:1987:232.

Judgement of the Court of 30 April 1974, C-181/73, *Haegeman v Belgium*, ECLI:EU:C:1974:41.

Other Official Documentation

Council of the European Union. “Council conclusions on the return and readmission of illegally staying third-country nationals.” JAI 554 MIGR 112 COMIX 439, 9 June 2016, accessed 25 April 2020. <http://data.consilium.europa.eu/doc/document/ST-10020-2016-INIT/en/pdf>.

European Commission. “Joint Proposal for a Council Decision - as regards the two-year extension of EU-Jordan Partnership Priorities.” 2018, JOIN(2018) 35 final, 2018/0406 (NLE).

European Commission. “Proposal for a Regulation - establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council.” 2016, COM(2016) 468 final.

European Commission. “Communication from the Commission – on establishing a new Partnership Framework with third countries under the European Agenda on Migration.” 2016, COM(2016) 385 final.

European Commission. “Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours.” 2003, COM(2003) 104 final.

European Parliament. “European Parliament Resolution of 4 September 2007 on Institutional and Legal Implications of the Use of ‘Soft Law’ Instruments, 2007/2028(INI).” 4 September 2007, accessed 25 April 2020. <https://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2007-0366>.

Online Publications

UNHCR. “Syria Regional Refugee Response.” 2018, accessed 24 September 2018. <https://data2.unhcr.org/en/situations/syria>.

UNHCR. “Enhancing Resilience and Self-Reliance in Communities. End of Year Report 2017.” 2017, accessed 25 April 2020. <https://www.unhcr.org/sy/end-of-year-reports-a-year-in-review>.

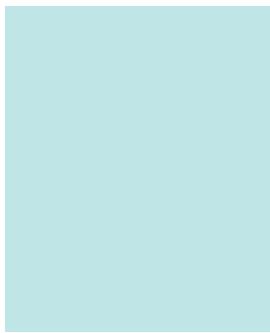
UNHCR. “UNHCR Viewpoint: ‘Refugee’ or ‘Migrant’ – Which is Right?” 2016, accessed 24 September 2018. <https://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html>.

Literature

- Barbelet, Veronique, Jessica Hagen-Zanker, and Dina Mansour-Ille. "The Jordan Compact: Lessons Learnt and Implications for Future Refugee Compacts." *Overseas Development Institute*, February 2018, accessed 24 April 2020: 1–8. <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12058.pdf>.
- Bartolini, Stefano. "New Modes of European Governance. An Introduction." In *New Modes of Governance in Europe. Governing in the Shadow of Hierarchy*, edited by Adrienne Héritié and Martin Rhodes, 1–18. Basingstoke: Palgrave Macmillan, 2011.
- Cardwell, Paul James. "Tackling Europe's Migration 'Crisis' Through Law and 'New Governance'." *Global Policy* 9, no. 1 (2018): 67–75.
- Cardwell, Paul James. "Rethinking Law and New Governance in the European Union: The Case of Migration Management." *European Law Review* 41, no. 3 (2016): 362–378.
- Carrera, Sergio, Raluca Radescu, and Natasja Reslow. "EU External Migration Policies – A Preliminary Mapping of the Instruments, the Actors and their Priorities." Project report prepared for the FP7 project 'Transnational Migration in Transition: Transformative Characteristics of Temporary Mobility of People' (EURA-NET). 2015, 1–74.
- Chinkin, Christine. "The Challenge of Soft Law: Development and Change in International Law." *International & Comparative Law Quarterly* 38, no. 4 (1989): 850–866.
- Dawson, Mark. "New Modes of Governance." In *A Companion to European Law and International Law*, edited by Dennis Patterson and Anna Södersten, 119–135. Chichester: John Wiley & Sons, 2016.
- Gammeltoft-Hansen, Thomas et al. "What is a Compact? Migrants' Rights and State Responsibilities Regarding the Design of the UN Global Compact for Safe, Orderly and Regular Migration." *Raoul Wallenberg Institute of Human Rights and Humanitarian Law*, 2017, accessed 25 April 2020. https://rwi.lu.se/app/uploads/2017/10/RWI_What-is-a-compact-test_101017-senaste-1.pdf.
- Kucukgocmen, Ali, and Karolina Tagaris. "Turkey Suspends Migrant Readmission Deal with Greece: Anadolu." *Reuters*, 7 June 2018, accessed 8 November 2018. <https://www.reuters.com/article/us-turkey-security-greece/turkey-suspends-migrant-readmission-deal-with-greece-hurriyet-idUSKCN1J31OO>.
- Lavenex, Sandra. "EU External Governance in 'Wider Europe'." *Journal of European Public Policy* 11, no. 4 (2004): 680–700.
- Möllers, Christoph. "European Governance: Meaning and Value of a Concept." *Common Market Law Review* 43, no. 2 (2006): 313–336.
- Niemann, Arne, and Natascha Zaun. "EU Refugee Policies and Politics in Times of Crisis: Theoretical and Empirical Perspectives." *Journal of Common Market Studies* 56, no. 1 (January 2018): 3–22.

- Oppermann, Thomas, Dieter Classen, and Martin Nettesheim. *Europarecht. Ein Studienbuch*. München: C.H.Beck, 2016.
- Ott, Andrea. "EU-Turkey Cooperation in Migration Matters: a Game Changer in a Multi-layered Relationship?" *Centre for the Law of EU External Relations*, 2017, accessed 15 September 2018. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3118921.
- Peters, Anne, and Isabella Pagotto. "Soft Law as a New Mode of Governance: A Legal Perspective." Edoc, the Institutional Repository of the University of Basel, 22 September 2016, accessed 25 April 2020. <http://edoc.unibas.ch/42734/>. 1–35.
- Sabel, Charles F., and Jonathan Zeitlin. "Learning From Difference: The New Architecture of Experimentalist Governance in the EU." In *Experimentalist Governance in the European Union. Towards a New Architecture*, edited by Charles F. Sabel and Jonathan Zeitlin, 1–28. Oxford: Oxford University Press, 2010.
- Schubert, Manuel, and Imke Haase. "How to Combat the Causes of Refugee Flows. The EU-Jordan Compact in Practice." *International Reports of the Konrad-Adenauer-Stiftung* 34, no. 1 (2018): 92–105.
- Senden, Linda. "Soft Post-Legislative Rulemaking: A Time for More Stringent Control." *European Law Journal* 19, no. 1 (2013): 57–75.
- Senden, Linda. "Soft Law, Self-Regulation and Co-Regulation in European Law: Where Do They Meet?" *Electronic Journal of Comparative Law* 9, no. 1 (January 2005): 1–27.
- Snyder, Francis. *Soft Law and Institutional Practice in the European Community*. San Domenico di Fiesole: EUI, 1993.
- Stefan, Oana Andreea. "European Union Soft Law: New Developments Concerning the Divide Between Legally Binding Force and Legal Effects." *The Modern Law Review* 75, no. 5 (2012): 879–893.
- Thym, Daniel. "Constitutional Foundations of the Judgements on the EEC-Turkey Association Agreement." In *Rights of Third-Country Nationals under EU Association Agreements*, edited by Daniel Thym and Margarite Zoeteweij-Turhan, 11–38. Leiden: Brill Nijhoff, 2015.
- Thym, Daniel. "Towards International Migration Governance? The European Contribution." In *The EU's Role in Global Governance: The Legal Dimension*, edited by Bart van Vooren, Steven Blockmans, and Jan Wouters, 289–305. Oxford: Oxford University Press, 2013.
- Tobler, Christa. "Context-related Interpretation of Association Agreements. The Polydor Principle in a Comparative Perspective: EEA Law, Ankara Association Law and Market Access Agreements between Switzerland and the EU." In *Rights of Third-Country Nationals under EU Association Agreements*, edited by Daniel Thym and Margarite Zoeteweij-Turhan, 101–126. Leiden: Brill Nijhoff, 2015.

- Tulmets, Elsa. "Experimentalist Governance in EU External Relations: Enlargement and the European Neighbourhood Policy." In *Experimentalist Governance in the European Union. Towards a New Architecture*, edited by Charles F. Sabel and Jonathan Zeitlin. 297–324. Oxford: Oxford University Press, 2010.
- Vooren, Bart van, and Ramses A. Wessel. *EU External Relations Law. Texts, Cases and Materials*. Cambridge: Cambridge University Press, 2014.
- Wolff, Sarah. "The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey." *European Journal of Migration and Law* 16, no. 1 (2014): 69–95.



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