Anja Mihr
Chiara Pierobon *Editors*

Polarization, Shifting Borders and Liquid Governance

Studies on Transformation and Development in the OSCE Region

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Preface

In this 2023 edition of the Organization for Security and Cooperation in Europe, (OSCE) Academy book study series on Transformation and Development: Polarization, Shifting Borders and Liquid Governance, authors examine topics and issues emblematic of the security paradigm shift occurring in times of *Zeitenwende* (the turn of an era) in the OSCE region. They present current research on shifting borders and political polarization characterizing Europe's Eastern Neighbourhood and the Central Asia countries.

This volume is divided into two parts. Part I presents chapters examining the role of borders and border practices, including patterns of border disputes among participating states of the Organization for Security and Cooperation in Europe (OSCE). The book also looks at how contested borders have impacted the engagement of international organizations such as the European Union (EU), North Atlantic Treaty Organization (NATO), and OSCE in security and conflict prevention. Particular attention is given to how European borders are slowly but progressively shifting through EU enlargement to envelop Georgia, Moldova, Montenegro, and Ukraine and to the polarization and contestation that processes of international norm diffusion have created on the ground.

In Part II, this year's editors present a special section on "Crisis, War, and Conflict in Ukraine," investigating European and international responses to the current Russia-Ukraine war. The authors examine how selected European countries and their neighborhoods have framed and engaged with the current conflict in Ukraine, pointing out the similarities and differences characterizing their positioning vis-à-vis the war. In addition, Part II provides an overview of the efforts made and the challenges faced by international organizations such as the OSCE and the United Nations (UN) to prevent and de-escalate violence.

Book Sections

The book opens the main Section on Polarization, Shifting Borders, and Liquid Governance with Chap. 1 "Migration Policies in the OSCE Region" by Anisa Abeytia, Esther Brito, and John Sunday Ojo, which explores discrepancies in the application of international asylum law among OSCE countries. In the following Chap. 2, "Early Warning Models in the OSCE: Adoption and Re-invention," Alina Isakova examines the construction of conflict early warning in the OSCE and invites the organization to re-evaluate and maintain conflict prevention and early warning efforts in Central Asia, the Caucasus, and the Western Balkans. Chapter 3 "NATO and EU Strategic Security Environment" by Aybike Yalcin-Ispir reveals that the common security threats these organizations face have increased the clarity regarding their division of labour in providing security. In the Chap. 4 "Patterns of Border Disputes Amongst OSCE Countries," Halina Sapeha, Kasra Ghorbaninejad, Ari Finnsson, Benjamin Perrier, and Emmanuel Brunet-Jailly investigate the extent to which the OSCE patterns follow or do not, those in the rest of the world. In the Chap. 5 "Assessing Water (Ir)Rationality in Nagorno-Karabakh," Leonardo Zanatta and Marco Alvi emphasize the centrality of water resources—and, more precisely, their deterioration and scarcity—for regional security by focusing on the transboundary water management issues characterizing Nagorno-Karabakh.

The Chap. 6 "Vetting as a Tool for Strengthening Judicial Integrity in the OSCE Region" by Teodora Miljojkovic looks at judicial vetting to strengthen institutional integrity and, through a case study focused on Serbia, illustrates the inherent dangers of the vetting procedure, which requires only that members reach the internationally prescribed levels of the rule of law compliance. In the Chap. 7 "Human Rights Adjudication in Central Asia," Saniia Toktogazieva provides evidence on how internal political dynamics and the fundamental rights-related jurisprudence of Kyrgyzstan, Kazakhstan, and Tajikistan are being shaped by external geopolitical factors, not necessarily by international laws promoting fundamental rights. The Chap. 8 "Human Rights and Social Media: Challenges and Opportunities for Human Rights Education" by Joanna Kulesza analyses the ambiguity of existing freedom of expression safeguards and, primarily, their online application based on the example of the Polish draft law on freedom of online speech. Similarly, the Chap. 9 "Digital Citizen Activism in Central Asia: Beyond Contestation and Cooperation" by Bakhytzhan Kurmanov focuses on the virtual space and mobilization of citizens through social media that contributed significantly to the October events in Kyrgyzstan in 2020 and the January riots in Kazakhstan in 2022.

In the Chap. 10 "The Dilemma of Good Governance Versus Power Grab in Georgia," Shalva Dzebisashvili scrutinizes the diffusion of bad governance practices characterizing regime transition in Georgia. His analysis uncovers how, by using informal rule and reform masking, political elites do little to prevent the complete monopolization of power. This thesis is further investigated by Malkhaz Nakashidze, who, in the Chap. 11 "Transformations of Georgia, Moldova, and Ukraine Towards EU Membership," discusses the common and differing challenges faced by Georgia,

Moldova, and Ukraine in the process of democratic transformation towards EU membership as of June 2022. Analogously, the Chap. 12 "Backsliding Rule of Law and "Stabilitocracy" in Montenegro" by Mirko Đuković offers a historical overview of democracy-building in the country. The contribution focuses on the ongoing constitutional crisis framed as the direct result of an ineffective transition carried out by a single party that has remained in power for three decades. Finally, the Chap. 13 "OSCE Securitization and De-securitization-The Kosovo-Serbia Dialogue" by Eni Lamçe brings to light the progress made on Kosovo's path to democratization by emphasizing the role played by regional actors, namely the USA, the EU, and the Russian Federation, in enhancing the country's domestic developments.

Part II of this anthology presents a Special Section on chapter "Crisis, War and Conflict in Ukraine," analysing international reactions and perspectives. The section begins with a short Chap. 14 titled "Introduction to the Special Section," where the editors of this volume—Anja Mihr and Chiara Pierobon—briefly familiarize the reader with the specific framing and terminology used by the EU and the OSCE in this regard. The Chap. 15 "Ukraine's European Integration in the Context of Russian Aggression" by Maryna Reznichuk investigates cooperation between Ukraine and the EU, reviewing the process of creation and implementation of a legal framework for harmonizing the Ukrainian legal system with the *EU acquis communautaire* in times of conflict.

Valerio Alfonso Bruno and Federica Fazio's Chap. 16 on "Italian Governments and Political Parties Vis-a-Vis the War in Ukraine" shows that the transition between the technocratic national unity government led by Mario Draghi and the right-wing political government led by Giorgia Meloni has taken place under signs of continuity. In Chap. 17 "Shaping German Feminist Foreign Policy in Times of Conflict in Ukraine," Chiara Pierobon examines Germany's response to the current conflict in Ukraine through a feminist lens. The chapter reveals that the current armed conflict has been used to develop and articulate the substance of a German Feminist Foreign Policy in practice. In the Chap. 18 "Polish Reactions to Russian Aggression Against Ukraine" Joanna Dyduch and Magdalena Góra consider the case of Poland and emphasize how external threat has silenced internal highly politicized debate and, to some extent, suspended domestic political conflict. The Chap. 19 "German, French, and Polish Perspectives on the War in Ukraine" by Caroline L. Kapp and Liana Fix compares the strategic interests and history of relations with Russia of Germany, France, and Poland and how these have influenced their approaches to delivering military support to Ukraine.

Veebel and Ploom illustrate the response to Russian aggression in Ukraine on behalf of the Estonian public and elite. Their Chap. 20 "Estonian Fears, Hopes, and Efforts–Russian War Against Ukraine" highlights the country's support for more severe sanctions and fear that Russia will use the same logic and action against the Baltic States. The Chap. 21 "Greece's Response to Russia's War on Ukraine" by Panagiota Manoli pinpoints that country's unitary and solid position in supporting Ukraine and how the current conflict has strengthened the centrality of rule-based order and the ties to EU and NATO allies in Greek foreign policy.

In Chap. 22 "Turkey's 'impartial' *Tarafsız*: Turkey's Impartial Stance Vis-a-Vis Russia's War Against Ukraine," Eleonora Tafuro Ambrosetti examines Ankara's role as a mediator in the current conflict, emphasizing its successful attempt to balance being pro-Ukrainian without being openly anti-Russian.

In Chap. 23 "The United Nations and the Russian-Ukrainian War," Georgios Kostakos critically assesses the inability of the UN to prevent or foresee the conflict, as well as the failure of its Security Council to deal with an armed conflict involving one of its five permanent members as an aggressor. Similarly, in the Chap. 24 "OSCE's Resilience in Times of War," Jelena Cupać pinpoints the challenges faced by another international organization: the OSCE. The author highlights how the organization had struggled long before Russia annexed Crimea in 2014 and how the pressure of the war in Ukraine will likely lead to an organizational decline or, at least, contraction. Finally, in the Chap. 25 "Transitional Justice in Ukraine," Anja Mihr discusses how the country might be best funded and legally prepared for a transition toward democracy that could last for decades.

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Part I
Main Section: Between Stability
and Transformation in the OSCE Region

Chapter 1
Migration Policies in the OSCE Region

Anisa Abeytia, Esther Brito, and John Sunday Ojo

1.1 Introduction

In 2015 over one million Syrians sought asylum in Europe. This triggered a rise in migratory policy responses anchored in Eurocentrism, built on historical biases, and enshrined in European laws, codes, and legal norms (Ameeriar, 2017; Dunbar-Ortiz, 2021; Emilsson & Öberg, 2022; Mishra, 2017; Perocco, 2018; Walia, 2021). Today, these policies have fundamentally shaped OSCE (Organization for Security and Co-operation in Europe) refugee and migration governance in a manner that warrants further analysis.

Critical literature has highlighted that Eurocentrism is enshrined in the legislative structures that shape the OSCE approach to migration policy, which manifest as inequities and an institutionalized tiered system that favors the migration of European communities over that of non-Europeans (Abeytia, 2021; Dunbar-Ortiz, 2021; Walia, 2021). Understanding how these policies reproduce biases is fundamental to assessing the realities of modern migration. Tracing this evolution, Perocco (2018) identified the rise of anti-migrant Islamophobia in European societies as an embedded structural phenomenon. He observed its normalization and increase in line with non-white economic immigration, noting that throughout the 1990s, punitive policies, practices, and discourses began to take more explicit shape in Europe. These narratives included themes such as "the Islamic invasion, the irreducible difference, the

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female condition, the incompatibility, and the impossible integration" to justify policies and practices of exclusion—manifesting as variations of discrimination, from social coverage and economic opportunity to targeted security policies, normalized institutional discrimination, and continued micro acts of violence across European states (Perocco, 2018).

Subsequent mass displacements of refugees have further exacerbated these systemic political fractures, which have crystallized in the lack of consistent implementation of the international right to asylum. A clear example is the European Union's (EU) recent adoption of the instrumentation of asylum law, which further erodes international norms in favor of the nation-state (European Commission 2021). This law highlights the growing social and political polarity driving the migration policy agenda by favoring the measures dictated by individual EU member states rather than more cohesive international legal obligations. As such, it affirms that white nationalism, not a refugee-centered agenda, is increasingly driving policy (Høy-Petersen, 2022; Campbell & Pedersen, 2014; Djuve & Kavli, 2019).

These policy approaches adopted in the Global North have become normalized and remain unscrutinized for biases in their instrumentation of migration law. Implementing polarized domestic policy in OSCE countries recreates the social structures of otherness and sets the basis for discriminatory approaches toward migration flows. This becomes evident in the case of France and its relationship with local non-white and migrant populations. Such racial otherness was the basis of a controversial anti-veil bill passed into law in 2010, which involved ethnonationalism rhetoric and did not target Christian religious coverings (Brayson, 2019). Again, across parts of France, migrant communities are segregated and often confined to banlieues—geographically isolated suburbs (Jobard, 2020), where young residents are commonly stereotyped as terrorists. Despite many being second and third-generation immigrants born and raised in France, they tend to be subjected to routine police and identity checks under the pretext of confirming their identities. The riots in France in 1983, 1990, and 2005 resulted from such collective racial stereotyping (Ware, 2014). As such, we see that general conceptions of integration or nationality are not the core driving factors of discrimination. However, non-white bodies are subjected to perceptions of threat, control, and otherness, both domestically and internationally (Linke, 2010).

National security and social cohesion are often cited as justification for these exclusionary migration laws and policies in the Global North (Dunbar-Ortiz, 2021; Walia, 2021). Yet the impacts of these practices extend into the Global South and act to benefit elites that deploy them to maintain a hold over minority populations, political dissenters, refugees, and internally displaced populations. It is essential to examine the underlying ideological bias that shapes migration policy to begin to apply the standards and laws prescribed by international asylum law universally across regions and populations (Medeiros, 2019; Schain, 2018).

1.2   The Underlying Ideological Basis of Migration Policy

A growing body of literature highlights biases and colonial antecedents within policy structures. In his book, Julian Go (2016) postulates the necessity of recognizing and addressing the insertion of post-colonial structures within the social sciences. Similarly, in "Not a Nation of Immigrants", Rozanne Dunbar-Ortiz (2021) outlines the deep social coding embedded in the USA's racialized social structures, most apparent in its immigration laws. Walia (2021) writes that law and policies are the "bricks of Fortress Europe".

Building upon this literature, we recognize colonial antecedents as echoes of empires that continue to shape societal structures and bureaucratic apparatus through unchecked biases in law, policy, and codes rooted in Eurocentric racism developed during colonization (Abeytia, 2021). This legal structure not only negatively impacts non-European refugees in the Global North but also marginalizes populations throughout the OSCE region—as exemplified by detailed reports of the state of Islamophobia in Europe (European Union Agency for Fundamental Rights, 2018). This is because colonial antecedents escape empirical examination as a normalized worldview (Go, 2016). Additionally, colonial antecedents project outward from the Global North and broadly impact OSCE countries' governance of minority and marginalized populations, promoting and favoring exclusionary practices over active democratic social inclusion—manifesting in varied ways, from targeted security policies to structural violence and deliberate state indifference (Davies et al., 2017; Perocco, 2018).

Systems of exclusion are upheld by legal practices that favor whiteness by employing brutal tactics to discourage populations from the Global South from migrating such as long-term detention (Mainwaring, 2020) and which continues to be "amplified by the language of our discriminatory legal frameworks and migration policies" (Abeytia & Diab, 2021a). These practices are not applied uniformly with some high-skilled migrants actively sought out by Global North states to supplement a shortage of skilled workers in specific fields (OCED, 2020; Germany to Change Immigration Laws to Attract Skilled Labor, 2003). However, these instances remain the exception rather than the norm—migrants are welcomed not based on their rights or identity but in exception (Jaskulowski & Pawlak, 2020). As such, colonial antecedents continue reverberating throughout the OSCE region as deep racialized social coding based on hierarchies established by European powers and rooted in racial identity (Ameeriar, 2017; Dunbar-Ortiz, 2021; Go, 2016; Mishra, 2017; Walia, 2021).

Indeed, constructing a white identity in the U.S. and its subsequent codification into immigration policy allows us to trace the blueprint of discriminatory migration practices and social exclusion in Europe (Samaddar, 2020). The production of a white racial category prevented non-European populations from gaining citizenship in the USA and limited the number of non-whites who could enter the country legally (Walia, 2021). In the 1900s, the eugenics movement bolstered this racial ideology. The exportation of USA racial ideology to Europe found a home in Nazi Germany,

where Jim Crow laws were the foundation of the infamous Nuremberg Laws (Dunbar-Ortiz, 2021). The Nuremberg Laws are an extreme manifestation, as was the trans-Atlantic slave trade and the 1882 Chinese Exclusion Act. However, blatant displays of racial exclusion should not be the only rubric to measure biases within migration and asylum policy in OSCE countries. The subtle insertions of biases into migration policies are legal microaggressions, intentional or not, and negatively impact non-Europeans and marginalized populations. Scandinavian countries, renowned for their institutionalized egalitarianism, provide salient examples on the appearance of post-colonial antecedents.

Despite efforts by Sweden and Norway to create structural practices of inclusion, Scandinavian states provide examples of the manifestation of biases situated in racial identity. In a recently published article, Høy-Petersen (2022) describes white Norwegian society as holding "deep-seated racist attitudes and stereotypes, but superficially display[ing] egalitarian behaviors". She defines this as a duality of human cognition that "obscures people's awareness of their negative stereotypes" and argues that this makes confronting racism difficult (ibid.).

Policymakers are not immune to personal biases or those of the societies in which they live (Ameeriar, 2017; Samaddar, 2020). In this regard, Sivanandan writes, "we are moving from ethnocentric racism to Eurocentric racism, from the different racisms of the other member states to an everyday, market racism" (Webber, 1991, p. 11). This Eurocentric worldview is expressed as preserving European values, cultural heritage, and religious traditions. It permeates to border security—underlying the efforts to maintain a fortress Europe—and refugee integration policy, which is imbued with the colonial mentality of the inadequacies of populations from the Global South who require civilizing by European integration policies (Emilsson & Öberg, 2022).

Along this line, Brandt and Crawford's (2016) boundary phenomenon can assist us in explaining the negative and sometimes violent reaction to refugees and internally displaced people (IDPs). As refugees and IDPs move into new regions throughout the OSCE countries, their entry serves as a breach of a barrier that previously existed physically and mentally. As such, Hungary's and the United States' push to erect border walls reflects a desire to literally build a boundary between refugees and local populations. Similarly, Australia's offshore housing of asylum seekers and using African and Middle Eastern countries as sites to hold refugees and IDPs obey this logic. Brandt and Crawford further explain that "having clear boundaries helps people feel like the opposing group is distinct and far away. That is, they won't be so much of a threat" (Tourjée, 2016). It had become evident that Fortress Europe and the model of erecting border walls and fences arose as a visceral spatial response to the boundary phenomenon (ibid.). These coercive aspects of migration policies and their harsh repercussions signal a despotic approach (Mitchell & Russell, 2020), visible in migration policies that institutionalize mechanisms rooted in the colonial past.

Migration policy is thus increasingly shaped by political polarity and influenced by nativist and populous movements. In this line, Djuve and Kavli (2019) write, "[t]his highly ideological policy field is an interesting case for the study of policy learning

versus ideas as drivers for institutional change or continuity". The recent conflict in Ukraine contrasted with the international response to Syria, highlights that the application of immigration and asylum law is not universal or ubiquitous throughout the OSCE region and is a direct example of the functioning of colonial antecedents in the application of migration policy that is, a reflection of the privileges attributes to whiteness. However, the preferential treatment given to Ukrainian refugees has been attributed to Ukraine's attempts to defend Europe from Russian aggression. Such a justification has been chastised in several socio-political fora. It has been claimed that such a discriminatory impasse demonstrates the unequal treatment and selective solidarity that exposes the prejudices embedded in EU asylum and refugee policies (Venturi & Vallianatou, 2022).

1.3   The Operative Frameworks of Migration of the OSCE and ODIHR

In exploring how colonial antecedents shape and condition migratory policy responses, it becomes essential to understand the frameworks within which the OSCE political architecture is developed and rationalized. This analysis allows us to account for the significant differences between formal policy objectives and the practical realities and lived experiences of migrants and asylum seekers traversing OSCE territories.

OSCE participating countries define the parameters of their migration policies within broader regional operation frameworks. Member states make several commitments to govern migration policy in a coordinated manner, including the Helsinki Final Act (1975), the Madrid Document (1983), the Vienna Final Document (1989), the Copenhagen Document (1990), the Paris Charter for a New Europe (1990), the Moscow Document (1991), the Helsinki Document (1992), the Budapest Document (1994), and documents adopted by the Ministerial Councils of Maastricht (2009) and Sofia (2004) (OSCE 2016). These various policies have included provisions promoting anti-discrimination, anti-racism, integrative integration, and social inclusion as part of the underlying values embedded in migration governance.

While the OSCE has no enforcement mechanism and is only a political and non-legally binding organization, it defines the framework for migration policies within the OSCE region. It is the OSCE Office for Democratic Institutions and Human Rights (ODIHR) that consolidates the activities of participating states to ensure the protection of human rights. The organization has a legal mandate to ensure that the participating states and their agencies' programs align with the OSCE's objectives, especially in mitigating discrimination against asylum seekers and refugees (Froehly, 2016). As such, the ODIHR engages directly with issues of migrant rights, including a push for electoral participation, democratization, integration, and resident registration systems.

With this aim, the ODIHR enacts guiding principles to be utilized by stake-holders—such as politicians, local authorities, and advocacy groups, among others—in defining migration responses coherent with overarching fundamental protections. As such, the ODIHR provides an enabling environment to evaluate migration policies and execute the rule of law programs. By reinforcing these various activities, the ODIHR seeks to support participating states in constructing inclusive and cohesive societies under a human rights-based approach to migration policy.

Unfortunately, fundamental differences remain between these policy frameworks' formal and practical spheres. Beyond structural failures in policy framing that may not account for the experiences of many migratory or displaced populations, political actors often adopt migration narratives to frame diverse social discourses to influence electoral outcomes. In this manner, polarizing domestic politics incentivizes political actors to instrumentalize narratives around migration favoring differential responses to specific sub-sets of migrants as a means of strategic framing.

1.4   The Instrumentalization of Migration Policy as a Political Strategy

The polarization of domestic policy aligns with the rising controversies associated with migration in most OSCE-participating countries. Emerging fringe far-right and populist parties capitalize on exclusionary ideologies to mobilize voters and increase their political capital often resorting to misinformation, disinformation, or selective cases of unwanted consequences derived from migratory movements. In countries like the United States of America, Donald Trump successfully adopted anti-migrant catchphrases during the election campaign, such as describing Mexican migrants as rapists and drug dealers. Similarly, the Polish President consistently leveraged derogatory accounts of migrants, asserting the importance of protecting Polish citizens from the "epidemic" of immigration (Andreas, 2009). Countries are embroiled in a narrative that perceives outsiders as a threat (Esses et al., 2017), leading political actors to hijack these insecurities to promote negative sentiment for political gain (Dempster & Hargrave, 2017). These statements are then translated by the media and molded by receiving societies in ways that compromise practical inclusion at the community level (OSCE and ODIHR, 2021).

Examples of rising political actors who have adopted these instruments to garner political support and encourage social fear abound (Juhász & Szicherle, 2017). The extreme right-wing party Vox in Spain used anti-migrant and xenophobic narratives as a springboard and now occupies the position of the third largest party in parliament. Similarly, conservative leaders Andrzej Duda in Poland and Viktor Orban in Hungary have sought to maintain power through the designation of internal enemies and the promotion of conservative hard-line policies, most aimed at migrants and minorities. Even in famously progressive Sweden, the arrival of asylum seekers from Syria in

2015 and 2016 resulted in an increasingly negative framing of migrants, weaponized under the assumption that they would commit crimes and even acts of terrorism.

These emerging polarized parties' use of racially charged metaphors has continued to breed intolerance and discrimination against migrants across the OSCE region (Ameeriar, 2017; Dunbar-Ortiz, 2021; Mishra, 2017; Walia, 2021). Much of the language adopted in public migration discourse often dehumanizes migrants and infringes on their fundamental rights. For instance, framing migrants as "others," "queue-jumpers", and "not like us" has continued to promote a destructive relationship between the citizens of host countries and incoming migrants (Doherty, 2015). This has impacted the policy regarding public pushback and political calculations (ODI, 2019).

Similarly, terms like "illegal" and "undocumented" have been widely chastised as pejorative, with many migrants being allowed to remain in their host countries without legal documents to work (MRCI, 2007). Alternative framings, such as that of "irregular migrants", are also problematic, as the Migrant Rights Centre Ireland denotes "a person cannot be irregular, but rather be in an irregular situation" (MRCI, 2007, p. 17). In this context, "irregularity" can be considered a social construct because specific laws classify certain types of migration as irregular and unwanted.

As becomes evident, political actors' framing of migration significantly shapes public perception of migrants, refugees, and asylum seekers (Doherty, 2015). The capitalization of this narrative by polarizing political forces to pursue nationalist and populist political aims builds upon the historical, racial and colonial antecedents we have identified to create narratives of villainization and social exclusion. Thus, despite formal policies toward migrant rights having been introduced and committed to, current trends demonstrate that we are far from being able to truly address the primary concerns of refugees and asylum seekers in OSCE countries and that we continue to fail to implement international protection standards consistently.

1.5 Differential Implementations of Migration Governance

Having explored the structure and instrumentalization of policies that regulate migration management throughout the OSCE region, we examine the patterns of treatment by European Union authorities of Ukrainian versus Syrian and Afghan refugees as a case study. We use this analysis to evidence how migratory policies are implemented differentially according to the target groups' identity characteristics. We thus explore the institutional dehumanization and structural racism that has become entrenched in EU migration and integration policies, in line with the rise of far-right populism and social polarization in narratives regarding migrants and their place in society. Furthermore, we note the longstanding impact of these policies beyond EU borders, as the political actions of the Global North condition migration management in the Global South. We conclude that the operationalization of migration governance is directly conditioned due to political polarization substantiated by xenophobic and racist narratives in Europe.

1.5.1   The Cases of Mass Displacement of Ukrainian, Syrian, and Afghan Refugees

The last few years have seen the rise of displacement crises worldwide—from Myanmar to Ethiopia. Over the last decade, Europe has been a destination for various mixed-migration influxes; the most prominent being those driven by the Syrian, Afghan, and Ukrainian conflicts. The Syrian conflict saw 6.8 million refugees over 11 years in the Middle East and Europe (World Vision, 2021). At the same time, Afghan asylum seekers represented less, only 21% of the refugees that fled to Europe from 2015 to 2016 (IRC, 2016). At that time, the EU recorded 2.4 million asylum applications, which marked the most significant influx of refugees to Europe since World War II (Brücker, 2022).

Comparatively, since the beginning of Russia's invasion in February 2022, over 6 million Ukrainian refugees have crossed into other states in only a few months (UNHCR, 2023) dwarfing the scale of previous displacements. Still, the reception that Ukrainian refugees have received has been entirely different from that experienced by those who came before. We emphasize the scale of the displacement to argue that the mass of those displaced was not the determining feature in the European migratory policy. While all the cases presented correspond to severe and intense crises of displacement affecting civilian populations due to the onset of war—and thus are somewhat comparable—the following social and political responses cannot be more disparate (De Coninck, 2022).

Considering this, we explore the manifestations of refugee protection concerning social, political, and economic disparities. The displacement experiences of Ukrainian refugees have differed significantly from those of Syrian and Afghan asylum-seekers in terms of public opinion, political narrative, humanitarian assistance, and policy responses (Diab, 2022; Trauner & Valodskaite, 2022). European public opinion about the reception of displaced Ukrainian refugees has been overwhelmingly positive—including calls to "keep borders open" and widespread commitments to aid and integration from neighboring states. The EU has even implemented the "Mass Influx Directive", a policy obligating Member State to provide humanitarian and medical aid, accommodation, and relocation assistance to refugees and access to education and the labor market (Brücker, 2022). This temporary protection regime is a watershed moment and a complete breakaway from previous EU migration governance in the twenty-first century (Trauner & Valodskaite, 2022). Individual state reactions have also been notably different. Key examples would be Poland and Hungary, which have implemented open border policies, deployed extensive humanitarian support and granted access to those fleeing without any need for documentation (Diab, 2022). These cases are particularly striking, given the states' previously rigid stance against other migration flows.

In contrast, Afghan and Syrian asylum seekers in 2015 and 2016 were met with villainization and apprehension (Bayrakli & Hafez, 2018; Benoist, 2018; Walida, 2021). European media described the mass displacement as a "refugee crisis" for Europe—a narrow, Eurocentric, and ahistorical assessment of the events.

The problem focused on those fleeing violence rather than on nationalism, xenophobia, and Islamophobia, equating asylum-seekers to security threats (Poynting & Briskman, 2020). European countries institutionalized the redirection of flows of migrants and asylum seekers perceived as non-white and non-christian, often forcibly and violently (Islam, 2020). In 2015, Hungary went as far as to raise border fences, closing off migratory routes and enacting laws that made it a criminal offense to aid immigrants entering irregularly to apply for asylum (Human Rights Watch 2018). Other countries, like Greece and Spain, became notorious for illegal pushbacks on land and sea routes. The EU detained incoming refugees for up to 18 months (Global Detention Project 2022)in polar opposition to the reception we now see of Ukrainian migrants, who have been granted immediate access to protected status without applying for asylum.

The migration and refugee move since 2022 also saw the re-emergence of ethno-nationalist discourses of European identity. It made evident Europe's belief in the continent's universe of obligation that is, its conception of who deserves to be saved. Thus, nationality and racial origin have played a significant role in determining who got what at any given moment, creating polarity between refugees and asylum seekers who were to be protected and those who were not. The combination of these elements has caused the EU's migration governance to have devastating effects on the human rights of non-white migrants (Crépeau & Purkey, 2016).

Indeed, the acceptance and protection of Ukrainian refugees fleeing the Russia-Ukraine war contrasts with the EU's approach to other refugees, such as Iraq, Afghanistan, and Africa. Recently, at the Belarus-Poland borders in November 2021, this inhumane treatment resulted in the deaths of at least 13 people, including a one-year-old Syrian boy (HRW, 2021). It is also worth mentioning that, during the mass displacement of Syrians following the Arab Spring, no Temporary Protection Directive was activated (World Vision, 2022). Even now, excluding non-Ukrainian refugee permits—primarily Afghans, Syrians, and other non-white minorities—and asylum seekers from temporary residences has resulted in allegations of discrimination in EU migration policies. While Ukrainian refugees have been granted freedom of movement within the EU, refugees and asylum seekers from other non-EU countries remain accommodatedor, more aptly, contained—in detention centers (Micinski, 2022). The selective treatment of refugees and asylum seekers raises the truism of non-discrimination inherent in OSCE policies (OSCE, 2009), evidencing the racial hierarchy in migration management (Ray, 2022).

We also highlight that the undertakings of the EU regarding refugee policy manifest as special policies of exclusion and have long-standing effects beyond the region (Stock et al., 2019). Migration scholars have increasingly analyzed how extraterritorial migratory control by states in the Global North affects countries in the Global South (Rechitsky, 2016). Notably, before the onset of the Syrian war in 2011, the EU furthered its coordination with bordering states through the establishment of agreements that provided incentives to neighboring non-EU states to become permanent hosting areas. The aim was to create low-cost alternatives to prevent migrants from being able to reach mainland Europe as part of the EU's externalization policies (Diab, 2022). In this line, the EU expanded its previous agreements with multiple

African nations—most infamously with Libyan strongman Muammar Gaddafi—to prevent African migrants from accessing the continent (European Council, 2022). Similarly, to manage migration flows from Syria, the EU entered into an agreement with Turkey that provided reduced visa restrictions for Turkish citizens and 6 billion euros in aid (Terry, 2021). Another notable example of this policy logic can be found in the offshore processing of asylum seekers on the islands of Manus and Nauru by Australian officials, simultaneously held up as a model by EU states and condemned by human rights organizations for violating international law.

In 2015, as Syrian and Afghan refugee flows increased, Europe further strengthened its re-bordering process. It continued to undermine the regional internal asylum procedures enshrined in the Dublin Agreement (Knudsen & Berg, 2021). EU states violated humanitarian law and forwent their responsibilities under the EU's standard asylum system—including via the use of illegal pushbacks, militarized borders, deportations, unlawful denial of entry to asylum-seekers, and even the subcontracting violence to bordering states. This illustrates the boundary phenomenon introduced by Brandt and Crawford (2016), which explores phenomena such as the "off-shoring" of asylum seeker processing, constructing border fences, bolstering border patrol enforcement, and criminalizing search and rescue efforts. An example of these exacerbating abuses would be the murder of 23 young migrants attempting to cross the fence separating Morocco from the Spanish city of Melilla (Brito, 2022).

In this way, Europe has institutionalized policies of containment that create centers, camps, informal shelters, and other structures to limit mobility for migratory populations both within and outside the EU. These policies seek to indefinitely contain and control those deemed as "unwanted" populations (Knudsen & Berg, 2021).

This phenomenon is often referred to as "campization" through which asylum laws and reception policies have consolidated camp-like characteristics in refugee accommodation. Many other non-OSCE countries have since replicated these policy approaches (Frelick et al., 2016) throughout the Middle East and Africa, regions heavily impacted by refugees and IDPs, where states now utilize camps as barriers, for example, 'The Jungle in Calais' in France; Moria on the Greek island of Lesbos and the vast network of camps in southeast Asia that house the Rohingya, or Jordan's Za'atari; and the largest camps located in Africa are all expressions of colonial antecedents halting the flow of non-European populations fleeing from the continued aftermath of colonization (Abeytia & Diab, 2021a, 2021b). The severity of the situation and the dire conditions in these camps have led many of these refugee populations to exist in a status of "social death" (Patterson, 1982), as their experiences of structural disenfranchisement operate as a form of slow attritional violence, placing them outside of life (Afana, 2021).

It has become evident that there is a differential consideration of who has the right to move through social spaces and exist within society. Ukrainian refugees have not been segregated or put in camps; families house them and receive extended social and economic support for integration. Afghan and Syrian refugees, however, were contained in overcrowded and insecure camps or informal settlements, with limited aid and little opportunity or intent to facilitate integration, often not being

granted refugee status at all. The racialized element of this containment becomes evident in the treatment of Ukrainian refugees of color, who were obstructed from leaving and discriminated against in processing areas (Ray, 2022). This differential perception of belonging has often been presented inhumanely by news reporting that sought to differentiate Ukrainian displaced from African refugees—evoking notions of whiteness, civilization, and a sense of kinship in messaging that embodies ideals of white nationalism and colonialism. In this way, we affirm that it is not necessarily the nature of the conflicts themselves that truly drive differential responses but the perceived notion of belonging that defines treatment in destination states.

To analyze the underlying conditions that account for the differential policy responses and implementations in migratory movements, we draw from scholars like Stephan et al. (2009). Their research states that discriminatory treatment can arise when migratory populations are deemed a "symbolic threat". This refers to the belief or fears that migrants will "challenge the in-group's religion, values, belief systems, ideology, or worldview" (De Coninck, 2022). Scholars in the field have identified this as a significant source of prejudice (De Coninck & Matthijs, 2020). The perception of a symbolic threat in the European context is inherently tied to Islamophobia and colonial antecedents. Indeed, studies on anti-immigrant sentiments in Europe have found not only that it is on the rise (Wieviorka, 2018), but that threat considerations are applied primarily to those arriving from non-European states (Czaika & Di Lillo, 2018), mainly those migrants who are associated with Islam, whether or not that be their actual religious affiliation (Heath et al., 2020). This was confirmed by the results of the European Social Survey, which established that, after the Roma, Muslims were the most unwelcome group in Europe (Heath & Richards, 2020).

As noted, these perceptions have their roots in colonial and racial ideologies. However, their rise in prominence also derives from their instrumentalization by specific political actors in domestic politics (Kaya, 2019). It is well-documented how populist parties have sought to leverage politics of fear around xenophobia, Islamophobia, and Euroscepticism as a fundamental electoral strategy (Oztig et al., 2021). The rise of populism in Europe has been particularly intertwined with Islamophobia—to the extent that selectively restrictive immigration has become the "battle horse" of right-wing populist movements (Pickel & Öztürk, 2021). Conversely, while far-right parties have further exacerbated these exclusionary sentiments, these groups have only been able to capitalize upon racism and anti-immigration as electoral strategies because of the pre-existing social biases and fears already present among European populations (Bayrakli & Hafez, 2018).

Populist movements have drawn upon concepts of nativism and identity politics to affect public opinion through discourses surrounding European and national heritage, substantiated by rejecting the integration of Muslim refugees and refugees of color (Kaufmann, 2018). In this line, Dennison and Geddes (2019) have explored the main drivers of voter support for populist parties in Western Europe related to immigration. The two main pain points exploited by these parties were economic and cultural uncertainties (Grossman & Helpman, 2021). Economic anxieties related to recessions and austerity policies increased receptivity to messaging of cultural backlash from anti-immigration populist parties. Primary messaging revolved around hostility to

immigration and nationalist conservative values. To follow our previous examples, Andrzej Duda's administration in Poland and Viktor Orban's in Hungary have used this discourse of migration and Islam as political leverage. Other groups, like Vox in Spain, National Rally in France, and the Northern League in Italy, have implemented similar strategies villainizing non-white migrants. It is also worth noting that even these seemingly anti-immigration parties have welcomed Ukrainian refugees openly—once again evidencing that the issue is not one of displacement but of identity. As such, there is a direct connection between the securitization of immigration and formal and informal political strategies selectively leveraged to exclude foreign populations (Orsini et al., 2022).

The practical manifestations of European refugee governance represent a paradigmatic example of the colonial and racial functioning of migration policies. Despite formal policies advocating for equal treatment, the imposition of a vision of symbolic threat upon non-white and non-christian migrants and asylum seekers has evidenced that, contrary to the narratives in OSCE and EU institutions, historic biases still define the lived experiences of migrants from the Global South in Europe. This is true throughout the OSCE region, primarily due to the policy ripples that have followed the securitization of European migratory movements.

The reception of Ukrainian refugees evidences how protection frameworks should work. As such, the stark differences that can be appreciated when evaluating how these mechanisms operated for Syrian and Afghan refugees highlight how colonial mindsets and Islamophobia warp the implementation of international obligations in an irrefutable manner. We have reviewed how the utilization of these issues by populist movements has become a centerpiece of regional politics, noting that it will only have further long-standing impacts on local and refugee populations threatening social cohesion and prompting further segregation. It remains clear that people are not disconnected from their history. As for other research endeavors, we must incorporate a critical colonial lens into understanding and assessing migration policies throughout the OSCE region.

1.6   Conclusion

This chapter has addressed the political polarization of migration policy across the OSCE region and in some of its 57 participating states most affected by migrants—most of them EU countries. Although several policy structures have embraced an equitable approach—influencing how the reception and integration of refugees and asylum systems are operationalized—the current migration regime remains heavily conditioned by historical, racial, and religious biases. This affects the practical implementation of policy and is aggravated by the political instrumentalization of migration narratives by emerging nationalist and populist forces seeking to leverage social insecurities for political purposes.

The international community's response to the Ukrainian crisis exemplifies the appropriate course of action that states should undertake when faced with mass displacement, as its implementation of policy and structural protections adhered to international asylum and human rights laws. Adopting this approach across populations is a critical first corrective measure in addressing colonial antecedents within migration policy frameworks.

A second step requires the inclusion of diverse voices in the drafting of migration policy—particularly those of affected populations. The fact that authorities implement migratory measures without accommodating representatives of displaced communities inherently makes these approaches fallible, fragile, and subject to political bargaining. Non-inclusive and state-centric policies are ineffective in addressing the human security impacts of mass displacement and thus worsen, rather than ameliorate, social crises. As such, it becomes crucial to ensure that representatives from refugee and asylum-seeker communities are active agents in migration governance. Representation in this sphere becomes a source of policy transformation and social resilience, potentially facilitating counterfactuals to historical and racial biases in developing a more inclusive policy formulation and implementation.

Finally, inequalities in migration policy stand to be challenged by an expansion of permitted policy actors, promoting whole-of-society collaborations between local policymakers, researchers, refugees, host communities, and civil society to reduce political and social polarization. These networks emerge as sites of civic resistance and become a base to sustainably address and acknowledge colonial antecedents within migration policy across the OSCE region. Localizing these migration decision-making frameworks allows for developing micro-social policies of active social inclusion that are responsive to specific local conditions and promote bottom-up integration through increased social and political engagement with displaced populations.

The impact of historical, colonial, and racial hierarchies on migration policy is undeniable. Consequently, we require approaches to policy solutions that are active and socially embedded designed with the specific aim of not only combating these antecedents but deconstructing them.

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Chapter 2
Early Warning Models in the OSCE: Adoption and Re-invention

Alina Isakova

2.1 Introduction

"Preventing the outbreak of destructive conflict remains one of our most difficult challenges in the twenty-first century", noted Alice Ackermann in 2003 (Ackermann, 2003:339), and this remains a crucial challenge for the OSCE region. After the end of the Cold War, the norm of conflict prevention (CP) developed across the international organizations (IOs), drawing on the United Nations Charter and such documents as the 1992 *Agenda for Peace* (UN, 1992). International bureaucracies, including their leading figures, e.g., the UN Secretary-General or the OSCE High Commissioner on National Minorities (HCNM), have played an important role in promoting, interpreting, and putting this norm into action. Focusing on the OSCE's conflict early warning (EW) component, this paper shows the role that the OSCE has played in not only adopting and implementing but also re-interpreting the norm of conflict prevention.

In the past decades, conflict prevention and early warning have entered the agenda of such IOs as the United Nations (UN), the European Union (EU), the African Union (AU), and the Organization for Security and Co-operation in Europe (OSCE). These organizations are among the heavyweights in the sphere of conflict prevention with active conflict prevention/early warning mechanisms and policies (Ackermann, 2003; Matveeva, 2006; Lund, 2009; Wulf & Debiel, 2009), and with a global (in the case of the UN and EU) or regional (in the case of the OSCE and the AU) outreach in this field.

This work contributes to understanding how early warning is constructed in international organizations as it pertains to conflict prevention. Since IOs play a major role in preventing conflicts through early warning (EW) mechanisms, it is important to grasp their understanding of it, as well as of possible responses. At the end of

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the day, these perceptions and constructions impact action or in-action by IOs (see for example Paris, 2003; McEvoy, 2017). In the past, there have been increasing discussions on the weaknesses of the OSCE and a necessity of reviving its capacities, including in the area of peace and security (i.e. Friesendorf & Wolff, 2022; ICG, 2022; Sammut, 2020; SIPRI, 2020). As shown by the outbreak of the war in Ukraine, the menace of violent conflicts is more than real, even in Europe. Uncovering the OSCE's EW mechanisms and their background, could shed light on prospects of re-activating the role of the organization in early warning and response activities.

This paper sets out to answer the following research question: How is early warning constructed in the OSCE? In this regard, it takes into consideration the role of international bureaucracies (IBs) in promoting the world cultural models of CP and EW. To better understand the case of the OSCE, its developments are considered in the context of similar developments in other IOs and the world cultural environment, into which they are embedded.[1] World cultural models embody the structure in which international organizations operate and which renders influence on their behavior. Since world culture is dynamic and controversial, international bureaucracies take up explaining it and offering expert solutions on the relevant matters as they shape the agendas in the IOs and beyond. To grasp their construction, the focus of this paper is on conflict early warning discourse(s)[2] among international organizations. It draws on a variety of primary sources originating from the IOs, as well as secondary sources on their work in CP.

2.2   Conflict Prevention and Early Warning

Starting from the Congress of Vienna and the creation of the United Nations, conflict prevention has been present on the international agenda (Ackermann, 2003). CP encompasses a wide range of measures—from 'structural' (long-term) to immediate (short-term) activities. The focus of this work is on operational, reactionary CP, namely early warning and response.

Early warning covers "gathering information and analyzing it to determine when a situation might lead to armed conflict, with a view to taking preventive action" (Rakita, 1998:541). Its stages include: 1. data collection; 2. data analysis; 3. assessment for warning/scenario identification; 4. formulating action proposal; 5. making recommendations; and 6. assessing early response (Austin, 2003). Early warning is literally useless without follow-up action. *Early response* includes actions aimed at reduction, resolution, or transformation of a conflict (ibid.). It covers such instruments as preventive diplomacy and mediation.

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[1] According to Meyer et al., world culture incorporated in people and organizations is dynamic and powerful – defining the actions and meanings of actors, despite of their self-perception of completely rational and self-interested actors (Meyer et al., 1997, p. 168). World culture itself puts importance on action and purposeful actors, and they at the same time continue being the (sometimes unaware) carriers of world culture.

[2] On the role of discourse, see for example Phillips et al., (2004), Tag (2013).

Warning and response should ideally go 'hand-in-hand' but active engagement with the problem—be it by local, national, or international actors on the ground or at distant IO headquarters—often faces a prolonged and sometimes futile decision-making process (see for example Wulf & Debiel, 2010). Improving this process appears rather necessary when one thinks of the conflicts ravaging in the world today (for an overview on the ongoing conflicts see Davies et al., 2022). At the same time, the success of early warning is extremely hard to measure, because "the event that was to have been prevented does not happen" (Miall, 1997, p.83).

The latter might be the reason why early warning has not been a topic as popular among scholars as peacekeeping and peacebuilding efforts. There are, of course, works devoted to the definition and importance of CP, including EW (Lund, 2002; Rakita, 1998; Ackermann, 2003; Austin, 2003), and more recently, on the evolution of EW (Muggah & Whitlock, 2022), knowledge production on EW across organizations (Engel, 2018a) or in/by particular organizations (Ackermann, 2003; Engel, 2018b). Some papers focus on the role of a particular organization(s) in the field, for example on EW in the UN (Dorn, 2004; Zenko & Friedman, 2011), the EU (Tercovich, 2014), the AU (Cilliers, 2005; Noyes & Yarwood, 2013), and the OSCE (Ackermann, 2009; Neukirch, 2013; Schernbeck, 2017).[3] But compared to other security dimensions the number of publications is still small, and the research gap invites further inquiries. Likewise, in other areas, such as inter-organizational cooperation, early warning has not been a favoured topic, with peacekeeping and peacebuilding encountered more often (see for example Paris, 2003; Brosig, 2010; Koops & Tardy, 2015; McEvoy, 2017; Tardy, 2019).

Despite being 'elusive' EW is still a very much indispensable part of conflict prevention. Hence, it is necessary to better understand its development. This paper offers a unique account of EW construction since 1990s—both taking into consideration the early warning agenda across international organizations and with a particular focus on the role of the OSCE and its bureaucratic units (HCNM and CPC). To better understand the EW construction in IOs and the role of international bureaucracies in this process, I first turn to theoretical approaches of IR constructivism and sociological neo-institutionalism.

2.3 Constructivism, World Society Theory, and International Bureaucracies (IB)

Construction of a certain policy area, such as conflict early warning, could be underlain by various factors—both internal and external to organisations. It includes international norms and the impact of influential actors, such as the UN, that promote these norms. Most of these norms are "embodied in the United Nations" and in the UN

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[3] See also works on mediation and preventive diplomacy mechanisms in the OSCE (Ackermann et al., 2011; Sabanadze 2013) and AU (Porto and Ngandu 2014), and crisis response across organizations (Debuysere and Blockmans 2019).

Charter, including such international principles as sovereignty, peaceful settlement of disputes, and cooperation (Nardin & Marpel, 1992).

A compilation of the existing international norms and principles could be linked to the neo-institutionalist notion of "world culture". World culture plays a role in defining—while also being defined by—such actors as international organizations (e.g., Meyer & Bromley, 2013; Meyer & Rowan, 1977; Meyer et al., 1997). While at times being highly dynamic and controversial (for instance, one could think of the contradiction between the non-intervention and "responsibility to protect" principles), world culture could explain a high level of organization and bureaucratization, as well as the similarity of approaches and policies among actors around the globe, namely isomorphic developments in world politics (Meyer et al., 1997).

International Bureaucracies (IBs) are seen as the most "fit" candidates for disseminating the world cultural models. By abiding to the "logic of appropriateness" (March & Olsen, 1998) and being related to the norms accepted in the international community, they could also increase their own significance (Barnett, 2010). IBs' importance continues to grow due to their expertise, social capital, and ability to produce information and shape approaches in the IOs, among its members, as well as in the wider political field globally (Barnett & Finnemore, 2004).

Considering both the role of the IBs in the construction of policy frames and the importance of the world culture they are operating in, this work explores the construction of conflict early warning in and by international organizations, in particular the OSCE, since the 1990s. The following section briefly overviews the world cultural models that matter most when constructing early warning.

2.4   International Organizations and World Cultural Models

As mentioned above, international norms and/or world cultural models play an important role in the policy approaches of IOs that act as promoters and transformers of world culture. Without diminishing the role of IOs as (potential) contributors to international norms (see also Meyer et al., 1997: 151), this section focuses on the world cultural models related to constructing conflict early warning in IOs. These do not pertain to just one specific organization but are shared across IOs and other actors of world politics. First among these world cultural models that have been accepted and promoted by IOs is conflict prevention; second is cooperation (among IOs), including in the EW field; and finally, both models are linked to bureaucratization in world society, which underlies the growing role of IBs and their importance in EW.
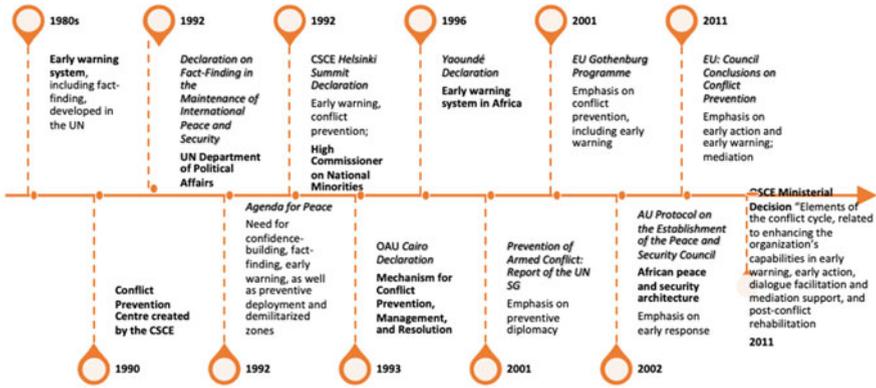
Fig. 2.1 Establishment of conflict prevention and early warning on IO agendas. *Source* Compiled by the author

2.4.1 World Cultural Model of Conflict Prevention and Early Warning

The 1980s and 1990s saw conflict early warning enter the realm of world politics—starting with the UN. Despite resistance of some member states, the UN bureaucrats worked on introducing related mechanisms into the UN system (Rakita, 1998). This paved the way for broader promotion of the *world cultural model of conflict prevention* among various IOs, including the OSCE, the AU, and the EU, (I)NGOs, and states.[4] Thus, IOs and other actors often share an understanding and principles related to CP that are rooted in the UN Charter and have further developed over the past decades (see Fig. 2.1). The United Nations Charter, Chapter VI refers to such conflict prevention means as negotiation, inquiry, mediation, conciliation, judicial settlement, and arbitration, as well as the ability to "resort to regional agencies and arrangements" in Chapter VIII. The latter is regularly reiterated in the OSCE documents, as well as the fact that the UN remains the primary global actor for dealing with issues of peace and conflict in the world (CSCE, 1992; OSCE, 1999; OSCE, 2002; OSCE, 2011c).[5]

1990s. One of the first, seminal documents related to CP per se is the 1992 *Agenda for Peace*, in which the UN Secretary-General (UN SG) Boutros-Ghali emphasized the need for confidence-building, fact-finding, and early warning, as well as cooperating

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[4] Nowadays, conflict early warning is also part of the agenda of such IOs as ASEAN and ECOWAS; INGOs such as International Alert, International Crisis Group; and states as Germany (FEMCD 2019) among others. In this paper, I focus on the four organizations – the AU, EU, OSCE, and UN – that have not only played a major role in constructing the norm of conflict prevention but have also developed functioning mechanisms of conflict early warning and response based on this norm.

[5] In the EU documents there are also references to the UN Charter (European Communities, 1997; Council of the European Union, 2009).

with regional organizations (UN, 1992).[6] Moreover, the term "preventive diplomacy" (coined by the UN SG Dag Hammarskjöld in 1960) was reinvented. In the same year, the *Declaration on Fact-Finding in the Maintenance of International Peace and Security* (UNGA, 1992) was adopted by the UN General Assembly (UNGA, 1992). The UN Department of Political Affairs was created in order to provide support to the UN SG on the issues of conflict prevention. It came as a replacement for the first early warning system which had existed in the UN since the 1980s (Rakita, 1998).

Similar developments took place in the OSCE (then the CSCE[7]) when its Conflict Prevention Centre (CPC) came into existence in 1990. Following this, the 1992 CSCE Helsinki Summit Declaration and Helsinki Decisions put forward early warning, conflict prevention, and conflict management; and established the CSCE High Commissioner on National Minorities (HCNM), who was to become "*an instrument of conflict prevention at the earliest possible stage*" (Helsinki Decisions, 2/II, CSCE, 1992).

The creation of the African Union prevention mechanisms similarly took place in 1990s: in 1993 the Cairo Declaration on the Establishment of the Mechanism for Conflict Prevention, Management and Resolution within the Organization of African Unity (predecessor of the African Union) (OAU, 1993) was adopted, and the 1996 Yaoundé Declaration (OAU, 1996) put forward an early warning system on conflict situations in Africa.[8]

2000s. Following the 1999 United Nations annual report on "Preventing War and Disaster" (UN, 1999), two UN Security Council (UNSC) Discussions in 2000 and 2001, as well as two subsequent reports by the UN SG in 2001 and 2006, were devoted to conflict prevention (Lund, 2009, p. 293). The 2001 *Prevention of Armed Conflict: Report of the Secretary-General* stressed the importance of conflict analysis and emphasized the efficiency of timely preventive diplomacy (UN, 2001).[9]

In the European Union the importance of conflict prevention measures has been underlined in a number of conferences by the member states (European Communities 1996; European Communities 1997, p. 3), as well as the EU reports (European Union, 2008, p. 9) and conclusions (Council of the European Union, 2009). In 2001, the Gothenburg Programme (European Council, 2001) stressed the role of CP, including early warning, in EU external activities.

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[6] He also included preventive deployment and demilitarized zones into the list (UN 1992).

[7] Conference of Security and Co-operation in Europe (CSCE) – a predecessor of the OSCE (from 1 January 1995).

[8] For more details see Odote (2016).

[9] Since the early 2000s, conflict prevention has also figured in the main UN documents on the *Responsibility to Protect* principle (e.g., ICISS 2001; UN GA 2005; UN GA 2009) and its *Responsibility to Prevent* (ICISS 2001; UN GA/UN SC 2016). But it is necessary to delineate between prevention of armed conflict and the prevention of atrocity crimes (genocide, war crimes, ethnic cleansing and crimes against humanity) that is the main focus of the R2P agenda. This delineation is clearer in more recent documents (e.g., UN GA/UN SC 2018; UN GA 2021).

In 2002, the AU Protocol on the Establishment of the Peace and Security Council (PSC Protocol) was adopted by the AU General Assembly (AU, 2002). It defined the details of the African Peace and Security Architecture and put an emphasis on early response. In 2004, the Common African Defence and Security Policy, Para. 13(j) emphasised "*early action for conflict prevention, containment, management, resolution and elimination*" (AU, 2004).

2010s. In 2011, the EU Council Conclusions on Conflict Prevention explicitly emphasized early action and early warning, in particular the necessity of obtaining information for the purposes of conflict risk analysis from various sources, from member-states to EU Delegations and civil society actors. In 2010s, a particular emphasis was placed by the EU on strengthening mediation as a significant part of its preventive action, building on the 2009 Concept on Strengthening EU Mediation and Dialogue Capacities (Council of the EU, 2009). After signing the Lisbon Treaty and on the verge of the EEAS creation, the presentation by the Deputy Director of the EU Crisis Management and Planning Directorate in the OSCE put forward the importance of mediation and strengthening mediation capacity (OSCE PC, 2010). In the documents from the same event—the Annual Security Review Conference—the following year there was a proposal issued for a "Concept on Strengthening Mediation-Support within the OSCE" that includes establishing mediation-support focal point (OSCE CIO, 2011).[10]

The year 2011 marked the adoption of OSCE Ministerial Decision No. 3/11 on the "Elements of the conflict cycle, related to enhancing the organization's capabilities in early warning, early action, dialogue facilitation and mediation support, and post-conflict rehabilitation" that stressed the importance of "*timely and preventive responses to crises and conflicts*" that requires, among other things, "*a comprehensive early warning capacity across all three OSCE dimensions*" (OSCE, 2011c). Both a 'comprehensive approach' (e.g., EU, 2016, also) and a renewed stress on mediation (e.g., EEAS, 2021) can be observed in other IOs (see Debuysere & Blockmans, 2019). In the OSCE, mediation capacity in the Conflict Prevention Center developed after 2011, after the adoption of guidelines based on the UN principles of active mediation (ibid.) and the UN General Assembly resolutions 68/303 of 31 July 2014 and 70/304 of 9 September 2016 (OSCE, 2016, p. 113). The Mediation Support Team (MST) within the CPC/Operations Service was created in 2014 (OSCE CPC, 2014). In fact, all four organizations—the UN, EU, OSCE and AU—have created relevant structures such as Mediation Teams. As shown above, the development of similar conflict prevention approaches took place across a number of IOs. Of course, mandates and functions might vary but the world cultural model of conflict prevention is hard to overlook. This is also seen in the similarities in the organizations' structures, such as 24/7 crisis centers/rooms and mediation teams/groups.

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[10] This study does not suggest that one or the other organization was the very first one to pave the way for working on the issue (this lies beyond the scope of this paper), but it is important to underline the reiteration of the shared conflict prevention model by both organizations.

The development and proliferation of the *world cultural model of conflict prevention*, including its early warning component, has led to a significant "imprint" not only in the normative sense but also in the creation of new structures in international organizations and world politics at large. As the next part shows, the latter was often reinforced by (and helped to reinforce) the cooperation among IOs in the area of conflict prevention.

2.4.2 World Cultural Model of (Inter-Organizational) Cooperation

In the past decades, international organizations have been developing cooperation in conflict prevention, leading to its institutionalization (signing agreements and memoranda, establishing points of contact), which is largely based on the *world model of cooperation* (see for example UNGA, 1993a, b). In the past decades, the UN, the EU, the OSCE, and the AU have developed (mostly bilateral) links with one another. Between the OSCE and the UN, as well as the OSCE and the EU, regular meetings, and contact, as well as mutual briefings at high and staff levels take place (see for example UNSC, 2017, 2018, 2019, 2020, 2021). There is also authorized cooperation among similar units across the organizations, e.g., the EU Situation Room and the UN Operations and Crisis Center (Council of the European Union, 2018; EEAS, 2019). In conflict early warning, international organizations have been building formal ties along the informal relationships that mostly involve information exchange.[11] The exchange is easier due the OSCE, EU, and UN membership overlap,[12] as well as the proliferation of the *world cultural model of conflict prevention* (see previous section).

In the long run, the impact between cooperation structures and CP/EW is mutual—cooperation contributes to strengthening the intersubjective understanding of the latter. First, formalisation of cooperation contributes to the strengthening of the relevant norms. Second, joint conferences and workshops support a common basis for understanding. For example, in 2003 an OSCE representative took part in an AU workshop on early warning in Addis Ababa that "*brought together selected experts to assist the AU Commission in determining a road map for the establishment of a Continental Early Warning system*" (OSCE, 2003a, 2003b).

Among the latest attempts to build a common understanding are the panel discussion between the office of the HCNM and the UN (OSCE, 2020b, p. 51), the 2019 discussion on "Preventive Diplomacy in the Changing Landscape of Modern Conflict: The Role of Regional Organizations" in New York that included the League of Arab States, the EU, the Organization of American States, the AU, the Shanghai

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[11] Online interviews with IGO ex-employee, IGO and NGO employees, April-August 2022.

[12] Especially in case of the EU, which has a 'seat at the table' in the OSCE and even issues statements supporting/legitimizing the OSCE position in front of the participating states; for example, in the case of the early warning issued by the OSCE HCNM on the 2010 interethnic clashes in Kyrgyzstan (OSCE 2010).

Cooperation Organization, the OSCE, and the UN (OSCE, 2019a), as well as the 2021 OSCE seminar on conflict cycle (OSCE, 2021a).

Thus, the mutually strengthening world cultural models of CP/EW and cooperation lead to the reinforcing of new approaches both inside and across the IOs. Nevertheless, these developments would not be the same if it were not for the bureaucratic nature of IOs. This has made possible the creation of the specific structures and mechanisms in the IOs based on the world cultural model of conflict prevention.

2.4.3   Bureaucratization in World Society

We can now observe worldwide what Meyer, Driori and Hwang have called the "organizational structuring of social life" (Meyer et al., 2006: 25). Commonly accepted policy standards and world models, as well as modern formal organizations with elaborated technical structures aimed at achieving policy-related goals are a result of this global process (Meyer et al., 2006). In the past decades, the relevant bureaucratic structures, mechanisms, and roles have also developed in the IOs regarding early warning and response (EWR) (see Table 2.1).

International bureaucrats are responsible for looking for trends and patterns in conflict situations and monitoring, data collection, and analysis (AU, 2018; EEAS, 2021; UN, 2020, 2021). These functions are usually fulfilled by a specific body in the headquarters, such as the EU and AU Conflict Warning Systems, OSCE Conflict Prevention Centre, EU and AU Situation rooms, OSCE Operating Room, UN Operations and Crisis Centre, or in the case of the African Union also in the Observation and Monitoring Centres of the Regional Economic Communities. Since the capacity of the bureaucratic units is limited, situation monitoring can also be undertaken by country teams, delegations, and missions on the ground. In subsequent stages, fact-finding missions, e.g., the UN SG fact-finding mission (UN, 1992), the EU in-country and follow-up missions (EEAS, 2020), the AU fact-finding missions (AU, 2012), or the OSCE fact-finding missions (OSCE, 2005; European Parliament, 2005) could take place to evaluate a situation.

Early Response, such as preventive diplomacy and mediation measures, is also implemented by international bureaucracies. For example, the OSCE SG made the CPC/Operations Service a focal point for mediation support (OSCE CPC, 2014). "Quiet diplomacy" or "good offices" of the UN SG are renowned in this regard, as well as "diplomacy for peace" by the UN special envoys and representatives (see UN, 2006, 2020). Early action by the OSCE High Commissioner on National Minorities takes place in the first stages after they and their office identify a situation as worrisome.

Table 2.1 Bureaucratic units in charge of conflict early warning and response in the IOs

Organization	United Nations (since 1945)	OSCE (since 1995)	European Union (since 1993)	African Union (since 2000)
Units in charge of conflict early warning and response	UN Secretary-General and the Secretariat: Department of Political and Peacebuilding Affairs, incl. United Nations Operations and Crisis Centre (UNOCC) (24/7); Department of Peace Operations; UN Standby Team of Mediation Experts; High-Level Advisory Board (HLAB) on Mediation. Office of the United Nations Commissioner on Human Rights (OHCHR)	Secretary General and the Secretariat: Conflict Prevention Center (CPC), incl. OSCE Operating Room (24/7); Mediation Support Team. High Commissioner on National Minorities and their office	Political and Security Committee (PSC). High Representative for Foreign Affairs and Security Policy / Vice-President of the European Commission, European External Action Service: Common Security and Defence Policy: Integrated Approach for Security and Peace Directorate (ISP): ISP.2 Conflict Prevention and Mediation Support, incl. the EU Early Warning System and the EEAS Mediation Support Team (MST); Common Security and Defence Policy: EEAS Crisis Response and Operational Coordination Department: Crisis Response System, including the EU Situation Room (24/7). European Commission: Service for Foreign Policy Instrument	African Peace and Security Architecture: Commission and its Chairperson: Commissioner for Political Affairs, Peace and Security and their Department (since 2018); Panel of the Wise; Continental Early Warning System (CEWS), incl. the Situation Room (24/7)

Source Compiled by the author

But I know, of course, in the UN and the EU… I think, mediation efforts are very similar. … I don't' think, there's a particular OSCE, let's say, method of mediation, which is unique compared to the EU and UN (Interviews 2022).[13]

With the establishment of the permanent structures and world cultural models on which IBs base their activities on, their importance and legitimacy increased.[14] Their increased significance would also mean they could 'turn the wheel' now and use their acquired importance and legitimacy to strengthen further the world cultural models of cooperation and conflict prevention. As the next section indicates, IBs can also impact the interpretation, implementation, and further development of world cultural models such as conflict prevention/early warning—be it due to their preferences or situational needs. The following case studies demonstrate some peculiarities of conflict early warning construction in the OSCE in the past decades, focusing on the role of the High Commissioner on National Minorities and the Conflict Prevention Center in its structure.

2.5 Construction of Conflict Early Warning in the OSCE

Being embedded into the world culture, the OSCE both contributes to and adopts the principles, components, and mechanisms of conflict early warning that are being promoted by and exist in the UN and other organizations with developed EWR systems.

2.5.1 High Commissioner on National Minorities

The OSCE's EW is primarily managed by the principles put forward in the 1992 CSCE Helsinki Summit Declaration, which was especially important because it created the position of the High Commissioner on National Minorities (CSCE, 1992).

„The High Commissioner provides "early warning" and, as appropriate, "early action" at the earliest possible stage regarding tensions involving national minority issues that have the potential to develop into a conflict within the CSCE area, affecting peace, stability, or relations between the participating States" (Helsinki Decisions, 23/I, 1992).

Here, it is necessary to emphasize that, contrary to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) or the UN High Commissioner for Human Rights, the HCNM's primary task is to monitor and address the threats of inter-ethnic conflict, not the rights of minorities per se (OSCE, 2008). And although this is

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[13] Online interview with IGO employee, April 2022.

[14] A number of studies discuss the increased importance and authority of IOs include Barnett and Finnemore (2004), Dijkstra (2012), Meyer et al. (2006).

a specific type of conflict, most of the conflict early warning discourse of the OSCE in the 1990s and 2000s can be found in the HCNM addresses and reports.

Officially, the HCNM (along with the OSCE Secretary General and OSCE participating states) can issue an early warning in order to draw the attention to the seriousness of the situation and call for the involvement of the OSCE and its participating states (Helsinki Decisions, 3/II, 1992). The HCNM has formally issued early warning only 2 times—in 1999 for Macedonia (now—North Macedonia) with regard to the refugee influx from Kosovo to the Former Yugoslavian Republic of Macedonia (FYROM) and in 2010 concerning the inter-ethnic tensions in Kyrgyzstan (OSCE, 2022b).

In May–June 2010, before the "Kyrgyz Events," the High Commissioner visited the country. After the situation deteriorated, a formal early warning was issued on June 12th (OSCE, 2010). The 2010 HCNM appeal included a call for action by the OSCE participating states and drawing the attention of the UN Security Council to the matter (ibid.). Unfortunately, no decisive action followed, even though the Participating States received the full information promptly (OSCE, 2011a/ HCNM2011).

In such a politicized and diverse organization as the OSCE, issuing the formal early warning thus does not guarantee success.[15] From the early years, this dubiousness led to a re-interpretation of a more practical mandate that offered a niche in which the HCNM could apply its powers.

The focus has switched to early action preceding the formal early warning, leaving it up to the "more potent institutions or forces" to act upon this (OSCE, 2003b, pp. 4–5). As the example of Kyrgyzstan shows, such action might not live up to expectations. Thus, High Commissioners have tried to avoid issuing early warnings until all other means are exhausted:

> But the approach for every High Commissioner has been to try not to issue early warning, until he or she … has really no means to influence the situation anymore. …And every High Commissioner sort of turned it around: let's have a lot of early action to avoid issuing an early warning (Interviews, 2022).[16]

Here, we can see how the international bureaucracy has transformed the usual model of moving from early warning to early response/action to fit better the existing constraints and opportunities of the organizational structure and it's political "filling".

Drawing on the existing mandate and the relative autonomy it offers, the HCNM has often turned to such early action as fact-finding, quiet diplomacy, and mediation, as well as providing legal and policy advice to governments to avoid issuing an official early warning (see also OSCE, 2008, OSCE, 2018a). Gathering information for analysis through visits to the states of interest and meeting with the parties forms a considerable part of HCNM activities (HCNM, 1999). Based on the above, recommendations are made, and specific facilitation steps are undertaken, including discussions with the relevant parties (Helsinki Decisions, 12/II, 1992).

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[15] Online interview with IGO employee, August 2022.

[16] Online interview with IGO employee, April 2022.

The HCNM remains important regarding both "quiet diplomacy" and the long-term prevention of inter-ethnic conflicts (OSCE, 2021c). This, however, does not exclude making open statements as a public figure to encourage the governments to abide by the international norms of peace and security; for example, the latest speeches of the HCNM have included an appeal to the authorities of Tajikistan and Kyrgyzstan, as well as Uzbekistan to resolve their territorial disputes peacefully (OSCE, 2019b, 2020c, 2021f).

2.5.2 Conflict Prevention Centre

The OSCE CPC in Vienna oversees monitoring the situation and contributing to sustaining peace in the OSCE region through providing information, analysis and recommendation to the OSCE Secretariat and its participating states. The CPC "functions as the OSCE-wide focal point for early warning, while its Mediation Support Team is in charge of dialogue facilitation and mediation support" (OSCE, 2020a). However, the CPC has a lot of other functions, such as supporting inter-state dialogue in the context of the Forum for Security and Cooperation (FSC), and confidence- and security-building measures (CSBMs). The latter has to do with military activities and security at large. In addition, the CPC oversees planning, restructuring, and closing field operations. In short, there are a lot of functions and tasks that call for prioritization. CPC monthly reports from past decades show an apparent inclination toward military issues, from non-proliferation to ammunition to mélange extraction, rather than an early warning.

Although the Forum for Security Cooperation could potentially serve as a platform for early response in the OSCE (OSCE, 2012), EW has not always received much attention from the CPC (especially considering the high level of HCNM involvement in many relevant conflicts when they qualify as inter-ethnic).

In the wake of the failure to address the inter-ethnic violence in Kyrgyzstan in 2010 (see also OSCE, 2012), there was a serious emphasis on "developing a 'culture' of early crisis response in the OSCE" that included both the role of the HCNM and the Secretariat's CPC (OSCE, 2011b/CPC 2011).

In 2012, the Early Warning Guidelines were worked out by an internal working group that included representatives of the HCNM and CPC and were disseminated to all the OSCE executive structures (OSCE, 2012). The document stressed the importance of field institution heads, the Secretary-General and CPC Director, and the Chairmanship of the Permanent Council in addressing early warning issues and the importance of cross-dimensional and cross-body coordination. It suggested a working definition and relevant early warning procedures (from data collection to analysis to communication) with case-by-case decision-making and a goal of timely response.

These developments have created momentum for the so-called "informal early warning" in the OSCE that is, to a large extent related to the field office focal points reporting to the CPC on potential risks (OSCE, 2012). The primary function of these

focal points is collecting, analyzing, and delivering the relevant information to the headquarters. These focal points are the Network of Early Warning Focal Points in the executive structures, including field offices and missions (OSCE, 2018b). While some missions, e.g., the Mission to Skopje (OSCE,), have an explicit early warning mandate, some structures do not, e.g., the OSCE Programme Office in Bishkek. However, there still may be a focal point—a person in charge of gathering and analysing the relevant information for the CPC (OSCE, 2018b, 2019[17]). Since 2012, a meeting of the focal point representatives for information exchange and capacity-building has been held annually (OSCE, 2018b).

In the past decade, early warning has become more and more associated not only with the HCNM, but also with the work of the CPC and its Network of Early Warning Focal Points, as well as field offices, e.g., in North Macedonia or Georgia (the Incident Prevention and Response Mechanism) (see OSCE, 2018b, 2019a, 2020b, 2021c, 2022a).

Here, as with the HCNM, we see a unique way in which international bureaucrats have been able to pursue EWR that goes beyond the formal early warning in the OSCE. In the case of the CPC, "informal early warning" has become an important part of its activities in the organization's conflict prevention and EWR framework.

2.6   Conclusion

It is impossible to talk about constructing conflict early warning in the OSCE—or other major international organizations—without discussing the universal norms and the so-called world cultural models (commonly accepted approaches and standards of policymaking). This work has focused on world cultural models necessary for constructing conflict prevention and conflict early warning in IOs: the world cultural model of conflict prevention that lays a foundation of generalized perceptions of CP/EW among organizations and the model of cooperation, as well as their bureaucratization that contribute to sustaining similar policy approaches across organizations.

As the OSCE example shows, the world cultural models reflected in the organization's mandate can be interpreted in a manner that international bureaucracies see fit to fulfill their mission better. Such bodies as the High Commissioner on National Minorities and the Conflict Prevention Centre thus contribute to implementing CP/EW policies and constructing their understanding and, ultimately, the future of conflict early warning.

Taking a closer look at the OSCE, this study has uncovered interesting elements of EW interpretation on account of the specifics of the organization at large, as well as the role of the HCNM, which has become one of the first "instruments" for dealing with inter-ethnic conflicts. Due to the challenging international environment and difficulties in making the early warning and response work, the HCNM has put early

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[17] Online interview with IGO employee, August 2022.

action before early warning. The HCNM's "quiet diplomacy" —primarily based on the principle of confidentiality—has become a more critical element of the job than preparing and officially issuing early warnings, which the HCNM has exercised only twice, namely in Macedonia (now North Macedonia) in 1999 and Kyrgyzstan in 2010.

Additionally, external events can trigger discursive and subsequent structural changes in the organization. After the "failure" to address inter-ethnic clashes in Kyrgyzstan in 2010, the early warning became more prominent in the OSCE agenda, including its Conflict Prevention Centre. This also relates to "informal early warning" (including information gathering and analysis) via the Early Warning Focal Points in the field offices that report to the CPC. Similarly to the office of the HCNM, the CPC has re-invented early warning—in this case, by focusing on "informal early warning."

Unfortunately, recent developments in the Azerbaijan-Armenia confrontation and the war in Ukraine demonstrate once more[18] that the result of these debates are long overdue, and a more decisive approach is needed in order to revive the OSCE's role in conflict prevention and early warning. They also call for the re-evaluation of the organization's role and finding its "niche" when the conflicts are over,[19] as well as keeping up conflict prevention and early warning efforts in Central Asia, the Caucasus, and Western Balkans.

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[18] Despite the official acceptance of the worsening situation on the ground (e.g., OSCE 2021h) and reports of the Special Monitoring Mission to Ukraine on hundreds of ceasefire violations (e.g., OSCH, 2021i, 2021j, 2021k), no decisive actions have been taken in the OSCE. Of course, more research is needed to assess whether any preventive action could have helped to prevent the war per se. Nevertheless, the organization has still failed in terms of adequate and timely response.

[19] According to the ICG report, the OSCE could play a role in ceasefire monitoring via a new field mission or a joint peace operation with the UN (ICG 2022: 16–17).

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Chapter 3
NATO and EU Strategic Security Environment

Aybike Yalcin-Ispir

3.1 Introduction

The North Atlantic Treaty Organization (NATO) and the European Union (EU) are the two essential actors of the European continent. These organizations have many overlapping areas regarding their members, geographical coverage, and agenda items. Security was the reason for the founding of NATO, while throughout its history, the EU has not had a primary focus on security.

For states and international organizations, identifying and evaluating enduring and new security challenges are crucial for their survival. Such information is collected in classified or public strategic security documents, which serve as the primary references for describing the threats, deciding on proper actions, and determining the need for development to better cope with threats (EU, 2022; NATO, 2022a).

In 2022, both NATO and the EU adopted strategic documents defining the security environment in which these organizations operate. As a military and political alliance, NATO revises its strategic concept approximately every ten years, and the adoption of the 2022 Strategic Concept document coincided with a severe change in the security landscape of NATO members with both the withdrawal from Afghanistan in August 2021 and the Russian invasion of Ukraine in February 2022. On the other hand, for the EU, accepting the Strategic Compass in such a turbulent time indicates its increasing relevance in security and defense. Although it is not the first time the EU has initiated such a process, with the Russian invasion of Ukraine, publishing a document assessing the strategic security environment has more significance for the EU.

This chapter investigates how NATO and the EU shaped their latest strategic documents by considering the significant changes in their security environments. By examining this, it is aimed to reveal whether these organizations could make their roles regarding the safety and security of the European continent apparent in

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their overlapping responsibility areas. The study analyzes official documents and open-source articles regarding the topic. In the first part, the security governance approach is explained to understand better the theoretical framework for the European security governance between NATO and the EU. The following details examine the previous strategic documents of NATO and the EU and their attempts to establish a strategic partnership on security to track the evolution of the security roles of these organizations. Later, the strategic documents of NATO and the EU published in 2022 are scrutinized to grasp their perspectives better. Based on all these examinations, the final section compares strategic documents under three headings: collective defense, crisis management, and cooperative security.

3.2   Security Governance Approach

The emergence of new and non-traditional security threats following the post-Cold War era necessitated the solving of problems with the inclusion of various actors and adoption of different cooperation methods, also referred to as "governance without government" (Rosenau & Czempiel, 1992). Hanggi supports the idea that governance includes horizontal and vertical dimensions, namely the inclusion of several non-state actors as well as an increase in the interaction among these actors in various platforms (2005, p. 7). While Rosenau and Czempiel describe governance as "a more encompassing phenomenon than government" (1992, p. 4), Webber et al. underline that the difference between government and governance is that government is traditionally understood as suggestive of centralized authority, vertical and hierarchical forms of regulation, and an ability to impose policy preferences by coercive means if necessary. Governance, by contrast, is concerned with understanding how the regulation of societies has been supplemented by the roles of political actors other than government as such (2004, p. 5).

The driving forces behind such a transition from government to governance are discussed by Krahmann, who puts forward three reasons: increasing budgetary pressures forcing governments to outsource and privatize some functions, increased awareness of international threats and transnational crimes which cannot be unilaterally solved, and globalization, which allows for more accessible communication and thus creates problems or perpetuates existing ones (2003, pp. 11–12). Governance is applied in many areas, including security. Security governance has also broadened the perspective in the security realm, which was widely accepted as a sole state affair, limited chiefly to national security and implemented primarily through military means. Security sector reform, peacekeeping, demobilization, reintegration, disarmament, and the rule of law can be categorized under security governance.

Security governance in Europe has been a topic of academic investigation (Webber et al., 2004; Schroeder, 2011; Kirchner & Sperling, 2007; Sperling & Webber, 2019). Specifically, European security governance between NATO and the EU has been researched by Tangör (2021, p. 77), who argues that NATO and the EU are complementary in the security realm and practical reflections of such a partnership have

characteristics of security governance. In line with this argument, the release of strategic security documents by both NATO and the EU, in which the roles and responsibilities to be assumed for the security of the region are stated, can be evaluated as the main steppingstone for structured security governance in Europe and are significant for this study.

3.3   NATO's Strategic Concepts

Since its establishment, NATO has been the leading organization providing security for the Euro-Atlantic area. The Washington Treaty, signed in 1949, is the primary reference document; however, it does not explicitly define a threat because such an operational view is reflected in the strategic concepts. NATO defined a Strategic Concept as an official document that outlines NATO's enduring purpose and nature, as well as its fundamental security tasks (NATO, 2022a). When the use of strategic concepts is taken into consideration historically, it can be asserted that they have been used to present an era's new security challenges and the necessary political and military steps to be taken for adaptation to these challenges. Strategic concepts are adopted by the North Atlantic Council (NAC), and additional documents may accompany them. On the other hand, as Ringsmose and Rynning state, "There is no single NATO method for producing a Strategic Concept" (2009, p. 6).

Changes in NATO's security environment are reflected in the strategic concepts. Since 1949, eight documents have been produced by NATO, with the most recent published in 2022. Regarding the threat perception in these documents, there is a definite need to distinguish Cold War documents from post-Cold War strategic concepts. In 1949, 1952, 1957, and 1968 Strategic Concepts, the Soviet Union was identified as the main adversary and threat (NATO, 2022a). On the other hand, in the post-Cold War era, threats have not been as easy to predict due to the nature of the new security environment, and this ambiguousness can also be found in strategic concepts.

Starting with the 1991 Strategic Concept, the documents have been unclassified. These have not merely been used as a declaration of military strategy but were conceived more as a public diplomacy tool. The 1991 Strategic Concept was published following the dissolution of the Soviet Union. In the declaration, a more comprehensive definition of security can be found in the following sentence: "In contrast with the predominant threat of the past, the risks to Allied security that remain are multi-faceted in nature and multi-directional, which makes them hard to predict and assess" (NATO, 1991). While mainly searching for the relevance of NATO in the new order, the 1991 Strategic Concept underlined unknown risks such as the "proliferation of weapons of mass destruction, disruption of the flow of vital resources and actions of terrorism and sabotage" (NATO, 1991). In the document, the fundamental tasks of the organization were underlined as security, consultation, deterrence, and defense and strategic balance within Europe. In addition to these

aforementioned tasks, early versions of crisis prevention, management, and cooperative security can be found in the document (NATO, 1991). The execution of such roles became apparent during subsequent events, such as NATO's operations in the Balkan Wars of the 1990s and the Partnership for Peace initiative.

NATO's second post-Cold War document, the 1999 Strategic Concept, articulated the organization's security, consultation, deterrence, and defense tasks. Additionally, with special consideration given to NATO's operation in Kosovo, crisis management and partnership were expressed more clearly in the document (NATO, 1999). The risks that might affect the security interests of the Alliance were listed as similar to those in the previous record except for additional references to organized crime and mass migration (NATO, 1999). Throughout the document, the multiple uses of the term "Euro-Atlantic" to describe the region draw attention and can be assessed as a reference to the possibility of worldwide actions, namely non-Article 5 and out-of-area operations.

Only two years after the 1999 Strategic Concept, the 9/11 terrorist attacks brought about the recognition of the need for a new NATO concept. However, due to the lack of political consensus among NATO members, it took nearly a decade for a new document to be produced. In the meantime, an interim Strategic Concept was adopted in November 2006, dubbed the "Comprehensive Political Guidance" (NATO, 2006). The document identified terrorism and weapons of mass destruction (WMDs) as the main threats. It stated that "[t]errorism, increasingly global in scope and lethal in results, and the spread of weapons of mass destruction are likely to be the principal threats to the Alliance over the next 10 to 15 years" (NATO, 2006).

In 2010 the third post-Cold War Strategic Concept document was approved (NATO, 2010). Unlike those that preceded it, the 2010 Strategic Concept, entitled Active Engagement, Modern Defense, underlined unconventional threats such as terrorism and cyber-attacks and stressed the need to collectively defend against these emerging security challenges (NATO, 2010). Moreover, the document focused more attention on NATO's role in crisis management and in the establishment of new partnerships. There was also an emphasis on a civilian approach in conducting operations. This perspective is reflected in the following sentence: "The lessons learned from NATO operations, particularly in Afghanistan and the Western Balkans, make it clear that a comprehensive political, civilian and military approach is necessary for effective crisis management" (NATO, 2010).

3.4   The EU's Security Documents

EU member states had an opportunity to adopt a "comprehensive and cooperative security approach" at the 1973 Conference on Security and Cooperation in Europe (CSCE and now OSCE) (Biscop & Coolsaet, 2003, p. 9). However, the first EU security strategy was only prepared in 2003. According to Koziej, the development of the EU's security approach can be categorized into three stages: pre-strategic, declarative, and initiative (Koziej 2018, as cited in Zielinski, 2020, p. 27). The pre-strategic

stage covers the years up to 2003 when the first document containing the word "strategy" was published. In 1990, the EU made efforts to formulate a common foreign and security policy, and the EU was positioned as the region's future political and security actor. As a result of the discussions, in the Maastricht Treaty, the EU adopted the Common Foreign and Security Policy (CFSP); however, there remained a need for a security strategy (EU, 1992). On this topic, Biscop and Coolsaet underline that the absence of an explicit strategy can be solved if all those involved in policymaking share the same basic views and can thus easily reach a consensus on policies that fit within these general guidelines, even if they are not explicitly written down. But about the external policies of the EU, distributed among all three EU pillars, this is not the case, in particular in areas covered by the Common Foreign and Security Policy (CFSP) and its military instrument, the European Security and Defense Policy (ESDP) (2003, p. 1).

According to Koziej's categorization, the second stage began with adopting the EU's first security strategy document (Koziej, 2018, as cited in Zielinski, 2020, p. 27). The European Security Strategy (ESS)—A Secure Europe in a Better World was published in 2003 by the European Council. In the document, key threats to European security were listed as terrorism, a proliferation of WMDs, regional conflicts, state failure, and organized crime (EU, 2009). Addressing these threats, building security in the EU neighborhood, and ensuring international order based on effective multilateralism were stated as the strategic objectives of the EU (2009). Following the ESS, the Franco-British Saint-Malo Declaration of 2008 is referenced as a significant change in the development of EU security and defense due to it containing the first overt expression of the desire for autonomous action capacity (Özen, 2002, p. 237). The ESS was considered a success by some. For example, a report prepared by the General Secretariat of the European Council in 2009 underlines the increased capacity to respond to threats identified in the ESS but also highlights the need to increase coherence through better coordination and strategic decision-making (EU, 2009). Moreover, the report added further threats to cyber security, energy security, and climate change (EU, 2009). According to Klohs and Niemann, "From 2003 to 2014, the EU undertook about 30 missions under the umbrella of the ESDP, with tasks and missions ranging from the support of security sector reform to ensuring compliance with peace agreements" (2014, p. 3). Grevi et al. also believe that the ESDP was a success and that all these missions can be evaluated as "tangible added value" (2009, p. 403). There are some who believe otherwise. For example, according to Zielinski, the document is insufficient due to the lack of "tools that would allow for real execution of the determined strategic objectives: addressing the threats, building security in the neighborhood, strengthening an international order based on effective multilateralism" (2020, p. 28).

Because of strategic changes in the global environment, such as the Russian-Georgian War, the Arab Spring, the financial crisis, and the Russian annexation of Crimea, a new security strategy for the EU was needed. As Biscop states, "Obviously no strategic document remains valid for 13 years. A strategy that cannot be touched no longer is a strategy but a dogma" (2019, p. 2). In 2016, the EU Global Strategy (EUGS)—Shared Vision, Common Action: A Stronger Europe was published by

the EU (2016), and underlined that there was an existential crisis for the EU both domestically and internationally (EU, 2016). The document is significant for its multiple statements concerning strategic autonomy while also stressing complementarity and cooperation with NATO. However, such an approach by the EU was criticized by Howort as follows: "The apparent implication here is that the EU (via CSDP) aims to become a military actor comparable to NATO—while not undermining it or questioning its supremacy. But what exactly does that mean?" (2017, p. 2).

The document listed five broad priorities: the security of the EU, security and defense, counter-terrorism, cyber security, energy security, and strategic communications (EU, 2016). As opposed to the ESS, the EUGS was conceived of more as a policy-oriented strategy, including policy recommendations (EU, 2016). According to Zielinski, in the new EUGS, "the perception of threats to the European security environment, compared to those included in the previous document, has not changed significantly" (2020, p. 29). Namely, WMDs, terrorism and organized crime were still challenges for the EU; however, in addition to these, hybrid threats entered into the EU literature due to Russia's employment of hybrid tactics, particularly in Crimea. Moreover, the EUGS covered additional threats stated in the 2009 European Council report, such as cyber security, energy security, and climate change (EU, 2016).

3.5   NATO-EU Strategic Partnership on Security

As the two significant actors with commonalities in members and agendas, a strategic security partnership between NATO and the EU is inevitable. Tardy and Lindstrom highlighted, that "(T)he NATO-EU partnership has become a central component of the broad security governance architecture for a series of reasons" (2019, p. 7). On the other hand, until the appearance of a real threat to the European region in the form of the Russian invasion of Ukraine, the division of labor had not been clear between these organizations, especially regarding the discussions on the EU's strategic autonomy. Although no clear assignment has been made regarding security duties in the latest strategy documents, the collective defense has naturally been left to NATO since Russia was highlighted as the most direct symmetric threat to the alliance. In contrast, crisis-management-related responsibilities requiring economic and political responses were stressed as direct asymmetric threats to the coalition. The related responsibilities seem to be shared between the EU and other international organizations.

With the launch of the ESDP in 1999, the EU expressed the need for clearly defined cooperation with NATO, though there was much discussion regarding strategic autonomy in the document. Subsequently, many attempts have aimed at achieving collaboration between NATO and the EU in the security realm. The EU-NATO Declaration on the ESDP of 2002 focused on strategic partnership in crisis management and conflict prevention and paved the way for the Berlin Plus arrangements (NATO, 2022b). Following that, the 2003 EU-NATO Berlin Plus arrangements were adopted. These have been recognized as "The most practical and longstanding EU-NATO

cooperative framework" (Williams, 2018). According to the Berlin Plus arrangements, the EU can request using NATO assets and capabilities to supplement an EU operation in a crisis. In some operations, such as the EU's Operation Althea, the Berlin Plus arrangements were implemented; however, the arrangements' limits were proven, as was their inability to address the needs of both sides.

Cooperation between NATO and the EU intensified in 2016 with adoption of the EU-NATO Joint Declaration (NATO, 2016). In the document, seven areas of cooperation were defined: countering hybrid threats, operational cooperation in the maritime domain, cyber security and defense, defense capabilities, defense industry and research, exercise, and the resiliency of partners (NATO, 2016). Following the document's adoption, the EU and NATO drafted 74 concrete actions to implement the objectives of the Joint Declaration and progress reports have subsequently been produced to study these. In 2018, a second EU-NATO Joint Declaration was signed, which announced the aim of rapid development in four key areas: military mobility; counter-terrorism; resilience to chemical, biological, radiological, and nuclear-related (CBRN) risks; and Women, Peace and Security (WPS) (NATO, 2022b). Through these steps, both organizations improved their cooperation in three aspects: achievement of political dialogue, integration of the NATO-EU dimension into the organization's work, and progress in their operations both in thematic areas and in the field (Tardy & Lindstrom, 2019, pp. 6–7).

Following the Russian invasion of Ukraine and the release of the EU Strategic Compass and NATO's Strategic Concept in 2022, the form of cooperation between these organizations became the official question. On 10 January 2023, a joint declaration was published in which the EU acknowledges that NATO is primarily responsible for collective defense while EU contributions complement NATO (2023). Moreover, in the declaration, there is a pledge to advance cooperation in both already existing areas and on newly emerging security challenges, such as space, climate change, and resilience topics (NATO, 2023).

3.6 Strategic Documents of the EU and NATO

The release of the EU's Strategic Compass coincided with the release of NATO's Strategic Concept and significant changes in the security landscape of the European region due to the Russian war in Ukraine. In March 2022, the Strategic Compass asserted that the EU aims "to become a stronger and more capable actor in security and defense: both to protect the security of its citizens and to act in crises that affect the EU's values and interests" (EU, 2022). The document is also regarded as a "quantum leap" in security matters for the EU's next five to ten years (EU, 2022). In contrast to the quiet welcome of the EU Global Strategy of 2016 by the Council of the EU, the Strategic Compass was endorsed by the foreign and defense ministers and heads of state and government of EU members, which is a sign of increasing interest in security and defense issues (Fiott, 2022, p. 1). Some have also criticized

the Strategic Compass for lacking in prioritization and ambition and for not being clear about strategic autonomy and partnerships (Kaim & Kempin, 2022, pp. 3–6).

Moreover, it has also been argued that EU states lack the political will to implement the Strategic Concept, further fragmenting the CSDP with many new projects (Kaim & Kempin, 2022, pp. 3–6). A significant feature of the Strategic Compass is that a comprehensive threat analysis was conducted before its preparation and that regular updates to this analysis are planned (EU, 2022, p. 7). The document covers various threats from Russia and China to climate change and the Arctic. Such a threat analysis can be considered a significant advance compared to previous EU strategy documents.

In terms of the tasks of the EU, the document is divided into four baskets: act, secure, invest, and partner (EU, 2022). According to Koenig, these baskets refer to crisis management, resilience, capabilities, and partnerships (2022, p. 1). Under these headings, there are several deliverables with deadlines, most of which are before 2025, making the document more concrete and realistic than previous on. In the "act" basket, the EU aims to enhance the readiness of its armed forces for missions and operations and has requested up to 5000 troops with rapid deployment capacity (EU, 2022). In the "secure" section, the aim is to strengthen the EU's capacity with regard to hybrid threats and enhance EU security interests in the maritime and space domains (EU, 2022). In the "invest" basket, the focus is on investing in key military capabilities as well as in research and innovation to minimize dependencies (EU, 2022). Lastly, in the "partner" section, the goal is to enhance cooperation with NATO, the United Nations (UN), the OSCE, the African Union (AU) and the Association of Southeast Asian Nations (ASEAN), as well as with bilateral partners, such as the US, Canada and Norway (EU, 2022).

Following the EU's Strategic Compass, NATO published its Strategic Concept in June 2022, 12 years after the previous concept. Prior to its publication, NATO conducted a study entitled NATO 2030: Making a Strong Alliance Even Stronger, which contributed to the new Strategic Concept and helped NATO shape its agenda for 2030. In the NATO 2030 report, various proposals were submitted, such as deeper political consultation and coordination and strengthened deterrence and defense that brought a future-oriented perspective to NATO (2021). Also, in the report, signals were given that NATO's strategic security environment had changed significantly, primarily due to "strategic competition as well as pervasive instability" (Keyman, 2022, p. 25), and that the new document would reflect these new threats. In line with this, the latest Strategic Concept refers to NATO's strategic environment as not at peace, mainly due to the Russian violation of international rules (NATO, 2022a, 2022b).

In contrast to the 2010 Strategic Concept, where Russia was referenced as a "strategic partner" for NATO (2010), the 2022 Strategic Concept identifies Russia as the "most significant and direct threat" (NATO, 2022a, 2022b). Authoritarian leaders, terrorism, instability in Africa and the Middle East, and emerging and disruptive technologies were listed among other threats. Unlike the previous document, the new Strategic Concept refers to China as a challenge to the alliance; however, "the document falls short of laying out how NATO can or should respond to this

mounting challenge" (Tardy, 2022, p. 11). Sloan also supports the idea that "the Allies have taken the step of identifying China as an aggressive competitor that they had previously been unwilling to take" (2022, p. 21).

In the document, NATO's core tasks were underlined as deterrence and defense, crisis prevention and management, and cooperative security (NATO, 2022a, 2022b). According to Keller, "collective defense" has been promoted to an overarching principle to be served by all three core tasks" (2022, p. 36). Under the area of deterrence and defense, NATO sets the aim that "in an environment of strategic competition, we will enhance our global awareness and reach to deter, defend, contest and deny across all domains and directions, in line with our 360-degree approach" (NATO, 2022a, 2022b). Counter-terrorism is considered as a cross-cutting task by NATO and is underlined as essential to NATO's collective defense. However, "terrorism is inevitably marginalized in the Concept; it is a key threat to the Alliance, but not to the extent that it would deserve the type of response that Russian aggression calls for" (Tardi, 2022, p. 9). In addition, the new Strategic Concept differs from the previous document in that climate change, human security, and the WPS agenda were included in NATO's tasks as cross-cutting themes.

Sloan criticizes the document since "it does not offer much detail about how the funding and force commitments required of the members will be realized" (2022, p. 18). The Strategic Concept is also evaluated as insufficient due to challenges that may hamper its success such as "achieving sustainability, promoting democracy, internalizing inclusive governance, and advocating for rules-based inter- and intra-institutional alliances rather than transactionalism" (Keyman, 2022, p. 27).

3.7 The OSCE in European Security Governance

The newly published strategic documents of NATO and the EU are very much influenced by the unlawful acts of Russia as well as by threats that are more complex and fragmented than ever. The OSCE, as an organization established to bring the East and West together for dialogue during the Cold War, is also a significant actor in European security governance. Since 1975, it has been experienced in supporting negotiations on confidence-building measures. In the security realm, primarily through its Office for Democratic Institutions and Human Rights (ODIHR), the OSCE "provides support, assistance, and expertise to participating States and civil society to promote democracy, the rule of law, human rights and tolerance and non-discrimination" (OSCE, 2022).

With the release of two separate but significant strategy documents and the concurrent Russian aggression in Ukraine, the role and future of the OSCE have been questioned. Russell summarizes the weaknesses of the OSCE as follows: "limited resources, diplomatic deadlock, and stalled reform efforts" (2021, p. 10). An OSCE member, Russia's invasion of Ukraine violates international law and OSCE norms, which brings about several questions, such as whether Russia should be excluded and how the OSCE can survive if its members do not respect the norms (Friesendorf &

Wolff, 2022, p. 4). Many authors believe that keeping Russia as an OSCE member is essential for maintaining dialogue even as it paralyzes the OSCE's operational capacity (Friesendorf & Wolff, 2022). Beyond such questions, and although the OSCE has failed in its monitoring and mediating missions in Ukraine, it remains an important participant in the region's security governance and could arguably still have the potential to play a crucial role in any ceasefire. Specifically, while NATO and the EU have identified Russia as a threat in their latest strategic security documents, the OSCE needs to find a different path in line with the inclusive nature it has maintained since the 1970s.

Regarding what the OSCE can do in such a tumultuous time, Reynolds and Ketola highlight that focusing on security perceptions on the ground rather than what capitals define as security perceptions for the region may help the OSCE find its added value in a new international security environment. Focusing more on the process than any obvious outcomes would resemble the original Helsinki process of the 1970s, where the dialogue on European security was open-ended. Implementing values would still be an intended outcome, but accepting that the OSCE is only one facet in a larger ecosystem of international organizations and donors may help sidestep administrative battles over implementation (2022, p. 8).

3.8   Conclusions

War on the European continent, geopolitical shifts in the international arena, a rising China, instabilities in the Middle East and Africa, climate change, and cyber threats are common issues addressed in the EU's Strategic Compass and NATO's Strategic Concept of 2022. Overall, it is possible to identify three significant engagement fields where NATO and the EU could share roles and responsibilities: deterrence and defense, crisis prevention and management, and cooperative security.

3.8.1   Deterrence and Defense

In the Strategic Compass, there is an emphasis on the mutual defense clause of the EU, which is believed to be essential in such a turbulent time with Russia posing a direct threat to the European continent. Article 42.7 of the Treaty on the European Union states that "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power" (EU, 2012), and the 12 specific referrals to this clause in the Strategic Compass indicate that the EU is trying to take the initiative. As a matter of fact, "the return of collective defense as the main paradigm for organizing European defense efforts is central to maintaining European unity just as much as it is about safeguarding NATO cohesion and the transatlantic link" (Mattelaer, 2019, p. 41). On the other hand, by examining the actions proposed in the document, the

mutual assistance article is regarded more "from the perspective of hybrid threats, cyber defense and space rather than a wider conceptualization of how the EU would actually—if at all—respond should Russian tanks enter EU territory" (Fiott, 2022, p. 2). For NATO, an organization established for collective defense, strengthening deterrence and defense has always been the top core task "to deny any potential adversary any possible opportunities for aggression" (NATO, 2022a, 2022b). As highlighted Mattelaer in this regard, "in practice, the Alliance's new deterrence and defense-centric approach has already materialized via NATO's reset of its policy on the Eastern flank, with a series of decisions taken since February 2022" (2019, p. 9–10).

In terms of the division of labor between the EU and NATO for the collective defense of the same territory, a concordat between the EU and NATO would be logical: NATO would be the central entity responsible for collective defense while the EU would assume a supportive role (Biscop, 2021, p. 2). In particular, Finland's NATO membership and Sweden's possible membership would reinforce the inclination to refer to NATO as the main guarantor of security for many European states. At the same time, non-NATO countries would seek to invoke EU Article 42.7. In addition to the division of roles in collective defense, cooperation in the defense-industrial sector is significant. Still, it is being undermined "by considerations of economic competitiveness and strategic autonomy" (Fiott, 2022, p. 48).

3.8.2   Crisis Prevention and Management

The EU's Strategic Compass addresses crisis prevention mainly under the "act" and "secure" headings and articulates the necessary actions that the EU must take: "We need to be able to act rapidly and robustly whenever a crisis erupts, with partners if possible and alone when necessary", and, "We need to enhance our ability to anticipate threats, guarantee secure access to strategic domains and protect our citizens" (EU, 2022). NATO's Strategic Concept also stresses the importance of experience gained in crisis prevention and management and underlines the need to "invest in crisis response, preparedness and management, through regular exercises" and to leverage the "ability to coordinate, conduct sustain and support multinational crisis response operations" (NATO, 2022a, 2022b).

Indeed, there is room for cooperation between NATO and the EU in countering hybrid threats and finding ways to respond to these, which essentially requires civilian expertise (EU Institute for Security Studies, 2021, p. 3). Since the 2016 Warsaw Summit, strategic communication, formal training and exercises for crisis response, and resilience are the areas that were enhanced by NATO and the EU (Smith, 2019, p. 17). Especially in the area of cyber insecurity, there is an improved possibility of cooperation between NATO and the EU because these organizations "share many of the same priorities in cyberspace, their policies are largely identical—based on the principles of resilience, deterrence, and defense—and their tools are becoming increasingly complementary" (Lete, 2019, pp. 29–30). According to the concordat

proposed by Biscop, the EU needs to assume the lead in confronting non-military threats and building resistance, while NATO would take a supportive role in these aspects (2021, p. 3). In particular, regarding how to deal with China, the EU needs to take a leading role in confronting China in the non-military realm, such as addressing vulnerabilities in global supply chains and confronting economic espionage. NATO would thus play a supporting role to the EU in terms of complex security. From the angle of crisis prevention, especially regarding its southern flank, the EU seems to be a more fitting organization than NATO in supporting the governments of that region, particularly at a time of actual possibility of conventional war in Europe. In this regard, Biscop also underlines that the "EU should favor an indirect military approach: supporting the states of the region through long-term capacity-building, rather than assuming executive tasks itself" (2021, p. 4).

3.8.3   Cooperative Security

The EU's Strategic Compass acknowledges the role of partnerships in addressing common threats and challenges and signals this via the "partners" heading (EU, 2022). The EU aims to enhance partnerships on a bilateral and multilateral basis. Regarding cooperation with NATO, it is stated that "further ambitious and concrete steps need to be taken to develop shared answers to existing and new threats and common challenges," and improved political dialogue, shared situational awareness, and parallel and coordinated exercises were listed among the possible ways to consolidate such cooperation (EU, 2022). In addition to NATO, the OSCE, AU, ASEAN, and Gulf Cooperation Council (GCC) are among the other organizations listed for relations with the EU (2022).

NATO's Strategic Concept also emphasizes the importance of partnerships, and a special focus is given to the relation with the EU. Nonetheless, despite the significance of cooperation between NATO and the EU emerging from strategic documents, these organizations have been described as "unstrategic partners" (Koops, 2010), their relationship as a "frozen conflict" (NATO, 2007) and the Berlin Plus agreement as a "straitjacket" (NATO, 2007). However, following the 2016 Declaration, there have been concrete developments. In particular, the latest strategic documents reveal that both organizations are increasingly aware of the benefits that their synergy will bring to the European continent, especially with war in the region requiring a united front.

According to the analysis of the institutional genesis of both organizations through security-related documents, it can be argued that collective defense will remain an area reserved for NATO as long as nuclear weapons exist. In light of NATO's hasty withdrawal from Afghanistan, expeditionary missions have become a target of discussions within NATO, and with the Russian war in Ukraine, crisis prevention and management have lost prominence for most NATO members. This situation has brought the EU to the fore as a potential leading actor in crisis prevention and management. Although there is a natural and uncodified division of labor between NATO and the EU, this does not imply that the other party should do nothing.

On security-related topics, counter-terrorism is where the possibility for NATO-EU cooperation is the lowest. There are differences in approaches between NATO and the EU regarding combating terrorism, which also result in differences in their incentives for collaboration. Because fighting terrorism requires hard and soft power capabilities, neither organization can take the lead or leave the matter to the other. However, other issues have recently appeared on NATO and EU agendas, such as the WPS agenda, emerging and disruptive technologies, and climate change, in which cooperation is necessary and easy to implement.

The Strategic Compass and Strategic Concept published in 2022 are significant opportunities to bolster cooperation between NATO and the EU and "to mend the schism between them" (Biscop, 2021, p. 1). At a time of war in Europe and a change of balance in the global arena, NATO and the EU must be more united than ever and complementary. A zero-sum game mentality would be detrimental to European security interests, and it is time to reap the benefits of synergy.

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Chapter 4
Patterns of Border Disputes Amongst OSCE Countries

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4.1 Introduction

The Organization for Security and Cooperation in Europe (OSCE) includes 57 states across Europe and beyond, encompassing three continents: Europe, Asia, and North America. The OSCE is an interesting security organization because it is the world's largest organization, intending to work for stability, peace, and democracy for about 1 billion people. The OSCE is a recent international organization, developed during the "détente" in the early 1970s when the Conference on Security and Co-operation in Europe (CSCE) was created to provide a forum for "dialogue and negotiation between East and West" (OSCE History, 2022). The CSCE emerged from years of negotiation originating with the Helsinki process and was established on 1 August 1975 with the signing of the Helsinki Final Act.

Over the years from 1975 to 1994, participating states met at summits and conferences to discuss their progress toward establishing the so-called "Decalogue," i.e., ten principles understood to guide the behavior of States at the end of the Cold War. On 9 October 1994, at the Budapest summit, the heads of state agreed to change the

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name from the Conference on Security and Cooperation in Europe to the Organisation for Security and Cooperation in Europe "to reflect its actual work, and they set out to strengthen a number of OSCE institutions" (OSCE, Budapest 1994).

Given the scope and reach of the OSCE as a security organization, this study aims to examine whether the patterns of border disputes in the OSCE region significantly differ from those in the other areas and how the OSCE patterns follow those in the rest of the world. With the help of the Borders in Globalization Dyads Database (BiG Dyads Database), the study we presented tested four main hypotheses: first, that traditional land border disputes are more prevalent in the OSCE region due to the presence of relatively young borders which are more likely to be unsettled and contested; second, that border disputes are less likely when borders are drawn along former administrative boundaries; third, that territorial disputes are more likely to occur when borders lack standing under international law; and fourth, that democratic dyads are less conflictual.

To address these questions, the paper reviews and discusses dyadic relationships, their history, disputes and conflicts, and their democratic solidity. This study of OSCE patterns contributes to the theoretical debates about factors that can explain the likelihood of border disputes. The focus on the OSCE region helps contextualize the discussion of relationships between border disputes and several aspects of interest. It sheds light on some persistent challenges to security governance in the OSCE region.

4.2 Border Stability and Disputes

Border disputes have fascinated social scientists since the Second World War. This fascination is also indicated by the wide range of terms used to describe borders—boundaries, lines, frontiers, marches, borderlands, border regions—and the various mechanisms that bring both sides of the border apart or together, such as border shapes, *stitching* borders, and territorial or a-territorial borders. This variety of terminologies focusing on the delineation and delimitation of territory and relevant communities of belonging is rooted in vibrant discussions that treat borders as part of a larger question, i.e., a question fundamentally interested in the stability of the current international system.

The acceptance of the norm of territorial integrity and the increasing economic interdependence of states have contributed to the general decline in territorial conquest and disputes over traditional land borders (Frederick et al., 2017; Hensel et al., 2009; Mitchell, 2016; Zacher, 2001). This does not mean that disputes have become a thing of the past. Disputes persist in different corners of the world, but these have evolved (Altman, 2020; Mitchell, 2016). For example, when it comes to their nature, disputes deal with "competition over maritime resources in areas around islands or homeland areas including the Spratly Islands, the Diaoyu/Senkaku Islands, and the Bakassi Peninsula" (Mitchell, 2016). Altman (2020) points to the shift in the predominant strategy of territorial conquest towards attempts to seize small territories—particularly unpopulated or undefended areas—while trying to avoid war.

Some studies highlight the limits of the territorial integrity norm as a constraint against territorial conflict (Altman, 2020; Hensel et al., 2009).

The existing research suggests that border disputes are less likely to happen when borders are drawn along previous internal or external administrative borders (Carter & Goemans, 2011, 2014; Toft, 2014). In the nineteenth century, after gaining independence, Latin American states used the principle of *uti possidetis juris* (when internal boundaries become international borders) to assert their territorial integrity in the face of potential attempts by European states to colonize parts of their territory and to avoid border conflicts between themselves (Carter & Goemans, 2011). More recently, the principle of *uti possidetis juris* was applied after the dissolution of the Soviet Union and Yugoslavia (Ratner, 1996; Vidmar, 2010). Such inherited borders make interstate interactions more predictable and decrease the cost of adaptation to changed circumstances. Otherwise, as Carter and Goemans argue, the parties concerned would have to allocate resources to deal with multiple issues, including "infrastructure, citizenship, taxpayer status, and property rights" (Carter & Goemans, 2011, 284).

Carter and Goemans analyzed a data set that included international borders that emerged in the twentieth century whether peacefully or forcefully and concluded that territorial disputes were less likely to occur when borders were drawn according to previous administrative frontiers (Carter & Goemans, 2011). The researchers also found that both violent and peaceful territorial transfers that follow previous administrative boundaries increase the probability of peace over time. Thus, the initial violent nature of border formation does not preclude a path to peace and stability when the borders correspond to previously established administrative lines. Likewise, drawing borders along previous administrative boundaries does not preclude the possibility of the emergence of disputes between the parties involved. However, such border disputes are less likely to result in militarized confrontation (Carter & Goemans, 2011). In a later study, Carter and Goemans (2014) showed that peace and stability are less likely when previous administrative boundaries are disregarded. They refer to the case of Kosovo's independence vs. the cases of Abkhazia and South Ossetia. They suggest that the latter are at a higher risk of a re-emergence of conflict because their newly drawn borders differ from their previous administrative borders within Georgia.

The existing literature shows that neighboring states with settled borders are less likely to experience militarized disputes or wars (Kocs, 1995; Owsiak, 2012). International border agreements between states solidify a negotiated outcome and represent a bilateral commitment. States often honour such international legal obligations and try to avoid breaking international promises. This was particularly relevant in the post-1945 world with the adoption of the United Nations Charter and the reinforcement of the principle of territorial integrity and prohibition on using force.

Borders that lack standing under international law are more prone to territorial disputes (Kocs, 1995; Owsiak, 2012; Toft, 2014). Kocs (1995) examined the relationship between the legal status of borders and interstate wars and found that unresolved territorial disputes between neighboring states are more likely to lead to wars. In the

post-1945 period, neighbouring states with settled borders rarely resorted to war despite changes in political, military, economic, and other indicators (Kocs, 1995).

Allee and Huth (2006) found that the legal settlement of territorial disputes is more likely when decision-makers face domestic political accountability, including due to the presence of democratic political institutions, which decreases the probability of an armed conflict. However, the relationship between stable borders and democracy remains unclear as the existing research disagrees on whether democracy precedes border stability or vice versa and stabilized borders and a lack of territorial disputes and conflicts create favorable conditions for democratic transition (Allee & Huth, 2006; Gibler, 2007; Owsiak, 2012; Toft, 2014). Gibler (2007) found that democracy has little or no effect on conflict when controlled for stable borders. His research argues that democracy and peace do not cause the stabilization of borders; quite the opposite, stabilized borders are conducive to democracy and the peaceful coexistence of democratic states (Gibler, 2007). Owsiak's study (2012) confirmed the existence of a positive relationship between settled borders and joint democracy in contiguous dyads but also emphasizes that "the pacific effects of joint democracy do not eliminate the statistical relationship between settled borders and militarized conflict" (Owsiak, 2012, 64).

We are using the Borders in Globalization Dyads Database (BiG Dyads Database) and dyad as a unit of analysis, to examine: first, whether traditional land border disputes are more prevalent in the OSCE region as the dyads in the region are relatively young and therefore have the potential to be unsettled and contested; second, whether border disputes are less likely when borders are drawn along previous administrative boundaries third, whether territorial disputes are more likely to occur when borders lack standing under international law; and fourth, whether democratic dyads will be less conflictual.

In the field of border studies, experts debate the use of the terms borders, boundaries and frontiers; this study focuses on dyads (Newman & Paasi, 1998; Prescott, 1987; Parker & Vaughan-Williams, 2009; Wilson & Donnan, 2012). A dyadic study of borders is less common but also more legalistic. Indeed, while the term boundary delineates a territory and has a history in international law, it also has a specific meaning, i.e., to bound a given territory. A meaning that emerged in the fourteenth century from the French *frontière* which, when translated into English—as, for instance, in the Treaty of Paris of 1783 which settled the American revolutionary war—is understood to mean the boundary of a territory.

The specific meaning of *frontière* in French, however, is a front, or the edge of a particular territory, i.e. the space between two existing territories (Hasselsberger, 2014; Konrad & Nicol, 2008; Kristof, 1959). Traditionally, legal experts refer to boundaries rather than borders to designate the delineation of the territory of a state. For instance, two essential and recent international treaties rely on the term boundary: the Vienna Convention on the Law of Treaties (entered into force in 1980) and the Vienna Convention on Succession of States in Respect of Treaties (entered into force in 1996).

The term "boundaries," despite being primarily used in international agreements, is not commonly used in social sciences and geopolitics by experts and scholars who

refer rather to the concept of borders, acknowledging, however, that the meaning of borders has evolved. For instance, Biggs (1999) notes that in the seventeenth century, borders were considered terrestrial lines on land and maps. More recently, however, scholars such as Brunet-Jailly (2015), Agnew (2008, 2009) and Paasi (2012) have suggested meanings that encompass policies and institutions, including specific state functions such as controlling trade flows or migration and human mobility through trade customs or migration policies.

The terms and meanings discussed above refer to specific aspects of borders or boundaries of the territory of a state. Here, we have to shift our focus on a dyadic view of the world which brings together the territories of two states, i.e. a bi-statist view of the edges of the territory of two states and their shared border.

The term dyad originates in ancient Greek *duas* or Latin *dyas,* meaning two or duo (Oxford—EOD n.d.). A dyad is "something that consists of two elements or parts." Dyad as a concept is used in several studies. For instance, Foucher in *Fronts et Frontières* (1988), the *Correlate of War project* (Singer & Small, 1972), or again the *International Border Agreement Database* (IBAD) by Owsiak, Cuttner and Buck (Owsiak et al., 2018), all use the dyad as a unit of analysis. The meanings given for dyads are not always the same. For instance, for Gochman and the Correlates of War (COW) project (1991) a dyad can be about sharing or non-contiguous territorial relationship between two states. For the COW project, the dyad is about contiguity and non-contiguity. What is central to the relationship is that it is recorded in international law in the United Nations registry. The Borders in Globalization database focuses on the dyad as a shared territorial line between two neighboring states when the United Nations recognizes it and whether it is delineated and recorded in international law. In this study, the focus is on the *concurrency of the relationship between two territories.*

Finally, a dyad is much more specific than a boundary or border. For instance, European continental/metropolitan France has boundaries with Andorra, Belgium, Germany, Great Britain (Channel Tunnel), Italy, Luxembourg, Monaco, Spain, and Switzerland. In other words, France has nine dyadic relationships with other countries, each dyadic relationship being inscribed in international treaties and registered at the United Nations and each dyad, thus, being much more specific and providing this study with a conceptual advantage for the analysis of border disputes.

4.3 Methodological Approach

The data for the analyses come from the Borders in Globalization Dyads Database (BiG Dyads Database). The BiG Dyads Database was inspired by Michel Foucher (1988, 2006), Kathy Staudt (2017) and other scholars using the dyad as a unit of analysis. These scholars, coming generally from international, peace, conflict, and war studies, created several datasets allowing for the analysis of boundaries from a dyadic perspective (see Starr, 1976; Gochman, 1991; Stinnett et al., 2002; Parris, 2004; Anderson & Gerber, 2004, 2007; Donaldson, 2009; Weidmann et al., 2010;

Lai, 2012; Chen et al., 2015; Staudt, 2017; Simmons & Kenwick, 2018; Owsiak et al., 2018). The International Border Agreements Dataset (IBAD) by Owsiak et al. (2018) and the Correlates of War Project (COW) (see Glochman, 1991; Stinnett et al., 2002) are perhaps the most similar to the BiG Dyads Database. The BiG Dyads Database, however, goes beyond the COW and IBAD regarding function and substance.

Regarding function, the BiG Dyads Database is a collection of datasets hosted on the open-source software MYSQL. MYSQL is a web-based relational database management system that allows users to query across datasets. Therefore, the BiG Dyads Database allows for a combination of diverse datasets and running queries across data that has never been subjected to computational analysis. This innovative functionality makes it possible to query or challenge established assumptions in border studies.

The BiG Dyads Database aims to provide a global view of dyadic regions. The database currently includes 47 variables across the 770 world dyads, specifically the 333 land dyads and 437 sea dyads (BiG Dyads Code Book, 2022). Only land dyads were selected for this research using the Foundations of Dyads Dataset (BiG Dyads Code Book, 2022, 16). These numbers differ from other projects employing the dyad as a unit of analysis. In Fronts et Frontiers, Michel Foucher noted that in 1988 there were 264 dyads in the world (Foucher, 1988, 7). Owsiak et al. (2018) have 281 territorial dyads in the IBAD, and the COW datasets contain 848 dyads in five categories (four are maritime), including 474 in their contiguous terrestrial category (Stinnett et al., 2002). The difference between the numbers of dyads in these various datasets is mainly based on years. The COW includes all dyads between states in the international system between 1818 and 2016. For example, it contains the dyads of Yugoslavia and the dyads of the countries that emerged after the breakup of Yugoslavia. As such, the COW has more dyads in their datasets, even if these dyads no longer exist. The IBAD dyads are based on legal border agreements between 1816 and 2001. In comparison, in the BiG Dyads Database, dyad dates in the historical dataset do not necessarily correspond to a legal delimitation agreement and more recent dyads than the IBAD are included, such as the new dyads created with the independence of South Sudan in 2011.

Substantively, the BiG Dyads Database includes data on political, social, economic, environmental and cultural indicators that are arranged as datasets relating to the various themes of the Borders in Globalization research program, i.e., History, Security, Governance, and Sustainability. Among the datasets are the history of dyads and their dates, conflicts and disputes. These indicators were developed to track dyads' origin and status today. The indicators are continually updated ad hoc when border changes are made, conflicts are resolved, or new states are created.

This study uses three indicators from the Dates Dataset under the History Theme (i.e., the year of establishment, the year of adjustment, and the historical antecedent of existing dyads) and three indicators from the Conflicts Dataset under the Security Theme (i.e., border disputes, border conflicts, and independence) to examine whether traditional land border disputes are more prevalent in the OSCE region as the dyads in Europe are relatively young; and whether border disputes are less likely when borders are drawn along previous administrative boundaries.

More specifically, the Dates Dataset under the History Theme was used to determine the age of dyads and whether borders were drawn along previous administrative boundaries. The dataset includes (1) the year of establishment, (2) the year of adjustment, and (3) the historical antecedent of existing dyads (BiG Dyads Code Book, 2022, 18–19). The year of establishment of a dyad is when the basic shape of the current dyad was established. This includes any substantial change, such as the emergence of a new state on the dyad, a treaty altering the course of the boundary line over a significant portion of the dyad, and/or other changes of this nature. *The year of adjustment* is the year of the last minor adjustment (i.e., an adjustment that does not fundamentally change the shape of the dyad) to the current dyad. This includes agreements involving exchanges of little territory parcels, legislating the boundary line's delimitation, or making minor adjustments to the boundary line. There are two prominent cases regarding how dyads appear; therefore, we determined the establishment dates in two ways. In the first case, dyads can appear by a delimitation process by existing states when two states that share a contiguous relationship sign and ratify a legal agreement to determine the geographical delimitation or location of the border. Here, the date of establishment relates to the date of the treaty. In the second case, dyads result from the appearance or disappearance of one or two new states in a contiguous relationship, which can come about in various ways, including via state succession, decolonization, secession, etc. Here, the date of establishment relates to the date of the event that changed the territorial situation. *The historical antecedent* indicates the year of establishment of the historical antecedent of the current dyad in cases when the modern dyad follows much the same lines as the dyad between predecessor states.

The Conflicts Dataset under the Security Theme was used to establish the number of dyads currently disputed and the number of dyads created through conflict and/or independence. This dataset includes (1) border disputes, (2) conflict, and (3) independence (BiG Dyads Code Book, 2022, 20). The indicator of *border dispute* is defined as whether at least one of the states in the dyad disputes the position of the border, and/or if the border has never been officially delimited, and/or whether at least one of the states in the dyad disputes the ownership of some portion/the entirety of the territory of the other state. The indicator of *border conflict* determines whether the current shape of a dyad arose out of a military conflict, violent independence, etc. The *independence* indicator determines whether the dyad arose from an independence/partition regardless of violence (BiG Dyads Code Book, 2022, 20).

UN recognition data were used to determine whether a dyadic pair has standing under international law and therefore examine whether territorial disputes are more likely to occur when borders lack standing under international law. The indicator on UN-recognized dyads is defined as whether or not the UN recognizes both states in the dyad. If both countries in the dyad are not recognized, or one of the countries in the dyad is not recognized, the dyad is considered to lack recognition (BiG Dyads Code Book, 2022, 14).

The study relied on the Democracy Index created by the Economist Intelligence Unit (Economist Intelligence Unit, 2022) to examine the relationship between democracy and border disputes. The overall index score is an average based on 60

indicators in five categories—electoral process and pluralism, functioning of government, political participation, political culture, and civil liberties—with each category scored on a 0 to 10 scale. Countries are divided into four groups: full democracies are those countries with an overall score between 8.01 and 10 (out of 10), flawed democracies are those with a score between 6.01 and 8.00, non-democratic countries include hybrid regimes with scores between 4.01 and 6.0, and authoritarian regimes are those with scores under 4.0. A dyad is classified as democratic if both countries in the dyad are democracies (whether full or flawed). If both countries in the dyad are not democratic or one of the countries in the dyad is not democratic, the dyad is considered non-democratic.

The BiG Dyads Database's datasets have limitations due to their binary nature, leaving no room for descriptive detail. This means that the datasets cannot describe the nature of each data point. For example, the dataset does not give information about the scale or intensity of border disputes or conflicts; it only records their existence. Furthermore, the dataset only records dyads currently in dispute and misses dyads that were once in dispute but have since been resolved.

4.4 Findings

This chapter started with assumption that traditional land border disputes are more prevalent in the OSCE region due to the relatively young borders of the state members which have the potential to be unsettled and contested. The BiG Dyads Database data show that the majority of dyads in the OSCE region are indeed comparatively young; however, the data do not point to the prevalence of traditional land border disputes in the region.

As Table 4.1 shows, the majority, 52 of the 93 (56%) European dyads—and 62 of the 107 (58%) dyads in the OSCE region—were established after 1990. This is perhaps counterintuitive given that the "Old Continent" is credited with creating the modern state system. Whereas the Spanish dyads do give Europe the oldest territorial dyads in our dataset, by proportion of total dyads, Europe has 36 of 93, or only 39%, of its dyads from before 1950. This is similar in the OSCE region where 39 of 107 (36%) date to before 1950. In comparison with Africa, which saw 64% of its dyads appear in one decade (the 1960s), the 1990s was the decade when Europe and the OSCE region established 44% and 51% of their dyads—remarkably more than during any other decade. In terms of stable older dyads, however, Europe—and therefore, the OSCE region—does have the oldest dyads in the world, with three predating 1800 and 13 total (14%) for Europe and 14 total (13%) for the OSCE region predating the 1900s. Nonetheless, when we compare this to the Americas—the only other region with modern dyads established before 1900—whose first dyads only appeared after 1800, 37.5% of the total dyads in the Americas appeared before 1900; this is more than two and a half times the proportion of Europe's pre-1900 dyads. Table 4.1 summarizes the key data from this regional perspective.

Table 4.1 Key comparative data across regions

	Africa	Americas	Asia	Europe	Intercontinental	OSCE region
Total # of land dyads	109	40	89	93	5	107
Oldest dyad	1956	1815	1911	1658	1975	1658
Newest dyad	2011	1981	2002	2006	1994	2006
Dyads before 1900	0	15	0	13	0	14
% of total	0%	37.5%	0%	14%	0%	13%
Dyads before 1950	0	33	33	36	0	39
% of total	0%	82.5%	37%	39%	0%	36%
Dyads after 1990 (inclusive)	18	0	34	52	4	62
% of total	17%	0%	38%	56%	80%	58%
Decade with the most dyads established	1960	1900	1990	1990	1990	1990
	70	9	32	41	4	55
	64%	22.5%	36%	44%	80%	51%

Source The BiG Dyads Database https://biglobalization.org/dyads-database/ and BiG Dyads Code Book (2022)

The oldest land dyads in the OSCE region date from the formation of unitary Spain in 1716, while the independence of Montenegro from Serbia in 2006 created the newest dyads (although several of them already existed in the same location but were between two different entities). There were only two new dyads formed in the OSCE region throughout the 1960s-1980s (the land dyad between Cyprus and the UK-Akrotiri and Dhekelia in 1960 and the land dyad between France and the UK (the Channel Tunnel/Chunnel) in 1987) and none further until the 1990s when 55 new dyads appeared (Fig. 4.1).

Despite its relatively young borders, the OSCE region is less prone to traditional land disputes. Throughout the world, with 333 land dyads as recorded in the BiG Dyads Database (BiG Dyads Code Book, 2022), there are 108 dyads—approximately one-third (32%)—of which are currently disputed (or never officially delimited or experiencing ongoing territorial dispute between the two states of the dyad) (Table 4.2). There are now 107 land dyads in the OSCE region, and the number of disputed dyads stands at 16 (15% of the dyads), which, contrary to our first assumption and hypothesis, shows that traditional land border disputes are less prevalent in the OSCE region. This is consistent with the findings of Frederick et al. (2017) that point to a decline in the prevalence of territorial claims in Europe after the Second World War and the shift of the regional distribution of shares toward Asia (Frederick et al., 2017, 103).

There are 63 dyads in the world where the current shape of the border has resulted from a past military conflict, violent independence, or a similar occurrence. Yet, 40%
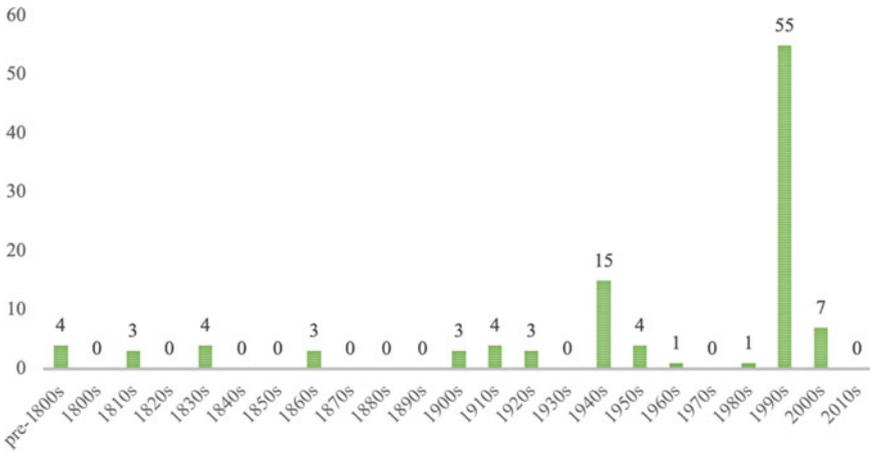
Fig. 4.1 Distribution of New Land Dyads in the OSCE Region by Decade. *Source* The BiG Dyads Database https://biglobalization.org/dyads-database/ and BiG Dyads Code Book (2022)

Table 4.2 Disputed dyads in the OSCE region and the world

	(A) Currently disputed[*]	(B) Conflict-driven	(C) Partitioned
World	108	63	247
Non-OSCE	66	27	152
OSCE/non-OSCE	26	11	26
OSCE	16	25	69

Source The BiG Dyads Database https://biglobalization.org/dyads-database/ and BiG Dyads Code Book (2022)

[*]The dataset only records dyads currently in dispute and does not include dyads which were once in dispute but have since been resolved

of those dyads (25) are located within the OSCE region. The number of dyads arising out of an independence/partition (regardless of the violence of the events leading up to this, or lack thereof) stands at 247 worldwide, of which 69 belong to the OSCE region.

Borders drawn along previously existing administrative boundaries appear to be less at risk of border disputes (Carter & Goemans, 2011, 2014; Toft, 2014). Looking at the recent history of the OSCE region, following the dissolution of the Soviet Union and Yugoslavia, the borders of the newly emerging states primarily followed previously existing administrative boundaries (Carter & Goemans, 2011; Ratner, 1996; Vidmar, 2010). Most formed international borders were recognized by neighboring states and remained peaceful. However, some exceptions continue contributing to ongoing instability in the OSCE region. A closer examination of the ongoing disputes illustrates the region's existing tensions and dispute patterns.

Table 4.3 Disputed land borders in the OSCE region

Dyads	Arose out of an independence	Year and treaty of establishment	Year and treaty of adjustment	Historical antecedent
Portugal-Spain	No	1716 Last of the Nueva Planta decrees and formation of unitary Spain	1926 Treaty of Badajoz—1801, Congress of Vienna—1815, Treaty of Lisbon—1864, Convention of limits—1926	1297 Treaty of Zamora—1143, Treaty of Badajoz—1267, Treaty of Alcañices—1297
Croatia-Slovenia	Yes	1991 Independence of both countries from Yugoslavia, border still in dispute	2017 Ruling by the Permanent Court of Arbitration accepted by Slovenia, not by Croatia	1919 Creation of Yugoslavia-internal borders
Kosovo-Serbia	Yes	2008 Kosovan independence	−888	−999
Cyprus-Northern Cyprus	Yes	1974 Partition of Cyprus	−888	−999
Northern Cyprus-UK (Akrotiri and Dhekelia)	Yes	1974 Partition of Cyprus	−888	1960 Cyprian independence
Abkhazia-Georgia	Yes	1994 Abkhazia-Georgia ceasefire	−888	1931 Internal border of Georgian SSR
Abkhazia-Russia	Yes	1994 Abkhazia-Georgia ceasefire	−888	−999
Nagorno Karabakh/ Artsakh-Azerbaijan	Yes	1991 Artsakh Declaration of independence	−888	−888
Armenia-Azerbaijan	Yes	1991 Breakup of USSR	1994 Independence of Republic of Artsakh	1920 USSR Internal Border
Georgia-South Ossetia	Yes	1991 Breakaway of South Ossetia from Georgia	2008 Russo-Georgian War	1936 Autonomous Oblast within SSR of Georgia

Table 4.3 (continued)

Dyads	Arose out of an independence	Year and treaty of establishment	Year and treaty of adjustment	Historical antecedent
Russia-South Ossetia	Yes	1991 Breakaway of South Ossetia from Georgia	−888	−999
Russia-Ukraine	Yes	1991 Dissolution of the USSR	−888	1927 USSR Internal border 1927–1991
Moldova-Transnistria-	Yes	1992 Transnistrian breakaway from Moldova	−888	−999
Transnistria-Ukraine	Yes	1992 Transnistrian breakaway from Moldova	−888	−999
Kazakhstan-Uzbekistan	Yes	1992 Dissolution of the USSR	2001 Border agreement	1924 USSR internal border 1924–1991
Kyrgyzstan-Uzbekistan	Yes	1991 Dissolution of the USSR	2011 Agreements of 2004, 2011	1924 USSR internal border 1924–1991

Source The BiG dyads database https://biglobalization.org/dyads-database/ and BiG Dyads Code Book (2022)

Table 4.3 shows that most disputed borders in the OSCE region were drawn along previous administrative boundaries. Historical antecedents of these disputed borders were internal administrative boundaries in the Soviet Union and Yugoslavia. Most existing border disputes are located in the post-Soviet region. Among these are breakaway territories that have proclaimed their independence, such as Transnistria (*de jure* the territory of Moldova), Abkhazia and South Ossetia (both *de jure* the territory of Georgia), and Nagorno Karabakh (*de jure* the territory of Azerbaijan). Russia's support underwrites the "independent" existence of these breakaway entities. In 2014, Russia occupied and incorporated Ukraine's territory of Crimea via a sham referendum. Russia has also applied an "independence" scenario to Ukraine's eastern regions, i.e., the so-called Luhansk and Donetsk People's Republics, thus creating a zone of instability within Ukraine's internationally recognized borders. In February 2022, Russia started a war in Ukraine and, once again, used sham referenda to incorporate the Ukrainian territories it had managed to occupy during several months of the war. While the boundaries of the occupied Crimea follow its administrative boundaries within Ukraine and those of the previous Ukrainian Soviet Socialist Republic, the boundaries of the other occupied territories reflect the fast-moving situation of the battlefield. Russia's full-scale war on Ukraine ended the OSCE Special

Monitoring Mission (SMM) in Ukraine, established in 2014 to facilitate dialogue and bring peace to the Donetsk and Luhansk regions. The Mission was initially viewed as a sign of the increased prominence of the OSCE as a security organization (Moser & Peters, 2019). Still, Russia's subsequent actions undermined the OSCE's efforts and credibility.

Creating and backing breakaway entities has been Russia's purposeful and distinctive strategy in the post-Soviet region (the so-called "near abroad"). Back in 1990, before the official dissolution of the Soviet Union, Transnistria declared its independence, leading to a war with Moldova that ended with the arrival of Russian troops and a cease-fire arranged by Russia (Potter, 2022). Transnistria's existence creates instability and tensions at the borders of both Moldova and Ukraine as part of the Moldova-Ukraine border is de facto a border between Ukraine and Transnistria. Abkhazia and South Ossetia were autonomous regions in the Georgian Soviet Socialist Republic and then in independent Georgia. In the early 1990s both regions attempted to separate from Georgia. As a result of the 2008 Russian war on Georgia, both breakaway regions were recognized as independent republics by Russia. In the 2019 Luxembourg Declaration, the OSCE Parliamentary Assembly reiterated its support for the territorial integrity of Georgia and the inviolability of Georgia's borders and referred to Russia's illegal occupation of these territories.

As discussed above, most disputed borders in the OSCE region were drawn along previous administrative boundaries from the Soviet Union and Yugoslavia and were recognized as the international borders of newly emerged states (Carter & Goemans, 2011; Ratner, 1996; Vidmar, 2010). The creation of breakaway regions on the territory of some of these emerging states—backed by an external actor such as Russia—violated the principle of territorial integrity and resulted in the international community's lack of recognition of the borders of these entities.

Most disputed borders in the OSCE region do not have standing under international law, which tends to increase the risk of territorial conflict (Kocs, 1995; Owsiak, 2012; Toft, 2014). More specifically, ten out of sixteen disputed dyads (approximately 63%) do not have UN recognition (Table 4.4) because one country of the dyadic pair, being a breakaway entity, is not a UN member. All of these dyads are located on the territory of the former Soviet Union and former Yugoslavia, except for the two dyads between Northern Cyprus and Cyprus and Northern Cyprus and the UK (Akrotiri and Dhekelia). Northern Cyprus is recognized only by Türkiye and does not have UN membership. Furthermore, UN Security Council Resolution 541 (1983) explicitly states that the independence declaration issued by the Turkish Cypriot authorities was legally invalid and called upon all States not to recognize any Cypriot state other than the Republic of Cyprus (SC Res 541).

UN-recognized but still disputed dyads include five relatively recent dyads—four post-Soviet and one post-Yugoslavian—as well as one older dyad—the never demarcated border between Portugal and Spain between the Caia River and Ribeira de Cuncos deltas.

The existing literature points to a relationship between democracy and stable borders (Allee & Huth, 2006; Gibler, 2007; Owsiak, 2012; Toft, 2014). To examine the relationship between democracy and border disputes for the disputed dyads in

Table 4.4 UN recognition of disputed dyads in the OSCE region

Dyads	Arose out of a conflict	UN recognition
Portugal-Spain	Yes	Yes
Croatia-Slovenia	Yes	Yes
Kosovo-Serbia	Yes	No
Cyprus-Northern Cyprus	Yes	No
Northern Cyprus-UK (Akrotiri and Dhekelia)	Yes	No
Abkhazia-Georgia	Yes	No
Abkhazia-Russia	No	No
Nagorno Karabakh/Artsakh-Azerbaijan	Yes	No
Armenia-Azerbaijan	Yes	Yes
Georgia-South Ossetia	Yes	No
Russia-South Ossetia	No	No
Russia-Ukraine	Yes	Yes
Moldova-Transnistria	Yes	No
Transnistria-Ukraine	No	No
Kazakhstan-Uzbekistan	No	Yes
Kyrgyzstan-Uzbekistan	No	Yes

Source The BiG dyads database https://biglobalization.org/dyads-database/ and BiG Dyads Code Book (2022)

the OSCE region, the study used the Democracy Index created by the Economist Intelligence Unit (Economist Intelligence Unit, 2022). The Index includes four categories: full democracies (overall score between 8.01 and 10), flawed democracies (scores between 6.01 and 8.00), non-democratic countries including hybrid regimes (scores between 4.01 and 6.0), and authoritarian regimes (scores under 4.0). For this chapter and study, a dyad is classified as democratic if both countries on the dyad are democracies (whether full or flawed) and non-democratic if both countries on the dyad are not democratic or one of the countries on the dyad is not democratic. Given that the Democracy Index was not calculated for breakaway entities, this study made assumptions using the regime of states that protect and support such entities' independence as a proxy (Table 4.5). For example, Abkhazia, South Ossetia, and Transnistria, backed by non-democratic Russia, are classified as non-democratic.

Only three out of sixteen disputed dyads in the OSCE region could be classified as democratic (Table 4.5), which seems to point to the less conflictual nature of democratic dyads. These include the old but still disputed border between two democratic EU member-states, Portugal and Spain, as well as two recent borders on the territory of the former Yugoslavia: one between EU members Croatia and Slovenia and the other between EU candidate Serbia and potential candidate Kosovo. Kosovo submitted its application for EU membership in December 2022 although not all EU members recognize Kosovo as a state. Serbia has not officially recognized

Table 4.5 Disputed dyads and democracy in the OSCE region

Dyads	Country 1	Country 2	Democratic dyad
Portugal-Spain	Flawed democracy 7.82	Flawed democracy 7.94	1
Croatia-Slovenia	Flawed democracy 6.50	Flawed democracy 7.54	1
Kosovo-Serbia	NA	Flawed democracy 6.36	1[a]
Cyprus-Northern Cyprus	Flawed democracy 7.43	NA	0[b]
Northern Cyprus-UK–Akrotiri and Dhekelia	NA	Full democracy 8.1	0[b]
Abkhazia-Georgia	NA	Hybrid regime 5.12	0[c]
Abkhazia-Russia	NA	Authoritarian regime 3.24	0[c]
Nagorno Karabakh/ Artsakh-Azerbaijan	NA	Authoritarian regime 2.68	0[c]
Armenia-Azerbaijan	Hybrid regime 5.49	Authoritarian regime 2.68	0
Georgia-South Ossetia	Hybrid regime 5.12	NA	0[d]
Russia-South Ossetia	Authoritarian regime 3.24	NA	0[d]
Russia-Ukraine	Authoritarian regime 3.24	Hybrid regime 5.57	0
Moldova-Transnistria	Flawed democracy 6.10	NA	0[e]
Transnistria-Ukraine	NA	Hybrid regime 5.57	0[e]
Kazakhstan-Uzbekistan	Authoritarian regime 3.08	Authoritarian regime 2.12	0
Kyrgyzstan-Uzbekistan	Authoritarian regime 3.62	Authoritarian regime 2.12	0

Source Economist Intelligence Unit (2022)

[a]We assume Kosovo is a (flawed) democracy

[b]We assume Northern Cyprus is not democratic due to its dependency on Turkey, which is a hybrid-regime with a score of 4.35

[c]We assume Abkhazia is not a democracy due to its dependency on Russia, which is not a democracy with a score of 3.24

[d]We assume South Ossetia is not a democracy due to its dependency on Russia, which is not a democracy with a score of 3.24

[e]We assume Transnistria is not a democracy due to its dependency on Russia, which is not a democracy with a score of 3.24

Kosovo's independence and the potential for a border conflict still exists. Pursuing EU membership is perceived as a path to a democratic and peaceful future.

Non-democratic disputed dyads in the OSCE region are mostly recent and located on the territory of the former Soviet Union where the transition of post-Soviet countries to democracy has been slower than expected. The OSCE's efforts to promote democracy in the region have had limited results. A few older non-democratic dyads include the dyads between Northern Cyprus and Cyprus, and Northern Cyprus and the UK (Akrotiri and Dhekelia). Northern Cyprus is classified as non-democratic due to its dependency on non-democratic Türkiye.

4.5 Conclusion

Border disputes and conflicts, as well as weak democratic institutions, continue to contribute to security instability in the OSCE region and the world. This study used the Borders in Globalization Dyads Database (BiG Dyads Database) to examine the current situation in the OSCE region. The data did not support the assumption and hypothesis about the high prevalence of traditional land border disputes in the OSCE region due to the young and potentially more unstable and contested borders. While most OSCE dyads are young, traditional land border disputes are less prevalent in the region. The newly formed international borders in the region followed administrative boundaries in the former Yugoslavia and Soviet Union. They were later recognized as the international borders of the recently emerged states. Most borders remain peaceful, which supports the hypothesis that borders drawn along previously existing administrative boundaries and recognized under international law tend to experience less risk of border disputes. Nevertheless, exceptions exist, as most disputed borders in the OSCE region were drawn along previous administrative boundaries in the Soviet Union and Yugoslavia. Most disputed dyads in the OSCE region are not democratic, which seems to lend support to the hypothesis about the less conflictual nature of democracy or at least indicate the existence of a relationship between democracy and stable borders.

The results underscore border dispute patterns likely to enhance tensions between emerging forms of democratic and governance liquidity in the OSCE region and the traditional forms of power exercise and protection of elites' vested interests. For example, Russia's disregard of the OSCE and international law, more generally, undermines regional security governance. Instead of contributing to the OSCE's efforts to promote security and democratization, Russia's adversity to democracy and purposeful strategy of instigating disputes and keeping them protracted and "frozen" makes it extremely difficult to find solutions to many existing border disputes in the OSCE region.

The data show that, while patterns of border disputes in the OSCE region follow those in the rest of the world, there is also regional specificity as most dyads are very young. Many dyads remain contested, which raises significant questions regarding

the overall stability and governance in the OSCE region and the effectiveness and limitations of regional international organizations such as the OSCE.

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Chapter 5
Assessing Water (Ir)Rationality in Nagorno-Karabakh

Leonardo Zanatta and Marco Alvi

5.1 Introduction

Since the collapse of the Soviet Union to September 2023[1] the landlocked mountainous territory of Nagorno-Karabakh has been the object of an unresolved dispute between Azerbaijan, of which it is internationally recognized as a part, and its ethnic Armenian majority population, backed by neighboring Armenia.[2] As home to the

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[1] On September 28, 2023, Samvel Shahramanyan, the elected president of the self-proclaimed Republic of Nagorno-Karabakh/Artsakh, signed the order for its dissolution, effective from January 1, 2024. This came after Azerbaijan conducted a lightning one-day offensive on September 20 to reclaim full control over its breakaway region and demanded that Armenian troops in Nagorno-Karabakh lay down their weapons.

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[2] In the 1920s, the government of the Soviet Union established the Nagorno-Karabakh Autonomous Oblast (NKAO) within Azerbaijan, where the majority of the population was ethnically Armenian. Tensions between the two ethnic groups were contained by Bolshevik rule but, as the Soviet Union crumbled, so did its hold on Armenia and Azerbaijan. In 1988, despite the region's legal location within Azerbaijan's borders, ethnic Armenians living in the NKAO demanded that it be transferred to Armenia and, in December 1991, with the demise of the Soviet Union, declared independence. An armed conflict broke out between Azerbaijan and the Karabakh Armenian separatist forces supported by Armenia. The war ended in May 1994 after the signing of the Bishkek ceasefire, which maintained the status quo of self-declared secession of the Nagorno-Karabakh territory together with seven adjacent districts of Azerbaijan. The war also resulted in roughly 100,000 casualties and hundreds of thousands of refugees. For more than a decade, the Nagorno-Karabakh conflict has been frozen, with artillery shelling and minor skirmishes between Armenian and Azerbaijani

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headwaters of rivers, dams, and hydropower plants alike, the lands in and around Nagorno-Karabakh play a vital role in providing water to an area that has been particularly afflicted by water scarcity. Throughout the years, the disputed status of this area has worsened the water security of Azerbaijan, whose territory constitutes the downstream area of this region.

The deterioration and scarcity of water resources have been increasingly at the heart of debates on regional security, with disputes over management and ownership of waterways leading upstream and downstream countries to the brink of conflict. To quote Cooley (1984), "water is likely to cause wars, cement peace, and make and break empires and alliances in the region". The danger of running into this eventuality emphasizes the need for transboundary cooperation to ensure water resilience and prevent further conflicts.

In this chapter, we will examine the existing literature on environmental security and governance, with an empirical analysis of the impact of water scarcity on regional conflicts. We intend to test two hypotheses: (1) water scarcity is unlikely to be the main cause of wars, but it can combine with factors such as ethnic, political, and social tensions to transform already existing hostilities into open military conflicts; and (2) politicization of environmental issues represents a further obstacle that increases mutual mistrust between contending parties and thus implies the need for a third actor to achieve durable and successful governance.

On 27 September 2020, the decades-long conflict between Armenia, which provides military and economic backing to the *de facto* Armenian breakaway republic of Artsakh,[3] and Azerbaijan erupted into an open military brawl lasting 44 days, representing a turning point in the dispute. On 9 November 2020, the two countries' leaders signed a Russia-brokered agreement to end belligerent operations, returning part of the region and the surrounding areas to the control of Baku. While the Azerbaijani side achieved significant territorial gains and access to abundant freshwater resources, the territories under Armenian control have been plagued by water and electricity shortages. Despite the end of the Nagorno-Karabakh conflict in September 2023, the lack of any new border demarcation between Armenia and Azerbaijan and exchanges of fire along the Armenian-Azerbaijani state border are just a few of the contentious issues that still eclipse water security problems. Nevertheless, the lack of lasting solutions to environmental issues poses the threat of new escalation between Azerbaijan and Armenia.

Our work consists mainly of three parts. The first section examines the existing literature on water scarcity and provides an overview of the hydropolitical structure of the Kura-Aras basin. In doing this, we highlight the region's potential regarding water resources and hydroelectric energy, analyze the water scarcity situation in Azerbaijan in the wake of the 2020 war, and describe the impacts of the November 9th

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troops threatening the status quo. In April 2016, the two sides fought a 4-day war that resulted in dozens of deaths and more than 300 casualties.

[3] The term "Artsakh" has become extensively used by the Armenian people to allude to the region's historical and cultural significance. According to one version, the name derives from the combination of two Armenian words: "ar" for "sun" and "tsakh" for "valley".

ceasefire agreement on water-related issues. The second section deals with regional environmental governance and water rationality theory. Consequently, we identify the types of governance and the possible actors involved in the South Caucasus region, evaluating whether the governance structures available are feasible according to the framework of water rationality theory. The third section applies the considerations overviewed in the second part before and right after the 2020 war to investigate the already existing and ongoing initiatives attempting to tackle water issues in the region, specifically those involving the three major regional powers—Russia, Turkey, and Iran—and the OSCE. Finally, we provide some conclusions on the uniqueness of the case of Nagorno-Karabakh in the literature on water conflict and governance and on the possible insights that the latter can provide to the analysis of transboundary water management issues in the broader OSCE region.

5.2 Real or Constructed "Wars Over Water"

This section seeks, using the geographical and political context of the South Caucasus and Azerbaijan, to understand the rationale behind the water wars and, more specifically, to what extent water issues trigger the outbreak of military conflicts. Water is essential to all aspects of life. It is necessary for human health, hygiene, waste disposal, food, and ecology, and it powers society's most important industries, including agriculture, energy, and transportation. In Azerbaijan, the country at the center of our research, annual freshwater consumption by economic sectors increased by 7% between 2000 and 2017 (SEIS, 2016). Due to the massive use of irrigation, agriculture has the highest water demand. In the same period, water use in this sector increased by 76.5% (SEIS, 2016). The country's energy mix is still heavily concentrated on its rich fossil fuels reserves, with oil and gas accounting for more than 98% of total supply and hydropower accounting for only 6% of gross electricity generation in 2019 (IEA, 2021).

According to Bencala and Dabelko (2008), factors such as population growth, increased agricultural production, increased consumption, and climate change are expected to result in an unprecedented scarcity of water resources. Mehta (2003), emphasizing the multifaceted nature of environmental scarcity, claims that it (1) is often caused by poor management; (2) varies across time and space, depending on factors such as climate, season, and temperature; and (3) is impacted by the fact that natural resources are "unequal resources" when it comes to their access and control. Being a "scarce" resource, it is understandable why policymakers, practitioners, experts, and scholars inevitably end up treating access to freshwater as a security issue (Gupta & Pahl-Wostl, 2013). Azerbaijan was experiencing a water crisis in the run-up to the 2020 Nagorno-Karabakh conflict. A report from CEOBS (2021) indicates that during the summer, water levels in the Kura River fell by two and a half meters, allowing seawater from the Caspian Sea to flow inland and upstream; and (2) the Mingachevir reservoir, the largest in the Caucasus region, saw its level drop by 16 m. This significantly impacted rural Azeris' drinking and agricultural

water supplies. Azerbaijani President Ilham Aliyev has acknowledged the country's water issues, pointing to the role of drinking water and irrigation projects as the most important issues on the government agenda in the coming years (President of Azerbaijan, 2020). On the eve of the conflict in July 2020, Azerbaijani President Ilham Aliyev approved the Action Plan for 2020–2022 to ensure the efficient use of water resources, which lists the construction of 10 new reservoirs across the country as well as water pipelines and irrigation canals (Lmahamad, 2020).

In addressing the issue of environmental scarcity, Homer-Dixon (2001) claims that it can be of three types: supply-induced, demand-driven, and structural. The first results from the deterioration and the exhaustion of an environmental resource, such as cropland erosion. The second is caused by regional population growth or increased per capita consumption of a resource, both rising demand. The third stems from the unequal social distribution of a resource that concentrates it in the hands of a small number of people while the rest of the population suffers from severe scarcity. These forms of environmental scarcity often interact in two patterns (Homer-Dixon, 2001). The first pattern of interaction, "resource capture", occurs when powerful groups respond to a drop in the quality and quantity of a renewable resource, such as water, by changing the distribution of the resource in a way that harms weaker groups. The second, "ecological marginalization", occurs if high population density, combined with a lack of knowledge and capital to protect local resources, causes severe environmental damage and chronic poverty.

In the case of Azerbaijan, it is arguable that the country has faced the problem of water scarcity from all the levels indicated. Since its independence in 1991, Azerbaijan has faced several water issues, such as water pollution, exhaustion of water resources in arid areas, salinization of irrigated lands, and a decrease in the level of the Caspian Sea. The nation's ecosystem varies from dry in the central and eastern regions to subtropical and humid in the southeast. Aside from the Caucasus mountains and the Lankaran lowland, most of the territory in the arid east and central areas records insufficient rainfall (Yu, 2022).

Azerbaijan's climate makes its agriculture heavily dependent on irrigation. In the country's most arid regions—such as the Aran and Absheron macroregions—the water level of the Kura and Aras Rivers has dramatically decreased in recent years. Lowlands like the Southern shore of the Absheron Peninsula and Southeast of Gobustan receive the minimum average annual precipitation—around 150–200 mm per year. At the same time, maximum and minimum temperatures across the country are expected to rise faster than the global average (Asian Development Bank, 2021) (Map 5.1).

This suggests that Azerbaijan's water scarcity is certainly supply-induced. Yet, water scarcity in Azerbaijan also exhibits characteristics of demand-induced scarcity since the country's population has reached 10 million people—more than half of the South Caucasus population—around half of whom live in rural areas and rely on agriculture (Yu, 2022). As a result of human activities, it is calculated that 40% of the water in the case of the Kura and 27% of the water in the case of the Aras is not discharged to the Caspian Sea (Zeeb, 2010). Finally, the water scarcity of Azerbaijan is also structurally induced, due to the conflict around Nagorno-Karabakh. This
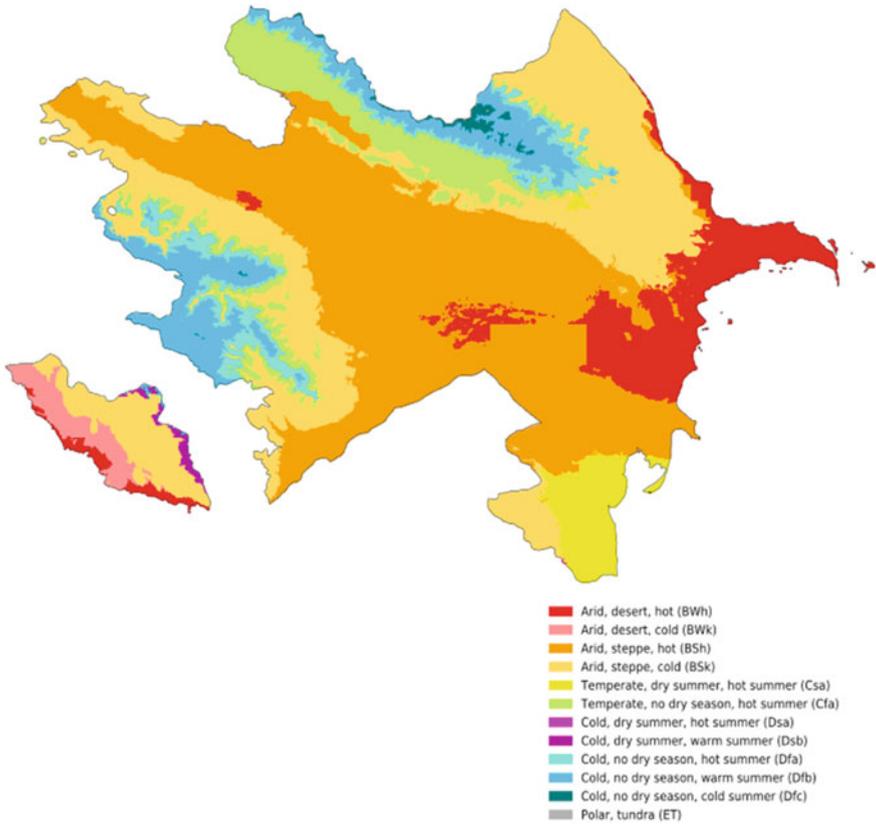
Map 5.1 Koppen-Geiger climate classification map for Azerbaijan. *Source* Beck et al. (2018)

region comprises unavailable water resources, which could reduce water scarcity in the most arid regions of the country. Eight rivers cross this region: the Tatar, Khachen, and Karkar, which flow into the Kura River, while the Vorotan, Voghchi, Hakari, Ishkhan, and Chkhpor are five tributaries of the Aras.

The lands in and around Nagorno-Karabakh are vital in providing water to its agricultural lowlands, which have been particularly affected by water scarcity. The region still preserves four significant dams and 36 hydropower plants built during the Soviet era, which together can generate about 2.56 billion cubic meters of water annually (Ministry of Energy of Azerbaijan, 2022). The largest single hydropower plant is Sarsang, built in 1976 on the Tartar River and located in the Terter region, which produces more than half the territory's hydropower capacity at 50 megawatts of energy (Mejlumyan & Natiqqizi, 2021). In 1990, the power produced by the plant per annum amounted to 81.9 million kW/hour (Ministry of Energy of Azerbaijan, 2022). It is worth mentioning that the Sarsang water reservoir provides irrigation water for about 125,000 hectares across six districts—Tartar, Agdam, Barda, Goranboy,

Yevlakh, and Agjabadi. Access to water resources cradled in the Karabakh mountains will inevitably change the energy strategy of Baku, shifting it towards a more intense use of hydroelectricity for local needs and thus reallocating natural gas resources available for export (Karimli, 2022).

Having defined the concept of water scarcity, framed its characteristics, and explained how it could be a security issue for a country, we need to understand the relationship between water scarcity and the outbreak of violent conflict and whether water issues alone can bring nations to the brink of military confrontation. As argued by Bencala and Dabelko (2008), the challenge for experts and practitioners is to distinguish between the several dynamics that can lead to conflict over water and find opportunities for cooperation. According to the existing literature, in areas where water is scarce in terms of quality and quantity, competition for limited supplies may involve individuals, groups (Gleick, 1993, Merierding, 2013), and even nations (Gleick, 1993; Klare, 2002). Klare (2002) argues that the possibility of conflict between states will increase as states face escalating demands for resources, resource shortages, and proliferating ownership contests. Some scholars (Abdel-Samad & Khoury, 2006) claim that environmental degradation can be both a reason for and a consequence of violent actions.

But are water or environmental issues enough to push states to war? Gleditsch (2001) states that, besides ecological degradation or resource scarcity, political, economic, and cultural factors could result in social fragmentation and cleavages, causing conflict. In the longstanding Nagorno-Karabakh conflict, military security, economic viability, and ethno-nationalist tensions have overshadowed water security issues for years. Alam (2002), although focusing on the Indian subcontinent, provides an exciting observation potentially relevant to the latest events in the South Caucasus. If a water shortage occurs during a wider conflict and enemy states depend on the same shared resources, each country will work to guarantee its access to the required water. O'Lear and Gray (2006), who also used Azerbaijan as a case study, insist that there needs to be more clarity in the causal linkages between environmental degradation and conflicts. Thus, we can argue that although the Nagorno-Karabakh conflict has deep historical and political roots, ecological issues revealed renewed tensions concerning Azerbaijan's water scarcity issues. This topic has seldom been researched, although Baku has seen this water-rich region of its territory as a way out of the country's constant lack of water resources. Up to 40% of the Republic of Azerbaijan's mineral water resources are located in areas under Armenian control before the 2020 war (Ahmadi et al., 2023). Thus, the Nagorno-Karabakh conflict case seems to prove Homer-Dixon and Blitt's (1998) claims on the fact that: (1) the perception of relative scarcity alone is not sufficient to generate conflict; but (2) if there is enough mobilization around a shared identity, such as religion, class, or ethnicity in the face of a rigid political structure then violent conflict related to resource scarcity among groups within a state may emerge.

Moreover, another aspect of water scarcity outlined by this conflict is that, as argued by Mehta (2003), environmental scarcity is both "real" and "constructed". This means that, even if water and water supply systems are increasingly likely to become both objectives of military action and instruments of war (Gleick, 1993),

environmental scarcity will be increasingly instrumentalized by policymakers and become the center of a series of political and discursive processes due to the increased strain that climate change will place on freshwater resources from industry, agriculture, and expanding urban populations (Armitage et al., 2015). This will likely happen through those mechanisms Alam (2002) describes as "bellicose statements". A 2021 report from CEOBS (2021) indicates that the extent to which the environment featured in the 2020 conflict between Armenia and Azerbaijan was unusual, with both parties co-opting and weaponizing the term ecocide and accusing each other of eco-terrorism and environmental sabotage. From the Armenian side, 51 NGOs, based mainly in Armenia, signed an "Ecocide Alert". In the alert, they blamed the Azerbaijan army for using white phosphorus, representing an existential ecological threat. They called for action from global environmental actors to prevent this "ecocide", highlighting the region's significant biodiversity and number of endangered species (CEOBS, 2021).

On the other hand, the Azerbaijani side blamed their Armenian counterparts for provoking fires and destroying ecosystems and settlements. Azerbaijan's Deputy Foreign Minister Elnur Mammadov said that Baku intended to bring evidence to the International Court of Justice of Armenia's environmental terrorism and illegal exploitation of natural resources. This included the pollution of industrial wastes from the Armenian side of the Okhchu River, 1 of 11 Azerbaijani rivers in Nagorno-Karabakh, providing approximately 30% of the country's total drinking water reserves (Mehdiyev, 2021). Moreover, in Resolution 2085, the Parliamentary Assembly of the Council of Europe (PACE) criticized the Armenian authorities, stating that deliberate limitation to access of water resources flowing from the Nagorno-Karabakh region to the citizens of Azerbaijan living in the Lower Karabakh "must be regarded as environmental aggression and seen as a hostile act by one state towards another aimed at creating environmental disaster areas and making normal life impossible for the population concerned" (PACE, 2016).

5.3 Establishing Water Governance in the South Caucasus: Irrationality Prevails

As claimed by Ahmadi et al. (2023), water played a dual role in the Nagorno-Karabakh region: (1) it ensured the water and energy security of the *de facto* republic and, to a lesser extent, Armenia; and (2) it was and still is critical for the development of Azerbaijan's neighboring regions and for the country's security. Homer-Dixon (1998) argues that, since river waters flow from one area to another, one country's access may be hampered by the actions of another. In the case of Nagorno-Karabakh hydropolitics, a term used by Waterbury (1979) to discuss the policies influenced by water resources, this implies that both the Armenian and Azerbaijani sides have used water diversion as both "real" and "constructed" weapons to exert pressure on each other. If, prior to the 2020 war, the ethnic Armenians living in the

region could rely on energy self-sufficiency, export electricity to Armenia, and, as claimed by the Azerbaijani side (Ahmadi et al., 2023), create artificial floods and droughts through the Sarsang Reservoir to provoke environmental damage in the plains of the Karabakh region under Azerbaijani control, in its aftermath, the *de facto* republic has suffered from water and electricity shortages. After the ceasefire agreement, only one-sixth of the Nagorno-Karabakh hydroelectric plants remained in the Armenian-Russian-controlled area, reducing the energy production capacity from the pre-war 191 megawatts to 79 MW (Mejlumyan & Natiqqizi, 2021). At the same time, Azerbaijan increased its hydropower production capacity, taking control of several hydroelectric power plants and planning to create new ones in the territories it retook in the war. The Kalbajar and Lachin districts, under Armenian control until the 2020 conflict, contain the Arpa and Vorotan Rivers. Around 5,000 cubic meters of thermal water per day in the Kalbajar, Lachin, and Shusha districts are now at Azerbaijan's disposal (Karimli, 2022). Baku also controlled the Jabrayil district and the state border with Iran, thus accessing the Khodaafarin reservoir. Therefore, the 2020 war completely changed the regional balance of power in terms of water resources.

Stabilizing conflict entails assisting governance through actors viewed as legitimate by the local population. Governance is widely understood to be the institutions (laws, constitutions, laws, policies, formal and informal rules), structures (entities, organizations, informal networks of actors and organizations), and processes (articulation of institutional mandates, negotiation of values, conflict resolution, lawmaking, and policy formation) that decide who makes decisions, how and for whom decisions are made, whether actions are taken, by whom, and for what purposes (Graham et al., 2003)?

What makes us think that in such a contested situation, the parties involved can work to reach a regime that governs environmental issues? Alam (2002) suggests that to secure their long-term water supply, states build and maintain relationships with their co-riparian countries conducive to long-term access to shared water. Nevertheless, if direct bilateral negotiations prove unsuccessful, the intervention of an impartial mediator can assist in communication between the parties (Alam, 2002). This theory is known as the "water rationality theory".

The institutional, structural, and procedural components of governance take place at various scales, from local to global, interact with each other, and influence the general capability, performance, and consequences of environmental governance (Bennet & Satterfield, 2018). Pahl-Wostl et al. (2018) sum up the different levels at which water scholars and policymakers advocate governance: (1) local, (2) national, (3) basin-level, and (4) global. When dealing with water resources in Nagorno-Karabakh, the first significant challenge is to understand who the actors were at each level of governance and, looking at water rationality theory, whether they could have collaborated.

Local environmental governance (LEG) has its cornerstones in subsidiarity and decentralization (Pahl-Wostl et al., 2018). It stipulates that, together with the formal inclusion in decision-making processes, there is a distinct definition of the realms of authority (local access issues, vector-borne diseases, and regional demand) that

local actors are expected to operate within (Lemos & Agrawal, 2006). The main driver for establishing LEG is connected with the fact that local people are more competent and committed to dealing with their problems than those from higher levels of government (Gupta & Pahl-Wostl, 2013).

In August 2022, both Azerbaijani (Turan News Agency, 2022) and Armenian (Hetq, 2022) media outlets reported that representatives from both sides had met and visited the Sarsang Reservoir, situated in the north of the then Armenian-controlled territories in Nagorno-Karabakh, to solve their water distribution problems. The government of the *de facto* republic declared that the two sides, assisted by Russian peacekeepers, had been in contact regarding water management issues since the end of the 2020 conflict. The media outlets also reported that the Azerbaijani representatives first monitored the reservoir and received information on the schedule of its water inflow and discharge. Second, the two parties discussed the restoration of water supply to irrigated lands in lowland Azerbaijan and the possibility of making such meetings regular.

However, although this event represented a faint sign of hope, establishing this type of governance was threatened by the unresolved conflict and Azerbaijan's intention not to negotiate with Karabakh Armenians. In 2013, the authorities of the *de facto* of Artsakh had proposed working out a way for both sides to use the Sarsang Reservoir. Arthur Aghabegyan, the Deputy Prime Minister of the *de facto*, suggested that the two sides could engage in joint management of the Tartar River and of the Sarsang Dam, since the reservoir has more capacity than is currently used (Leylekian, 2015). Although the initiative received the support of the OSCE Minsk Group and, in particular, of the US co-chairman James Warlick, Azerbaijan rejected the offer, saying that it would not negotiate with the separatists. Baku, by virtue of the principle of territorial integrity,[4] claimed the entirety of the region and, in fact, the ceasefire agreement of November 2020 did not in any way mention the status of the region. Azerbaijani President Ilham Aliyev repeatedly affirmed that ethnic Armenians living in Nagorno-Karabakh will enjoy no special status or autonomy once the area comes fully under the control of Baku. While Veliyev et al. (2019) claim that Azerbaijanis and Karabakh Armenians may see an opportunity for cooperation in the Sarsang Reservoir by focusing on the environment as a common goal, Leylekian (2015) argues that the political context and the disposition of the conflicting parties make it difficult to incite them toward such rationality.

Therefore, as demonstrated by the August meetings between the Azerbaijani and *de facto* authorities, the only attempts to establish a form of local governance were possible thanks to the presence of what Alam would define as a third actor who mediates between the parties involved in the conflict: the Russian peacekeepers. In September 2021, the Kremlin's servicemen provided more than 200 tons of drinking water to the residents of the *de facto* republic using two water carriers, each with a

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[4] The territorial integrity of sovereign states is a cardinal principle of international law laid out by Article 2(4) of the UN Charter and is also recognized as a rule of customary international law. In 1993, the UN Security Council adopted four resolutions regarding the Nagorno-Karabakh conflict that confirmed the occupation of Azerbaijan territories by Armenian armed forces and called for the withdrawal of Armenian troops from the occupied districts.

volume of about five cubic meters (Ministry of Defense of the Russian Federation, 2021). Furthermore, they tended to crops, fixed water pipes, and facilitated meetings to discuss access to water and electricity with Azerbaijani officials (Vartanyan, 2021).

Additionally, the Kremlin's militarily depleting takeover of Ukraine has provided Azerbaijan with the functional space[5] and legal cover to test Russian presence within the region. Thus, it is clear that the peacekeepers' mission did not offer a lasting solution to establish and strengthen water governance. For this reason, establishing LEG in Nagorno-Karabakh could not be an option according to our theoretical framework.

National environmental governance (NEG) implies that water is a national resource that should be managed to benefit the economy and society (Pahl-Wostl et al., 2018). This means that, for the sake of domestic interests, it is up to the state to manage national and transboundary resources (Gupta & Pahl-Wostl, 2013). Applying this definition to our research, it would appear that Azerbaijan and Armenia, the two countries that fought over Nagorno-Karabakh for three decades, should agree on the management of water resources. Since the Arpa and Vorotan Rivers feed Lake Sevan, the main source of freshwater in Armenia, Yerevan is also deeply concerned about water governance in the Nagorno-Karabakh region.

The instrumentalization of water scarcity operated by both parties, environmental relations between Armenia and Azerbaijan would be determined by the absolute lack of mutual trust. It is no coincidence that the only document signed between the two sides dates back to 1974, when tensions were contained under the common borders of the Soviet Union. On this occasion, the Soviet Socialist Republics of Armenia and Azerbaijan inked an agreement on the joint utilization of the waters of the Vorotan River, allocating 50% of the waters to each party.

As paraphrased by Weinthal (2002), governance dynamics have to be looked at in terms of upstream/downstream dynamics. This means that, if upstream countries are politically powerful and concerned about water security issues, they are more likely to develop joint rules that benefit downstream countries as well. However, in our case, the most upstream of the two countries, Armenia, was defeated in the war, has limited economic resources, and has been experiencing a very serious political crisis since the last war with Azerbaijan. Thus, the new geopolitical framework in which Yerevan has lost control over upstream territories has strongly reduced the country's legitimacy as an interlocutor in regional and international affairs *vis-a-vis* its neighbor Azerbaijan. In the aftermath of the 2020 conflict, with unresolved issues of border demarcation,[6] exchange of prisoners of war, and the implementation of

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[5] Since Russia launched its invasion of Ukraine on 24 February 2022, the Kremlin has reportedly been redeploying some of its more experienced peacekeepers from Nagorno-Karabakh. Instead, young conscripts are now stationed at mountain outposts designed to act as a deterrent to provocations. This has resulted in new incidents in the region's villages where the Russian peacekeeping mission has been deployed.

[6] After the restoration of the sovereignty of Azerbaijan over the territories adjacent to Nagorno-Karabakh, the demarcation of the Azerbaijan-Armenia border emerged as a new issue. It has remained undefined between the two countries since the collapse of the Soviet Union, and different interpretations over the maps established at that time have made some transboundary bodies a matter of dispute (e.g. Lake Sevan).

the so-called Zangezur corridor fuelling tensions between the two sides, water issues are treated as part of the conflict and might be discussed only after the signing of an eventual peace agreement or memorandum of understanding.

Basin-level environmental governance (BEG) is where water issues and conflicts are best dealt with (Pahl-Wostl et al., 2018). The Kura River and its primary tributary, the Aras, originate in the mountains of eastern Turkey, join in Azerbaijan, and drain a basin that is 117,000 square miles in size and includes portions of Georgian, Armenian, Iranian and Azerbaijani territory. Since the collapse of the Soviet Union, the Kura-Aras Basin has become an international river basin joining five states: the new countries of the South Caucasus (Armenia, Azerbaijan, and Georgia), Iran, and Turkey.

Regarding the Southern Caucasus countries, this watershed represents both a common vital resource and a security challenge. For example, in Georgia, this water basin is necessary for agriculture; in Armenia, it is needed for both agriculture and industry (Campana & Vener, 2009); and in Azerbaijan, the Kura and Aras Rivers provide about half of the drinking water and 60% of the irrigation water necessary for agriculture (Zeeb, 2010). Moreover, being located most downstream among the three states in the region, Azerbaijan depends on its upstream neighbors for its primary freshwater resources. Although the majority of the Kura-Aras river basin is located on its territory (31.5%), the three primary water sources crossing the country—the Kura, Aras, and Samur Rivers—originate in neighboring countries and are heavily impacted by pollution and overuse from upstream industries and municipalities in those counties, as well as within Azerbaijan (Yu, 2022). The dependency ratio is also high: according to a blog post by the World Bank (2004), about 73% of Azerbaijani water resources come from bordering flows and 70% of its territory is located on international basins.

Water users in all three countries face water quality and quantity problems. The difference in water use among these three countries also relates to vulnerability. If, on the one hand, Georgia has an oversupply of water and Armenia has some shortages based on scarce management, the main challenge is faced by Azerbaijan, which has to deal with the heavy need for water flow (Campana & Vener, 2009). Furthermore, the Kura-Aras watershed in the South Caucasus has drawn attention due to its severe industrial and agricultural pollution, radioactive contamination, and lack of availability of fresh water for drinking.

The concept of basin governance revolves around the notions of efficiency within a hydrological systems approach (Pahl-Wostl et al., 2018). Ahmadi et al. (2023) argue that there is a significant correlation between the Nagorno-Karabakh conflict and water management issues in the Kura-Aras basin. Although the basin's water scarcity problems have emphasized the common need for transboundary cooperation, the riparian states have yet to sign any joint treaty regarding water allocation, water quality, or ecosystem maintenance. The lack of adequate collaboration caused by the Nagorno-Karabakh conflict has created a significant barrier to developing a viable and efficient multilateral water management system in the region (Veliyev et al., 2019). There is no global regime to govern such conflicts in river basins, as each is managed separately by the riparian states (Haas, 2016). In the Southern

Caucasus, such bilateral agreements were inked mostly during Soviet times, with the three newly born states inheriting these accords in compliance with the International Convention on State Succession. The Soviet Union inked two conventions in 1927 with Turkey on the "regulation of the use of transboundary waters" and the "utilization of transboundary streams" and two others in 1957 with Iran on the "establishment of the regime on the Soviet-Iran border" and the "procedure of settlement of boundary disputes and incidents". The parties agreed on preserving the boundary waters, the exchange of information regularly regarding the quantity and volume of water in the transboundary rivers, joint management of transboundary waters and energy resources, joint draft projects, and the protection of water quality (Zeeb, 2010).

After the collapse of the Soviet Union in 1997, the Ministry of Environment of Georgia and the State Committee of Ecology and Nature Management of Azerbaijan signed a memorandum of understanding on cooperation in the development and implementation of pilot projects for monitoring and assessment of the status of the Kura-Aras basin. In the same year, Georgia signed two other agreements with its neighbors on cooperation in environmental protection. In 2016, Iranian and Azerbaijani authorities agreed to cooperate on constructing power plants on the Aras River at the Khudafarin and Giz Galasi Dams. After the 2020 war, works on this hydroelectric power plant's infrastructure started in 2022, aiming to generate a total capacity of about 280 megawatts (Sarabi, 2022).

However, looking at Basin Environmental Governance (BEG) under the lens of water rationality theory and applying this to our research, it becomes evident that the presence of more than one "water irrational" actor—Armenia, Azerbaijan, and/or Turkey—can hamper the establishment of BEG for water management. Despite their lack of bilateral diplomatic relations, Armenia and Turkey have continued to honor old treaties signed before the collapse of the Soviet Union and continue to share the Arpacay/Akhourian River equitably. Nonetheless, because the treaties only address the quantity to be shared by the co-riparians, further cooperation between the two parties has been necessary to address water quality and protection issues. The lack of sufficient water-rational actors in the BEG implies the necessity of a third actor who can act as a mediator between the contending countries (Alam, 2002).

Global environmental governance (GEG) aims to develop a shared understanding of international water drivers and their impacts to establish standard norms for water management and raise the efficiency of policy measures (Pahl-Wostl, 2013). The 1972 Stockholm Declaration on the Human Environment and the 1992 Rio Declaration on Environment and Development are widely regarded as the foundations of international environmental law. The basic principles outlined in these declarations link environmental and human rights. However, these international ecological laws have flaws, particularly in implementation as international organizations lack enforcement authority. This is especially the case if the actors involved in the governance attempts are not "water" or "environment" rational.

5.4 Few Initiatives, Poor Chances of Success

As discussed thus far, the relationship between governance and conflict dynamics in the South Caucasus region demonstrates that several irrational actors are involved in the water governance process. Water rationality theory presumes that rational riparian countries will build relationships to maintain long-term access to shared water resources. This is different in the South Caucasus region. At the local level, there was the issue of the upstream region of Nagorno-Karabakh, which serves the downstream territory of Azerbaijan with sources of water—the lack of recognition from Baku of Nagorno-Karabakh as a counterpart limited any attempts at LEG. A significant issue at the national level is the poor relationship of Armenia with Azerbaijan and Turkey, where the lack of diplomatic relations prevents any developments toward NEG.

Therefore, BEG, which should bring the governance system to a broader level, allowing for the involvement of other actors as mediators between "irrational" actors, has a privileged position in our analysis. Nevertheless, if we consider the irrationality of the actors involved and the predominant role that Russia has played in the regional security dynamics—which was strengthened further after it deployed peacekeepers in the Nagorno-Karabakh region—BEG as a strategy of water governance is not without hindrances. This portion of the chapter analyzes attempts aimed at strengthening the Kura-Aras BEG, both considering the format of cooperation among the actors—the South Caucasus countries of Georgia, Armenia, and Azerbaijan, together with regional actors Turkey, Russia, and Iran—and with an external platform of regional cooperation—the OSCE, for instance.

On December 2020, after the outcome of the Nagorno-Karabakh war, Turkish President Recep Tayyip Erdoğan proposed the creation of a 3 + 3 country-regional cooperation platform as a win-win initiative for the three South Caucasus states—Georgia, Armenia, and Azerbaijan—and their three neighbors—Russia, Turkey, and Iran. In particular, Erdoğan claimed, "Not only Azerbaijan, but all countries of the region, including Armenia, as well as the whole world, will benefit if peace and tranquillity are achieved in the Caucasus" (Jamnews, 2021). As stated by Russia's Foreign Minister Lavrov, Russia supports the realization of such a platform based on the points highlighted in the Nagorno-Karabakh ceasefire declaration:

> The joint statement contained the principles that define joint steps to advance the settlement, including work on unblocking all transport communications, unblocking all economic ties in this region, from which not only Armenia and Azerbaijan but also Georgia will benefit (Daily Sabah, 2021).

In January 2021, then-Iranian Foreign Minister Javad Zarif's diplomatic tour in Azerbaijan, Armenia, Georgia, Turkey, and Russia was inspired by Erdoğan's initiative. In Baku, Zarif expressed his pleasure at Azerbaijani territorial restoration, while in Yerevan, he pinpointed that the territorial integrity of Armenia represents a red line for Tehran (Kucera, 2021). Despite taking a passive position during the last conflict, Iran's main challenge in this new regional scenario is to reconfigure its

relationship with Baku and Yerevan by building up mutual trust and stabilizing the geopolitical situation on its northern border.

The first session of the 3 + 3 group was held in Moscow on 10 December 2021, with the participation of all the regional countries except for Georgia. Tbilisi refused to take part in the meeting due to the presence of Russia, which does not recognize its territorial integrity. As declared by Georgian Deputy Foreign Minister Alexander Khvtisiashvili in this regard, "Georgia will not be able to engage in the peace platform, where the country occupying Georgian territories is participating as well" (Demirtaş, 2021).

Strengthening the regional security system in the South Caucasus remains the major pillar of this new platform of security for Tehran, Ankara, and Moscow. However, when it comes to interstate issues, particularly those related to water management, this approach has provided the necessary tools to improve cooperation in the Kura-Aras River Basin. In this framework, water issues are considered as an element of security among states rather than an element on which to build mutual cooperation. Thus, in such a region where water irrationality is related to political dynamics among local actors, making it difficult to find a suitable solution, supranational policies may represent a way to create the basis for a neutral water cooperation platform.

One of the most relevant frameworks in this sense in the South Caucasus is the EU Water Initiative (EUWI) and its operational tool, the EU Water Framework Directive (WFD), which supports EU countries and beyond in the adoption of water reform policies. Although the EUWI has managed to provide for adopting general principles of Integrated Water Resources Management (IWRM), the enforcement of such management frameworks still needs to be improved in this region. An ineffective legal and environmental framework and a need for more transparency and public awareness represent the main obstacles to establishing a sustainable water cooperation system (Veliyev et al., 2019).

In May 2003, at the fifth Environment for Europe Ministerial Conference in Kyiv, the Organization for Security and Co-operation in Europe (OSCE), the United Nations Environment Programme (UNEP), and the United Nations Development Programme (UNDP) launched an important initiative, the Environment, and Security (ENVSEC) initiative, to formulate a comprehensive response "to the challenges posed by the close links between environmental degradation, natural resource scarcity and conflict" (OSCE, 2012).

In the South Caucasus, this initiative launched several projects to strengthen bilateral and multilateral cooperation at the water basin level, taking as its principal legal framework the UNECE Water Convention. Between 2002 and 2008, the ENVSEC Initiative implemented the South Caucasus River Monitoring project, a jointly-led North Atlantic Treaty Organisation (NATO) and OSCE project aimed at establishing a regional transboundary river monitoring system for water resources among Armenia, Azerbaijan, and Georgia in the Kura-Aras River Basin. This first project laid the basis for developing a multimodal approach to regional cooperation in this basin. In 2006, as part of the same initiative, the UNDP carried out the identification of transboundary aquifer systems in the South Caucasus and an assessment of water resources and

issues related to their use. Moreover, the UNDP addressed the importance of establishing an NGO forum in the Kura-Aras River Basin as part of this initiative. This forum would be aimed at increasing public participation and the capacity of local communities to face water degradation and adopt sustainable measures to improve the coordinated use of the transboundary basin resources.

In the context of the Kura-Aras River Basin, where the water irrationality of the actors involved does not allow for water quality and quantity issues that regional water users have to face to be properly addressed. The OSCE, through the ENVSEC initiative, fills this gap by depoliticizing water management among the riparian countries through the implementation of transboundary policies that put at the center the water users, laying the foundations for basin-level environmental governance in the South Caucasus which involves local communities and conducts basin analysis.

The role of such international organizations in implementing common norms for water management and efficiency-oriented policy in a specific area is part of global environmental governance, as theorized by Pahl-Wostl (2013). However, such as the supranational approach is often lacking in the proper enforcement authority in a regional framework. The OSCE, due to its intergovernmental structure in which the South Caucasus countries are directly involved, is endowed with a certain degree of authority as a mediator in solving water issues between states. In this sense, a successful example of the facilitator role of the OSCE lies in the ENVSEC initiative, which, between 2010 and 2011, accomplished the development of a bilateral agreement between Georgia and Azerbaijan on the water management of the Kura River. Supported by the UNECE, this is the first bilateral agreement in the South Caucasus region to establish a cooperation framework between two countries for the protection and sustainable use of a water resource.

5.5   Conclusion

The 44-day war in Nagorno-Karabakh in 2020 highlighted some critical features for understanding water conflicts and governance dynamics in the broader OSCE region. In the Introduction, we formulated two particular hypotheses, and we argue that this specific case study has confirmed them. The first hypothesis is that water scarcity is unlikely to be the leading cause of ongoing wars. Still, it can combine with factors such as ethnic, political, and social tensions to transform already existing hostilities into open military conflicts. We then outlined how the existing literature has yet to draw any general rule on whether or how the phenomenon of water scarcity can be considered a direct cause of the outbreak of war. The longstanding conflict in Nagorno-Karabakh has overshadowed water issues for a considerable amount of time, and water was not mentioned in the November 2020 ceasefire agreement, continuing to be a topic of secondary importance compared to other issues, such as border demarcation, exchange of prisoners of war, and the implementation of the so-called Zangezur corridor. It is also true, however, that Azerbaijan was experiencing a water crisis in the run-up to the 2020 conflict, and the *de facto* republic of

Nagorno-Karabakh possessed the region's water resources. These resources represented an essential source of electricity and an instrument of political leverage in the conflict, as the rivers of this territory contribute to the livelihood of many Azerbaijani regions. Therefore, water scarcity has played a role in the conflict and, if not managed rationally, will lead to further tensions between Azerbaijan and Armenia.

Our second hypothesis is that the politicization of environmental issues represents a further obstacle that increases mutual mistrust between contending parties. This implies the need for the intervention of a third actor to achieve durable and successful governance. In the second part of the chapter, we introduced the water rationality framework, which claims that: (1) to secure their long-term water supply, states build and maintain relationships with their co-riparian countries conducive to long-term access to shared water and (2) if direct bilateral negotiations prove unsuccessful, the intervention of an impartial mediator can assist in communication between the parties. The politicization of environmental issues seen in 2020 was a new feature in the conflict, with Armenia and Azerbaijan co-opting and weaponizing the term "ecocide" and accusing each other of eco-terrorism and environmental sabotage. By analyzing the different models of governance (from local to global) and different actors that could be involved in the aftermath of the war under the lens of the theoretical framework of water rationality, we can argue that the South Caucasus is a "water irrational region", with security issues and unresolved conflicts, where water scarcity to the role of mere security and political issue.

To give further ground to such a statement, we investigated two initiatives proposed to address the region's issues. The first is the 3 + 3 platform offered by Turkey in the aftermath of the 2020 conflict, which considers water among the other security issues in the region. The 3 + 3 format platform, which tries to bring together the three South Caucasus states and their neighbors Russia, Turkey, and Iran, proposes a new model of regional security that only sometimes addresses the environmental issues that the regional actors have to handle. If, on the one hand, the creation of a regional security system may provide stability in the area, the political dimension preserves the *status quo* of hierarchical power and conflict stabilization rather than promoting environmental cooperation among the countries.

The second initiative is the ENVSEC, launched by the OSCE, the UNDP, the UN Environment, and the United Nations Economic Commission for Europe (UNECE) in 2003, which aims to bring about the depoliticization of water issues and establish a common framework for the Kura-Aras Basin countries (Armenia, Azerbaijan, Georgia, Iran, and Turkey). This would allow member states to adopt rational measures, from the local to the basin dimension, and to resolve common issues. What hinders a greater impact of this initiative is: (1) the lack of enforcement ability of these organizations; (2) the nature of the South Caucasus region as a contest where potential mediators—Russia, Turkey, and Iran—pursue a politicized agenda; and (3) the unbiased role of the international organizations entitled to support the implementation of the water governance system in a region dominated by water irrational actors. Water irrationality in the South Caucasus also explains why, for example, the

case of the Sarsang water dam between Azerbaijan and Artsakh *de facto* authorities has not followed the same path of the management of the Enguri dam between Georgia and the secessionist rules of Abkhazia.

The influence of international organizations like the OSCE, which has already promoted *ad hoc* policies through the ENVSEC initiative, remains the only path to establishing a dialogue platform for depoliticizing water issues in this region. Addressing the worsening climate situation is one objective of the ENVSEC initiative. The OSCE should encourage the implementation of measures that depoliticize water issues and build a sustainable long-term alternative form of water governance in the region.

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Chapter 6
Vetting as a Tool for Strengthening Judicial Integrity in the OSCE Region

Teodora Miljojkovic

6.1 Introduction

Ever since the Helsinki Final Act of 1975, the principle of judicial independence has been recognized as one of the core values among the OSCE Member States. Its importance was further highlighted at the Copenhagen meeting of OSCE States as quintessential for "ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character" (The CSCE Cf. document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE , 1990). This commitment to the rule of law and judicial independence by the OSCE states was further strengthened in the OSCE Charter for European Security of 1999 (OSCE Summit Declaration, 1999) and later in Helsinki Council Decision no. 7/08 on further enhancing the rule of law in the OSCE area. The primary standards for establishing the principle of judicial independence in the national context of the OSCE states were defined in the Kyiv Recommendations on Judicial Independence in Eastern Europe, the South Caucasus, and Central Asia (OSCE, ODIHR & Max Planck Minerva Research Group on Judicial Independence, 2010). The rule of law and judicial reforms have also been recognized as one of the main areas of OSCE operation in the literature on the topic (Evers, 2010).

Despite the laudable commitment, obtaining and preserving an independent judiciary in the OSCE region has been proven to be much more difficult in practice (Bodnar & Schmidt, 2012). One of the reasons behind such a state of play is the unfinished transition process and unsatisfactory judicial reform in many of the OSCE countries (Mihr, 2020). This chapter will illustrate the experiences of the countries that have had to pursue the most radical measure of interference with judicial independence—judicial vetting—for compliance with their rule of law commitments.

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This chapter's main research claim is that vetting needs to be assessed holistically through international standards and the particular national context. If international standards are not narrowly curtailed to the necessities of each national context, there are inherent dangers of abuses passing undetected. The chapter will proceed in the following manner: Firstly, closer attention will be given to the definition of the vetting of judges in the context of transitional justice. Secondly, contemporary vetting procedures will be analyzed in the context of the rule of law deficient democracies", which pursue judicial vetting prevalently for institutional capacity-building purposes and not only as means of "dealing with the past" (Karstedt, 1998). Finally, the vetting experience of Serbia between 2008 and 2012 will be closely examined using Frankeberg's (2006) method of layered narrative. The Serbian vetting saga reveals valuable insights into how international vetting standards can be used and abused nationally. Additionally, it shows that the procedural safeguards of the vetting procedure can be easily circumvented.

6.2 Vetting as Means of Interference with Judicial Independence

Vetting procedures have gained momentum in Third Wave Democracies as a tool for rebuilding state capacity post-crisis or during regime shift within the transitional justice framework (Mayer-Rieckh, 2007). In the broadest sense, vetting can be defined as a process of "assessing integrity to determine suitability for public employment" (United Nations, 2006, p. 4). This procedure aims to "exclude from public service persons with serious integrity deficits to reestablish civic trust and re-legitimize public institutions and disable structures within which individuals carried out serious abuses" (United Nations, 2006, p. 9). Throughout the 1990s, vetting was used to reorganize various public sector structures: police, state officials, and the judiciary underwent such vetting in new democracies emerging following the departure from communism or authoritarianism. Vetting was implemented as a tool of transitional justice in post-communist countries such as East Germany (Wilke, 2007), the Czech Republic (Skapska, 2003), and Poland (Czarnota, 2007). It has also been applied in post-conflict settings such as Bosna and Herzegovina (Mayer-Rieckh, 2007). As a part of radical measures of restructuring the public sector, authoritative international organizations such as the OSCE, the UN, and the Council of Europe have closely monitored the vetting procedures. Nevertheless, research on the precise nature, impact, and scope of vetting in practice remains scarce, except in transitional justice scholarship (e.g., De Greiff, 2007; Elster, 2004; Horne, 2017; Lynch, 2013; Mihr, 2020; Stan, 2016).

In many post-communist countries, vetting has often been paired with lustration, both in theory and practice. The concepts of vetting and lustration are used interchangeably in the literature (Sadurski, 2005, p. 245), although there are significant differences. As Czarnota has explained, lustration "does have some elements

of vetting, but it goes further because it is connected with the process of decommunization, which means a conscious attempt at removal of the remnants of communism from the public life of the societies and states embarked on the process of democratization and creation of a law-governed state" (Czarnota, 2009, p. 311).

Thus, it could be argued that lustration is a means of "dealing with the past", (Sisson, 2010) while vetting is a forward-looking measure that aims to foster public trust in institutions and strengthen new democracies. A vetting process is a form of administrative justice (Teitel, 2009). It is prescribed by law and guided by legal principles in its implementation, unlike pure purging, a very similar phenomenon often present in post-authoritarian contexts. Unlike the purging of the previosus regime's staff without any aspect of due process, which has a general retaliatory nature (Lynch, 2013, p. 61), vetting serves the purpose of supporting democratic transition and building citizens' trust in state institutions.

Nevertheless, the differentiating lines between the two may get blurred. As Horne has observed, "while there is a gray area in which a vetting program can potentially blur into a purge", these two procedures can be differentiated by "having a clear process with transparent and legitimate vetting criteria, limiting the procedures in advance of their commencement, basing the process on reliable and verifiable information, and cleaving to the rule of law practices" (Horne, 2017, pp. 428–429). The de-Ba'athification program in Iraq is recognized in the literature as a prime example of how vetting can be misused for political purposes (Horne, 2017; Sissons & Al-Saiedi, 2013).

Vetting has been recognized as a successful measure within the transitional justice framework. The international community has assertively endorsed it, especially in post-conflict societies such as post-Dayton Bosnia and Herzegovina (Bergling, 2008). Nevertheless, such a drastic measure is prone to significant misuse, as has also been noted. For example, in the first years of post-1989 Poland, vetting was often used as a bargaining chip in the political arena and proposed as means of dealing with political opposition (Walicki, 1997). Kiss (2006) has also noted a similar pattern in post-communist Hungary. Besides the dangers of political misuse of the vetting procedures by national governments, another problem has emerged in the vetting practices of post-conflict societies—the inapplicability of international standards due to the embedded local socio-political context, for example, in the case of Kosovo (see Betts et al., 2001).

Vetting procedures are also standard in contemporary legal realities, but the discourse around them remains predominantly in the transitional justice setting. Institutional capacity-building and public sector reforms have been deemed "the heart of the transformation" process (Boraine, 2006). Nevertheless, the institutional reform umbrella within transitional justice rarely focuses on the specifics of each part of the public sector that needs to be transformed for a democratic regime to prevail.

This chapter argues for building on a distinctive framework for vetting judges. A distinct framework should, on the one hand, observe international standards on judicial independence and the rule of law and, on the other, account for the specificities of the local contexts in which the vetting is being applied.

The aims and rationales of vetting procedures have changed considerably over time. In the post-communist setting, the main ground for vetting was involved with the previous communist regime. In the post-conflict environment of Bosnia and Herzegovina, the primary rationale was to vet officials who might have had links to severe human rights abuses due to the atrocity of the war that took place at the beginning of the 1990s. One of the main ideas behind the vetting of police, judges, and prosecutors in Bosnia and Herzegovina was to eliminate individuals who were in any capacity related to war crimes, as well as to establish proportionate ethnic representation among the officials of the public sector (Hasic, 2015).

Nevertheless, in the last decade, new aims and different grounds for vetting have emerged that target the judicial sector only and focus primarily on strengthening the rule of law and judicial integrity. This rationale for vetting judges has appeared in countries that could be defined as "the rule of law deficient democracies" (Bogdandy & Ioannidis, 2014). These countries still carry the remnants of their past (Mihr, 2020). However, their judicial reforms through vetting have now been prompted by their obligations deriving from their international commitments and EU accession procedures (Coman, 2014). Thus, the institutional capacity-building of the judiciary as an aspect of transitional justice has merged into the constitutionalization of international standards on judicial independence. For example, the purpose of the Albanian Vetting Act of 2016 was to.

> determine specific rules for carrying out the transitional re-evaluation of all persons to be vetted, to guarantee the proper functioning of the rule of law, the true independence of the justice system, as well as the restoration of public trust in the institutions of [that] system
>
> (The Assembly of the Republic of Albania (2016). Albanian Law no. 84/2016 – "The Vetting Act").

The new aims and rationales of the vetting procedures are reflected in the international standards on vetting, which call for stricter scrutiny and more robust procedural safeguards when it comes to the restructuring of judges (see Venice Commission, CDL-REF(2022)005, 2022). Nevertheless, these standards have not been analyzed systematically and, over time, the focus of judicial vetting shifted to forward-looking goals of establishing an independent judiciary as a cornerstone of contemporary constitutional democracies. As the transition to a democratic regime has gained a prevalently forward-looking nature, the current aims and rationales behind the vetting procedures tend to differ from the ones in transitional justice. Unlike the post-communist vetting of judges, which took place during the 1990s, the model that emerged in the last two decades has been primarily justified by the urgent need to clear the judicial sector of corrupt and incompetent judges. Judicial vetting now aims to reach the requirement of independence and integrity of the judiciary as prescribed by the modern understanding of the rule of law. In this manner, vetting has become one of the mechanisms for combatting corruption in the judicial sector, which is particularly important in rule-of-law deficient democracies where this has been a particular issue (Laver, 2012).

The vetting of judges is now based on assessing the judiciary through objective criteria such as competence and impartiality and less on examining their particular

involvement in the previous regime. With objective grounds for evaluation and strict procedures for its implementation, a vetting process might appear shielded from the possible political misuses detected in post-communist settings. However, empirical evidence from several countries, such as Serbia, shows this is only sometimes the case. As Gloppen has warned (2013, p. 73),

> "if misused, however, anticorruption strategies become very effective tools for undermining judicial independence by ridding the judiciary of independent-minded judges that the authorities find bothersome." This danger of political misuse requires a deeper engagement with national contexts when implementing a measure as radical as vetting regarding the judiciary or one of the other branches of government.

The countries that have pursued judicial vetting to fight corruption and inefficiency in the judiciary score relatively low in adherence to the rule of law (World Justice Project, 2021). Continuous work on the national level, but also in cooperation with international organizations such as the Organization for the Cooperation and Security in Europe (OSCE) and the Council of Europe CoE, has been carried out to improve the overall efficiency and independence of the judicial sector in the OSCE region. The OSCE states that falling short of the rule of law requirements cannot be perceived only through the transitional justice framework. Shifting the focus from their transitional nature to the specifics of their rule of law deficiency could help identify whether specific tools, such as the vetting of judges, could be well adapted to their local contexts.

6.3 Democracies with Systematic Rule of Law Deficiencies

Judicial vetting as a tool for strengthening judicial independence and accountability has spilled over from the transitional and post-conflict contexts. It has also been used in countries that the literature refers to as "delegative" (O'Donnell, 1994), "fragile" (Issacharoff, 2015), or "defective" (Merkel & Croissant, 2000). These terms should not be used interchangeably. Seeing them listed allows us to draw a meaningful conclusion—there are multiple layers in differentiation between a well-functioning democracy and a full-fledged authoritarian regime. The definition of defective democracies hints at the problems encountered by the OSCE states that pursue judicial reforms (such as Serbia, Ukraine, Moldova, and Bosnia and Herzegovina). According to scholars, a

> defective democratic system significantly limits the functioning of core democratic institutions that secure basic political and civic participatory rights and freedoms, imposes constraints on the horizontal checks and balances on power, and/or imposes limitations on democratically legitimated authorities in their effective political power to govern

> (Croissant & Merkel, 2019, p.440).

Many of these democracies have emerged from authoritarian regimes and still struggle with the past. However, there are inherent dangers in perceiving them only as democracies in transition. As Merkel notes:

"It can be shown that defective democracies are by no means necessarily transitional regimes" as "they tend to form stable links to their economic and societal environment and are often seen by considerable parts of the elites and the population as an adequate institutional solution to the specific problems of governing 'effectively' (Merkel, 2004, p.33).

In that sense "as long as this equilibrium between problems, context, and power lasts, defective democracies will survive for protracted periods" (Merkel, 2004, ibid).

Acknowledging that some transitional regimes may have become permanent could contribute to a better understanding of their problems, especially regarding the flaws of their judicial sectors. Assessing these countries in light of their current state of play and not the ideal full-fledged democracy they aim to become may facilitate the adjustment of tools such as vetting to their respective local contexts.

The vetting of judges as a rule of law enhancement tool calls for a narrow delineation of the context where it can be applied. Bogdandy and Ioannidis (2014) offer an account of "democracies with a systematic deficiency in the rule of law" (Bogdandy & Ioannidis, 2014). According to these authors' definition, democracies with a systemic deficiency in the rule of law are those in which "institutions are regularly seen as unable to tackle infringements, due to corruption, unwillingness, institutional weakness, or lack of necessary capacity" (Bogdandy & Ioannidis, 2014, p. 73). Thus, in these countries, "normative expectations are undermined" (ibid). Focusing on the systemic violations of the rule of law is essential for assessing the vetting of judges. This tool is perceived as radical and should be used only when every other measure of strengthening judicial integrity fails. A thorough analysis of empirical evidence is needed to conclude whether vetting successfully addresses a systemic rule of law deficiency in the judicial sector. This chapter aims to contribute to that line of research.

6.4 International Standards—Towards a New Framework?

That a judiciary is not only a part of the public sector but also a governmental branch has significant implications for a vetting process regarding its scope, aims, and procedural safeguards. The judiciary's position in constitutional architecture is guided by the principles of separation of powers, the rule of law, and judicial independence, as prescribed by international standards and national constitutional norms (e.g., see International Commission of Jurists, 2007, p. 20).

Against this backdrop, those principles should be reflected in the normative framework of the vetting procedures and be balanced with the need for a complete restructuring of the justice system. From an assessment of the authoritative international documents which not only set the standards of protection of judicial independence but also put limits on interference with the organization of the judiciary, it is noticeable that only a few are dedicated explicitly to vetting. The authoritative international documents on judicial independence, such as the Basic Principles on the Independence of the Judiciary (UN, 1985); Universal Charter of the Judge (International Association of Judges, 1999); Kyiv Recommendations on Judicial Independence in

Eastern Europe, South Caucasus, and Central Asia: Judicial Administration, Selection and Accountability (ODIHR, 2010); or the European Network of Councils for the Judiciary (ENCJ)'s Minimum Standards regarding the evaluation of professional performance and irremovability of members of the judiciary (ENCJ, 2012–2013), do touch upon the principle of irremovability of judges, as well as the appointment, dismissal, and disciplinary procedures, but do not tackle judicial vetting in the form of either a disciplinary or judicial removal tool.

6.4.1 Transitional Justice Standards on the Vetting of Judges

The literature often uses vetting with lustration procedures applied to the public sector, including the judiciary (Mihr, 2020). The CoE's framework for assessing the transitional justice measures in European post-communist countries has provided necessary standards on lustration procedures, including the vetting of judges. The guiding lustration standards may be found in the Parliamentary Assembly of the Council of Europe Resolution 1096 (PACE, 1996) and its explanatory memorandum (CoE Committee on Legal Affairs and Human Rights, 1996), and more thoroughly through the jurisprudence of the European Court of Human Rights (Sweeney, 2012). Although the standards under the CoE offer general guidelines on restructuring institutions in a transitional period, they do not specifically regulate the vetting of judges as a specific branch of the public sector. In that sense, more thorough are the Operational Guidelines of the International Center for Transitional Justice (ICTJ), produced in collaboration with the United Nations Development Programme (UNDP) in 2006, on "Vetting Public Employees in Post-Conflict Settings—Operational Guidelines" (ICTJ-UNDP, 2006), as well as the report of same year by the United Nations High Commissioner for Human Rights on "Rule of Law Tools for Post-Conflict States—Vetting: An operational Framework" (OHCHR, 2006).

Besides the prosecution of crimes committed under totalitarian regimes, the PACE resolution also envisioned administrative measures such as lustration and decommunization laws for the persons "who did not commit any crimes that can be prosecuted […], but who nevertheless held high positions in the former totalitarian communist regimes and supported them" (PACE, 1996, para. 11). The specific aim of these measures was to "exclude persons from exercising governmental power if they cannot be trusted to exercise it in compliance with democratic principles, as they have shown no commitment to or belief in them in the past and have no interest or motivation to make the transition to them now" (ibid). These administrative measures were implemented nationally through lustration laws and vetting in the public sector. The PACE Resolution emphasized that these measures could be deemed to be the rule of law adherent if the following conditions are fulfilled:

> Firstly, guilt, being individual, rather than collective, must be proven in each case – this emphasizes the need for an individual, and not collective, application of lustration laws. Secondly, the right to defense, the presumption of innocence until proven guilty, and the

right to appeal to a court of law must be guaranteed. Revenge may never be a goal of such measures, nor should political or social misuse of the resulting lustration process be allowed. The aim of lustration is not to punish people presumed guilty – this is the task of prosecutors using criminal law – but to protect the newly emerged democracy (PACE, 1996, para. 12).

By setting these criteria, the Assembly aimed to highlight the rather *pragmatic nature* of the lustration procedures, whose primary purpose is to enable a smooth transition rather than address the wrongdoings of the past. The Guidelines supporting the Resolution, contained within the Explanatory Memorandum, discuss in detail the requirements that must be considered within the lustration procedures.

The European Court of Human Rights (ECtHR)'s jurisprudence on lustration in the countries of post-communist European broadly reflects the Resolution. The claims brought before the ECtHR were mainly argued under Article 14 in conjunction with Article 8 and Article 6 (on procedural grounds) (Sweeney, 2012, 133–139). In the case *Matyjek v Poland* (No. 38184/03, ECtHR, 2007), the ECtHR applied the criminal limb of Article 6, referring to the tests set in the well-known case *Engel and Others v Netherlands* (Application no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, ECtHR, 1976) and equated lustration to criminal trials in terms of procedural safeguards. The requirement of the same procedural safeguards under the criminal limb of Article 6, which imposed quite a burden on countries seeking lustration, did not entail that the ECtHR equalized the lustration process with the criminal trial. The specific nature of the lustration was illustrated in conditions laid out in the judgment *Adamsons v. Latvia* (App. no 3669/03, ECtHR, 2008). According to this judgment, there were four necessary conditions for the lustration process to be compatible with the European Convention. Firstly, a lustration law had to be accessible and predictable, as required by the principle of legality. Secondly, the punishment could not be its only purpose. Thirdly, the procedure must have been precise enough to address the individual (rather than collective) responsibility and followed by sufficient procedural safeguards (Adamsons v Latvia, App. no 3669/03, ECtHR, 2008, para. 116). The Council of Europe's framework on transitional justice measures illustrates the main rationales that emerged in the post-communist setting to delineate the procedural safeguards needed for the lustration and vetting to be differentiated from plain purging.

The ICTJ Operational Guidelines further emphasize that "There is no 'one-size-fits-all' response to vetting and public consultations help design context-and institution-specific vetting strategies" (ICTJ-UNDP, 2006, p. 19). Nevertheless, before a country proceeds with vetting as a transitional justice mechanism, six different types of conditions need to be fulfilled: (1) political, determining whether there is a political will to pursue vetting; (2) institutional, assessing which state institutions need to be vetted; (3) individual, identifying the individuals who fall within the scope of vetting; (4) legal, specifying which actor will have the legal mandate to implement vetting; (5) operational, related to the resources needed to carry out the vetting procedures; and (6) temporal, adapting the vetting process to other transitional processes within the country, such as political ones (ICTJ-UNDP, 2006, pp. 11–14). The experience of the post-communist countries shows that the transitional regimes mainly grappled with the lack of will within the society to carry out radical reform

in both the institutional and political realm as, for example, took place in post-1989 Hungary and Poland (Nalepa, 2021, p. 279).

While these conditions served as valuable guidance for countries that underwent more comprehensive institutional reform in the first years of transition, they need to be revised in contemporary vetting, explicitly targeting judges. The vetting narrative has now switched from the "dealing with the past" rationale to strengthening the rule of law and enhancing the efficiency of the judiciary. As the nature of the vetting procedure has become more technical and politically neutral in its aims, the requirement for political consensus seems to have lost its previous profundity, although authoritative bodies, such as the Venice Commission, still emphasize its importance. According to the Venice Commission, regarding the Albanian Draft Vetting Law, "it's the question of political necessity and the wide public consensus that determines the legitimacy of a measure radical as a re-evaluation of all judges" (Venice Commission, 2015, para. 98).

The problem in practice is assessing whether there is a sufficient political consensus. This shortcoming in the judicial vetting paradigm leaves space for possible political misuse, which the Serbian vetting procedure of 2008–2012 illustrates.

Vetting of the judiciary now falls within the constitutional framework on judicial independence of each OSCE state, which is also affirmed in authoritative international standards. The standards on contemporary vetting procedures can be found primarily in the soft law of specialized international bodies, such as the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR), which closely follow the vetting of judges in national contexts. Although the standards laid out by these bodies broadly reflect the vetting principles established in the transitional justice context, they are better adapted to the necessities of the local contexts and the specific nature of the judicial role.

6.4.2 Contemporary Standards on the Vetting of Judges

The standards for vetting judges, as previously emphasized, have been thus far analyzed in the literature from the transitional justice perspective. However, there were recent developments in standards on vetting under the European Convention of Human Rights following the Albanian judicial reform process of 2016. In the judgment, *Xhoxhaj v. Albania* (ECtHR, 2021), the ECtHR, for the first time, assessed the compliance of contemporary vetting procedures with the Convention (Tammone, 2022). The case concerned a former judge of the Constitutional Court of Albania, who was dismissed due to the vetting procedure as she had failed to account for some of her financial assets. The applicant referred to Articles 6 and 8 of the Convention, but the ECtHR found no violation. This judgment represents a significant development in the international framework of judicial independence and the principle of judicial irremovability. As some observers noted, the ECtHR "changed the 'course' of case law not only from *Oleksandr Volkov v. Ukraine* but also from *Baka v. Hungary*

as regards the principle of the irremovability of judges" (ECtHR, 2021). The justification for this shift is found in the particular circumstances of the Albanian situation, which the ECtHR characterized as sui generis (*Xhoxhaj v. Albania*, para. 299). The question that remains unanswered is what the criteria are to determine which case legitimately calls for an exception from the principle of the irremovability of judges and which, on the other hand, represents its flagrant violation, as was the case of the Serbian reappointment of judges a decade ago.

The specific nature of the vetting of judges, which may result in their dismissal, calls for a holistic interpretation of the relevant international standards on all the procedures concerning judicial status—appointment, dismissal, and evaluative and disciplinary procedures. The assessment of vetting as a tool for enhancing judicial integrity cannot overlook the fact that no international standard calls for an *absolute* principle of the irremovability of judges, as almost all of the relevant documents allow for an exception. Nevertheless, strict procedural safeguards must be observed even in cases of abnormality. For example, the Universal Declaration on the Independence of Justice (Singhvi Declaration) holds that "A judge shall not be subject to removal except on proved grounds of incapacity or misbehavior rendering him unfit to continue in office" (United Nations, 1987, para. 30).

Similarly, the Kyiv Recommendations entail that disciplinary proceedings should be used only in "instances of professional misconduct that are gross and inexcusable and that also bring the judiciary into disrepute" (ibid. para. 25). Further, procedures that lead to dismissal of judges need to be fair (Report of the UN Special Rapporteur, para. 61.), open (Kyiv Recommendations, para. 26.), and conducted by an independent authority (Recommendation CM/Rec (2010)12, par 69). The standards by which judges are assessed should be clear and foreseeable (*Oleksandr Volkov v. Ukraine*, ECtHR, app. no.21722/11, para. 173–185), and the decision on dismissal needs to be reasoned (Kyiv Recommendations, para. 26). Lastly, judges need to be provided with an effective remedy against the decision on their dismissal (Baka V. Hungary, App. 20,261/12, para. 21).

These standards should also be reflected in the vetting of judges, as emphasized in the Venice Commission's Position Paper on vetting judges in Kosovo (Venice Commission, 2022). As the Venice Commission has highlighted, "dismissal due to a negative evaluation should be avoided for all judges who have taken office, except in exceptional circumstances. In case of imbalance between these, the independence of the judiciary takes precedence" (Venice Commission, 2022, 82). The strict observance of the judicial independence principle and its prevalence over other institutional considerations is the key differentiating factor between the transitional and contemporary vetting procedures.

Further, the Venice Commission insists on the extraordinary nature of the vetting of judges, as "such radical solution would be ill-advised in normal conditions since it creates enormous tensions within the judiciary, destabilizes its work, augments public distrust in the judiciary, diverts the judges' attention from their normal tasks, and, as every extraordinary measure, creates a risk of the capture of the judiciary by the political force which controls the process" (Venice Commission, 2015, para. 98). The

OSCE/ODIHR (2014, para. A) took a similar position in the case of Moldova recommending that the possibility of dismissal of judges as an outcome of the evaluation process should be avoided.

While the above-described standards prescribe very detailed and strict procedural safeguards to be implemented in the vetting of judges, these can be easily circumvented in practice without due attention to the local context.

The following section of this chapter will analyze the Serbian reappointment of judges, which took place between 2008 and 2012, to illustrate how the local context may undermine the efficiency of procedural safeguards implemented in vetting judges. The Serbian reappointment of judges has been well analyzed in the national scholarship (e.g., Trkulja, 2010; Ivosevic, 2010; Marinkovic, 2009) but has not been assessed yet from the perspective of international standards on vetting as a tool for strengthening judicial integrity.

The next section of this chapter will depict how the local context not only informs but also undermines the normative expectations behind vetting as a tool of judicial reform.

6.5 Serbia—The Vetting of Judges as a Rule of Law Violation

The Serbian experience with the judicial vetting of 2009 is arguably one of the most explicit illustrations of the dangers inherent in judicial vetting if the local context is not observed. In this case, disregarding the principles of the rule of law and judicial independence was multifaceted. The arbitrariness of the reform application and gross violation of procedural safeguards reflected a disregard for the rule of law. The reappointment of the Serbian judges, which took place in 2009, has been labeled by Serbian scholars and international observes as a "traumatic experience" (International Commission of Jurists, 2016, p. 4), which enabled the government to "cleanse the third branch from the 'politically unsuitable'" judges (Trkulja, 2010, p. 44). The specificity of the Serbian experience, as well as those of other previously discussed rules of law deficient democracies, is that breaking with the past as an aim in pursuing judicial reform overlaps with the necessities of complying with the standards derived from international commitments, Council of Europe and OSCE membership, and the EU Accession Procedure. Since the transition, the Serbian case of judicial reforms needs to be assessed through the prism of the EU Accession Procedure as, throughout the years, this has been the key driver of every judicial overhaul.

As the research on the EU rule of law conditionality shows, unlike in the previous rounds of enlargement,

> the candidate countries from the Western Balkans are required not only to adopt the EU regulations and conditions set out in the negotiating chapters but also to have the most difficult acquis effectively and sustainably implemented before accession (Zhelyazkova et al., 2019, p. 24).

Serbia emphasized Chaps. 23 and 24, which require significant changes regarding the judicial and anticorruption framework. Amidst adopting the new Constitution of 2006, the Serbian government passed a "National Strategy for the Judicial Reform" (Ministry of Justice of the Republic of Serbia, 2006). The strategy emphasized the need for a radical change to meet the EU conditionality benchmarks, citing judicial incompetence and the low trust of citizens in the judicial system. Nevertheless, the implemented reform in no sense coincided with either the international principles of judicial independence or the best practices of the European region.

On 22 December 2008, the Serbian National Assembly introduced legislation to proceed with the planned reform of the judicial sector, among which was new legislation on judges (Law on Judges of the Republic of Serbia, 2008). The law addressed the reappointment of judges only at the end, in transitory and final provisions.

The composition of the High Judicial Council (HJC) tasked with the vetting was also regulated only by the transitory provisions of the Law on HJC. The call for general reappointment was announced in July 2009 (Official Gazette no. 52/09 of 15.07.2009). Within its decision-making process, the HJC violated the procedural principle of contradiction (*audiatur et altera pars*) as no vetted judge was called to a hearing while their case was being decided. Judges could not dispute the information used as evidence for their dismissal (Vodinelic et al., 2013, p. 102).

The final decision on the appointed judges was issued on 16 December of the same year (Official Gazette of RS, no. 116/08). The non-reappointed judges were made aware of their dismissal only once they realized their names needed to be added to the list of appointed judges. Soon after, the HJC issued a decision with the list of non-appointed judges (High Judicial Council of the Republic of Serbia, 2009). This decision did not include individual reasoning or any evaluation score indicating the reason for non-reappointment (Serbian Association of Judges, 25 March 2010). Officially, the judges were given a *collective* reasoning for their dismissal in this decision.

When the call was issued in July, 5030 applications were filed, half of which were from sitting judges (High Judicial Council, 2009). Only 1531 judges were reappointed, meaning that one-third of the previous judges were not reappointed, and the total number of judges was reduced by one-quarter (Serbian Association of Judges, 2010). Almost all of the 837 non-reappointed judges used the legal remedy provided by the Constitution—an appeal to the Constitutional Court (CC).

The judicial status of all the non-appointed judges officially expired on 31 December 2009, which led to a surge in constitutional appeals to the CC. Although these cases were allegedly given priority, in the following year, the Constitutional Court issued only two judgments upon judges' appeals—in the Saveljic case in May 2010 and the Tasic case in December 2010 (case Saveljic, VIIIУ-102/2010 of 28 May 2010 and case Tasic, VIIIУ-189/2010 of 21 December 2010).

The role of the Constitutional Court in the Serbian vetting saga is specific and requires particular attention. In its case law regarding the reappointment of judges, the Court took a cautious approach and, rather than actively engaging in the process, opted for subtle nudging of the government to correct the mistakes already made. The judges' appeals were upheld when the context revealed that the violations were

hardly disputable. From the comparative perspective, the deference of constitutional courts when it comes to the vetting of judges is not unusual (see, e.g., Constitutional Court of Bosnia and Herzegovina AP-1091/07 of 14 April 2010). Nevertheless, an analysis of the review of the constitutionality of the judicial vetting procedures reveals that the difference between the transitional justice model of vetting and the rule of law deficient democracy model matters. When the vetting of judges is used as a transitional tool to support a shift in regime or address past abuses, adjusting the rule of law guarantees may be justified by the politics of the democratic transition. However, when the proclaimed aim of the reform is the rule of law compliance, the "extraordinary political circumstances" argument as a ground for deference becomes much more challenging to defend. The reluctance of CCs to intervene in the judicial vetting process indicates that the process in question is of a rather delicate, political nature where practical difficulties may weigh down the constitutional principles of the rule of law and judicial independence. A similar pattern of deference could have been noted during the 2003 vetting in Bosnia and Herzegovina. The Bosnian judges did not have an adequate remedy against the decisions on their dismissal, as the grounds for appeal were too narrow (Mayer-Rieckh, 2007, p. 200). The Bosnian Constitutional Court was not helpful in that regard, as it dismissed most of the judges' appeals on the grounds of non-exhaustion of remedies or due to appeals being ill-founded (Iseric, 2019, p. 301). As previously stated, a right to an effective remedy against a dismissal represents one of the core tenants of judicial independence.

Nevertheless, considering the specificity of the Bosnian post-conflict exigencies, the common opinion has been that the above-analyzed shortcomings of the Bosnian reappointment procedure did not undermine its overall positive outcomes (Mayer-Rieckh, 2007). As the Venice Commission emphasized, "it would have been unrealistic to have insisted on immediate full compliance with all international standards governing a stable and full-fledged democracy in a post-conflict situation such as in BiH following the adoption of the Dayton Agreement" (Venice Commission, CDL-AD (2005) 004, 2005, para. 97).

In 2009, before the judgments in the Saveljic and Tasic cases, which had already been passed when the dismissal of judges was carried out, the CC had a chance to review the constitutionality of the reappointment procedure itself (The Constitutional Court of the Republic of Serbia, 2010a). In the IUZ-43/09 case, the applicants claimed that the reappointment of 2008 would violate the principle of retroactivity and interfere with the already acquired tenure of sitting judges. It would also breach the principle of the separation of powers and the right to an impartial and independent tribunal (ibid). The CC dismissed initiatives for constitutional review as unfounded and, thus, cleared the way for the reappointment of the judges. This CC's solution backfired. Once the judges were dismissed, the CC was swamped with judges' appeals.

In the Saveljic case, which concerned a judge who was not reappointed and who received only a decision with a general justification for the dismissal, the CC upheld the dismissed judge Saveljic's appeal and found that the rationale for the discharge of a judge must be individual rather than collective, as well as based on the concrete facts and proven evidence, as that is the only way to secure respect for the principle

of fairness as guaranteed by Article 31 (1) of the Constitution. The HJC violated the judge's right to access the court as one of the vital procedural guarantees under the right to a fair trial.

However, due to the missing reasoning and individual decision on the dismissal, the CC was of the stance that the conditions for it to decide on the merits of judge Saveljic's case were not met. The fact that the CC missed the chance to decide on merits and instead returned the case for reconsideration to the HJC, a body that the CC itself found to violate judge Saveljic's procedural guarantees, shows the ineffectiveness of this remedy, the only one which judges had at their disposal.

In the aftermath of the judgment in the Saveljic case, on the same day, the HJC issued 564 individual decisions on the dismissal of judges and delivered them to the Constitutional Court so that the review of appeals presented by the non-appointed judges may resume (The Constitutional Court of the Republic of Serbia, 2010b, para. 10). But instead of repeating the assessment of evidence used for the dismissal of each judge and issuing individual reasonings in each case, the HJC reissued 564 individual decisions lacking the proper evaluation of the judges' performance in light of the criteria set. Among these was that of Judge Milena Tasic, whose appeal was accepted by the CC. In the judgment, upon Judge Tasic's appeal, the CC stated that the HJC had violated the principle of adversity as one of the prerequisites of the right to a fair trial, as Judge Tasic had been given no recourse to respond or have access to the files which were used as evidence for her dismissal.

As criticism from various international and national bodies sparked, the Serbian government decided to introduce amendments to the law on judges of 2008, create a review process of the transitional HJC's previous work, and reassess all the cases of dismissed judges. However, the new solution introduced as a legal amendment was peculiar and disputable from the perspective of the rule of law and comparative constitutional practice. According to the amendments to the Law on Judges, a new composition of the HJC (the permanent one) was to be established, which would assess the work of the transitory design of the HJC. All the appeals of dismissed judges submitted to the Constitutional Court would be "converted" into requests to the HJC (The Law Amending the Law on Judges of the Republic of Serbia, 2010). Additionally, the amendment prescribed that the new composition of the HJC would adopt its new criteria for assessing judges who applied for reappointment.

6.6   Vetting of the Vetters

Due to the failure of the first vetting procedure, the international community closely monitored the review process. The review process was formally announced as an opportunity to remedy the previous mistakes and finally bring transparency to the vetting of judges. In reality, it was, as Ivosevic (2010) well coined, "a recycled judicial reform". Nevertheless, according to the independent report of the EU delegation members who were present at the sessions of the newly composed HJC, the rules that the new composition of the HJC adopted "were frequently breached and interpreted

in a way that is contrary to the purpose of the procedure" (Vodinelic, Bojovic & Reljanovic, 2013, 125). Furthermore, "the general impression is that this was done to justify the 2009 appointment before the general public both in the country and abroad" (Vodinelic, Bojovic & Reljanovic, 2013, p. 125).

In the case IUz-1634/2010, the CC emphasized that, in all the cases of dismissed judges, which were already in the appeal stage, the criteria that the new composition of the HJC would adopt could not be applied, as that would violate the principle of legal certainty (The Constitutional Court of the Republic of Serbia, 2011, section 2). Even when assessing the new judges who would apply for positions, the "new criteria" that the unique composition of the HJC was to adopt could only clarify the criteria that the first composition had used, as otherwise, it would amount to discriminatory differentiation between the judges assessed by the transitory design and those considered by the permanent one.

Finally, the problem that emerged in practice was that this new, permanent composition of the HJC needed to be revised, as some sitting council members had been members of the previous one. Some were also declared unfit for office by the Agency for the Fight Against Corruption. The decisions of the new composition were challenged before the Constitutional Court in the case of Jovanovic and Others (The Constitutional Court of the Republic of Serbia, 2012). The CC applied the judicial independence doctrine and concluded that the composition of the new HJC was in breach of the judge's impartiality principle. Further, the CC also found that the new HJC criteria were discordant with the principle of legal certainty (The Constitutional Court of the Republic of Serbia, 2012). Finally, the CC quashed all the decisions of the HJC on the appeals of the 126 judges who were petitioners of the Jovanovic and Others case and ordered the HJC to reinstate them to their previous positions.

Besides the 126 judges that the CC indirectly reinstated to their positions, the new HJC, on its initiative, also quashed the previous HJC's decisions on dismissal and reinstated judges dismissed in 2009. By 2014, around 590 judges (out of 837 dismissed) were reinstated. Around 700 judges decided to sue the state for material damages. Among the judges who were not reinstated, not necessarily all were deemed unfit for office—some had decided to change professions, and some had reached retirement age or passed away.

The Serbian vetting saga is a process that failed to comply with the principle of the rule of law on all levels. Firstly, the rationale behind the judicial reform needed to be clearer and more opaque, and its justifications must be better communicated to the public. The discrepancy between the official reasons given by the government—enhancement of the rule of law—and how the vetting was carried out shows that the 2009 reappointment was unavailing at best. Secondly, the grounds of the vetting procedure did not adequately reflect the proclaimed aim in how they were both prescribed and applied. Thirdly, the procedural flaws of the vetting amounted to a clear rule of law violation, which was also recognized in the analyzed jurisprudence of the Serbian Constitutional Court.

6.7   Conclusion

This chapter illustrates the trajectory of judicial vetting to strengthen institutional integrity within the OSCE region. Focusing specifically on the judiciary as a part of the public sector and a branch of government that undergoes vetting, it highlights the need for a deeper theoretical engagement with this tool from the perspective of judicial independence.

Putting forward the rule of law deficiency as one of the critical features of OSCE transitional regimes, it aimed to show what is at stake when vetting as a radical measure of institutional reform is pursued. Finally, the Serbian case study shows the inherent dangers of the vetting procedure which the object is only to reach the internationally prescribed levels of rule of law compliance.

As noted by Seibert-Fohr, "The OSCE region is unique and particularly suited to the analysis of judicial independence in transition because it includes countries in different stages of transition" (2012, p. 2). Analyzing how different stages of transition also impact the nature and the success of judicial vetting as a tool for strengthening judicial integrity may be an avenue for further research. As this chapter argues, the vetting experience of Serbia in the first decade of transition had significant shortcomings from a rule of law perspective. Some significant improvements in vetting procedures across the region have been noted in the last decade. For example, the ongoing Albanian judicial reform, which includes the vetting of judges, has been acknowledged as a successful example despite some identified shortfalls (Hoxhaj, 2021). Some other OSCE states, such as Moldova are actively pursuing the same path (ODIHR, 2023).

For the vetting of judges to be recognized as an efficient tool for strengthening judicial integrity, international standards and local contexts need to be considered. Working towards a novel, evidence-informed framework may help in such an endeavor.

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Chapter 7
Human Rights Adjudication in Central Asia

Check for updates

Saniia Toktogazieva

7.1 Introduction

Constitutional courts (CC) in some Central Asian countries use international and comparative materials not only for purposes of judicial creativity. They also depend on the prevailing understanding of the status of international law in domestic law. The latter, in turn, appears to depend on geopolitical considerations. In this context, it is essential to emphasize two underlying observations. First, due to the extreme legalism in these countries, the references by Central Asian CCs to international sources in their reasonings/decisions seem to reflect a formal hierarchy of sources of international and domestic law. Furthermore, the reluctance of Central Asian CCs to treat references to international and foreign sources as a matter of "normal" judicial interpretation and the emergence of a sovereigntist approach in formal, legal rules means that the ability of CCs in the region is severely undermined when it comes to reviewing new legal restrictions on fundamental rights that are inspired and promoted by Russia.

It is important to note that unlike in Kyrgyzstan, in the past, Kazakh, Tajik, and Uzbek CCs did not have a mechanism for individual complaints. Although such a mechanism was recently introduced in the three countries, the jurisprudence on fundamental rights protection of these states is limited. The issues of fundamental rights protection are usually raised in the context of either interpretation of the constitutional text or constitutional amendments. Recently, a typical pattern has been

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observed among Central Asian states, except for Uzbekistan, which is reflected in constitutional amendments. First, provisions on the revocation of citizenship were introduced in constitutional texts. Second, constitutional provisions on the relationship between international and domestic law shifted from monism to dualism, thus negatively impacting the protection of human rights through international institutions, such as the UN Human Rights Committee (UNHRC). In international law, the relationship between international and domestic law is usually explained by two opposing theories: dualism and monism.[1] Dualism assumes distinct characteristics of both systems that cannot alter one another. According to dualism, domestic law prevails in case of a conflict between domestic and international law (Higgins, 1994; Peters, 2007). On the other hand, Monism presumes that these two systems constitute one legal order, and in case of a conflict, the norms of international law prevail (Kelsen, 1945; Ferrari-Bravo, 1983).

Central Asian CCs, except Uzbekistan, were involved in balancing monism and dualism and have provided their opinions on these issues. As such, it is exciting to compare the main approaches and reasonings adopted by these courts in the context of fundamental rights protection. Before moving on to a detailed analysis, it is essential to highlight the key geopolitical factors in the Central Asian context, as it can be assumed that these factors also substantially influence the decision-making process of Central Asian CCs. First, all Central Asian states, except Uzbekistan,[2] are members of the Russian-led Collective Security Treaty Organization (CSTO), which aims at strengthening peace, collective security, territorial integrity, and cooperation in the region (CSTO, 1992). Due to the wars in Syria and Afghanistan, one of the key aims of this organization was to fight against terrorism and drug trafficking (CSTO, 2014). Besides the CSTO, Central Asia is also actively involved in the Russian-led Eurasian Economic Union (EAEU) (Treaty on the EAEU, 2000). From an institutional point of view, it could be argued that these organizations are an imitation of the European Union (EU) and North Atlantic Treaty Organization (NATO) in the post-Soviet region (Kembayev, 2016a).

Thus, membership in these organizations and, as implied by some experts, the overall dominance of Russia in them, as well as Russian influence as a pacesetter in the region, might be the reason and root cause for the wave of constitutional amendments regarding the status of international treaties and citizenship revocation (Cooley, 2019). Accordingly, the current chapter will analyze decisions made by the Kyrgyz, Kazakh, and Tajik CCs. It is important to note that while reviewing the constitutionality of constitutional amendments, the Kyrgyz Constitutional Chamber analyzed and reviewed each provision separately. However, the Kazakh and Tajik courts refrained from taking such a detailed approach, choosing to conduct a general review of all the amendments simultaneously.

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[1] For information on these theories, see: Malanczuk (1997), Charlesworth et al. (2005).

[2] Uzbekistan refused to extend its membership in 1994. For further details, see: Protokol o Prodlenii Dogovora o Kollektivnoi Bezopasnosti [Protocol on prolongation of the treaty on Collective Security] (1994).

7.2 Kyrgyzstan: The 2010 Constitutional Chamber Reforms

Besides geopolitical factors, the shift from monism to dualism is rooted in a sensitive issue in Kyrgyzstan. At the heart of this are the events of April 2010, when President Bakiev was ousted, and the interim government was established. Unlike the 2005 revolution (Radnitz, 2005, 2006), the revolution in 2010 was bloody and is estimated to have killed around 100 people, shot by rooftop snipers on the orders of Bakiev and his regime (Collins, 2011).

The period after the interim government was established was volatile and tense for Kyrgyzstan. This was especially the case in the southern part of the country, where ethnic conflict between Uzbek minorities and the Kyrgyz ethnic majority caused hundreds of deaths, physical injury, and property damage.[3] In response, several investigations were conducted (Osenka Nezavisimoi Komissii, 2011), and governmental commissions were established to investigate the events (Zakluchenoe Nacionalnoi Komissii, 2011). In addition to this, several local and international non-governmental organizations (INGOs) have also published independent reports on this issue (Amnesty International, 2010; Human Rights Watch, 2010). Regarding the outcomes of these reports, there were clear discrepancies between governmental commissions and independent international inquiry commissions. First, the Ombudsman report concluded that: "In the south of Kyrgyzstan, there was a local conflict, which was instigated by people of Uzbek nationality, such as K. Batyrov and others. They started, financed, and provoked this conflict" (Osenka Nezavisimoi Komissii, 2011). The National Commission to investigate the case described the June events as "attempts to use the situation by various separatist groups led by K. Batyrov, supporters of Kurmanbek Bakiev, and external forces interested in destabilizing the situation" (Zakluchenoe Nacionalnoi Komissii, 2011).

The main narrative of the government regarding the June events was that it was a separatist attempt by the Uzbek minorities instigated by leaders such as ethnic Uzbek K. Batyrov and assisted by the ousted President Bakiev. Furthermore, government reports singled out Uzbeks as the instigators of the conflict and failed to consider that most victims were Uzbek minorities themselves (ibid.).

Notably, the independent international inquiry commission that was established on the invitation of the interim government implied that if further independent and impartial investigations were conducted, the events might be characterized as crimes against humanity and the failure of the provisional government to take practical steps to prevent and resolve conflicts might be identified as the root cause of the conflict (Kyrgyzstan Inquiry Commission, 2011). Furthermore, the report emphasized that the evaluation of the June events must be conducted in the political and historical context. This was marked by the "under-representation of ethnic Uzbeks in public life and the rise of ethnonationalism in the politics of Kyrgyzstan" (ibid., 2). Once the report was published, it met with a hostile reception from the Kyrgyz interim

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[3] According to the official figures provided, 408 people were killed, 2,574 people were injured. For more details, see: Zakluchenoe Nacionalnoi Komissii (2011).

government and was seen as an attempt to violate the sovereignty of Kyrgyzstan. The primary author of the report was declared a persona non grata (Radio Free Europe/Radio Liberty, 2011).

Shortly after this, a deputy commission was established under the parliament, which published another report supporting the narrative of previous reports by the Ombudsman and the National Commission. The report stated that "the cause of the conflict was the actions of such separatist politicians as K. Batyrov and others, and both organized criminal groups and the drugs trade contributed to the incident" (Otchet Vremennoi Deputatskoi komissii, 2011). Thus, all claims of potential crimes against humanity were categorically denied by the Kyrgyz government, which decided to conduct their investigations and try the suspects in the ordinary courts of Kyrgyzstan. Several international organizations and NGOs raised concerns about the fairness of these investigations. According to their reports, victims of the June events had been denied justice, an impartial and fair investigation, and a trial. Reports also stated that the Kyrgyz authorities had subjected Uzbek minorities to discriminatory treatment, including arbitrary arrests and torture (Amnesty International, 2013). There were two crucial trials against ethnic Uzbek activists Batyrov and A. Askarov, which subsequently created tension between the government of Kyrgyzstan and international organizations. K. Batyrov, who was repeatedly referred to in all governmental reports, was tried in absentia, found guilty of separatism charges and incitement of hatred among ethnic groups, and was sentenced to life imprisonment (Prigovor Jalal-Abadskogo gorodskogo suda, 2011). Batyrov had been granted asylum in Sweden, but the Kyrgyz government refused the extradition request (Radio Free Europe/Radio Free Liberty, 2011). Batyrov later applied to the UNHRC, claiming that Kyrgyzstan had violated the right to a fair trial under the ICCPR. The case has been pending for some years.

Another case involved human rights activist Askerov, an ethnic Uzbek who had documented human rights abuses by law enforcement in his hometown of Bazar-Korgon. After the June events, he was arrested and later found guilty of being an accomplice in the murder of a police officer and for instigating ethnic hatred and threatening the constitutional order. He was sentenced to life imprisonment (Prigovor Verhovnogo Suda, 2011). Once he had exhausted all available domestic remedies, Askarov appealed to UNHRC. In April 2016, the Committee concluded that Kyrgyzstan had violated its obligations under the International Covenant on Civil and Political Rights (ICCPR) and that Askarov had been "arbitrarily detained, held in inhumane conditions, tortured and mistreated, and prevented from adequately preparing his trial defense" (Human Rights Committee, 2016). The Committee also concluded that Kyrgyzstan was obliged to make reparations to Askarov and to conduct a new trial "subject to the principles of fair hearings, the presumption of innocence and other procedural safeguards" (CCPR, 2016) and, if necessary, to release Askarov immediately. Furthermore, in 2017, a report prepared by the Norwegian Helsinki Committee on the June 2010 events was found to be "extremist" and was banned by a court order. The report contained several pieces of evidence, based on interviews, of severe violations of the rights of Uzbek ethnic minorities during the 2010 events (Norwegian Helsinki Committee et al., 2012).

Both cases, overall that of Askarov, were susceptible to the Kyrgyz government and put the authorities in a difficult position. If the international community's recommendations had been implemented, most of which claimed that Askarov was unjustly imprisoned, this could have caused severe discontent among some of the country's strongly nationalist groups. He died in prison in 2020, age 69, due to an untreated COVID-19 infection.

7.2.1 Lowering the Status of International Human Rights Treaties

The Kyrgyz constitutional assembly that drafted the 2010 Constitution comprised several civil societies and human rights activists (Postanovlenie Vremennogo Pravitelstva, 2010). To ensure that Kyrgyzstan did not repeat its previous two mistakes, the drafters decided to prioritize the norms of international human rights law, and Article 6 of the 2010 Constitution stipulated the following: "The provisions of international treaties on human rights shall have direct action and take priority over provisions of other international treaties" (Constitution of the Kyrgyz Republic, 2010). Thus, the norms of international human rights law and the decisions of human rights institutions had priority over other international treaties and domestic law. Referring to this provision and based on recommendations adopted by the UNHRC, Askarov's lawyers could demand that the Kyrgyz authorities release Askarov immediately. In 2016, constitutional amendments were introduced, and Article 6 was reformulated as follows: "The procedure and conditions for the application of international treaties and generally recognized principles and norms of international law are determined by law" (Zakon Kyrgyzskoi Respubliki, 2016). Thus, it is evident that the amendments shifted the constitutional regulation and approach to international norms from a monistic to a dualistic approach.

Before analyzing the changes introduced to Article 6, the Chamber stated that each amended provision had been reviewed for compliance with the fundamental rights and freedoms of individuals, the permissibility of their restrictions, the principles of a democratic, legal, secular state, and the procedure for amending the Constitution, as provided for by Article 114 of the Constitution of the Kyrgyz Republic (Zakluchenie Konstitusionnoi Palaty, 2016).

The Constitutional Chamber went on to specify that individuals' fundamental rights and freedoms are natural opportunities for a person and citizen to enjoy the primary benefits provided by the state to exist and develop as an individual. For this purpose, the status of a person and a citizen is reflected in the Constitution, and a range of legal guarantees is established, the protection of which is ensured by all state bodies. Based on the principles of equality and justice, the state is obliged to protect the values of the individual, society, and the state simultaneously, achieving a balance between these values through legal mechanisms (ibid.). Considering these provisions, the compliance of the norms of the draft amendments to the Constitution

of the Kyrgyz Republic with international human rights agreements was checked. In connection with this, the Chamber concluded that the new wording of Article 6 of the draft Constitution did not provide for the abolition or restriction of human rights and freedoms (ibid.). This reasoning was justified by referring to the principle of *pacta sunt servanda*. That is, the Chamber stated that under international law, it is assumed that they create binding international legal norms for their signatories, rights, and obligations once international treaties are ratified. The operation and application of international treaties imply strict fulfillment by all parties of its obligations, such as *pacta sunt servanda.*

Thus, the provisions of international treaties that have entered into force and are ratified by state parties must be voluntarily implemented by the state parties based on the principle of conscientious performance of obligations. The states themselves fulfill and monitor the implementation of the concluded agreement. In this regard, the proposed new wording of the second part of Article 6 of the Constitution implies the consolidation of organizational measures to ensure the implementation of international treaties, including human rights treaties ratified by Kyrgyzstan. Such a law may also include provisions aimed at adopting relevant legislative and other domestic legal acts, that is, legislation that supports the international treaties in force in the Kyrgyz Republic and measures to be taken should an international treaty be violated. Thus, the Chamber concluded that the new wording of Article 6 of the Constitution did not provide for the abolition or restriction of human rights and freedoms and therefore did not contradict the existing principles of fundamental rights protection (ibid.).

Another amended constitutional provision related to the right to citizenship. It is essential to highlight that even before the amendments to the Constitution in 2015, despite the absolute nature of citizenship, the Kyrgyz parliament amended the law on citizenship to allow the revocation of citizenship in case of involvement in terrorist activities (Zakon o vnesenii Izmeneiy, 2015). Before the referendum, Article 50 of the Constitution stipulated, "No one may be deprived of his/her citizenship and denied the right to change his/her citizenship" (Constitution of the Kyrgyz Republic, 2010). After the referendum, this norm stated: "No citizen can be deprived of his/her citizenship and the right to change his/her citizenship except (…) following the procedure established by constitutional law" (ibid.). The Constitutional Chamber concluded the following on this issue.

First, the Chamber stated that the institution of citizenship is dual. On the one hand, it protects human rights and freedoms; on the other, it protects the state's interests. By granting a person rights and liberties, the state guarantees the realization of that individual's interests and opportunities and protection from unlawful actions due to the given state's jurisdiction. In exchange, the state requires that individual to observe the established rules of conduct and duties. Such a requirement is based on the state's sovereignty principle and aims to enable it to perform its functions (Zakluchenie Konstitusionnoi Palaty, 2016). This provision is consistent with Article 15 of the Universal Declaration of Human Rights. Second, the Chamber went on to state that many democratic states practice the deprivation of citizenship as a punishment or sanction. Deprivation of citizenship is an extreme measure to which the state usually

resorts when the behavior of a citizen is not consistent with the interests and laws of the state. As a rule, deprivation of citizenship is a sanction against a specific person in connection with their behavior (ibid.). The Kyrgyz Republic, guided by the principle of sovereignty provided for in paragraph 1 of Article 1 of the Constitution of the Kyrgyz Republic, is free to choose how citizenship is legally regulated, wherein the constitutional law must establish the grounds and procedure for deprivation of citizenship, precluding arbitrariness of actions in this regard. Bearing this in mind, the proposed amendment, according to which no citizen can be deprived of his/her citizenship and the right to change his/her citizenship, except in the cases and manner established by constitutional law, cannot be considered a discriminatory norm or unacceptable restriction of the rights and freedoms of a person and citizen. Thus, the Chamber confirmed the constitutionality of this proposed amendment and justified it by referring to the principle of sovereignty.

The 2016 constitutional amendments were accepted through a referendum (Postanovlenie Sentralnoi Izbiratelnoi Komissii, 2016). The parliament was supposed to adopt two important new laws in this field: the law on nationality and the law on the implementation of international law.

7.3 Kazakhstan: 2017 Constitutional Amendment Case

In Kazakhstan, there were no apparent tensions or sensitive political cases between the Kazakh authorities and the UNHRC or other UN human rights treaty bodies. Most of the recommendations concerned women's rights in the context of the Committee on the Elimination of Discrimination against Women (CEDAW) (CEDAW, 2015). However, 2017, when Nazarbayev announced further constitutional reforms and the modernization of democratic institutions, wording that closely resembled the Kyrgyz Constitution also appeared in the Kazakh Constitution. Before the amendment, Article 4 of the Kazak Constitution stated that: "International treaties ratified by the Republic take precedence over its laws and are applied directly, except when it follows from an international treaty that its application requires the issuance of a law" (Constitution of the Republic of Kazakhstan, 1993).

Proposed amendments reformulated the same Article: "International treaties ratified by the Republic have priority over its laws. The procedure and conditions for the operation on the territory of the Republic of Kazakhstan of international treaties to which Kazakhstan is a party are determined by the legislation of the Republic" (ibid.). Much like in Kyrgyzstan, this provision shifted Kazakhstan's approach to the relationship between domestic and international law from monism to dualism.

It is important to note that in 2009, the Constitutional Council was requested to interpret the same Article to implement the obligations under the Customs Union (now EAEU).

Specifically, the Prime Minister of the Republic of Kazakhstan requested the Council interpret Article 4 and explain how to implement decisions of the Commission of the Customs Union, of which Kazakhstan was a member state and the treaty ratified by Kazakhstan.

The Council (Normativnoe postanovlenie, 2009) stated that although the Constitution of Kazakhstan did not contain a special rule providing for the possibility of the transfer/delegation of certain state powers to international organizations, this right can be deduced from the preamble and Article 8 of the Constitution. The preamble stipulated that the people of Kazakhstan want to occupy a worthy place in the world community, and Article 8 of the Constitution requires respect for the principles and norms of international law on pursuing a policy of cooperation and good neighborly relations between states (Constitution of Republic of Kazakhstan, 1993). As a member state of international organizations, Kazakhstan must carry out all the necessary organizational and legal measures to fulfill such a requirement, including harmonizing domestic law. Therefore, the Council concluded that the Commission of the Customs Union acts are binding under the Treaty. In case of a conflict between the actions of the Commission and other regulatory legal acts of the Republic of Kazakhstan, then, as a rule, the legal norm adopted by the Commission shall prevail. At the same time, the Council underscored that decisions of international organizations and their bodies cannot violate the Constitution's provisions that guarantee the Republic's sovereignty. It also underscored the inadmissibility of changing the unitarity and territorial integrity of the state, which is the form of government of the Republic established by the Constitution.

With this decision in mind, let us analyze the 2017 constitutional amendments case. Unlike the Kyrgyz Constitutional Chamber, the Council of Kazakhstan did not examine each proposed provision separately, instead, the decision included one overarching justification, presumably applicable to all provisions. The Council stated that a number of the amendments and additions to the Constitution (Zakon Respubliki Kazakhstan, 2017) introduced by the law aimed at ensuring its supremacy in the system of existing law and its unconditional execution throughout the country, improving state management, strengthening the protection of citizens' constitutional rights and freedoms, and ensuring their constitutional duties are fulfilled (Normativnoe postanovlenie, 2017). The Council went on to state that the entire recent history of the formation and development of Kazakhstan as an independent, strong, and thriving state with a developed civil society is the result of the adoption of modern constitutional values and the fundamental principles of the Republic of Kazakhstan, as well as their subsequent implementation. Furthermore, the Council continued that the proposed amendments filled the constitutional values and basic principles of the Republic with new content. Thus, as is evident, the reasoning resembled more of a proclamation than a judicial decision. It did not analyze the relationship between domestic and international law. It disregarded the previous interpretation of that relationship presented by the Council in the context of the Customs Union (Normativnoe postanovlenie, 2009).

In addition, the proposed amendments included a new norm on the revocation of citizenship. Before the amendments, the provision stated: "Under no circumstances

may a citizen of the Republic be deprived of citizenship, the right to change their citizenship, nor can they be expelled from Kazakhstan." After the amendments, it stipulated: "Deprivation of citizenship is allowed only by a court decision for the perpetration of terrorist crimes, as well as for causing other grave harm to the vital interests of the Republic of Kazakhstan." It is essential to highlight that, much like in Kyrgyzstan, before the amendments to the Constitution, the Kazakh parliament amended the law on citizenship, regulating the possibility of revocation in the case of involvement in terrorist activities (Zakon o vnesenii Izmeneiy, 2015).

As in the previous part of the reasoning, on this issue, the Council did not provide a detailed analysis of the revocation of citizenship, preferring instead to resort to general terms. It stated that the proposed amendments upgraded the degree of protection of human rights and freedoms. In the Council's opinion, this was reflected in the following ways (Normativnoe postanovlenie, 2017). First, the Commissioner for Human Rights gained constitutional status. Second, the judicial system and prosecutor's office had been strengthened. Third, the president was given the power to challenge the constitutionality of already promulgated laws in the Constitutional Chamber. Furthermore, strengthening parliamentary control over the government and the institution of constitutional authority is an essential step in developing a democratic and legal state, testifying to the Republic's commitment to the rule of law (ibid.).

Although not explicitly stated, based on the abovementioned reasoning, one can assume that the Council was suggesting that these new provisions aimed to create a new national mechanism of human rights protection. Thus, similar to the issue of international human rights norms, the Council also promoted the principle of sovereignty in the case of revocation of citizenship.

7.4 Tajikistan: 2016 Constitutional Amendment

Tajikistan was no exception regarding the wave of constitutional amendments in the region. Article 14 was amended as follows: "Restrictions on the rights and freedoms of a person and citizen are allowed only to ensure the rights and freedoms of others, ensuring public order, protecting the foundations of the constitutional order, ensuring state security, national defense, public morality, public health, and the territorial integrity of the republic" (Constitution of the Republic of Kazakhstan, 1994). Furthermore, the norm on citizenship was revised to state the following: "The procedure for the acquisition and termination of citizenship of the Republic of Tajikistan is governed by constitutional law" (ibid.).

The court was asked to review the constitutionality of the proposed amendments, but its reasoning needed a more consistent, clear, and specific test. The court, in general terms, stated that the proposed changes to the Constitution corresponded to the current stage of development of the state and society and were aimed at strengthening the foundations of the constitutional system, protecting human rights and freedoms, strengthening the constitutional status of citizenship, legislative, executive, and

judicial power, development of local governments, and active involvement of citizens, especially young people, in political life and government (Postanovlenie Konstitucionnogo Suda, 2016). However, the court should have specifically analyzed or discussed examples of how exactly these amendments achieve the aims as mentioned earlier. Moreover, no detailed analysis was conducted on the limitation of rights or citizenship revocation.

7.5   Geopolitics and External Influence in Central Asia

The rights-related jurisprudence of Central Asian CCs revealed that in the context of the relationship between the norms of international human rights law and domestic law, these states are shifting from monism to dualism while adopting a pluralistic approach in the context of the relationship between the norms of regional organizations, such as the EAEU, and domestic law. This is an alarming tendency. Therefore, discussion of this issue is vital and contributes to the global discourse on judicial review. To comprehend the magnitude of the problem, it is important to contextualize these courts in a broader geopolitical context, particularly considering Russia and China's external influence.

Since the famous sentence from the Lotus decision claimed that "restrictions upon the independence of states cannot be presumed" (PCIJ, 1927), the concept of sovereignty has been undergoing dramatic changes. Depending on the circumstances, different states and scholars have argued for a strictly positivist interpretation of Lotus, while others have advocated a more normative understanding. This dissonance was particularly evident in a split ICJ decision on the Congo arrest warrant case (ICJ, 2002). In his book *From Apology to Utopia*, Martti Koskenniemi argues that states and their claim to sovereignty are always approached from two perspectives: Apology (personal interest) and Utopia (object/normative). Koskenniemi claims that the only way the international or global legal order can survive is by constantly balancing these two perspectives "from emphasizing concreteness to emphasizing normativity and vice versa" (Koskenniemi, 2009). Recent developments in human rights law, humanitarian law, international criminal law, and the emergence of such concepts as humanitarian intervention, R2P, and the emphasis on the rights of people to self-determination have complicated the issue of sovereignty even more. The wave of global constitutionalism, which departed from the traditional majority rule understanding of democracy and moved toward a concept more focused on human rights, created a tendency within the texts of constitutions to adopt the monistic approach to the relationship between international and domestic law (Kumm, 2009; Krisch, 2007).

Central Asia's bond with Russia remains strong due to historical ties, strategic considerations, and security and terrorism threats. With the establishment of the EAEU, Russia is also trying to dominate the trade and economic policies in the region (Kembayev, 2016b). Russian influence extends beyond foreign affairs but substantially impacts internal political dynamics in these states (Roberts, 2015). For

instance, whatever law the Russian Federation adopts has a subsequent "chilling" effect on Central Asia. Since 2012, Russian domestic and foreign policy has emphasized territorial integrity, sovereignty, and non-interference, reflected in the adoption of several laws. In 2012, Russia adopted the so-called "Foreign Agents Law", which tightened the regulation of NGO activities (Federalniy Zakon, 2012). Then, in 2016, the Russian parliament passed what was referred to as the "Yarovaya Law", which tightened regulations on extremism (including religious), counterterrorism, and surveillance (Federalniy Zakon, 2016a, 2016b). In 2019, the Russian parliament adopted two more controversial laws: the first "on banning fake news and insulting the state" (Federalniy Zakon, 2019) and the second on "sovereign internet" (Federalniy Zakon, 2019).

This trend toward sovereignty, security, and counterterrorism in Russia was soon followed by a wave of analog laws in Central Asia. Tajikistan (Zakon Respubliki Tadjikistan, 2015), Uzbekistan (Zakon Respubliki Uzbekistan, 2014), and Kazakhstan (Zakon Respubliki Kazakhstan, 2015) amended laws on NGOs to incorporate elements of the "foreign agent" concept. Laws on extremism and mass media were significantly tightened in Tajikistan.[4] The Kyrgyz parliament attempted to adopt a "foreign agent law" and amend its mass media law similarly. Still, under pressure from civil society, the bills were shot down (The Guardian, 2016). Nevertheless, from time to time, this latter bill reappears on the agenda. In light of recent laws adopted in Russia on sovereign internet and banning fake news, experts predict that similar laws may soon be adopted in Central Asia (Ridgwell, 2018). If this happens, the constitutional courts will likely review these laws' constitutionality.

Furthermore, a wave of constitutional amendments took place in Kazakhstan, Kyrgyzstan, and Tajikistan, and incremental changes can be seen in Uzbekistan (Zakon Kyrgyzskoi Respubliki, 2016; Zakon Respubliki Kazakhstan, 2017; Zakon Respubliki Uzbekistan, 2017). These reforms were presented as a project of democratization, modernization, and parliamentarian, yet from the perspectives of fundamental rights and freedoms; the constitutional amendments reflected one typical pattern: they reemphasized the importance of sovereignty and security and created a possibility for citizenship revocation (ibid.). Furthermore, a tendency to reconsider[5] the place of international treaties and norms in the hierarchy of the domestic legal system can also be observed in the region (Zakon Kyrgyzskoi Respubliki, 2016; Zakon Respubliki Kazakhstan, 2017; Zakon Respubliki Uzbekistan, 2017). This shift can be placed into a broader context of emerging scholarship, which suggests that Russia's new approach to international law (Mälksoo, 2009, 2015; 2016) is (re)shaping its relationships with international organizations and their bodies (Mälksoo, 2016).

Some Russian and Western scholars argue that the failure of the post-Cold War international system to integrate Russia into the Western world resulted in these

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[4] For more analysis of these laws and their implications, see the recent concluding observation of the CCPR: UN Human Rights Committee (HRC) (2019).

[5] Before this development, the relationship between domestic and international law in Russia reflected the monist approach. For more information on this issue, see Butler (2007).

political events and their current implications for international law, precisely the rapidly emerging idea of a Russian approach to international law (The Economist, 2019). Sakwa argues that contrary to Russia's expectations of becoming part of the "Greater West", NATO, the EU, and the "historical West" claimed all victory in the Cold War and established an international legal order predominantly based on Western values that did not include Russia (Sakwa, 2017). This approach, it is argued, is the reason for Russia's aggressive behavior, which led to the annexation of Crimea, the invasion of Ukraine, and a move toward the East (White, 2011). Thus, Russian foreign policy underwent a certain shift, leading to the unprecedented cordiality of the Sino-Russian relationship (Ukaz Prezidenta RF, 2016). Scholars also claim that Russia is now forming and advocating its own approach to international law, which is first, grounded on the classic and strong concept of state sovereignty; second, views the international community as relatively weak; third, denies cosmopolitan, liberal constitutionalist ideas of international law (Mälksoo, 2015). Finally, it is important to note that these events have a significant impact on Central Asia as well, because, after the annexation of Crimea, Russia actively started building various regional economic, security, and other unions that many claim mimic Western institutions such as the EU and NATO in the post-Soviet world (Cooley, 2019).

One of those institutions is the Eurasian Economic Union (EAEU), which currently comprises Russia, Belarus, Kazakhstan, Kyrgyzstan, and Armenia and is expected to ultimately include all Central Asian states (Treaty on the EAEU, 2000). Although the benefits of these regional unions for Central Asian states are highly contested (Vinokurov, 2017; Alimbekov et al., 2017; Khitakhuranov, 2017; EDB, 2017), the abovementioned states still joined the EAEU. Russia targeted Kazakhstan, Kyrgyzstan, and Tajikistan by providing stabilization grants and loans, securing an extension of military facilities for these states, and providing benefits for labor migrants from Central Asia in Russia, since Kyrgyzstan and Tajikistan's economies are heavily dependent on remittances from migrants in Russia (Pomfret, 2019).

Finally, just as Russia is developing its approach to international law, which is grounded on solid state sovereignty, China, too, has this approach. This is primarily discussed in the works of Chinese scholars and rarely in the dominant Western international law literature. From the beginning, it is argued that China was a persistent objector to the Westphalian system of international law and the notion of self-determination. Instead, China insisted on border delimitation (Anonymous, 2010). Roughly speaking, the logic of this approach is as follows: the powers agree on all territories on the historical principle (Perdue, 2005), and agreements on territorial division occur "at the expense of other nations sandwiched between them" (Anonymous, 2010).

Furthermore, scholars suggest that before the emergence of different fields of international law, such as international trade law as governed by the World Trade Organization (WTO) and other areas of economic law, China was skeptical about this system (Rühlig, 2018) and was less active. However, now, in the context of international economic law (Storey, 2012; ICG, 2012; Hameiri & Jones, 2016), "China is eager to participate in its formulation to help realize her vision for the global order" (Tirkez, 2018). This specific Chinese approach to international law may very well

affect Central Asia, and some signs of this happening are already emerging (International Crisis Group, 2012). For instance, Tajikistan (Putz, 2019) ceded part of its territory to China instead of loan repayments in 2011 (Eurasianet, 2019), and the main narrative of the Tajik government was that this was justified by a preexisting historical agreement (Glushkovo, 2011). Furthermore, China is actively investing in and supporting activities such as "joint archeological exploration," and it is unclear what its specific purposes. Central Asian states must be cautious about this, and constitutional courts must also consider this geopolitical context when adjudicating cases on the relationship between international and domestic law (Wang, 2019).

In her book *Is International Law International?* Anthea Roberts argues that Western parochialism in international law threatens the existing system of international law (Roberts, 2019). She urges that there is a need to diversify perspectives, diversify networks, and stop taking a blinkered view when discussing issues of international law (ibid.). Roberts' main argument is that during the Cold War, we lived in a bipolar balance of power. The post-Cold War period created something called unipolar power, namely universal international law. However, we live in a competitive world order established in a multipolar era. Roberts emphasizes that currently, there is a solid challenge for international law from such states as Russia and China. According to Roberts, the international legal order is divided into parallel worlds, where the same international issues have different narratives from a global law perspective, and no equal and reasonable dialogue occurs.

Central Asian states, particularly constitutional courts, should consider these challenges when they use international norms to justify their decisions in the context of rights protection (Peters, 2011). The practical implementation of the UNHRC's findings on these states' territory before and after constitutional amendments mainly depended on the goodwill of its authorities. And the performance of these decisions beyond the borders of those states has never been associated with constitutions. Thus, adopting a pluralistic approach in the context of regional security, economic, and counterterrorism organizations, where these norms prevail over domestic models, and at the same time taking a dualistic approach in the context of international human rights norms, where the priority is given to national norms, these courts risk driving the entire region to be absorbed by Russian and Chinese approaches to international law.

7.6 Conclusion

This chapter revealed that in Central Asia, these courts' internal political dynamics and fundamental rights-related jurisprudence are being shaped by external geopolitical factors. One can observe, for instance, an emerging shift among these courts from monism to dualism when it comes to the norms of international law, particularly in the field of human rights protection, and a pluralistic approach regarding examples

related to regional organizations. The author of this chapter argues that such a two-fold trend in the treatment of the means of international law is an alarming tendency in the Central Asian states.

Thus, in light of recent legal changes in Central Asia affecting the position of international law in national constitutional orders, there is little hope that references to international law will reinvigorate constitutional jurisprudence on fundamental rights in the region. Moreover, Central Asian constitutional courts are very likely to face new rules emanating from Russia which limit fundamental rights, particularly in the context of the laws regulating security, antiterrorism, and "foreign agents". However, due to local political power dynamics and the emerging sovereigntist turn, the constitutional courts are unlikely to find these laws unconstitutional, no matter how much international human rights institutions, such as the UNHRC, condemn them.

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Chapter 8
Human Rights and Social Media: Challenges and Opportunities for Human Rights Education

Joanna Kulesza

8.1 Introduction

Social media and freedom of expression are intentionally ambiguous terms. Their meaning and scope change along with societies and the technologies they use. It is primarily for this reason that disinformation is a growing challenge for all forms of social media and its users. The fine line between freedom of expression and political propaganda raises increasing concerns during international unrest and hybrid threats. States and businesses strive to address this challenge promptly and effectively. Yet, the dogmatic distinction between free expression and journalistic due care needs to be made aware of the myriad new media channels and evolving means of communication. In 2022, the European Union (EU) proposed the Code of Practice on Disinformation (European Commission, 2022)—a nonbinding set of practical guidelines to support social media platforms' attempts to eliminate harmful online communications. This is only the latest in a long line of steps toward enhancing media providers' accountability and countering the political and social threats posed by various content categories made available through various online media outlets. The latest code builds on the experiences of the 2018 Code of Practice on Disinformation, introduced initially to encourage the worldwide business community to rise to the challenge of countering disinformation. The EU's strategy against disinformation has relied on the Code as a proven effective measure to limit the dissemination of online content that might impact election results, public health, or international security.

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The Code is, however, only the latest in a series of institutionalized measures taken to address this most recent human rights concern. It is complemented by enhanced EU action within the Digital Act Package and the Digital Services Act (DSA), as well as national actions aimed at limiting the discretionary power of online platforms and the undesirable "chilling" effect they might have on freedom of speech.

In this chapter I will be looking into the ambiguity of existing freedom of expression safeguards, their online application, legal measures aimed at establishing provider liability, as well as recent ideas from individual countries to ensure that national law is applied to international social media companies, based on the example of the Polish draft law on freedom of speech online. The chapter proposes a dedicated administrative "Freedom of Speech Council" to counter the allegedly over-restrictive policies of social media giants and existing notice and mechanisms.

This chapter suggests that the Central and Eastern European experience in online and offline media regulation be considered in the development of media policies in the Central Asian states. Given Poland's communist past, its democratic revolution, and its efforts in ensuring the rule of law in public discourse, its experience may prove useful when it comes to understanding current geopolitical processes in Central Asia. Poland has successfully implemented the relevant EU laws on intermediary liability, building its current online media governance model around the co-regulation imposed by the EU's 2001 e-Commerce Directive. It is currently one of the stronger supporting voices in the debate on further advancing this model of intermediary liability through the DSA. These measures are, however, somewhat unique as they reflect Poland's preoccupation with digital sovereignty and its expectation that the new intermediary liability model will provide stronger protection. That said, this interpretation is not directly reflected in the EU explanatory reports—on the contrary, in fact, EU Member States are to further advance co-regulation rather than top-down regulation of intermediaries within the respective territorial jurisdictions. The Central Asian model of strong media censorship and the expectation that locally available online media will conform with local ethical and legal standards is, therefore, of direct interest.

This chapter seeks to contribute to the further economic and social advancement of Central Asian information societies. The transition from a strongly censored state-funded media to a liberal media market is particularly interesting in the context of the most recent changes to the structure of public media in Poland and Poland's expectations concerning the draft DSA, discussed in the final paragraphs of this chapter.

8.2 The European Consensus on Freedom of Expression Throughout Eurasia

The United Nations concluded its negotiations of the Covenant on Civil and Political Rights (ICCPR) in 1966. They took place in parallel to a similar discussion over the first European treaty aimed at protecting human rights, inspired by the success of the Universal Declaration of Human Rights (UDHR) (see Bates, 2010, 2). In November 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms (known as the European Convention on Human Rights or ECHR) was signed, laying the foundations for the work of the Council of Europe (CoE) and the European Court of Human Rights (ECtHR). Building on numerous articles of the UDHR, the stipulations on freedom of expression contained in the ECHR resembled those of Article 19 of the UDHR.

Article 10 of the ECHR includes a more detailed version of the general clauses from Article 19 of the UDHR. Its wording grants everyone "the right to freedom of expression", including "freedom to hold opinions and to receive and impart information and ideas". It is important to note the three elements of this right, which resemble the structure of the original Article 19 in the UDHR, those being the right to have, share, and access all forms of expression. None of these integral freedoms should be infringed on through "interference by public authority". They should all be granted to everyone with no discrimination and "regardless of frontiers" (ECHR, 1950, Article 10 para. 1). A limitation clause in Article 10 para. 2 allows for constraints to be placed on the exercise of these freedoms only when certain conditions are met. Exercise of the freedom of expression may be limited through the introduction of "formalities, conditions, restrictions or penalties" prescribed by law and "necessary in a democratic society" (Arai-Takahashi, 2002, 11). The reasons for which the right may be limited are named directly in the text of the ECHR and have been thoroughly explained in the ECtHR jurisprudence.[1]

The ECtHR has noted on numerous occasions that Article 10 refers to states and introduces their negative obligation to refrain from interference with the exercise of the individual right to free expression, unless circumstances, described in Article 10 para. 2, are met (see Council of Europe Research Division, 2011a, 2011b, 21). States are obliged to refrain from interfering with the dissemination of information or ideas individuals wish to share with others under their jurisdiction (ibid.). The right to receive information is rarely understood to impose an obligation upon a state to disclose personal information on the individual claiming access thereto (European Commission of Human Rights, 1987, pt. B, para. 74).[2] Enforcement of such rights

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[1] These include: "the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary" (ECHR, 1950, Article 10 para. 2).

[2] See also: Council of Europe Research Division (2011a).

should be assured primarily through the introduction of an "effective and accessible procedure" enabling the applicants to have access to "all relevant and appropriate information".[3]

The European human rights protection system heavily relies on ECHR case law. The ECtHR imposes on state parties' additional obligations under Article 10. Until recently, positive obligations of states[4] primarily pertained to privacy protection (European Court of Human Rights, 2008b, Article 8) or the right to assembly (Article 11).[5]

Regarding Article 10, states were initially only under a (negative) obligation to refrain from infringing on the right to freedom of expression, without implying a positive obligation of the states to protect that right from infringement by nonstate, private actors. This was the case until 2008 when the ECtHR confirmed states' positive obligation to safeguard the ability of individuals to exercise their right to receive and impart information within the limits set by the ECHR. In Khurshid Mustafa and Tarzibachi v. Sweden, the Court claimed: "It cannot remain passive where a national court's interpretation of a legal act (…) appears unreasonable, arbitrary, discriminatory or, more broadly, inconsistent with the principles underlying the Convention" (European Court of Human Rights, 2008a). It therefore claimed that state parties had an obligation to oversee private disputes among individuals within their jurisdictions in order to safeguard the human rights guarantees set out by the ECHR.

The European approach to the right to freedom of expression may be regarded as the obligation of states to guarantee, for everyone within their jurisdiction, the right to hold, receive, and impart information regardless of frontiers, unless limitations are introduced within acts of national law if considered necessary in a democratic society. Such limitations may only be exercised by state authorities or entities acting on their behalf. State parties are also under a positive obligation to protect the right from unauthorized infringement by private parties. When it comes to safeguarding the execution of these obligations, it is the ECtHR that has the authority to hold states responsible for individual breaches of their obligations as set out by the ECHR. The personal complaint procedure has proven to be a relatively[6] successful tool in implementing the European standard of free speech in all its detail.[7] Its application to online services in general and social media more specifically is discussed below.

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[3] For the appropriate case-law, see: Council of Europe Research Division (2011b).

[4] On the positive and negative obligations of states under the ECHR, see generally: Akandji-Kombe J-F (2007).

[5] See, for example: European Court of Human Rights (1988), para. 34; and more recently: European Court of Human Rights (2005).

[6] The ECtHR has faced strong criticism from the British authorities, see, for example: Watt and Bowcott (2012).

[7] Largely thanks to the introduction of a unique "margin of appreciation" doctrine recognizing cultural differences among states which influence their interpretation of human rights and individual liberties. See generally: Greer (2000).

This detailed European standard serves to ensure the successful implementation of the universal human rights paradigm for freedom of expression. It should be understood as a detailed reiteration of the UN General Comment.

As per the United Nations CCPR/C/GC/34, the obligation to respect freedoms of opinion and expression is binding for every state party. This indicates that the state's executive, legislative, and judicial branches, as well as other national, regional, or local public or governmental authorities, are directly obligated to guarantee that these rules are not violated. Insofar as these Covenant rights are amenable to application between private persons or entities, state parties are also obligated to ensure that individuals are shielded from any private actions that might restrict them in their exercise of the freedoms of expression and opinion. States parties are required to ensure that the rights contained in Article 19 of the Covenant are enshrined in the domestic law of the state in a manner consistent with the guidance provided by the United Nations Human Rights Committee (UNHRC) in its General Comment No. 31 on the nature of the general legal obligation imposed on states parties to the Covenant.

Article 19 para. 1 requires states to ensure that individuals' freedom to express their beliefs is protected. The Covenant forbids any exceptions or limitations to this right. The right of an individual to change their opinion at any time and for any reason is included in the concept of freedom of opinion. No person's rights under the Covenant may be diminished because of their actual, perceived, or hypothetical opinions. Opinions of a political, scientific, historical, moral, or religious nature are all protected under this clause. Criminalizing the expression of an opinion is inconsistent with paragraph 1.

The UNHRC emphasized explicitly that "free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights". It is considered a cornerstone of a democratic society (UNHRC, 2011, 3).

8.3   Intermediary Liability in the 2022 Digital Services Act

These general guidelines and practices have been locally applied to reflect the challenges posed by the global information society. Europe has long taken the "mere conduit" approach to online media regulation, ensuring that service providers are not held liable for the content they merely allow access to. The most recent reiteration of this approach—as a good practice example—is briefly outlined below.

The DSA, prepared by the European Commission, is a key element of the reform of consumer protection in the information society. It serves as an example for other countries and regional organizations, including Central Asian countries. These countries benefit in terms of increased platform competition for consumers in the remittance market. It can help remittance senders make annual savings of millions of euros every year on remittances from Europe to Central Asia.

The legislative package, of which the DSA is a part, aims to increase the competitiveness of European goods and services in the context of a global digital economy. Announced on 16 December 2020 together with the Digital Markets Act (DMA),[8] the DSA is a milestone on the path toward the implementation of the European Digital Strategy (EDS) (European Commission, 2020). One of the aims of the EDS is the long-awaited reform of internet service providers' liability regimes, including "very large platforms" and social media. Through the DSA, the European Commission intends to replace the e-Commerce Directive that has been in force for over two decades.[9] The main objectives of the project include: (1) simplifying and ensuring transparency of the accountability regime for providers of electronically supplied services; (2) introduction of a due diligence standard and imposition of an obligation for "very large online platforms" to carry out a risk analysis, i.e., those used by a minimum of ten percent of users in the EU, or at least 45 million people; (3) introduction of new information and procedural obligations to protect users from unfair advertising, including profiling and disinformation; and (4) simplification of mechanisms that allow users to quickly and effectively protect their interests online, while guaranteeing respect for individual rights, in particular the right to a fair trial. All these changes in law and the accompanying practice are intended to reflect the fundamental assumption of Community law concerning the control of internet content. It is the prohibition of preventive censorship and the provision of judicial oversight of decisions that shape the scope of individual rights on the internet, especially those taken by private entities. Europe is once again trying to set standards for the effective protection of individual rights in cyberspace, without duplicating either authoritarian solutions that work well in the Global East or those based on a deep trust in the mechanisms of the free market, which Europe's Western partners have relied on. Central Asia values effective media censorship to protect national security and governmental authority, looking at online service providers in the same way as offline press publishers. This contrasts with the EU, which understands the fundamentally distinct nature of online media and provides a unique model of regulation offered for consideration here.

This unique nature of online and offline media in Central Asia is reflected in the latest (2022) report published by Reporters without Borders, which notes the decline of Central Asian states in the global ranking of press freedom (Putz, 2022). Except for Turkmenistan, every nation in Central Asia saw its real score fall, even as its ranking increased. As a result, governments might celebrate an increasing rank as evidence of advancement, despite a general decline in or stagnation of press freedoms in the area. With an internet penetration rate of roughly 50 percent in, e.g., Kyrgyzstan, online services and intermediary liability have yet to become prominent in regional public debates (CIA, 2022). Would it be worth considering a different approach to online

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[8] Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) of 15.12.2020, COM (2020) 842 final, 2020/0374(COD).

[9] EU Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (e-Commerce Directive).

media freedom? What is the cost/benefit analysis of the EU example? How does this reform impact free speech online, in the EU, and beyond? How will individual states deal with the updated requirements and ensure the rule of law and effective protection of free speech within their jurisdictions and across borders? In the next section, I will briefly analyze the Polish case, which is significant for the rule of law challenges faced by other Central and Eastern European states.

8.4 Digital Services Act (DSA) Package

The liability of providers of electronically supplied services is a well-regulated issue in Community law, notably through the e-Commerce Directive, which has been in force for over two decades. Its basic assumption is that service providers are not responsible for the content they allow their consumers to access. *Mere conduit* is a fundamental principle for the European approach to content control. It has also been included in the Digital Service DSA in a form very similar to Article 12 of the e-Commerce Directive and implemented in national law.

Respectively, Chap. 3 of the Polish Act on the Provision of Electronic Services excludes the service provider's liability for the provision of electronic services.[10] According to the provisions of Article 12 of the Act, a service provider who provides services involving the transmission in a telecommunications network of data by the recipient of the service or the provision of access to a telecommunications network shall not be liable for the content of such data if they are not the initiator of the data transfer, do not select the recipient of the data transfer, or select or modify the information contained in the transfer. This disclaimer also covers the automatic and short-term intermediate storage of the transmitted data if this action is solely to carry out the transmission and the data are stored only as long as is typically necessary for the transmission. According to Article 13 of the Polish Act, the exclusion also applies to providers of caching services, i.e., those who, by transmitting data and providing automatic and short-term intermediate storage of such data, accelerate re-access to them at the request of another entity, if they meet the conditions described above.

The most important provisions implementing this principle are contained in Article 14 of the Polish Act on the Provision of Electronic Services, which introduces a peculiar European variation of the notice and take-down mechanism known in the United States, sometimes called *notice and (take) action.* According to its provisions, the liability of hosting service providers is excluded if they are not aware of the unlawful nature of the data or related activities by providing "ICT system resources to store data by the recipient of the service" and, in the event of receiving an official notification or obtaining reliable information about the unlawful nature of the data or related activities, they immediately prevent access to these data. This provision is supplemented by Article 15 of the Act, which emphasizes the lack of a general

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[10] Act on the Provision of Electronic Services (2002) as amended (hereinafter referred to as the Act).

obligation to monitor data, perceived in the European Union from the beginning of regulatory work as a threat to freedom of expression (Husovec et al., 2020).

Similar solutions can be found in the draft articles 3–5 of the DSA, although formally, under Article 71, the relevant provisions of the Directive will cease to apply. However, Article 71(2) of the DSA provides that any existing reference to the Directive and the national provisions implementing it, including the Polish Act on the Provision of Electronic Services, are to be treated as direct references to the DSA. Articles 3–5 of the DSA will be supplemented by additional provisions concerning, for example, platforms or disinformation, requiring their operators to exercise due diligence in preventing violations of the legally protected interests of users.

In addition to the standard transmission, caching, and hosting known from the e-Commerce Directive, the DSA introduces the possibility of also exempting from liability for transmitted content service providers involved in offering access to local networks, the operation of critical internet resources, such as the domain name system or keeping registers of top-level domain names (TLDs). It should be noted that while the DSA's objective is to extend the same legal rules to as many information society service providers as possible, both the wide range of inclusions and the unclear relationship between the DSA and, for example, media law, including, above all, the definition of an audiovisual media service and the editorial responsibility of its provider under the Audiovisual Media Services Directive, may be unsatisfactory. Moreover, the new rules do not cover search engines or content aggregators (Audiovisual Media Services Directive, 2010, pp. 1–24).[11]

Without carrying out a detailed analysis of the above articles and the interpretative and practical problems resulting from their content, it should be noted that since their adoption two decades ago, they have been the subject of fervent and justified criticism as unclear and as imposing on service providers a disproportionate burden of immediately deciding on the legality or illegality of the content to which they allow access.

Moreover, such decisions are often tantamount to an immediately enforceable decision of a single-instance, one-person quasi-court, such as an employee of the service provider acting as a moderator or examining a report regarding potentially illegal content, and directly affect the shape of individual rights.

They restrict freedom of expression (if access to the indicated content was "immediately prevented") or deprive individuals of the opportunity to effectively assert the protection of their rights (if the entry or image is not considered by the service provider to be blocked or, in practice, removed). The most considerable doubts, however, were raised not so much by the mechanism used by private individuals to protect their rights or other legally protected interests but by the cooperation that arose in the application of these provisions between organizations protecting copyright, often on behalf of foreign corporations and service providers operating in Europe.

Service providers have often put mechanisms in place on their own to detect potential infringements of intellectual property rights by specific groups of operators,

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[11] See also: RIPE NCC (2021), para. 22.

contributing to the discussion on the undesirable "chilling" effect that the legislation has produced in European practice.

Service providers, defending themselves against possible financial liability for damage caused to copyright holders that could be harmed by the distribution of certain digitized materials, independently and hastily decided to prevent access to them, without analyzing the provisions introducing exceptions to protection, such as fair use or the specificity of the genre of creativity. Consequently, applying the Directive has often been described as encouraging lobbying by large media content providers, whether from Europe or the United States.[12] This exciting aspect of the intermediary liability regime and its implementation shows that service providers may effectively and diligently protect some online rights on the condition that sufficient incentives exist, including a pending liability. In the case of intellectual property rights protection, these result in individual business risk assessments that prevent any potential individual harm to copyright holders.

Criticism of the principle of mere conduit in European law has focused on excessive, quasi-judicial power transferred to private entities under the provisions of the e-Commerce Directive. An individual has often been deprived of a genuine opportunity to appeal against such a decision because it is technically impossible to establish the identity of the actual infringer of its legally protected interests or, as a last resort, the difficulty of attributing to it the perpetrator of the infringement.

8.5   Disinformation as a Crime

The DSA will likely perpetuate this imperfect solution and its "chilling" effect (European Union, 2021). Interestingly, this undesirable side effect of the e-Commerce Directive has recently become a subject of interest of the Polish Ministry of Justice, which presented a draft law on freedom of speech in social media (Polish Ministry of Justice, 2022). The project aims to force, e.g., Facebook administrators not to remove content that they consider inconsistent with the terms of use of the website, but, in the opinion of a possibly appointed Freedom of Speech Council, would be under Polish law. When the social media operator and the Council disagree on their perceptions of the free speech allowed online, the latter would be able to impose a fine of 50 million Polish Zloty (12 million euros) on the former.

This proposal and the motivation for it are a good illustration of the disputed division of powers between the state and the private service provider when it comes to setting the boundaries of freedom of expression and the right to be informed in the age of social media (Polish Ombudsman Office, 2021).

A day after Twitter banned US President Donald Trump from its platform for inciting violence on Capitol Hill in Washington D.C., the Polish Minister of Justice

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[12] Cf. Article 17 of the Directive on Copyright and Related Rights in the Digital Single Market and amendments to Directives 96/9/EC and 2001/29/EC and the Polish complaint before the CJEU: Poland v. Parliament and Council, Case C-401/19. See also: Schwemer and Schovsbo (2020).

announced updated plans to introduce a Polish law ensuring freedom of online speech. He argued that democracy could only be discussed when "we are dealing with a guarantee of freedom of speech and freedom of the debate. Unfortunately, the decisions of large corporations have threatened and violated the values at the heart of democracy" (Polish Ministry of Justice, 2022). The Ministry of Justice started working on a draft act on protecting freedom of speech on social networking sites in 2020. Among other things, these efforts followed a ban on a right-wing party nationalist march advertised as a Facebook event in 2016 (Press, 2016). In November 2016, the accounts of the March for Independence, the All-Polish Youth, the National Radical Camp, and the National Movement were taken down by Facebook administrators. Yet, Facebook was unable to defend the ban under Polish law. When pressed directly by the Ministry of Digitization, it ineffectively referred to the nationalists' use of the "forbidden" phalanx and swastika symbols, which are not themselves illegal in Poland (while hate speech is, but that is not what Facebook referred to in their decision). The Facebook account of the Independence March was quickly restored in November 2016. In early 2022, Facebook banned the site of another right-wing party, Konfederacja, this time for spreading disinformation on COVID-19 and opposing the vaccine mandate (Wątor, 2022). This last incident directly incentivized the relaunching of the Freedom of Speech Council debate. Minister of Justice Zbigniew Ziobro clarified that blocking the Konfederacja site was "incredible and unacceptable" interference in the public debate and could influence future elections. Ziobro argued that "big corporations shape the image of the world in line with their belief". The draft act is meant as a countermeasure and intended to "ensure that Poles enjoy the freedom of speech and the right to information" (Polish Ombudsman Office, 2021). Should this new regulation be approved, social media users are to be granted "their right to a free debate and expression of views" and see it "protected against arbitrary deletion of content or its moderation" because it "is not in keeping with the worldview of the owner of a given website" (ibid.).

The most important novelty proposed by the draft would be the establishment of the Freedom of Speech Council. It would be chaired by the Chairman of the National Broadcasting Council, who, along with the other members would be elected for a six-year term by the Sejm (but not the Senate, where the ruling coalition does not have a majority). Another change would be the introduction of trusted "notifiers", who would act against disinformation disseminated via social networking sites. They would lodge a complaint with the Freedom of Speech Council requesting that a specific post on a social networking site be marked as disinformation. Candidates for trusted notifier entities would be certified by institutions such as the Ombudsman, the Ombudsman for Children, the Ombudsman for Patients, and the Polish Financial Supervision Authority, all of which have been recently reappointed by the ruling Polish coalition.

The most significant change however would be the departure from imposing administrative fines on social networking sites that do not fulfill the obligations contained in the Act, in favor of creating a new version of the category of crimes subject to multi-million fines. Such regulation would allow, argues the Ministry of Justice, for the fine to be transferred to an EU state, where the website claimed to be

interfering with the freedom of speech on social networking websites is located. In this way, the execution of the fine would be fully enforceable, ensuring that the big social media corporations respect the statutory regulations.

It is against this background and with these expectations that Poland has strongly supported the DSA. It sees it as a promise of enforceability of national standards of freedom of speech against individual international companies, however flawed or distant from international standards these might be.

8.6 Lessons Learned and the Way Forward

All European states are looking to regulate transnational social media companies. The EU, and subsequently Poland, have adopted the updated version of the notice and take-action mechanism described above. As noted, however, they take a different view on issues of state sovereignty and the limits of national jurisdiction online. The contrast between the most recent EU proposal on the DSA and its Polish reading might be exciting for post-Soviet countries.

Much the same as all post-Soviet states, Poland has a history of media censorship. It is a part of history that it was eager to abandon after 1989. Poland's current media system has been built on the democratic principles of freedom of expression and the rule of law. This is also the paradigm behind the European regulation of civil society with free and open media. Yet, as Central and Eastern European states such as Poland and Hungary have struggled with the rule of law since the late 2010s, the question of appropriate media regulation has come to the forefront of public debate. Since 2016, the Polish authorities have implemented legislative and practical measures that closely tie public media to the ruling party. This has been achieved by selecting specific individuals to lead Polish public media and by making legislative changes. Poland expects the new intermediary regime to ensure that the country's unique understanding of freedom of expression and protection of traditional values, including those related to religion, to be reflected in the application of the new law. While interesting, this is far from the original policy approach that the EU established for all free media and the Union. Central Asian states might therefore consider these examples with interest.

An effective intermediary liability system is on offer that grants freedom of expression to two online actors. On the other hand, post-Soviet states such as Poland and Hungary are returning to a strict policy regarding media freedom. In their future debates, Central Asian countries might want to consider a balanced approach to intermediary liability that encapsulates values enshrined in the UDHR discussed above but also considers their post-Soviet past, which might impact the local understanding and interpretation of these universal principles.

Moreover, like the General Data Protection Regulation (GDPR), which revolutionized the universal protection of privacy and personality, the DSA gives freedom of speech a universal transboundary effect beyond the EU. It may also interest non-European actors, such as non-EU member states within the OSCE, to comply with

these standards. As it stands, the emphasis of the DSA is on the universal nature of freedom of expression. While on the one hand, it will require intermediary service providers to allow their platforms to be used for hate speech, discrimination, or terrorist practices; on the other, the democratic principles of the rule of law and freedom of the press are the pillars of the transnational regulation that the EU imposes.

Facebook is one of the social networking sites whose owners take the utmost care to avoid accusations of spreading disinformation, bias, or manipulating the shared message. However, even the abovementioned project to establish a Freedom of Speech Council shows the futility of these efforts, for example, in the face of crushing accusations against Cambridge Analytica and its business model, based on targeted political advertising, which has been likened to military psychological operations (Flam, 2018). Despite developing the most advanced artificial intelligence system to support the fight against fake information and accounts, Facebook is once again proving powerless against government-backed disinformation (Facebook, 2020). In 2013 in St. Petersburg, a company operating under the name the "Internet Research Agency" was founded, now referred to by critics as a "troll factory". Numerous reports in the Western press have described its business model, which employs "copywriters" to create countless fake social media accounts that are used to distribute content developed on behalf of the Russian government (Legucka, 2019). The Internet Research Agency's budget of about 1 million euros allows the company to employ around 80 people on a rotational basis, "divided into foreign sections" (ibid.). They conduct discussions "in different European languages and evoke extreme emotions on the internet".

In June 2014, government papers were leaked by hackers. Based on these documents, the extent to which the Internet Research Agency attempted to sway public opinion through social media became publicly known. Until June 2015, when information from fake accounts used for biased internet trolling appeared in one of its offices, the Internet Research Agency had attracted little attention. The press then published stories of individuals getting paid for this job (Hans, 2014). Following reports from the U.S. Department of Justice in 2018, a U.S. grand jury accused 13 Russian nationals and three Russian organizations, including the Internet Research Agency, of breaking the law to interfere in "United States political processes and elections" (Mangan & Calia, 2018). Central Asia is another key area where the Internet Research Agency operates (Altynbayev, 2018). Historically, Moscow has seen Central Asia as within its sphere of influence. As a result, the development of Russian news outlets promoting Kremlin propaganda poses an extraordinary threat to this region.

Moreover, these outlets frequently provide two competing viewpoints for their audiences, inciting divides and conflicts. One example might be social media posts praising Russia's consumer policies and fostering a favorable image of the country in Central Asian nations while at the same time criticizing migrant labor from Central Asia on Russian television and in other media. Moreover, the Kremlin makes frequent use of regional social media platforms, well-known online forums, and so-called "influencers" or "trolls" to achieve their political aims of increasing divergence and "driving the ledge" (Warner, 2022).

According to the Georgian Center for Strategic Analysis for example., Russia uses social networks such as My World@Mail.Ru, VKontakte, and Odnoklassniki to advance its agenda and expand its cultural influence in the post-Soviet region (Altynbayev, 2018). Russia also utilizes the internet to sway elections elsewhere: It stirs up xenophobia in Europe and the United States, foments anti-American feelings, and strengthens Russian influence in Russian-speaking nations (ibid.).

8.7 Conclusion

Despite all these efforts, both regulatory and technological, there is no simple, single solution to the issue of online disinformation. The OSCE Representative for Media Freedom plays a crucial role in safeguarding media freedom and promoting the principles of free expression within the OSCE. While the Representative may align with the provisions outlined in the Digital Services Act (DSA), it is important to note that they do not explicitly incorporate the DSA into their mandate, as it falls outside the scope of their responsibilities. However, it is evident that the nonbinding recommendations issued by the OSCE Representative for Media Freedom are consistent with the objectives and principles set forth in the DSA. These recommendations aim to address challenges related to online media and digital platforms, such as ensuring transparency, accountability, and protecting freedom of expression, all of which align with the goals of the DSA. While the OSCE Representative for Media Freedom does not directly incorporate the DSA, their recommendations reflect a shared commitment to upholding media freedom and promoting responsible digital practices. They also agree with the defenders of free speech when they argue that the cure for disinformation is not a ban on free speech but more information. This is the path taken by the EU, which relies on cooperation rather than regulation when it comes to combatting fake news.

Not only has it been operating the EU versus Disinfo website since 2015,[13] where it identifies Russian disinformation on an ongoing basis, but in 2022 it published the updated Code of Practice on Disinformation (European Commission 2022). The updated document seeks to set out a new, broader range of commitments and measures to counter online disinformation. Signatories have committed to take action to demonetize the dissemination of disinformation, ensure the transparency of political advertising, empower users, enhance cooperation with fact-checkers, and provide researchers with better access to data (ibid.).

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Chapter 9
Digital Citizen Activism in Central Asia: Beyond Contestation and Cooperation

Bakhytzhan Kurmanov

9.1 Introduction

The emergence of new technologies and the availability of smartphones with social media applications led to the rise of digital citizen activism. The rise of digital activism that was present in the Arab Spring and the Euromaidan demonstrated the significance of social media and new technologies in mobilizing civil society activists and led to the attention given by scholars to the role of digital civil society in authoritarian regimes (Arafa & Amrstrong, 2015; Wilson, 2017; Pospieszna & Galus, 2019). Notably, the adoption of Web 2.0 technologies and its social media applications has increased the participation and collaboration of citizens in and with their governments (Gunawong, 2015). Some scholars have argued that the rise of digital civil society could serve broader democratization goals in authoritarian regimes (Kaplan & Haenlein, 2010). Gil-Garcia et al. (2018) noted that the use of information and communication technologies (ICT) in government, and the explosion of digital information throughout society, offers the possibility of a more efficient, transparent, and effective government responsive to citizen activists.

The literature on digital activism in autocracies concentrates on the role of authoritarian controlling, co-opting, censoring, and repressing digital activists to achieve regime consolidation. For instance, MacKinnon (2011) discussed how autocracies adopt ICT and social media in their survival strategies. Linde and Karlsson (2013) found that the increased use of e-participation in non-democracies did not form more responsive and accountable states. Guriev and Treisman (2019) noted that information autocracies needed to control the information space and create government messaging to distort reality and make its citizens genuinely believe in the legitimacy of such an authoritarian regime. Hence, digital activism is challenged by increased

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pressure from authoritarian regimes that have learned how to use technologies to ensure its survival.

The current literature focuses on a binary approach to digital activism, examining whether it encourages democratization or how it is controlled and co-opted by information autocracies. However, we need a better understanding of how this activism operates in non-democratic regimes and the roles of digital activism in dictatorships. This chapter fills this gap by analyzing cases of digital citizen activism in three hardline autocracies such as Kazakhstan, Uzbekistan, and Tajikistan, in post-Soviet Central Asia, aiming to understand what roles are undertaken by digital activists. Though some works have analyzed the development of civil society in Kazakhstan (Knox & Yessimova, 2015), the oppression of activists in Uzbekistan (Lewis, 2015), and broader transformations of civil society in the region (Ziegler, 2010), the research on digital activism in the Central Asian region is nascent. Looking at activists deepens our understanding of digital activism's roles and functions in autocracies. Using as case studies Kazakhstan, Uzbekistan, and Tajikistan, this chapter aims to answer the following research questions, namely what are the roles of digital activism in authoritarian countries?; and, does the rise of digital activism result in increased democratization of autocracies?

This chapter investigates the digital activism in post-Soviet Central Asia that has significantly manifested across the region. Digital activism on social media hugely influenced the 2020 October revolution that resulted in the ousting of Kyrgyz President Sooronbay Jeenbekov. Sadyr Japarov, an opposition leader serving sentences in prison at that time, shortly after resumed power (Gabdulhakov, 2020). Likewise, the January 2022 riots in Kazakhstan (Kudaibergenova & Laruelle, 2022) were fueled by the increased mobilization of online activists who unleashed the citizen's frustration with the economic and political reforms of the first president Nursultan Nazarbayev and his successor Kassym-Jomart Tokayev. All five Central Asian states have pursued varied economic and political trajectories since their independence from the Soviet Union in 1991. This makes this region particularly interesting for comparative analysis of digital activism, such as in Kazakhstan, Uzbekistan, and Tajikistan (BTI, 2022). The countries allow, nevertheless, social media and digital platforms use, albeit heavily censored (see Table 9.1).

Empirically, this chapter is based on analyzing cases of digital activism in post-Soviet Central Asia. This primary data was based on 27 semi-structured in-depth interviews conducted through purposive sampling (see Appendix A for a detailed list of interviews in Kazakhstan, Uzbekistan, and Tajikistan). The selected interviewees were citizen activists directly involved in the activities of selected cases of digital citizen activism explained above. Interviews were conducted per the approval of the ethics committee of Nazarbayev University. All respondents provided explicit consent, though some refused to allow recording. Most respondents were in urban centers (Almaty and Astana in Kazakhstan, Tashkent in Uzbekistan, and Dushanbe and Khujand in Uzbekistan). Additional demographic information is provided in Appendix A.

This chapter aims to contribute to the broader research on digital activism in the Organization for Security and Cooperation in Europe (OSCE) region. The OSCE,

Table 9.1 Citizen digital activism. Selected V-Dem indicators for Kazakhstan, Uzbekistan, and Tajikistan. Digital Society. 2021. (V-Dem, 2022)

Indicator	Kazakhstan	Uzbekistan	Tajikistan	Description (question and scale)
Average use of social media to organize offline action	2.15	1.69	0.09	How often do average people use social media to organize offline political action of any kind? Scale: 0 = Never or almost never to 4 = Regularly
Existence of online media	2	2.27	1.63	Do people consume domestic online media? *Scale:* 0 = Not at all. No one consumes domestic online media. to 3 = Extensive. Almost everyone consumes domestic online media

particularly the Office for Democratic Institutions and Human Rights (ODIHR), welcomed the post-Soviet region's democratization and the flourishing of citizen activism (Galbreath, 2009). But thus far, most studies on civil society, digital activism, and broader democratization in the OSCE region are limited to the Western Balkans (Mastrorocco, 2020) and hybrid regimes in the post-Soviet Caucasus region. Digital activism in post-soviet Central Asia still needs to be researched, and this is where I aim to add to the discourse in this chapter. Hence, in this chapter, I argue that digital activism in authoritarian Central Asia seeks cooperation rather than contestation in its engagement process with the state. Secondly, in this region, online activists often undertake the legitimation discourse role imposed on them by autocratic states.

9.2   Roles of Digital Activism in Autocracies

This chapter identifies three significant strands in the roles of digital activism in authoritarian states based on Lewis's (2013) and Diamond's and Plattner (2012) frameworks. These authors argue that digital media can unite and organize various individuals to pursue their collective goals and engage with the state (Diamond & Plattner 2012). The explosion of ICT and social media allowed for resource mobilization by activists to form independent groups and associations that started challenging the rule of authoritarian regimes during the Arab Spring (Arafa & Armstrong, 2015). In Tunisia, online activism on social media facilitated resource mobilization that led to a change in the regime (Breuer et al., 2015). Digital activism is also pivotal, for example, in citizen mobilization in Ukraine, leading to Euromaidan in 2014 (Bohdanova, 2014). As such, it has started to actively oppose or contest the policies of autocracies.

Digital activism in autocracies also acts through the co-option and mobilization of supportive citizens and activists. Non-democracies need to gather support and assistance from society to achieve development goals, for instance, the delivery of

social services. Authoritarian regimes do not rely simply on oppression; the co-option of elites and civil society plays an essential role in regime stability (Przeworski & Gandhi, 2006). Such "involuntary" or "induced" participation is imposed by state bodies to force citizens to participate in various forms of cooperation (Mansuri & Rao, 2013). Fu and Distelhorst (2020) found that the Chinese regime under President Xi has adopted a "flexible repression" approach based on two key ingredients: harsh crackdowns on non-state narratives and co-optation and mobilization of supporting civil society organizations.

Recent research also shows how activists are not just co-opted or forced by the state to cooperate in such scenarios but genuinely believe in the benefits of such cooperation (Urinboyev & Eraliev, 2022). McCarthy et al. (2020), in their study of the public councils created at regional police offices in Russia, found that state-dominated civil activist associations could help bring influential critical voices and criticisms. Hence, civil society and digital activism can actively cooperate in non-western settings. In such environments, online activists who do not oppose the state can become an essential mechanism for regime survival through constructive cooperation. However, the risk for an authoritarian regime is that civil society organizations and citizen associations might develop an independent discourse that would endanger the regime's survival. Autocratic regimes strongly resist creating autonomous spaces where civil society can develop. Therefore, an authoritarian government is interested in controlled cooperation with civil society activists that could serve the legitimation goal.

Against this backdrop, digital activism can fulfill the legitimation goals of authoritarian regimes. Autocratic rulers have realized that social media can be used to maintain coordination with their supporters disseminate propaganda and influence online discourse, i.e., to seek legitimation (Gunitsky, 2015). The existence of relative freedom on social media could serve as a feedback mechanism for the government to adapt its policies and understand its citizens' political opinions and preferences (Gerschewski, 2013). In such systems, the authoritarian regime would remain in full power while allowing a wide range of online conversations and controlled digital activism (Guriev & Treisman, 2019). Gobel (2013) has highlighted how authoritarian regimes could use ICT, online participation tools, and social media activism to achieve autocratic consolidation by enhancing a regime's capabilities of governing society. Thus, this new networked authoritarianism can use digital activism for legitimation purposes.

Various authoritarian countries worldwide have used digital activism to legitimize and promote their discourse on the internet. Chinese authorities have created a set of elaborate strategies to promote the ruling regime's legitimacy by controlling the social media space and crafting a government message (King et al., 2013; Zeng et al., 2019). Han (2015) has demonstrated how the Chinese authorities have used various online users to eliminate alternative discourse and promote government legitimacy in the internet space. A more detailed study by Zeng et al. (2019) explained how the Chinese authorities have managed to defuse urban protests by using the mechanism of co-optation through normative (prescriptive rules), cognitive (shared conceptions), and regulatory (established rules) control over media. Ultimately, the government

has imposed its "interpretation" and "message". Kurmanov and Knox (2022) have similarly shown how hybrid regimes in Central Asia inherently achieved legitimation rather than collaboration with citizens in policy-making. Therefore, digital activism can legitimize authoritarian regimes through the enhanced capacity of such regimes to forge and disseminate the state discourse.

9.3   Networked Authoritarianism and Control of Digital Space

Though the selected three countries have experienced a variety of trajectories in political development, specific common trends can be observed in the development of digital space for activism. First, as the background showed, all three countries have imposed significant control over civil society and activism. The V-Dem (2022) database and other secondary sources indicate that such state control mechanisms extend to the digital space. Kazakhstan, Uzbekistan, and Tajikistan governments are significantly engaged in the control of the internet and in punishing online activism (see Table 9.2). All three countries arrest citizens for political content when it opposes the government's opinion in the digital space. Central Asian states actively filter and control internet and digital media content. In Kazakhstan, during the January riots of 2022, the government shut down the internet for several days in the country. Similarly, internet access was blocked in the restive GBAO region of Tajikistan amidst the protests in June 2022, and several activists who posted critical posts were imprisoned (Putz, 2022). In Uzbekistan, during the unrest in Karakalpakstan, the authorities blocked the internet to stop the protests (Najibullah & Babadjanov, 2022). This shows that Central Asian autocracies employ tools of oppression when facing digital dissent.

V-Dem data shows that the authorities allow relative freedom on social media. Though governments in Kazakhstan, Uzbekistan, and Tajikistan use social media censorship, this effect is limited (see Table 9.3). Overall, the online media space is relatively relaxed for hard-line autocracies, reflecting the potential for online activism in the country. One can argue that autocratic governments are more interested in learning from social media activism, which indicates the regime's somewhat limited cooperative nature. However, the fact that the Central Asian governments preferred to monitor social media activism also reveals the limited capacity of the states to control the social media space. For instance, Tajikistan blocked Facebook for some time, but the country could not remove all politically sensitive content (Shafiev & Miles, 2015).

The states in Central Asia widely promote government messages and discourse on social media through networked authoritarianism. The Kazakh regime actively used TikTok to persuade Kazakh citizens to vote on the Constitutional referendum, revealing how the state aims to maintain its discourse on the internet (Kurmanov, 2022). Shafiev and Miles (2015) found that the Tajik state actively used pro-state

Table 9.2 V-Dem indicators. Government control of digital space. Selected V-Dem indicators for Kazakhstan, Uzbekistan, and Tajikistan. Digital Society. 2021. (V-Dem, 2022)

Indicator	Kazakhstan	Uzbekistan	Tajikistan	Description (Question & Scale)
Arrests for political content	1.14	0.86	0.55	If a citizen posts political content online that would run counter to the government and its policies, what is the likelihood that the citizen is arrested? *Scale:* 0 = Extremely Likely to 3 = Extremely Unlikely
Government internet filtering in practice	1.42	1.1	0.96	How frequently does the government censor political information (text, audio, images, or video) on the Internet by filtering (blocking access to certain websites)? Scale: 0 = Extremely often (It is a regular practice for the government to remove political content, except to sites that are pro-government) to 4 = Never, or almost never
Government capacity to regulate online content	2.65	3.44	2.27	Does the government have sufficient staff and resources to regulate Internet content in accordance with existing law? *Scale:* 0 = No, almost all online activity happens outside of reach of the state, where it lacks the capacity to remove illegal content to 4 = Yes, the government has sufficient capacity to regulate all online content

volunteers on social media to support government policy and oppose critics. This reveals that though Central Asian governments permit digital activism to a certain extent, the regimes aim to control internet content and to promote government discourses to strengthen their rule. This finding indicates the nature of transforming networked authoritarianism in the Central Asian region, as revealed in the literature by Kurmanov and Knox (2022). In the next section, the chapter investigates three specific cases of digital activism, one each in Kazakhstan, Uzbekistan, and Tajikistan, respectively, to explore what roles such activism plays in the evolving autocracies of the region.

9.4 Digital Activism to Initiate Police Reform in Kazakhstan: Legitimation Instead of Cooperation

Kazakhstan has been a stable yet autocratic regime for the past 30 years. Under the rule of the first president, Nursultan Nazarbayev (1991–2019), the country experienced significant autocratization. Though Nazarbayev introduced attempted public

Table 9.3 V-Dem indicators. Government control of social media. Selected V-Dem indicators for Kazakhstan, Uzbekistan, and Tajikistan. Digital Society. 2021. (V-Dem, 2022)

Indicator	Kazakhstan	Uzbekistan	Tajikistan	Description (question and scale)
Government social media censorship in practice	2.31	2.54	2.03	To what degree does the government censor political content (i.e., deleting or filtering specific posts for political reasons) on social media in practice? *Scale:* 0 = The government simply blocks all social media platforms to 4 = The government does not censor political social media content, with the exceptions mentioned in the clarifications section
Government social media monitoring	1.82	1.28	1.53	How comprehensive is the surveillance of political content in social media by the government or its agents? Scale: 0 = Extremely comprehensive (the government surveils virtually all content on social media) to 4 = Not at all, or almost not at all (The government does not surveil political content on social media, with the exceptions mentioned in the clarifications section.)

sector reforms, their impacts were not realized in strengthening democratic institutions and broader civil society (Knox, 2008). On paper, the civil society sector in Kazakhstan has significantly grown and developed over the years since the country's independence in 1991. Even though the civil society in Kazakhstan partners with the government in public service provision and is actively growing, this sector remains almost entirely controlled and regulated by the state (Knox & Yessimova, 2015). This authoritarian control has led to a controlled and subdued Kazakh civil society while the internet and online activism have grown in importance. Digital activism in Kazakhstan has grown since the second President, Tokayev, came to power in 2019 with a program of political reforms that were ostensibly aimed at increasing openness, transparency, and responsiveness. Tokayev announced the concept of a Listening State and embarked on creating open government institutions in the country. However, as Kurmanov and Knox (2022) demonstrate, the open government in Kazakhstan has not resulted in the empowerment of citizens but has led to the co-optation and legitimization of the regime.

In Kazakhstan, digital activism has been on the rise due to the relative freedoms of the internet. The case of activism by Kazakh citizens devoted to initiating police reform serves as an elaborate example of the interaction between digital activism

and the state. It started on 19 July 2018 when Kazakh citizens were shocked to learn about the tragic murder of a famous Kazakh figure skater in Almaty who was stabbed in broad daylight in the center of Almaty (Satubaldina, 2018). This critical incident caused massive citizen participation on social media and sparked a public outcry over public safety. On the day of the funeral, the activists gathered to discuss police reform and started preparing a clear policy document with demands for policy reform. As a result, the digital activists formed a group on Facebook called *Trebuyem Reformu MVD* (Demanding the Reform of the Ministry of Interior Affairs), and the citizen-initiated project for the reform of the Kazakhstani police was initiated (Mashayev, 2019). The Facebook group membership increased to 15,000 people within two days. The group's activists genuinely believed that, through minor yet effective changes, the political system in Kazakhstan could be changed, even the notorious police of Kazakhstan. The activists saw their role as moderators between citizens, the state, and experts in the reform of Kazakhstani police and chose to cooperate to trigger change and legal reforms.

Initially, the Kazakh government resisted the activists' demands to reform, for example, concerning the power of the Kazakhstani police. President Nazarbayev claimed that 'General Kassymov, the Minister of Internal Affairs, is the most experienced policeman in our country, an honest, decent man… he will suggest what we should do with the police ' (Trotsenko, 2019). The Minister did not react but then supported citizen input in the reform by providing more information related to the incident and the work of the police (Mashayev, 2019). Instead, in February 2019, Kassymov was replaced as the head of the Kazakh police by Yerlan Turgumbayev, who introduced a Roadmap for the Reform of the Police that incorporated some of the digital activists' recommendations related to the introduction of service police in Kazakhstan (Service Police in Kazakhstan, 2019). The head of the Agency for Civil Service arrived in Almaty in Spring 2019 and supported the work of the activists. During the meeting, a three-sided plan was developed to create a "service police", a pilot project was supposed to be launched in Almaty.

As the reform proceeded, it succumbed to slow implementation and superficial changes. More than 112 recommendations were suggested by the concise policy document prepared by the activists' coalition. However, only 12% of all recommendations were fully implemented, 10% were partially implemented, and 78% were ignored (Kazakh Activist #4, 26.11.2019). Hence, the outcome of the reform still needs to be achieved; the state bodies would not engage in reform but would prefer the appearance of such. The police reform focuses shifted from the concept of service police toward a focus on technologies and inter-agency cooperation between state bodies in public safety. The Kazakh president, Tokayev, focused the police reform on local police services rather than introducing systematic changes (Kazakh Activist #3, 25.11.2019). The main suggestion was to create police stations within walking distance and to strengthen the reform of local police services. Interviews with the key informants on both state and civil society sides revealed that the reform needed to be top-down with little consideration for citizen input (Kazakh Activist#4, 26.11.2019).

Overall, the visible government drive for police reform transformed into a mimicry of cooperation with the activists of *Trebueym Reformu MVD*. Furthermore, the

use of information manipulation and information overload by the Kazakh government was noted by some activists (Kazakh Activist #4, 26.11.2019). Activists were invited to numerous meetings with the officials in Almaty and Nur-Sultan/Astana and needed a feasible results plan (Kazakh Activist #2, 24.11.2019). Other activists noted that only some reforms were implemented (Kazakh Activist #4, 26.11.2019). For instance, superficial reforms were implemented (change of training, renaming of police academies, and mandatory bodycams for police officers) while structural and systematic changes were missed (Kazakh Activist #3, 25.11.2019). The group *Trebuyem Reformu MVD* cooperated with state officials, generally avoided contestation, and generated a specific proposal of recommendations. However, the Kazakh State disengaged and initiated a facsimile of police reform while maintaining superficial cooperation with the activists. This example illustrates how digital activism can legitimize an autocratic regime, although the government does not collaborate.

9.5   Urban Activism in Uzbekistan: Constrained Cooperation

Under the first Uzbek president, Karimov (1991–2016), the country became a hard-line autocratic state following his "Uzbek Way" ideology. President Karimov imposed stringent conditions on the country's civil society development (Khamidova, 2018). Even though the number of NGOs is considerable (around 9,200 are registered in Uzbekistan), most are conservative religious and secular organizations (Khamidova, 2018). The second President, Mirziyoyev, announced political reforms aimed at democratic reforms and increased responsiveness of state officials to citizens. Mirziyoyev has actively promoted the liberalization of the Internet and social media space as a part of the reforms. The President's efforts to promote free and critical thinking have led to the development of an active virtual civic space that has started to act autonomously. Moreover, Saida Mirziyoyeva, the President's daughter, was appointed Deputy Chairwoman of the Board of Trustees of the Public Foundation for Support and Development of National Mass Media in Uzbekistan, tasked with the provision of support and protection for bloggers and online activists in Uzbekistan. Uzbekistan has experienced the emergence of many Facebook groups and virtual civil communities (Murtazashvili & Mirakilov, 2020).

As Uzbekistan under President Mirziyoyev has pursued liberalization reform, the country's rising influence of virtual civil society groups has been observed. If a specific incident happens and the bloggers start to write about it in their groups, the government can listen and respond accordingly with a decision (Uzbek Activist #5, 22.12.2020). Several influential online groups dedicated to specific issues have been created. This chapter concentrates on a case of digital activism related to citizens' fight against housing demolition in Tashkent City. From 2017–2019 the city government of Tashkent (khokimiyat) embarked on massive construction projects by private developers that involved demolishing people's homes in the city. Massive

evictions occurred, and thousands of citizens were neither properly informed nor compensated (Bennetts, 2019).

The *Tashkent Snos* (Tashkent Demolition) is a Facebook-based group that was created to discuss and protest the decisions of local authorities (khokimiyat) to demolish homes of citizens and historic buildings/areas in the capital Tashkent. The group has acquired approximately 23,600 members, and their posts led to the suspension of the demolition of old buildings in Tashkent and other Uzbek cities (Uzbek Activist #5, 22.12.2020). The posts of activists in the group present an example of the work of online communities in Uzbekistan. The group is an example of digital citizen activism aimed at protecting citizens' rights.

> Local state bodies [khokimiyat] violate the vital rights of citizens by allocating land to private companies who simply demolish houses. And it turned out that in such a situation, no one protects citizens. At first, we turned to lawyers, and they answered: "What can you do now? This is a wave; you must adapt and do as the state says." So, we organized ourselves quite spontaneously on Facebook. I opened the Tashkent Snos.uz group so that people could help each other, for example, with advice, exchange legal information.
>
> (Uzbek Activist #8, 11.03.2021).

The *Tashkent Snos* group achieved some notable success in defense of the rights of citizens concerning the protection of their houses against demolition. In 2017 the group sent a letter to the Ministry of Justice of Uzbekistan questioning the legal status of the guarantee letters [garantiynyye spravki] given to the residents whose houses were to be demolished (Uzbek Activist #8, 11.03.2021). The Ministry of Justice stated that the guarantee letters were illegal and that proper compensation should be provided in demolition cases. Another example is that the group managed to prevent the destruction of a grove of trees in Tashkent (Uzbek Activist #7, 10.03.2021). The developer received a huge fine, and the construction project was canceled. Hence, the digital activists cooperated with the Ministry of Justice of Uzbekistan to protect citizen interests.

However, the group's cooperation on some major issues could have been more fruitful. The members of the *Tashkent Snos* group participated in a discussion of the Cabinet of Ministers Resolution No. 911, a cornerstone legal act that defined rules for demolition. They opposed the introduction of a legal norm allowing the state to seize land for investment projects in addition to state needs. State bodies should have considered the group's suggestions and allowed private companies to acquire land in such a fashion (Uzbek Activist #8, 11.03.2021).

Instead, the group started to face growing reluctance from state bodies (especially the local executive office of Tashkent—*khokimiyat*) to acknowledge citizen requests. Private construction companies have acquired land in central Tashkent and park areas to construct a planned commercial development. According to activists, this was doubtless motivated by the rent-seeking interests of the officials of local executive bodies (*khokimiyat*) (Uzbek Activist #7, 10.03.2021). Digital activists noted that the state bodies (such as the prosecutor's office and courts) were on the side of the local executive office (khokimiyat) and private developers (Uzbek Activist #8, 11.03.2021). The developers were large firms owned by officials or their relatives.

Thus, digital activism faces limits even when it chooses cooperation if the activists contest the vested interests of an autocratic state.

As this case illustrates, the digital activists chose cooperation rather than contestation in their fight against private developers' housing demolition in Tashkent. The Uzbek state organized meetings with the activists of the *Tashkent Snos* group. However, the group still failed to achieve its goals, and the Uzbek state seems to imitate cooperation with activists while maintaining a legitimation discourse. Overall, the group had limited success in cooperating with the authoritarian state. Meanwhile, the Uzbek state attempted to control the information space and create a government message to distort reality and enforce its legitimation. To promote state discourse, the Uzbek authorities claimed that the demolition was legal and that citizens received the necessary compensation and information (Letters, 2019).

9.6   Digital Activism in Tajikistan: Arrested Cooperation

The Civil War in Tajikistan (1992–1997) substantially impacted the institutions and development of the regime and the country, let alone the civil society. Instead, state authorities face significant erosion and dysfunctionality (Markowitz, 2012). The Tajik president, Rahmon, managed to take power in the peace negotiations of 1997 and later mobilized external support and aid to cement his power (Marat, 2016). Scholars have noted that, in the 2000s, President Rahmon established a "soft authoritarian" state that focused on creating a political narrative and used a co-optation strategy to increase its supporters (Marat, 2016; Markowitz, 2012). However, from 2010–2021 Rahmon consolidated his political power and established a stronger authoritarian state (Marat, 2016). Lemon and Thibault (2018) have argued that the Tajik regime used the counter-insurgency threat to justify its oppressive regime and crack down on civil society, political opposition, and activists.

In Tajikistan, there has been growing digital activism related to the political transformation in the country and the shift from a soft-line authoritarian regime into a strong autocracy. Considering the high number of Tajik migrant workers in Russia, Tajikistan has witnessed a significant rise in digital activism on social media platforms such as Vkontakte, a Russia-based analog of Facebook, and Odnoklassniki Platform, a Russia-based social media platform created early in the 2000s. Marat (2016) observed that the vast diaspora of Tajiks working abroad, mainly in Russia, using these platforms, including Facebook, pose a threat to the authoritarian regime in Dushanbe through the internet and social media channels.

A study of the *Mometavonem* platform initiated by foreign donors and local civil society organizations provides substantial insight into digital activism in the country. The *Mometavonem* platform was created in 2012 by a push from civil society and the Soros Foundation in cooperation with the mayor's office of Dushanbe city. The platform was intended to encourage inhabitants' participation in reporting and mapping municipal service problems and monitoring their improvement through an online interactive platform. This site allowed any user to register their request on one of

the priority issues quickly, indicate the problem's location, and provide a telephone number for communication. Hence, the platform became autonomous for digital activism in municipal services. More than 6,000 citizen complaints were sent to the platform, and 4,000 were registered as unique (South-South World, 2015).

Initially, *Mometavonem* was planned to focus on socioeconomic issues covering 16 types of services, including water supply, heating, gas, electricity, and maintenance of sanitation conditions, roads, and public transportation (South-South World, 2015). However, the platform quickly transformed from an online platform to record problems with city utilities and services to inform and participate in solving Dushanbe city problems. According to a decision by the mayor of Dushanbe, special offices of *Mometavonem* were created at the district level of local government (*khukumat*), and responsible state officials were assigned. The platform allowed digital activists to cooperate with city authorities to resolve and improve city service delivery.

As the interviewees noted, two significant forces drove the creation of the *Mometavonem* portal. The first was support from international organizations to bring new collaborative and participatory mechanisms based on applying new technologies to Tajikistan (Tajik Activist #2, 22.05.2020). The enthusiasm of local civil society and activists triggered the realization of the platform. They sparked an impulse for enhanced collaboration with civil society organizations in Dushanbe (Tajik Activist #3, 04.06.2020). The second driving force was the deliberate decision by the then-Mayor of Dushanbe, Ubaydulloev, an influential and experienced politician in Tajikistan who supported Dushanbe's development after the civil war (Tajik Activist #7, 13.11.2020). The mayor provided the office, necessary funding, and resources to realize this platform (Tajik Activist #2, 22.05.2020).

Mometavonem quickly became popular, and Dushanbe residents endorsed the platform's interactivity, which enhanced the responsiveness of the city officials. The platform sparked digital activism by citizens in a way that was directed at cooperation with authorities rather than contestation. The site, which existed in working mode for five years, ceased to be updated at the end of January 2017 after Ubaydulloev was dismissed and Rustami Emomali (the Tajik President's son) took his place. The new mayor shut down the platform immediately without explanation (Tajik Activist #3, 04.06.2020). It was revealed that the decision to close the online platform was driven by middle-level officials of the city government (*khukumat*) who resisted responding to citizens' complaints and requests. Rustami Emomali reportedly stated that Dushanbe city officials did not like the platform because it generated criticism of officials' work (Tajik Activist #7, 13.11.2020). The transformation to deeper autocracy in Tajikistan has suspended this effective form of cooperation. The mayor of Dushanbe worried about the potential for contestation that could come out of the platform.

As a result of rising contestation in the digital arena, the Tajik government has focused on blocking and maintaining control over social media and the internet. The presence of "networked authoritarianism" was revealed as it manifested through the attempts by the Tajik authorities to curtail citizen activism and discussion using more sophisticated means. The government started to rely on so-called "pro-state volunteers" who created online profiles with fake names and pictures and defended

pro-government narratives in critical online groups and communities (Shafiev & Miles, 2015). The government regularly forces students to become "volunteers" who create accounts on Facebook and disseminate government-influenced messages. The Tajik state created a youth group called *Avangard* ("Vanguard") to protect the regime by posting pro-government content and attacking independent digital activists (Tajik Activist #7, 13.11.2020).

The Tajikistan case reveals several essential features of digital citizen activism in the country. First, digital activists initially chose a cooperative role in improving the provision of utility services in Dushanbe city. However, as the Tajik regime transformed into a hardline autocracy, the state opposed and limited such activism. Second, the Tajik government started actively disseminating and enforcing its message in digital space. Hence, a legitimation discourse was imposed by the state on digital activists.

9.7   Digital Activism in Central Asia

Although the civil society sector and digital activism have been well controlled and "managed" by hard-line autocracies in Kazakhstan, Uzbekistan, and Tajikistan, the countries have experienced a rise in digital activism that has enjoyed the relative freedoms of internet space. This chapter has examined the development of the roles of digital citizen activism in post-Soviet Central Asia. This work reveals that digital activists in Central Asia mainly seek cooperation with the authoritarian state to resolve citizen issues. However, once activists face resistance from state bodies in responsiveness to their needs, they use digital media to articulate their concerns about their cause.

Table 9.4 summarizes the digital activism strategies and how authoritarian states respond.

Three major findings can be generated based on investigating these digital activism cases. First, digital citizen activists mainly organized to pursue their groups' interests

Table 9.4 Contestation, cooperation, and legitimation discourses in Central Asia

	Contestation	Cooperation	Legitimation discourse
Digital activism	Activists contests and opposes state officials on various policies that infringe on or violate citizens' rights	Activists pursue cooperation with state officials to achieve their collective interests	Activists promote and support state policies
Authoritarian state	State faces contestation and aims to disengage activists (through legitimation or oppression)	State officials seek to employ activists in the delivery of public services and to tweak policies to their preferences	Government aims to disseminate its message and impose its discourse on activists

in cooperation with the authoritarian state. As the cases of police reform in Kazakhstan, prevention of demolition of historical buildings in Tashkent, and the digital platform for city utility services in Dushanbe demonstrate, the activists used the technologies and social media to aggregate the interests of concerned citizens and to articulate a list of proposals/recommendations for state officials. Activists sought cooperation and collaboration with various state agencies to resolve their grievances. This work uncovered that activists were not necessarily co-opted or forced to collaborate and work together with state structures. The activists had an agency of their own in their activities and attempted to shape and modify state policies and the delivery of public services. This finding provides a relatively novel understanding of the cooperation role of activism and broader civil society in autocracies and is more expansive than the notion of "involuntary participation" (Mansuri & Rao, 2013) or co-optation (Gerschewski, 2013; Przeworski & Gandhi, 2006).

The cases of digital citizen activism illustrate that contestation was pursued more nuancedly by online communities in Central Asia. Contrary to Diamond and Plattner (2012), Arafa and Armstrong (2015), and other scholars, this work finds that the contestation role of activists does not necessarily oppose the regimes' autocratic nature. The digital activists did not seek democratization but sought to overhaul policies that infringed on or violated the rights of citizens. This finding is counter-intuitive to the Western concept of civil society and civic activism, understood as the force for contestation and democratism. Furthermore, this finding contributes to a more nuanced understanding of the role of digital activism and broader civil society in non-Western settings.

The third finding is that Central Asian autocracies have learned to use social media and online spaces to promote their strategic narratives and pursue their legitimization. Confirming the authoritarian regime legitimization literature (Gerschewski, 2013), this work argues that autocracies in Central Asia aim to consolidate their rule in their engagement with digital activism. As the case of police reform in Kazakhstan illustrated, the state took control of the reform through meaningless engagement. In the case of the fight against demolition in Tashkent city, the state actively proceeded with the destruction of commercial projects by pushing its narrative while imitating the process of cooperation with activists. Hence, an autocratic state imposes a legitimation discursive role on digital activists.

9.8   Conclusion

This chapter provides the first scholarly glimpse into the interaction between digital activism and authoritarian states in post-Soviet Central Asia. This chapter aimed to tackle questions on the role and the possible impact of digital activism in authoritarian countries in Central Asia; and whether and to what extent digital activism results from increased demand for democratic reforms or the desire for the legitimacy of autocratic regimes. Both are valid assumptions.

This analysis of three cases from post-Soviet Central Asia has revealed that digital activism can play many roles in authoritarian settings. However, this work uncovers that activists seek to engage in cooperation rather than contestation with the authoritarian state. Digital activism aspires to redress the rights of citizens infringed on by the state through productive interaction, such as by providing suggestions on legislative changes and participating in meetings with state officials. However, when an authoritarian state faces cooperation, the state officials aim to employ digital activists in public service delivery and tweak policies. This resistance to becoming responsive to articulated citizens' needs in the form of digital activism curtails the ability of such activism to become genuinely effective. The state is unwilling to change its policies based on the demands of digital activists. Critically, when an autocratic state identifies the potential for contestation in collective and collaborative digital activism, the non-democratic regime oppresses or channels such activism toward legitimation discourses. Therefore, the role of digital activism is limited to legitimation discourse in authoritarian settings where potential criticism is not tolerated and cooperation is unwanted.

Consequently, this chapter concludes that the rise of digital activism has a limited impact on increased democratization in evolving autocracies. Non-democratic states have learned to use the tools of networked authoritarianism to eliminate any potential threats from emerging virtual civil society. Ultimately, the authoritarian state manages to control and channel digital activism into legitimation roles that prop up its long–term durability. The investigation of cases in this chapter shows that, although Central Asian regimes have experienced significant political transformation in the past 30 years, they have managed to construct resilient autocratic states with a capacity for network authoritarianism. However, there are some notable differences among the autocracies of post-Soviet Central Asia: Uzbekistan and Kazakhstan have declared that they are reforming toward increased responsiveness, openness, and liberalization of the media space, while Tajikistan has transitioned from a soft to a hard-line autocratic regime. The officially proclaimed policies of transparency and responsiveness in Kazakhstan and Uzbekistan have resulted in the arguably higher acceptance of potential contestation from activists. However, as the cases of Mometavonem in Tajikistan demonstrated, authoritarian states in Central Asia cannot allow the formation of autonomous spaces that could generate alternative viewpoints. This work supports Lewis' (2013) point that autocracies benefit from the self-organization power of civil society but tend to dismiss its potentially dangerous liberating power. However, further research on how Central Asian autocracies can use digital activism for authoritarian legitimation is warranted.

Table 9.5 Interviews conducted in Kazakhstan. (* = conducted virtually)

#	Profile/ affiliation	Code	Sex	Age	Date	Place
1	Civil society activist/ private sector think tank	Kazakh Activist #1	Male	35–45	30.10.2019	Nur-Sultan
2	Civil society activist/ non-governmental organization	Kazakh Activist #2	Female	25–35	24.11.2019	Almaty
3	Civil society activist/ think tank	Kazakh Activist #3	Male	35–45	25.11.2019	Almaty
4	Civil society activist/ private sector	Kazakh Activist #4	Male	35–45	26.11.2019	Almaty
5	Civil society activist/ non-governmental organization	Kazakh Activist #5	Female	35–45	26.11.2019	Almaty
6	Civil society activist / think tank	Kazakh Activist #6	Female	45–55	27.11.2019	Almaty
7	Civil society activist/ private sector	Kazakh Activist #7	Male	45–55	12.03.2020	Almaty*
8	Civil society activist/ think tank	Kazakh Activist #8	Male	35–45	28.06.2020	Nur-Sultan*
9	Civil society activist/ think-tank	Kazakh Activist #9	Female	45–55	20.10.2020	Nur-Sultan*
10	Civil society activist/ non-governmental organization	Kazakh Activist #10	Female	45–55	20.12.2020	Almaty*

Appendix A. Detailed List of Interviews Conducted

The institutional affiliation of the interviewees was clarified and added to the column profile. The authors provided respondent organizations' names only where the interviewees explicitly allowed for this disclosure and when it did not pose risks to our interviewees (Tables 9.5, 9.6 and 9.7).

Table 9.6 Interviews conducted in Uzbekistan. (* = interviews conducted virtually)

#	Profile/ affiliation	Code	Sex	Age	Date	Place
1	Civil society activist / private sector consultancy	Uzbek Activist #1	Male	35–45	05.02.2020	Tashkent
2	Civil society activist/ non-governmental organization	Uzbek Activist #2	Male	35–45	07.02.2020	Tashkent
3	Civil society activist/ private sector think tank	Uzbek Activist #3	Male	45–55	06.02.2020	Tashkent
4	Civil society activist/ higher education institution	Uzbek Activist #4	Male	35–45	10.08.2020	Tashkent*
5	Civil society activist/ journalist	Uzbek Activist #5	Female	35–45	22.12.2020	Tashkent*
6	Civil society activist/ non-governmental organization	Uzbek Activist #6	Female	25–35	23.12.2020	Tashkent*
7	Civil society activist/ private sector think tank	Uzbek Activist #7	Male	35–45	10.03.2021	Tashkent*
8	Civil society activist/ non-governmental organization	Uzbek Activist #8	Female	45–55	11.03.2021	Tashkent*
9	Civil society activist/ private sector think tank	Uzbek Activist #9	Male	35–45	16.07.2022	Tashkent*
10	Civil society activist/ non-governmental organization	Uzbek Activist #10	Male	25–35	16.07.2022	Tashkent*

Table 9.7 Interviews conducted in Tajikistan. (* = interviews conducted virtually)

#	Profile/affiliation	Code	Sex	Age	Date	Place
1	Civil society activist/ non-governmental organization	Tajik Activist #1	Female	25–35	20.05.2020	Dushanbe*
2	Civil society activist/ international organization	Tajik Activist #2	Male	55–65	22.05.2020	Dushanbe*
3	Civil society activist/ non-governmental organization	Tajik Activist #3	Female	35–45	04.06.2020	Dushanbe*
4	Civil society activist/ private consultancy	Tajik Activist #4	Male	45–55	12.06.2020	Dushanbe*
5	Civil society activist/ think tank	Tajik Activist #5	Male	35–45	06.11.2020	Dushanbe*
6	Civil society activist/ private consultancy	Tajik Activist #6	Male	35–45	09.11.2020	Khujand/ Dushanbe*
7	Civil society activist/ non-governmental organization	Tajik Activist #7	Male	55–65	13.11.2020	Khujand/ Dushanbe*

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Chapter 10
The Dilemma of Good Governance Versus Power Grab in Georgia

Shalva Dzebisashvili

10.1 Introduction

Since the third wave of democratization (Huntington, 1991) in the early 1990s, the proponents of successful democratic transition have looked tirelessly for instances in which regime change has led to the establishment of more democratically functioning institutions, i.e., the use of democratic practices and thus to the tradition to *good governance* and a consolidated democracy (Huntington, 1991). Georgia has been titled the lighthouse of democracy as a part of this wave, following the 2003 "Rose Revolution", has gradually regressed in its democratic credentials, and after the parliamentary elections and the change of political regime in 2012, ultimately plunged into the category of partly authoritarian (or hybrid) democracy (Freedom House, 2021). As the *Nations in Transit 2020* calmly states, the 29 countries which have experienced a democratic breakdown, leading to the maximum number of undemocratic regimes since 1995 in Europe and Central Asia, are characterized by:

> …these politicians have stopped hiding behind a facade of nominal compliance. They are openly attacking democratic institutions and attempting to do away with any remaining checks on their power. In the region stretching from Central Europe to Central Asia, this shift has accelerated assaults on judicial independence, threats against civil society and the media, the manipulation of electoral frameworks, and the hollowing out of parliaments, which no longer fulfill their role as centers of political debate and oversight of the executive (Freedom House, 2020).

Despite the laudable attempt of the *National Movement* government to establish a tradition of peaceful transition of power (to the coalition of *Georgian Dream*) through parliamentary elections, the hopes of further democratic consolidation and the proliferation of good governance principles quickly died and were replaced by growing

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domestic and international concerns (Kakachia & Lebanidze, 2019). In fact, this negative tendency is typical not only for Georgia, but a series of countries in Europe and Central Asia, once again highlighting the problem of "democratic automatism", in which democratically held elections do not automatically herald the advent of stable democratic institutions. This point is shared by Joseph Derdzinki and Thomas Carothers, who conclude that the movement away from a dictatorship or an authoritarian regime in no way guarantees the movement toward democracy (Derdzinski, 2009). The quest for the best formula of democratic development, especially for those countries that, similarly to Georgia, experienced an authoritarian past, remains unfinished, thus ultimately boiling down to the ability of the political system to force the government and of the government itself, to act in the spirit of good governance and the practices involved.

According to Fukuyama, the discussion of contemporary politics on how to constrain tyrannical governments has centered on the institutional mechanisms that constrain the government, that of the rule of law and democratic accountability (Fukuyama, 2014). Thus, it has become highly relevant from the political and policy analysis perspective, including the extensive menu of concepts on the general rationale and practical mechanisms authoritarian regimes use, to justify the retreat from democratic achievements and ensure the effective monopolization of power. In this context, Lust and Waldner (2015) distill the essence of the problem and frame it as changes made by authoritarian regimes in formal political institutions and informal political practices that significantly reduce citizens' capacity to control the government and keep it accountable (Lust & Waldner, 2015). The backsliding of democracy has thus been accelerated over the past decade.

This implies that the institutional mechanisms of accountability and the means of internal political and societal control, such as the internal security services, will inevitably come to the center of analytical scrutiny and bear great potential for providing deeper insight into the processes of general political transformation. The literature on the role of internal intelligence and other state security services is still underdeveloped, resulting in a "lacunae of understanding" and significance of these agencies in general and their political decision-making, not less in obstructing the democratic consolidation of institutions, i.e., the application of good governance practices (Alymbaeva & Fluri, 2021). It should also be noted that literature still needs to hold the so-called security sector's control and accountability at the core of its analysis. Such literature is known as the Security Sector Reform (SSR) literature. However, as David Lewis correctly points out, largely the product of OSCE, the SSR is too overly optimistic while remaining unable to deliver a coherent doctrine with isolated assistance programs of primarily prescriptive and technical nature, divorced mainly from other initiatives and disconnected from the complexities (challenges) of political transformation (Lewis, 2011).

10.2 Hypothetical Approach

One can argue and assume that the wide variety of theoretical explanations for the democratization processes offers little to distill a universal formula for a successful transition. But still, it remains a mere simplification (Geddes et al., 2018). Instead, an attempt must be made to construct a hypothetical proposition based mainly on the more narrow systemic factors of political change: the strength of external (international) demands, the lack of internal pressure from below, and the nature of bureaucratic tradition, typically dominated by internal security apparatus in the Soviet era. As the aspect of international involvement (pressure) is visible in Georgia before and after the regime change in 2012, our first hypothetical claim is pretty much in line with Haggard and Kaufman's (2016a, 2016b) statement that the absence of a powerful opposition turns a transition from authoritarian rule to a mode of more liberal, good governance which is elite-driven mainly with external, i.e., international, inducements and constraints playing a much higher role in the calculus of the existing regime (Haggard & Kaufman, 2016a, 2016b).

The second hypothetical explanation takes the influence of bureaucracy as a focal point of analysis, whether from the point of political (party) domination or the level of infiltration by loyal personnel or security service cadres. One could assume that, due to the heavy domination of the Soviet past, institutional/normative legacies, and bureaucratic ethics, the Russian pathway of "democratization" inevitably becomes a role model of failed democracy for Georgia. This is the crucial factor to be considered while studying post-Soviet regimes where, similarly to Russia, a large portion of senior bureaucrats (a quarter in Russia) can have a security services background (Treisman, 2018). This type of bureaucracy is intimately linked to the ability of the ruling regime to control and monitor at all levels of governance to ensure collaboration and prevent sabotage. However, as Barbara Geddes states, it also increases the power of the so-called inner circle of the regime and the clientele networks, as well as often requiring a concentration of power by chief executives and the replacement of the competent bureaucracy with regime supporters (Geddes et al., 2018).

10.3 Political Elites as Role-Model?

The role of political elites and leaders is a variable determining governance and regime type outcomes. No doubt, leaders exert immense influence on political processes and decision-making. However, as Ilie looked deeper into the identity of political leadership and the *prime-sites* of their emergence, he paraphrased that most research rests on the stereotypical approach of heroic individuals in hierarchical positions who mobilize supporters to achieve certain organizational goals. Whereas managers who know the rules, and how to break the rules, win (Ilie & Schnurr, 2017).

The significance of the arrangements between outgoing and incoming elites has been extensively discussed by Michael Albertus and Victor Menaldo (2018). In

essence, the negotiations are regarded as pacts and enterprises undertaken by political elites for other elites, and the institutional architecture of democracy is designed to shield the incumbent elites from the rule of law (Albertus & Menaldo, 2018). Therefore, the ability of voters to translate their preferences into policies is blocked, leaving the very authoritarian DNA of almost every democracy untouched (Albertus & Menaldo, 2018). Understandably, pacts between rival elites have tremendous consequences on the quality of democratic transformation and its institutional effectiveness. Conversely, as Luca Tomini concludes, the opposite process can happen in which opposing parties view each other as mortal enemies, and the narrow ruling elite perceives the political demands of the opposition as a threat. Thus, the choice is made to favor more authoritarian rule (entrenchment, repressions, and suspension of the rule of law) (Tomini, 2018). Viewing leadership as a systemic element, Ilie assigns the leader a significant role in shaping the human and institutional environment, where individual commitments, corporate, and cultural values (e.g., Nokia vs. Erikson) define the change processes (Ilie & Schnurr, 2017). This logic is further strengthened by Sarah Binder, who draws attention to the ability of party leaders to control resources and be exceptionally well informed and, therefore, to dominate the rank and file (Binder & Lee, 2015). In the end, the willingness to reach particular types of political arrangements for power-sharing is detrimental to political elites, according to Bell (2018). The elites themselves have to be distinguished by the degree of multilevel accountability, i.e., the multiplicity of stakeholders, as this indicates the interests and values upon which their power is constructed (Ade, 2019).

Hence, the role of leaders and elites in democratic transition reveals strong references to designing proper institutional mechanisms. Because the existing ones have contributed to the longevity of the previous regime and can be used by the new ruling party in the same way. Graeme considers the essence of democratic consolidation in the ability of all political groups to accept the established political institutions and the rules of the game, thus highlighting even more strongly the importance of institutional design typically carried out by political elites (Gill, 2000). Naturally, the definition of a consolidated democracy implies the existence of democratic institutions that fully comply with the principles of good governance, i.e., have the ability and mechanisms of (self)checks and balances. The elites in charge are very aware of this. However, to make good governance happen or, as Fukuyama puts it before governments can be constrained, they have to be able to govern—an apparent reference to governance practices and effective bureaucracy (Fukuyama, 2014).

Considering what has been discussed above, conceptually and context-wise, the critical political events during and after the Rose Revolution in 2003 in Georgia must taken under the analytical scrutiny. These can be broadly divided into two periods of differing political rule: The period of Saakashvili and United National Movement (UNM) domination and the authority of the Georgian Dream (GD) and the oligarch Bidzina Ivanishvili after their parliamentary victory in 2012. As for the case of Georgia, primary emphasis can be placed on the ability and willingness of transitional elites to bargain, strike a deal, and agree on (including institutional) arrangements that either secure the incumbent regime's interest or enable a more radical systemic (with or without personnel) purge.

Recognizing the role of leaders and elites in designing political institutions, the logic, and structure of those institutions, including constitutional arrangements, will be given special attention, along with the assessment of institutional mechanisms that either support political consensus building or, in contrast, increase the chance of negotiation failure. Not least important is to recognize from the very beginning the risk of having an institutional design that is incredibly informal and leaves sufficient space for building and utilizing informal, shadowy centers of actual and effective decision-making. This is even more important when societies are politically divided and polarized. Here, we regard institutions based on consociationalism and, thus, the arrangements for power-sharing as the best model that is primarily elite-driven (Jakala, 2018).

Even in stable democracies, according to Mansbridge and Martin, institutions and political organizations have little incentive to further successful political outcomes, thus resulting in frequent policy reversals and government changes (Mansbridge & Martin, 2013). It should not be forgotten that, in the case of Georgia, the socialist past has to be elevated as a critical variable determining the institutional arrangements at all levels where the expectations of consensual power-sharing have to be minimal. This comes as no surprise due to the basic acknowledgement that socialism could be regarded as democratic as long as it allows for elite competition for power, and not the rigid domination of politics and industry by a single elite (Medearis, 2001). The basics for any change in political institutions appear to be the agreement on the very constitutional document that safeguards the vital rights and interests of elites, especially those about to "exit the dictatorship on their terms" (Albertus & Menaldo, 2018). It is likely that if an agreement is not reached. The institutional arrangements lack legitimacy, as Justin Parkhurst argues. Their constraining effect is too weak, and the incumbent regime (as well as its opponents) starts to treat politics as a "winner-take-all" game and "abuse office to marginalize oppositions permanently" (Parkhurst, 2017; Haggard & Kaufman, 2016a, 2016b). Such abuse of office is typically understood as the monopolization of institutions and state agencies under which government departments "operate as 'party fiefdoms'", and are identified with individual ministers (Jakala et al., 2018).

Haggard and Kaufman argue that those regimes, along with the domination of state agencies, allow for limited political participation and reward those who cooperate conditionally (e.g., in semi-competitive elections), endure most, and are even capable of minimizing the impact of regime opponents who "choose to remain outside the controlled institutional space" (Haggard & Kaufman, 2016a, 2016b).

It should also be noted that the term "controlled institution" does not exclude the existence of a hidden or informal center of decision-making. Kunicová points out this by dwelling on distributive politics and formal institutions in Russia (Shapiro et al., 2008). And this claim is further supported by Albertus and Menaldo, who include the political culture and patronage in this context. They conclude that informal institutions can work in tandem with formal ones or even bolster them (Albertus & Menaldo, 2018). Contemporary research is still struggling to uncover the evidence of hidden power and the "shadowy world" and thus remains insufficient primarily to change government policy, as Duncan Green admits (Green, 2016).

As the solid administrative body of bureaucracy represents the essence of institutions and the machinery of governance, the bureaucratic arrangements and policies in critical areas of political decision-making will be examined, as well as the norms and procedures of formal accountability and transparency, as these represent the central pillars of the concept of good governance and democratic institutional development, even more so as the role of bureaucracy is being discussed. Since control by institutions and of institutions is the key to regime stability, the democratic system typically asks for mechanisms of *answerability* and punishment. The first is related to the availability of information (transparency), and the second is directly linked to the capacity to impose negative sanctions on office holders (National Research Council, 2008). While there are many interpretations of accountability (e.g., horizontal vs. vertical), we would rather look for the evidence of *within the system (or systemic) accountability* and *external accountability*. The former implies the mechanisms within the governance system, whereas the latter relates to the means of accountability before the public (society) and international actors. The external or *third dimension of accountability* is centered around the power of international actors (governments and organizations) to hold a state institution to account. It is particularly relevant since new democracies usually seek foreign support and legitimization. For example, David Lewis draws attention to the limited effects of the assistance provided by OSCE in police reform in post-soviet Central Asia, as it has been very narrow and technical in nature and needs more significant oversight from competent officials (Lewis, 2011). Furthermore, some sources point directly toward references to good governance and the rule of law that are largely absent or vaguely defined in EU demands to the partners to whom assistance programs are provided (Brockmann & Bosold, 2009). This aspect is particularly relevant to Georgia, as every ruling party since the declaration of independence in 1991 formally recognized the European perspective as the only way of state development. However, the permanent and traditional reference to a European future and the respective increase in bureaucratic and technical-normative linkages with the standard tool of the EU's conditionality does not always result in a high speed or quality of democratic transformation.

Thus, Parkhurst correctly confronts the problem of bureaucratic abuse and political monopolization with the challenge of growing dominance of technocratic expertise in political institutions as harboring the risk of moving away from democratic ideals (Parkhurst, 2017). Since we are far from recognizing the technocratic essence of bureaucracy as problematic in our research context, the primary focus is devoted to the qualities that make bureaucracy "well trained, of good standing and tradition…with a strong sense of duty and no less strong *esprit de corps*" (Schumpeter, 2003). Schumpeter doubles down on this matter, highlighting the critical importance of a strong, independent, and powerful bureaucracy (of the Weberian mold) to be able to guide and, if needed, instruct the politicians in various ministries (Schumpeter, 2003). This perfect picture is contrasted and presented by him as the main argument and answer to governments staffed by amateurs who typically don't understand that this "powerful engine"—a product of a centuries-long development—cannot be created in a hurry or hired with money (Schumpeter, 2003). This finding is illuminating as it helps in every respect to search for plausible answers in cases like Russia or Indonesia,

where in one instance, Russians remained wary of the democratic institutions. At the same time, Indonesians learned quickly to use their institutions for channeling their preferences (Lussier, 2016). Hence, the influence of bureaucracy becomes a focal point of analysis, whether from the point of political (party) domination or the level of infiltration by loyal personnel or security service cadres.

Consequently, we won't be able to avoid the comparison of Georgia with the Russian "model" and political reality because, often, new democracies experience common pathologies they have inherited from the former colonial occupiers, as Albertus and Menaldo aptly highlight (Albertus & Menaldo, 2018). Do we have profound evidence of institutional roots still linked to Soviet-era KGB and *Siloviki* (power services), and does the communist past represent the defining factor that explains the more substantial grip and control over society, thus the difference to non-communist authoritarian regimes (Kelley, 2017)? These questions are, evidently, very relevant and must be responded to since many post-Soviet countries, in their trans-formation processes, expose political regimes that are characterized by the power of strong executives "buttressed by control over economic rents, the judiciary, the police", and institutions that work "…in concert with the court and legal systems which were under strong political influence in the Soviet period and have remained equally subordinate to political elites…" in the post-Soviet period (Haggard & Kaufman, 2016a, 2016b).

Similarly, when the former secret intelligence service of East Germany, the Stasi, ruled the country, the communist party-dominated government jobs and public offices had to be additionally controlled and monitored by the Stasi. Hundreds of thousands of agents infiltrated and guided solely by their loyalty to the secret service Ministre of State Security and his control (Geddes et al., 2018). In this context, the formality of checks and balances and respective institutions becomes an increasingly domi-nant marker for these regimes. Infiltration of the government by the "contemporary incarnation of the Cheka" can be seen down to the regional governmental offices that have been stripped of their authority (administrative or financial) space and "transformed" into presidential representations, staffed with envoys (*polpreds*) with a background in the security services (Kovalev, 2017; Zimmerman, 2014). Conse-quently, it is no surprise that absolute power corrupts absolutely and easily. Those who capture state institutions start to increasingly engage in economic and business activities by abusing their coercive power and control over the justice system to "re-assign state property to themselves as private owners while maintaining that they are, indeed the state" (Osipian, 2019). This is relevant and intriguing as it also refers to the monolithic self-understanding, reflection, and mentality of those individuals belonging to the "elite uncontrolled class" of *Siloviki*, characterized by the shared belief in a strong state, order, unity, primacy of the state over the individual, desire to bring others under control, and loyalty to one's team (Taylor, 2018). The power of shared mentality, norms, and corporate values cannot be ignored. In fact, this might become a powerful, if not central, obstacle to institutional change, as the carriers of this mentality denigrate the ability of ordinary citizens to understand the "realm of official politics" and regard themselves as uniquely competent to understand the existing challenges (Treisman, 2018). Thus, as Caparini argues, this phenomenon

has to be carefully and decisively dealt with by ensuring "…that the mentality of those working in the new service doesn't reflect that of the former service"(sic!) (Green 2016). This can be done by ensuring that the security apparatus remains "agnostic about the party in power," through lustration and prosecution practices to ensure justice, legitimacy, and consolidation and by political-administrative purging and vetting (Derdzinski, 2009; Fraihat, 2016; Harris & Reilly, 1998). In the end, if we borrow from Joseph Derdzinski, it is essentially whether we'll be able to prove the power of authoritarian legacies per se or the inherent choice of the new political elite to preserve them to secure their interests (Derdzinski, 2009).

10.4   The Georgian Reality

On the eve of the *Rose Revolution* in 2003, President Eduard Shevardnadze's aging and weak administration was quite sure about the prospects of successful parliamentary elections. It did not regard the young generation of politicians such as Mikheil Saakashvili, Zurab Zhvania, or Nino Burdjanadze as the mortal enemies of its political longevity. It had several reasons. They were all nurtured in the Shevardnadze government-led "Citizens' Union" party, occupied various mid-to high-level official (political) positions, and organizations created by them for the electoral purpose were not expected to do well, and, indeed, did not score a dangerously high number of votes (OSCE/ODIHR, 2003). The "white fox", prone to balancing his powerful ministers and regularly holding consultations with the minister of interior, initially Kakha Targamadze, and later his successor Koba Narchemashvili, could hardly believe that the situation following the rigged elections of 2003 got out of control that he was forced to negotiate with the "Troika" of Saakashvili, Zhvania, and Burjanadze, and managed only to secure his inviolability, but not that of his party nomenclature or the members of the corrupt economic oligarchy (Zamalashvili, 2004). Valentin argues that only limited space for goodwill and common ground was visible (Ade, 2019). We can see a rapid change and replacement of elites, both political and economic, following the deal reached between the revolutionary Troika and the ousted president Shevardnaze, which did not include guarantees of no prosecution, imprisonment, or exile, as Albertus and Menaldo would argue (2018). Interestingly, the incumbent regime's firm control of the security apparatus during the transition of power is the critical factor for such guarantees. Yet this was lacking from the beginning of the protest and even grew more problematic as the protests transitioned into a full-blown street revolution.[1] Unofficial channels, used intensively by several UNM and other leaders of the revolutionary alliance during the demonstrations, were not intended to create a certain level of trust but rather to implant disunity, intimidation, and chaos.[2]

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[1] Koba Narchemashvili, the Former Minister of Interior in Georgia in 2003, personal communication, July 2, 2021.

[2] Valeri Khaburdzania, the former Head of Intelligence Service, personal communication, February 21, 2021.

Since the source of support and legitimacy of the incoming political elite was utterly distinct from the incumbent regime, the primary way to signal loyalty to the president's base was through excessive extortion practices and prosecutions (Albertus & Menaldo 2018).

The personality and leadership qualities of former president Saakashvili who led the mass storming of the parliament as it was about to legitimize the falsified results of the elections, significantly increased his popularity and led the other members of the Troika to agree to his candidacy for the presidential elections in 2005.[3] The United National Movement stood firmly under the personal control of Saakashvili, with, essentially, no instances of internal severe disagreements to whatever decision was made, be it sudden relocation of the parliament unconvincingly justified by the need for decentralization or a hasty decision to build a deep sea port called Lasika (with no evidence of complex, serous evaluations done in advance) (Saakashvili, 2011). Even his very last decision, to return to Georgia, with no chance of any massive popular support, can only be explained hopes of his still existing personal popularity (vs. declining approval rates of the UNM) and the fear to lose his grip not only on the political situation in Georgia, but in the UNM party itself.

Personalities in party politics matter very much and aside from a few individuals such as Zurab Adeishvili, Giga Bokeria, and Vano Merabishvili in the UNM the role of ministers and deputy ministers was reduced to the technical function of executing decisions made in the inner circle.[4] This resulted in the frequent replacement of premier ministers and ministers, ironically called in public the government carousel, on which one individual could "practice" several ministerial positions within a short period of time.[5] Irakli Okruashvili, who, similar to other UNM ministers, occupied several key positions in the power ministries (from 2003 to 2006), and ended up at odds with Saakashvili due to his growing popularity, did not want to accept the Ministry of Economic Development as compensation for his political ambitions, and was eventually arrested and exiled to France in 2007 (Civil.ge, 2007).

The Georgian Dream (GD), led by the oligarch Ivanishvili, utilized similar patterns of leadership, consolidating a vast coalition of political parties, movements, and organizations supported by a mass base, a significant part of which was alienated by the strict and repressive policies of the Saakashvili regime (Transparency International Georgia, 2010). All of the critical political appointees in the new government following the parliamentary victory of the GD in 2012, and especially after 2016, were former members of the CARTU-foundation and Cartu Bank, institutions run by Bidzina Ivanishvili since the late 90s (Cartu Bank, 2022). During the political

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[3] Giorgi Baramidze, the member of the UNM, former minister of Interior in 2004, personal communication, October 3, 2021.

Nino Burjanadze, former Chairmain of the Parliament in 2001-2008, personal communication, August 5, 2022.

[4] Burjanadze, personal communication, August 5, 2022. Khaburdzania, personal communication, February 21, 2021.

[5] Note: Among many instances (incl. dozens of prime ministers) the career paths of Giorgi Baramidze and Irakli Okruashvili were extraordinary as they managed to occupy several key power-ministerial positions in a very short period of time.

developments and solidification of his power, he increasingly relied on his close circle of accomplices. Ultimately, he decisively distanced himself from several coalition parties that were domestically considered pro-western and democratic (Topuria 2014).

After resigning from political activities as prime minister and handing over this position to his closest ally, Irakli Gharibashvili in 2013, he again returned as the chairman of the Georgian Dream party and, in 2021, distanced himself again from the political life by once again appointing Irakli Gharibashvili as a prime minister. As a result, Gharibashvili had "unexpectedly" resigned from the position of PM in 2015, supposedly due to heavy criticism from the oligarch (Gogua, 2015). Given all this, alongside other frequent instances of governmental carousels, where previously praised and credited political figures and colleagues (Kvirikashvili and Gakharia), became a "disgrace" to the GD, as well as the frequent changes of ministerial positions which continued to be a routine practice, the centrality of Bidzina Ivanishvili's leadership in the GD cannot be denied (Radio Liberty, 2021). Furthermore, the frequent use of informal and shadowy mechanisms of decision-making and influence while deciding on political appointments or projects of economic and/or financial importance was frequently corroborated by Gia Khukhashvili, who happened to be at the very center of GD creation and the building of the team which led the oligarch to parliamentary victory in 2012.[6]

In a position of political domination and individual control of their party, such regimes exploit the absence, i.e., the weakness of the political opposition (caused by political nihilism and inability to mobilize additional supporters) and create or modify institutional designs to meet their preferences and interests. Such elite-driven transformation lacks pressure from below and can only exhibit some degree of external accountability (Haggard & Kaufman, 2016a, 2016b). Both parties (UNM and GD) immediately exploited their constitutional majorities in the parliament to proceed with constitutional changes that favored the political interests of the incoming regimes. In the case of the former, the constitution was amended to reduce the president's power and turn the presidential republic into a German-modeled parliamentary republic with the prime minister on the top of the executive (Khidasheli, 2012). Arguably, this was done to allow President Saakashvili, who no longer could be elected in a presidential capacity, to transfer to the prime minister's chair and continue ruling the country. Similarly, the Georgian Dream, having promised to introduce direct and proportional elections (with no majoritarian seats in parliament), broke its promise and postponed the introduction of the promised electoral model until 2024 (Radio Liberty, 2019).

The decision was relatively easy to explain since the promise of 'better elections' was forced by the political crisis and massive popular demands for government resignation during the *Gavrilov Night*. Additionally, the decision to abolish the seats in the parliament that are elected based on majoritarian victory could hardly be accomplished as those parliamentarians typically represent the local (regional) servants or

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[6] Gia Khukhashvili, former Councelor of Bidzina Ivanishvili, personal communication, July 27, 2021.

clientele of the ruling regime and are thus a potent tool of parliamentary domination. The political intentions manifested in institutional design can also be seen in other domains of political activity, such as the center-region relationship, i.e., the delegation of authorities from the center to the regions and municipalities, widely termed in Georgia as politico-administrative decentralization. We also see a similarity, which can be attributed to the typical pattern of authoritarian behavior, such as the maximization of control.

During UNM rule, for example, the position of regional governors, at that time unconstitutional entities, was strengthened and heavily subordinated to the president through the appointment of personally loyal individuals and party cadres (e.g., Petre Ziskarishvili, Akaki Bobokhidze, and Zaza Gorozia). These moves made it possible to minimize the space of political activism in the provinces and paralyzed local economic initiatives and activities, making them almost entirely dependent on endorsement from the political center in Tbilisi. However, the GD government promised to implement administrative decentralization before the parliamentary elections in 2012. It soon threw away these promises. It continued the tradition of staffing governors' positions with loyal cadres and even decreased the number of free municipalities from twelve to five (Civil.ge, 2017a, 2017b). In the end, the significant factor that constrains each regime and keeps it within the frames of democratic acceptability is the external (European/Western) influence, reflected in multiple conditions and demands of technical, institutional-procedural, or a pretty radical political nature (Association Agreement, or the EU-Commission Opinion on the Candidacy status), that despite their increasingly demanding nature cannot be entirely ignored by the ruling regime (European Commission, 2022).

Schumpeter paraphrased that an effective bureaucracy cannot be created promptly and hired with money. It must be sufficiently independent and powerful to avoid becoming a government of amateurs (Schumpeter, 2003). Unfortunately, the Georgian reality in all cases reveals substantial evidence of an administrative apparatus that is heavily politicized and thus prone to frequent reshuffling across the entire bureaucratic pyramid based on political but also increasingly individual (ministerial), loyalty (Mariamidze, 2018; Urushadze, 2018). Retaining the pattern of behavior from the UNM and initially committing to the political purge of governmental offices as the UNM did in 2003, the GD even expanded the number of employees in public offices, hitting a record, albeit somewhat reducing the number of public employees fired bluntly at ministerial demand and with no solid legal protection (Lomidze & Dzidziguri, 2020; Urushadze, 2018). Admittedly, such bureaucracy can hardly meet the high demand for efficacy, which is especially important at managerial and administrative levels (Harris & Reilly, 1998). The degree of bureaucratic accountability can hardly be assessed as optimal due to the formal nature of control mechanisms, the politicization of justice, and the low availability of relevant information. For instance, the parliamentary committees rarely question or call intensive hearings on matters of great urgency for the ruling party, and even those that functionally deal with issues of state security, in fact, serve the interests of the agencies to be held accountable (Dzebisashvili, 2014). Furthermore, the deputy chairman of the Defence and Security Committee in the Georgian parliament Ms. Teona Akubardia was forced to write

a letter to the Speaker of Parliament (GD), listing all the activities of the committee related to security services, where she and other opposition members of the committee were stripped the constitutional right to participate by the current committee chair Irakli Beraia (a blatant abuse of power). In essence, this powerful mechanism of parliamentary control, questioning, and investigation became an extended hand of the executive during the Saakashvili era. They were successfully "imported" and utilized by the Georgian Dream.

The absence of practical tools of checks and balances and the formality or informality of the accountability mechanisms of government agencies has become even more problematic as it allows the incumbent regime to increasingly resort to undemocratic and violent means of political control and domination that typically can only be executed by heavy reliance on security services or the *Dzalovnebi*, a Georgian term widely used in political language and a direct translation of the Russian *Siloviki*. The initial popularity after the revolution in 2003 was wasted due to the heavy and clumsy activities of power agencies, such as the Ministry of the Interior (with the intelligence department integrated) and a prosecutors' office that has essentially eliminated the freedom of the judiciary and increasingly expanded intimidation practices toward the businesses and large segments of the population.

In line with Caparini's findings, the parliamentary oversight of security and intelligence services in Georgia has become a pure formality and, similar to the Russian case, has been captured by party members and has thus lost its independence and value (Caparini, 2007). Significant challenges related to ineffective oversight, a lack of political neutrality, and undemocratic practices in internal security services continue to mark security governance in Georgia. This is similar to the Russian model exemplified by the limited ability of national legislatures to control security services, where the State *Duma* often even increases their discretion by delegating legislative initiatives to the concerned security agencies themselves (Treisman, 2018). The phenomenon of the rapidly growing influence of security services in the political system down to the very critical moment of forming a new elite—a mix between *nomenklatura* and *siloviki*—to destroy competitors and secure economic and political instruments of power, including the means of coercion, has been brilliantly covered by Andrei Kovalev (Kovalev, 2017). The members of these agencies, in extreme cases as in Russia, can gradually take over key positions across the country, and "United by a common identity, a shared worldview, and a deep personal loyalty", the *siloviki* constitute a cohesive corporation, accountable to no one but the president himself, being the driving force behind authoritarian policies (Treisman, 2018).

Under Ivanishvili's leadership, the intimidation practices toward businesses and the population decreased significantly. Nevertheless, the intensity and extent of political espionage toward the opposition, journalists, social activists, clergy, and foreign diplomats, and election fraud were made possible through massive intimidation of "vulnerable" segments of voters by security agents. The infiltration of security apparatus-related individuals in central or regional administration offices reached a point of concern (Civil.ge, 2022). This tradition was not GD-novum and was first effectively instrumentalized during the UNM rule. But the scale of merging and diffusion between the *Dzalovani(siloviki)* agencies and other public offices such as

ministries, municipalities, parliamentarians, or even businesses and, most importantly, the ruling GD party is alarming.[7] It should be noted that similar to their Russian counterparts, the members of the Georgian security agencies have developed a common mindset, shared understanding, and set of principles that unites them, whether active in duty or outside of the institutional framework. This is expressed in the word—*Tanamshromeli*—meaning 'colleague' but far better matches the Russian version—*Sotrudnik*. This code word, which testifies to your professional background and corporate values, makes it much easier to transfer from one power (*Dzalovani*) agency to another and remain indefinitely in any public office if needed.

10.5   Conclusion

The problem of the diffusion of bad practices in transitional democracies is not new. Similar to other international cases, an initial push for a more democratic rule in Georgia did not necessarily result in a consolidated democracy in which institutions play significant and independent roles in keeping democratic principles such as transparency and accountability, i.e., the mechanism of good governance, viable. The reality is sobering. Instead, the new political elites (UNM or GD) had opted to take advantage of authoritarian tools and formal accountability (reform masking) and do little to prevent the total monopolization of power and state capture. Whether under UNM led by Mikheil Saakashvili or the GD led by Bidzina Ivanishvili, the common feature is that the monopolization of politics by both regimes started with the individual monopolization of the party. The party structures of UNM and GD, although different in design, constituency, and commitment to a cohesive political ideology, reveal a striking similarity in the behavior of their political leaders and appointment policies and principles based mainly on political and individual loyalty. Leaders are instrumental at every level of political decision-making, utilizing formal or informal frameworks (formats) of policymaking. They lead negotiations and are the best informed to make decisive moves, whether by designing new institutional frameworks or defining the acceptable level of institutional accountability.

In his policy of centralization of power by eliminating the possibility of local self-governance and appointing personal trustees as governors accountable solely to him personally, President Saakashvili provided only lip service to the democratic prospects of the country and allowed Bidzina Ivanishvili to benefit from this mistake. Similarly, the bureaucracy, the backbone of the effective administrative functioning of any country, was reduced to the function of a politically (and individually) trusted pool of public offices and technical implementers, stripped of any ability and responsibility of independent or neutral thinking and initiative. With the degradation of existing

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[7] Note: the story of the former deputy minister of State Security Service is exemplary, as it reflects a rapid ascendance of "nobody" with the condition of social dependency to the position of deputy minister and the status of multimillionaire. The involvement of the Russia based businessman David Khidasheli in the David Gareji affair and his consequent reward by the Georgian Government (thousands of hectares of forest in the natural resort area Racha) is pretty much telling.

accountability mechanisms of state institutions and agencies to the level of formal and embarrassing mimicry of Western practices, the process of creating the so-called *power vertical* (or *Vertikalj Vlasti* as it is called in Russia) in Georgia was complete. State capture, evident by the end of UNM rule, became even more articulated during the GD government with an ever-growing and all-embracing bureaucratic apparatus.

All this, with a great dose of insights into the difficulties of parliamentary oversight over security and intelligence services when institutions are captured by party members and thus lose their independence and ethical value, is extensively reviewed by Caparini (2007). Pretty in Russian style the national legislature in Georgia plays little if any role in executing serious control over Dzalovnebi/Siloviki. This is even more dangerous, as due to the growing tendency of merging between the political nomenklatura and formally former representatives of power agencies the risk of a complete takeover of the entire fabric of political governance becomes looming, effectively turning it to truly unaccountable and closed system. It is no secret that even in the most democratic countries the democratic oversight of security and intelligence services is challenging. In authoritarian countries or even transitional democracies, these services represent a key means of maintaining power and neutralizing domestic opposition. Therefore, we agree with Joseph Derdzinski that studying the "powerful and shadowy security apparatus" and the degree they were exposed to systemic changes and liberalization could have powerful policy implications toward "nudging the holdouts" (Derdzinski, 2009).

With all markers in place, the current political system and the way of governance in Georgia strongly resembles the system created by Vladimir Putin in Russia, with the strong central pillar of power exerting influence and control both in the administrative structures of the country and party echelons using the security apparatus (infiltration and proliferation). If continued unchecked, this practice will inevitably result in a more totalitarian system, except when this damaging prospect is balanced by the increased involvement of external actors (the EU and/or USA) and their respective accountability demands and other tools of good governance. Unfortunately, the external pressure, i.e., whether the EU-12 point recommendations on the prospects of Georgia's EU candidacy or the promise of NATO membership have increasingly failed to create positive resonance in the current government in Georgia. This has been demonstrated by canceling the so-called EU-brokered *Charles Michel Agreement* on the side of this ruling GD party, the stunning lack of practice and implementation of the EU-Commission 12-point recommendations, and the increasingly confrontational rhetoric toward the EU and the US by the GD representatives in the context of the Russian war of aggression in Ukraine. This fact points toward the need for greater importance to the mandatory nexus between the external pressure factors and internal demands represented by a powerful democratic opposition. Without this strong linkage, where external and internal democratic pressures can be mutually reinforcing when needed, reliance solely on the positive effects of international demands can be futile and misleading.

Not least, domestic political competition must be characterized by the permanent presence of a robust democratic opposition, which can not only increase the impact of external (democratic) pressure but also enormously benefit from it, forcing the

incumbent regime to comply with its demands. If these changes remain on paper, Georgia will risk becoming a champion of isomorphic mimicry only.

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Chapter 11
Transformations of Georgia, Moldova, and Ukraine Towards EU Membership

Malkhaz Nakashidze

11.1 Introduction

Since the collapse of the Soviet Union and the restoration of independence, many OSCE member states are engaged in democratic transformation. The relations of post-Soviet states with international actors, such as the European Union (EU), play an important role in this transformation process. Becoming closer to and joining the EU is the main goal of certain states within the process of the country's transformation. Ukraine, Georgia, and Moldova have been cooperating with the EU for several decades in different formats (Eastern Partnership, Associated Trio, etc.). Along with economic modernization, the primary task of all three countries is the transformation of democratic institutions, and the EU provides various ways of partnership in this regard, including financial support.

Despite many obstacles and challenges, the achievement of visa-free travel and a free trade and association agreement with the European Union can be considered a particular success of the transformation process. Today, these agreements are a significant framework, an agenda for developing these countries. All three countries have left behind many vicious features of post-Soviet statehood, although they still have many steps to take before achieving a perfect democratic system. Associate country status is undoubtedly a confirmation of progress. Its achievement could have been smoother, especially in the face of growing pressure from the Russian Federation. Today, the main task of these countries is to show more progress on the path to democratic transformation. This will allow them to receive candidate status for EU membership and become full members. In June 2022, in the context of Russia's aggression in Ukraine, the European Union granted candidate status to Ukraine and Moldova, with the European perspective on Georgia based on the condition of fulfilling certain obligations.

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The transformations of Georgia, Moldova, and Ukraine have been widely discussed by scholars, including from a comparative perspective. The development of these countries is examined in the context of democratization and security in the Eastern neighborhood (Nilsson & Silander, 2016), which is characterized by specific difficulties (Ahmad Way, 2022). The transformation process has also been a subject of research from a legal perspective (Elsuwege & Petrov, 2017), especially in terms of legal and constitutional challenges arising from the association agreement (Petrov, 2016). The processes of transformation have exhibited a lack of democracy (Nodia et al., 2017) and have encountered many obstacles (Grecu, 2015), including state capture, the influence of oligarchs on institutions (Delcour et al., 2019; Konończuk et al., 2017), and implementation of ineffective anti-corruption policy (Emerson et al., 2017). The transformation process of these countries is the subject of extensive research in the context of Europeanization, democratization, and external and internal challenges (Popsoi & Franchino, 2021). An important source of this research is also the decision of the European Union on granting candidate status to these countries (European Commission, 2022), which obliges the national governments to undertake multifaceted reforms. This chapter considers the transformation process in connection with European integration and its requirements. In the scholarly literature, European integration is defined as the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations, and political activities towards a new center whose institutions possess or demand jurisdiction over the pre-existing federal states. This broad definition includes both a social process and a political process, as well as the construction of new political institutions with a direct say in at least a part of their member states' affairs (Wiener et al., 2018).

The chapter assesses how Georgia, Moldova, and Ukraine have fulfilled the political criteria for EU membership. The following questions have been identified that will guide the analysis: (1) what conditions the countries must fulfill in the process of transformation, (2) what progress they have experienced so far, and (3) what concrete steps should be taken in the coming years to join the EU. The remainder of the chapter consists of five sections.

The following two sections address EU enlargement and membership criteria and the transformation achievements of the three countries under discussion since the entry into force of the association agreements. The following section addresses the main challenges of transformation in European integration and specific challenges in the change process, such as political polarization, improvement of the justice system and the rule of law, anti-corruption reforms, de-oligarchization, promotion of human rights, and others. Finally, the chapter analyzes the EU's decisions on Georgia's candidate status versus those for Ukraine and Moldova and related challenges.

11.2 The European Union Enlargement

EU enlargement is essential to its integration policy (European Council, 2006). Six rounds of enlargement have been carried out since the foundation of the EU. In the process of integration, the European Union uses various instruments for the Europeanization of partner countries. Conditionality and socialization are the most critical elements among these instruments, although the EU has other agencies. Schimmelfennig (2009: 8) identifies eight tools available to the EU when dealing with countries that are not members of the Union. Under conditionality, the European Union offers various incentives to partner states, e.g., financial assistance and access to the EU market, and in return, requires the fulfillment of multiple conditions. By contrast, socialization comprises all EU efforts to "teach" EU policies—as well as the ideas and norms behind them—to outsiders to persuade outsiders that these policies are appropriate and, therefore, to motivate them to adopt EU policies (Schimmelfennig, 2009: 9). Conditionality is one of the tools that the EU uses successfully to convert those states that have trade and economic relations with it, or that are trying to become closer (Lavenex, 2004: 682). Conditionality entails the linkage between fulfilling particular tasks (conditions) and receiving distinct benefits (rewards). The Copenhagen criteria and the acquis establish it, and EU conditionality influences the domestic structures in the applicant countries (Eli, 2015).

The first step of EU membership for a country is to meet the key criteria for accession. These were mainly defined at the European Council in Copenhagen in 1993 and are hence referred to as the "Copenhagen criteria". Countries wishing to join need to have: (1) stable institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities; (2) a functioning market economy and the capacity to cope with competition and market forces in the EU; (3) the ability to take on and effectively implement the obligations of membership, including respecting the objectives of political, economic, and monetary union (Presidency Conclusions, 1993). After a country receives candidate status, the EU begins negotiations, and the government must ensure further compliance with the EU "acquis" (Access to European Union Law, 2022). This is the body of common rights and obligations binding on all EU countries as EU Members and includes 35 chapters. Applicant countries must accept the *acquis* before joining the EU (DG NEAR, 2012). Throughout the negotiations, the Commission monitors the candidate's progress through regular reports, Communications, and clarifications on conditions for further progress (European Commission, 2012).

Thus, in the next few years, the EU and citizens of these non-EU countries expect intensive transformations of national political systems from the national governments of Georgia, Moldova, and Ukraine. The accession process of these three countries may be slower than it was for the granting of candidate status. The lesson from previous enlargements is clear: negotiations always take longer and become much more complicated than anticipated at the start (Grabbe, 2017). However, it is also necessary to consider the political significance of EU accession and the role of Ukraine in this matter. Some European scholars estimate that granting Ukraine

membership is a political and moral imperative as the Ukrainian people are fighting not only for their country but also for common European values of peace, democracy, fundamental freedoms, and civilized international relations (Emerson et al., 2022a, 2022b, 2022c). Membership applications raise existential questions not just about the borders of the Union and relations with neighboring countries but also about the future shape of the EU and how power and financial resources will be distributed internally (Emerson et al., 2022a).

11.3 Transformation in the Process of European Integration

On June 23–24, 2022, the European Council adopted a decision regarding the EU membership applications of Georgia, Ukraine, and Moldova. The European Council granted candidate country status only to Ukraine and the Republic of Moldova. The European Council noted it is ready to give Georgia the candidate country status after considering the priorities indicated in the Commission's conclusion on Georgia's membership application. The decision of the European Council places particular emphasis on the fulfillment of the Copenhagen criteria. It emphasizes the importance of reforms, especially in the rule of law, independence, functioning of the judiciary, the fight against corruption, and the rights and equal treatment of minorities (European Council, 2022). The European Commission proposed 12 recommendations to Georgia (Liboreiro, 2022), 9 to Moldova, and 7 to Ukraine (European Commission, 2022). The following paragraphs will discuss the main challenges facing all three countries according to the respective areas.

11.3.1 Political Polarization in Georgia

Polarization is not a new phenomenon in Europe (Bértoa & Rama, 2021) and affects the discussion of EU integration issues in the national parliaments (Wendler, 2016). According to the European Commission, one of the particular challenges faced by Georgia is political polarization. The polarization in Georgia is characterized by a lack of compromise, a winner-take-all approach, and a highly personalized political system without strong institutions. In the Georgian case, polarization is not based on ideological party differences but on mutual rivalry between two political camps (Gelashvili, 2021). Opinion-poll data show that Georgians' stated ambitions to join the EU lag behind their understanding of what constitutes a civic and more inclusive national identity as it is broadly understood throughout most of the union—a phenomenon that Georgia currently shares with Hungary and Poland. This culture clashes over what it means to be "European" is now becoming more of a political battleground in Georgia (Gegeshidze & De Waal, 2021).

According to the commission, Georgia remains faced with critical challenges due to its overly divided political scene and political polarization. It suggests that strengthening democratic oversight and eliminating vested interests should be a priority (European Commission, 2022). In the final recommendation, the Commission indicates that Georgia should address the issue of political polarization by ensuring cooperation across political parties in the spirit of the April 19, 2021, agreement. This agreement was directly brokered between the political parties by the President of the European Council, Charles Michel, although the ruling party later declared the agreement annulled (EU, 2021). Political polarization remains one of the most critical challenges for the country. Besides hindering the achievement of consensus among the main political actors, it also impacts its ability to carry out essential reforms for European integration as the political parties only make statements and do not take real action.

11.3.2   Justice System and Rule of Law

All three countries are facing the need for significant reforms in the judicial system. However, there have been several attempts to implement reforms at different times (Cenuşa, 2019; Minzarari, 2022; Nakashidze, 2021; Zhernakov, 2016). The democracies of Ukraine, Moldova, and Georgia are not perfect, but they stand out among the Eastern Partnership countries. They have demonstrated steady improvement towards the standards set out by the Copenhagen criteria of a functioning market economy, stable democracy, strong rule of law, and the capacity to implement all EU legislation (The Eastern Partnership Index, 2021). The attention of the European Commission is directed towards Georgia. In particular, the Commission has recommended the country to adopt and implement a transparent and effective judicial reform strategy and action plan post-2021 based on a broad, inclusive, and cross-party consultation process; to ensure a truly independent judiciary, in particular, the Supreme Court; and to undertake a reform of the High Council of Justice and appoint the High Council's remaining members. The European Commission has especially emphasized that all these measures must fully comply with European standards and the recommendations of the Venice Commission.

Judicial reform is also one of the main challenges for Moldova (Minzarari, 2022). Moldova started to create the legislative foundations of an independent judiciary and reform implementation relatively late after the country's government changed following the last elections in 2021. The Commission's recommendations for Moldova are relatively general and require completing the essential steps of the recently launched comprehensive justice system reform, including through efficient use of asset verification and effective democratic oversight. From this point of view, the bill on 'pre-vetting' key judicial appointments, passed by the Moldovan parliament on 17 February 2022, should be noted. The law provides for a preliminary check of candidates for the positions of members of the Superior

Council of Prosecutors and the Superior Council of Magistracy. However, regarding the rule of law, experts still point to the politically corrupt judiciary and the need for reforms (Emerson et al., 2022c).

As for Ukraine, the European Commission draws attention to ensuring that Ukraine, following the recommendations of the Venice Commission, enacts and implements legislation on a selection procedure for judges of the Constitutional Court of Ukraine, including a pre-selection process based on the evaluation of their integrity and professional skills, in line with Venice Commission recommendations. The European Commission also advises Ukraine to finalize the integrity vetting of the candidates for the High Council of Justice members by the Ethics Council and select candidates to establish the High Qualification Commission of Judges of Ukraine. A common problem in Georgia and Ukraine is the composition of the Supreme Council of Justice. As the members are not appointed to the judiciary through an open and transparent process, their independence and impartiality could be better. New appointments to the court are in the hands of a select group of judges, and other judges have little influence over the council's decisions.

Despite the differences between the two countries, justice sector reforms in Ukraine and Moldova have run into the same problems. Scholars believe that transforming the justice sectors in the countries is blighted by the legacy of Soviet institutions. It requires changing the operating environment for politicians and businesspeople to the point where they see the value of independent courts for upholding rights. Society has a vital role in this process by holding its leaders accountable and demonstrating a sustained demand for impartial justice (Lough & Rusu, 2021).

11.3.3   Institutions and Elections

For Georgia, Moldova, and Ukraine in the last few decades, it has been a big challenge to hold democratic, accessible, and fair elections (Leshchenko, 2016). The task of integration into the European Union puts before these countries the necessity of holding democratic elections following European standards. According to the European Commission and the Office for Democratic Institutions and Human Rights (ODIHR), the 2020 parliamentary elections in Georgia were competitive, and overall, fundamental freedoms were respected. However, at the same time, the European Commission indicates that the ODIHR highlighted allegations of voter pressure, vote buying, and the blurring of the line between the ruling party and the state.

The situation in Moldova is slightly different. According to the European Commission, the 2021 elections were well-administered and competitive. However, at the same time, ineffective campaign finance oversight, political bias of news outlets, and the partiality of the Central Election Committee remain to be addressed. The parliamentary nature of democracy has been confirmed by recent competitive elections at the parliamentary and presidential levels (European Commission, 2022). Therefore, the European Commission only generally indicates that Moldova

should address the shortcomings identified by the OSCE/ODIHR and the Council of Europe/Venice Commission. Despite the electoral democracy in Moldova being greatly improved after years of instability and oligarchical power (Emerson et al., 2022c), public accountability has not been achieved since actual power is not located in public institutions, but within the informal networks controlled by the oligarchs (Crowther, 2022).

As for Ukraine, the European Commission has not given any specific election recommendations (European Commission, 2022). However, the assessment does mention the new electoral code of Ukraine adopted in 2019, which introduced an open-list proportional representation system, enfranchised internally displaced persons, and strengthened gender quotas. The Commission notes that Ukraine first tested the Code of Conduct during the 2020 local elections but identified the need for additional changes regarding campaign finance transparency, balanced and unbiased media coverage, and election complaint procedures. Noteworthy, the law on national referenda was adopted in January 2021, and a new law on local referenda is underway based on the Venice recommendations of the Council of Europe (CDL-PI (2022) 001-e, 2022). The need for legislative regulation of local referenda was determined by the election program of President Volodymyr Zelenskyy, "Democracy through referendums", which provides a legislative mechanism according to which the Ukrainian people should carry out the main tasks of government through referendums and other forms of direct democracy (Verkhovna Rada, 2021a). According to the conclusion of the European Commission, Ukraine is a vital parliamentary, presidential democracy with competitive elections at national and local levels based on a comprehensive constitutional, legislative, and institutional framework that corresponds to European and international standards (European Commission, 2022). It should be noted that a similar assessment concerning Georgia is not to be found in the conclusions of the European Commission. Indeed, the 2020 parliamentary elections were followed by a large protest in Georgia and the opposition's announcement to boycott and refuse to enter the new parliament.

11.3.4 Anti-corruption Reforms

Corruption has been a significant challenge for all three countries since independence. Georgia has been, to some extent, successful in the fight against corruption, and it has been a valuable experience for Moldova and Ukraine over the years (Corruption Perceptions Index, 2021). Nonetheless, although Georgia moved from being a "failed state" to a state with low corruption rates following the Rose Revolution of 2003 (Gvindade, 2012; Kupatadze, 2012), today, there are institutional problems in the fight against corruption, and cases of corruption are observed at high levels of the public sector. This is why the European Commission advised Georgia to strengthen the independence of its Anti-Corruption Agency, bringing together all essential anti-corruption functions to address high-level corruption cases rigorously (European Commission, 2022). Creating a special investigative service is also a big challenge for

Georgia and has been under constant discussion for the last ten years. The protection of personal data is an additional important challenge. The European Commission advised Georgia to equip the new Special Investigative Service and Personal Data Protection Service with resources commensurate with their mandates and to ensure institutional independence.

Moldova faces several challenges in the fight against corruption. The European Commission has advised Moldova to deliver on its commitment to fight corruption at all levels by taking decisive steps towards proactive and efficient investigations and ensuring a credible track record of prosecutions and convictions (European Commission, 2022).

As for Ukraine, the country needs to strengthen the fight against corruption, particularly at high levels, through proactive and efficient investigations and a credible track record of prosecutions and convictions (European Commission, 2022). In Ukraine, a Specialized Anti-Corruption Prosecutor's Office was established; however, this development has not succeeded. Hence the recommendation of the European Commission to complete the appointment of a new head of the Specialized Anti-Corruption Prosecutor's Office and the appointment of a new director of the National Anti-Corruption Bureau of Ukraine. On the other hand, Georgia boasted the best score among the ten countries in 2016 and 2021 (André, S. 2022).

11.3.5 De-oligarchization

Since the signing of the Association Agreement, oligarchs in Ukraine, Moldova, and Georgia have been considered key obstacles to reforms (Konończuk et al., 2017). After the last democratic elections, Moldova and Ukraine have removed the oligarchs from the country's government structures and reduced their influence on politics. Nevertheless, this problem has not been entirely overcome in the EU's integration process. Referring to Georgia, the European Commission pointed out that the country should implement the commitment to "de-oligarchization" by eliminating the excessive influence of vested interests in economic, political, and public life. Before the recommendation of the European Commission, the European Parliament adopted a resolution (European Parliament, 2022) that directly mentions Bidzina Ivanishvili, the former Prime Minister, who formally maintains influence over the ruling party. Likewise, regarding Moldova, the European Commission has pointed out that Moldova should implement the commitment to "de-oligarchization" by eliminating the excessive influence of vested interests in economic, political, and public life.

The European Commission has advised Ukraine to implement an anti-oligarch law to limit the excessive influence of oligarchs in economic, political, and public life. Despite the differences of opinions at the national (Denisova, 2021) and international levels (Zakaria, 2021), the country has already taken some steps in this direction and adopted a law on oligarchs (Verkhovna Rada, 2021b), taking into account the recommendations of the Venice Commission of the Council of Europe (CDL-REF (2021)

086) and international experience (Hubareva, 2022). The law entered into force on 7 May 2022, though its implementation has been somewhat delayed due to the war and because the register of oligarchs still needs to be compiled. Ukraine has already taken important steps in this direction, such as the arrest of Viktor Medvedchuk (Breuninger, 2022), the imposition of sanctions on Kolomoisky (Blinken, 2021), the initiation of criminal proceedings against ex-president Poroshenko (DW, 2022), and others. Similarly, Moldova has also engaged in this field through the calls for the arrest of ex-president Igor Dodon (Euronews, 2022), the removal of oligarch Plahotniuk from the government, and the imposition of international sanctions (OFAC, 2022).

The goal of de-oligarchizing Georgia has also been mentioned in EU official documents (European Parliament, 2022). The major problem faced by the country is that the ruling party "Georgian Dream" framed the de-oligarchization campaign as an attempt to discredit the country's governance system (CIVIL GE, 2022f). In addition, it will be quite difficult for Georgia to comply with the European Commission's de-oligarchization condition, primarily because state institutions (including the courts) in such a weak democracy do not enjoy the trust of civil society (Menabde, 2022).

11.3.6 Fight Against Organized Crime

Creating effective mechanisms to fight against organized crime is another essential condition for integration in the European Union. At the legislative level, all three countries have partially implemented international standards and adopted special laws. However, effective implementation still needs to be solved. The European Commission, for example, indicates that Georgia has made significant efforts to fight organized crime within the framework of its national strategy and corresponding action plans and has stepped up cooperation with Europol and EU Member States (European Commission, 2022). Nevertheless, European Commission also advised Georgia to strengthen the fight against organized crime based on detailed threat assessments, rigorous investigations and prosecutions, and guaranteeing accountability and oversight of law enforcement agencies.

Moldova is facing a significant challenge against organized crime. According to the European Commission, Moldova is a source, transit, and destination for trafficking in human beings—particularly for sexual exploitation and forced labor— although there have been few convictions of perpetrators. The Commission noted that the General Police Inspectorate tackles organized crime, but conviction rates are unavailable. Therefore, the European Commission has advised Moldova to strengthen the fight against organized crime based on increased cooperation with regional, EU, and international partners. With Ukraine, the European Commission has recommended that the government ensure that its anti-money laundering legislation follows the Financial Action Task Force standards and adopts an overarching strategic plan to reform the entire law enforcement sector (European Commission, 2022). Even in this case, the ineffectiveness of law enforcement mechanisms is a significant challenge. Remarkably, Georgia successfully fought against organized crime in 2004–2012

when the parliament adopted the law "On Combating Organized Crime and Racketeering" (Law of Georgia, 2005). The law was relevant for fighting against organized crime, and this experience could be helpful in Ukraine and Moldova.

11.3.7 Free Media and Human Rights

Media freedom is one of the essential indicators of the success of all three countries on the path towards integration into the EU. The media environment has always been different in the three countries, and cases of oligarchs or government influence have caused concern in Europe. After applying for EU membership, the issue of media freedom was raised most acutely in Georgia. The European Parliament also adopted a special resolution on the media environment in Georgia, where strong criticism was expressed towards the country (European Parliament, 2022). Accordingly, the European Commission mentioned that Georgia should vigorously guarantee a free, professional, pluralistic, and independent media environment by ensuring the highest legal standards and by launching impartial, effective, and timely investigations in cases of threats against the safety of journalists and other media professionals.

Regarding media freedom, compared to Georgia, the European Commission has a weak note with Ukraine and notes that the country should tackle the influence of vested interests by adopting a media law that aligns Ukraine's legislation with the EU audio-visual media services directive and empowers an independent media regulator. Steps have already been taken to improve media freedom in Ukraine. For example, one of the oligarchs—Rinat Akhmetov—said that his System Capital Management (SCM) group is set to transfer the licenses of the television channels owned by its Media Group Ukraine to the Ukrainian government. These media holdings include the Ukraine and Ukraine 24 TV channels, which before Russia's full-scale invasion, were among the most-watched channels in the country (The Kyiv Independent, 2022). Regarding Moldova, the European Commission has not expressed any opinion or recommendation on the media environment.

The human rights situation in Georgia, Moldova, and Ukraine has always been a subject of attention from the EU, and the specific conditions are reflected in the annual reports on the implementation of the Association Agreement. After applications for EU membership by the three countries, the European Commission has yet to present detailed recommendations in this field. The European Commission emphasized that Georgia should move swiftly to strengthen the protection of the human rights of vulnerable groups by bringing perpetrators and instigators of violence to justice more effectively. In particular, the country should consolidate its efforts to enhance gender equality and fight violence against women, especially considering that crimes against women represent a big challenge (Public Defender of Georgia, 2021). The European Commission made similar recommendations concerning Moldova, which faces discrimination against minorities, especially in Transnistria (Emerson et al., 2022c). Finally, the European Commission has indicated that Ukraine should finalize the legal framework reform for national minorities currently under preparation as

recommended by the Venice Commission. The country has indeed started implementing relevant reforms in the mentioned area, although enforcement mechanisms still need to be fully implemented.

In addition, the European Commission advised Georgia to adopt legislation so that Georgian courts proactively consider European Court of Human Rights judgments in their deliberations. Georgia should also ensure that an independent person is nominated as a new Public Defender (Ombudsperson) and guarantee the Office's practical institutional independence. The Government of Georgia has already announced that it will not appoint the candidacy of Public Defender and has requested non-governmental organizations to submit an agreed-upon candidate.

11.4   Georgia's Current Challenges

From the beginning, scholars expected that the decision of the European Union towards Georgia would be different (Emerson et al., 2022a). As became known after the decision, the European Commission set Georgia different conditions for obtaining EU candidate status than Moldova and Ukraine, including addressing issues of political polarization, the full functioning of all state institutions, judicial reform, the independence of an anti-corruption agency, de-oligarchization, the fight against organized crime, an independent media environment, the protection of human rights and gender equality, and the involvement of civil society in decision-making processes, as well as taking into account ECHR judgments and nominating a new Public Defender (Ombudsperson) (EU, 2022).

It should be noted that the Georgian authorities criticized the different decisions of the European Commission towards Georgia. In the beginning, the ruling team criticized (CIVIL GE, 2022b) the European People's Party, which pointed to oligarchic governance (EPP, 2022); they then said that Georgia had been prevented from obtaining this status due to its geographical location and European leaders had directly indicated this in advance (GPI, 2022). The ruling party responded to US State department's statment (Civil Ge, 2022h) and also actively criticized the EU ambassador to Georgia and said that the Ambassador "played a strictly negative role in relations between the European Union and Georgia" (Civil Ge, 2022g). The Georgian Dream party also said that if Georgia were to go to war against Russia before December, the country would be "guaranteed" European Union candidate status (Civil Ge, 2022d). The Government of Georgia stated that Georgia would not apply for EU membership until 2024 (Civil Ge, 2022a) and that granting candidate status to Ukraine was offered only because of the ongoing war (GD, 2022).

However, despite such a position, after the decision of the European Council, which was followed by public protests against the government in Georgia, the ruling party slightly changed its political tactics (Kobakhidze, 2022) and presented a plan to implement the 12-point recommendations written by the European Union (BMG,

2022). The plan was met with skepticism by the President of Georgia and the opposition (Civil Ge, 2022c). However, the ruling party nevertheless discussed implementing the European Commission's recommendations with a part of the opposition (Civil Ge, 2022e). The action plan to implement the 12 recommendations of the European Commission was also presented by Georgian civil society organizations (OSGF, 2022b). In this plan, all 12 issues are described in detail, with the only exception of de-oligarchization. Nonetheless, in the 5th step of the plan, the authors write that fulfillment of all other priorities in this 12-point list should automatically reduce the oligarchic influence on democratic institutions (OSGF, 2022a). Such an approach may not be justified since the implementation of the other 11 recommendations, which are doubtful to be achieved based on the authorities' attitudes, cannot automatically lead to oligarchization.

The ruling party created working groups in the Georgian parliament to implement the recommendations. These working groups are for further institutional strengthening of de-oligarchization, judicial reform, electoral code revision, anti-corruption measures, special investigation service, and personal data protection service. The working group for the revision of the Election Code of Georgia is headed by the first deputy chairman of the Georgian Dream faction, and all other groups are governed by the chairman of the legal committee (Parliament of Georgia, 2022). Regarding the composition of the groups, not all opposition parties and leading non-governmental organizations participate in their work. For example, the ruling party announced that one of the professional organizations, "Fair Elections" (ISFED) will not participate in any working group. In solidarity with ISFED, four other non-governmental organizations also suspended their work in the functional groups, who considered that the decision contradicts the recommendations of the European Commission number 10 about broad involvement of civil society in the decision-making process (1TV, 2022; Radio Liberty, 2022a, 2022b).

The Parliament developed the rules for staffing the working groups. According to this rule, each group should have four members from the parliamentary majority, another four from the non-majority, and representatives of the CEC, State Audit Service, National Communications Commission, and civil society. Only a few minor political parliamentary groups are represented in the working group. In addition, since the parliamentary majority determined that only two civil society members from the representatives of the "Georgian National Platform of the Eastern Partnership Civil Forum" should be allowed in the group, this participation was somewhat limited. The Government of Georgia has indeed started working on the implementation of the recommendations of the European Commission. Still, there are no high expectations regarding this, particularly because of the position of the ruling party regarding de-oligarchization.

The attitudes of the citizens of Georgia indicate such a conclusion. According to a July 2022 survey by CRRC-Georgia (CRRC Georgia, 2022), almost a third of respondents (30%) could not name a reason for Georgia to have been refused the candidate status (CRRC Georgia, 2022). The interviewees said that the reasons for such a decision were non-fulfillment of demands (14%), obstruction of the opposition (8%), Georgia not engaging in the war against Russia (4%), and action of the

Russian government (3%). Most of the population did not think that obtaining EU candidate status was dependent on the start of a war with Russia, and 60% of the population believe that this is little or not at all true. According to the survey, a large part of the population (45%) does not expect that the Georgian government will carry out the reforms requested by the EU by the end of the year. Fifty-one percent (51%_ of Georgian Dream supporters do not know what the European Commission means by oligarchs, while most of the opposition supporters (60%) assume that the European Union is referring to Bidzina Ivanishvili when talking about de-oligarchization (CRRC Georgia, 2022).

11.5 Conclusion

Georgia, Moldova, and Ukraine have made significant democratic transformations after the Association Agreements with the European Union came into force. These three countries are distinguished by their democratic reforms among the members of the Eastern Partnership; however, the functioning of state institutions, the fight against corruption, the rule of law, and ensuring high standards of human rights protection and media freedom remain significant challenges on the way to EU integration.

One of the critical challenges for all three countries is the reduction of the influence of oligarchs and the weakness of state institutions, although significant differences emerge. Moldova and Ukraine, where the oligarchs have been officially removed from power, have more political will and ability to complete the reforms. Georgia, where the oligarch is behind the ruling party, will need much effort to fully implement de-oligarchization. Without that, it will be challenging to implement the reforms necessary for EU integration. Ukraine's experience in this field should be shared with Moldova and Georgia, and Georgia's experience in the fight against corruption should be shared with the other two countries.

The opinions provided by the European Commission as part of the EU candidate status process are an essential guide for all three countries. They will significantly assist national governments in implementing the reforms necessary to meet the membership criteria. However, it is vital to recognize the existing problems and develop clearly defined strategies for development. This concerns especially Georgia, whose government does not fully accept the recommendations issued by the EU and instead criticizes the EU itself. In the coming years, the challenge for Ukraine and Moldova will be the implementation of reforms and active preparation for negotiations with the EU. The success of this process will also depend on the end of the war in Ukraine. Everyone acknowledges that Russia's invasion of Ukraine and the struggle of the Ukrainian people have influenced European enlargement priorities. However, the progress made by countries in previous years should be considered when granting candidate status. Different decisions on the part of the EU towards Georgia, as compared to Ukraine and Moldova, resulted from several failures of the Georgian authorities in various fields in the past years. First, Georgia saw significant deterioration in media freedom and human rights. In addition, it was detrimental that

the agreement reached between the parties on April 19, 2021, providing a detailed plan for democratic transformation with the unprecedented involvement of the President of the European Council, was later annulled. The process was also negatively affected by the weak support provided by the Georgian government to Ukraine and its European partners in the contest of the current Russia-Ukraine conflict. Membership in the European Union means first partnership and respect for shared values. In the nearest future, it is necessary to strengthen the collaboration between all three countries and show commitment to common European values.

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Chapter 12
Backsliding Rule of Law and "Stabilitocracy" in Montenegro

Mirko Đuković

12.1 Introduction

As a result of Montenegro's accession negotiations with the European Union (EU) and as a participating state of the Organization for Security and Cooperation in Europe (OSCE), it faces significant political, institutional, and constitutional challenges. The challenges can be seen as a political crisis that is the product of the decades-long rule of one party that has managed to shape the governance system following its prerogatives on one side and the lack of political culture involving compromise on the other (Čagorović, 1993; Erin & Bieber, 2014; Jovanović & Marjanović, 2002). The political system of Montenegro was built on feeble promises of Euro-Atlantic integration, values of Western democracy, and the principle of the rule of law and equality. Aside from fulfilling the criteria to join NATO in 2016 and being the most advanced candidate state in the EU accession process relative to its neighbors (Soyaltin-Colella, 2022), Montenegro suffers from structural deficiencies in upholding those values which it proudly proclaimed in its Constitution in 2007.

The EU, first and foremost, expects institutions to work towards achieving the goal of becoming its member. Therefore, Montenegrin institutions should adhere to and protect values stipulated in Article 2 of the Treaty on the European Union (TEU). The article sets the values on which the EU is founded and represents the community's constitutional identity. Respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights are at the core of the legal order of the EU. Member States are to protect these values, and the legal framework of the EU, including common constitutional traditions of Member States, ensures that all national policies are aligned with the *acquis communautaire*. Unfortunately, Montenegro has seen marked stagnation in its EU accession. The current geopolitical

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situation suggests, it could be an opportunity for Montenegro to become a member. The political and constitutional crises have gravely affected this prospect.

Since the elections in August 2020, Montenegro has gone through an intensive and turbulent political period. The 42nd Government was voted out, and the 43rd—a so-called minority government—was formed in April 2022. However, it lost a vote of confidence three months later. President Milo Đukanović refused to give a mandate to the candidate that the majority of the Parliament had supported. The political crisis continued when the President dissolved the Parliament and called for snap elections. At the same time, the mandate of the President ended, and the new President, Jakov Milatović, was elected. The election of Constitutional Court judges was used as a political bargaining chip. Under pressure of the EU, parties finally made a consensus. They elected three out of four missing judges in the Constitutional Court, as it is the only institution responsible for solving electoral disputes. In this way, the Court was formally unblocked. This chapter explores the correlation between the political polarization that is entrenched in the ethnopolitical division of society (Džankić, 2014; Keiichi, 2007; Morrison, 2009), a division that the ruling party has carefully manipulated for three decades (Baća, 2017b; Komar & Živković, 2016), and the constitutional and institutional crisis that has undermined the EU accession process by directly affecting the rule of law principle.

The chapter analyzes the influence of political processes on the rule of law and access to justice in Montenegro. More specifically, it focuses on the ongoing constitutional crisis. It posits that the situation is not only a result of the lack of political culture around compromise but a direct result of an ineffective transition carried out by a single party that has remained in power for three decades. The chapter will show the correlation between the crisis and the "stabilitocracy" phenomenon, involving "weak democracies with autocratically minded leaders, who govern through informal, patronage networks and claim to provide pro-Western stability in the region" (Kmezić & Bieber, 2021). The ruling elites have successfully capitalized on the global geopolitical crisis, presenting themselves to Western partners as the only ones who can maintain cohabitation and political stability. The EU has tolerated this dynamic and possibly unintentionally accelerated democratic backsliding (Baća, 2017a; Džankić et al., 2018). This chapter thus suggests that the "consolidation transition phase" ended in 2020 when the Democratic Party of Socialists (DPS) lost the election.

For the first time since the introduction of political pluralism, one of the main features of democracy—government replaceability—has been achieved in Montenegro in 2020. Very turbulent dynamics mark the fourth transition phase within the ruling majority, the experimental phase of a technocratic government, futile cohabitation, "minority government," the reconciliation of the "old majority" that won the 2020 elections, and the rise of the populist centrist movement "Pokret Evropa sad" ("Europe now Movement") that the ousted technocratic ministers founded. The lack of political dialogue and the continuous violation of the Constitution have led directly to dysfunctional institutions. As a result, the rule of law has progressively

deteriorated, and democracy is backsliding (Jović, 2022; Kapidžić, 2020; Papada et al., 2023).

The chapter investigates whether the ongoing institutional and political crises since 2020 directly result from reforms carried out by one political actor anchored in the comfortable port of "stabilitocracy" and whether Montenegro has officially entered the fourth period of its long transition to liberal democracy. To answer these questions and to understand the nature of the constitutional blockade and institutional incapacity to resolve it, the chapter takes a historical overview of transition and democracy building in Montenegro. This overview provides solid ground to unpack the political processes that have occurred in the last three decades and, to a certain extent, allows for a causal-comparative approach to establish cause and effect between these processes of political hegemony and justice system reform on one side and constitutional crisis on the other. Furthermore, the socio-legal approach allows for applying non-legal issues in the judiciary and constitutional crisis context.

The constitutional crisis is illustrated through three distinctive occurrences. The first explores the contentious relationship between the Supreme Court and the Constitutional Court; the second exposes the continuous violations of the constitutional provisions by the various actors in the political system, including the judges themselves; and the third describes the most recent situation in which the Constitution is held hostage by political elites resulting in a blockade of the Constitutional Court.

The chapter suggests that the long transition under one party was just the beginning of the political processes ahead. It concludes with a proposal that Montenegro needs a new constitutional framework with a separate legal framework that regulates the Parliament, Government, and President.

12.2 The Long Transition

Scholarship suggests three distinct periods in Montenegro's post-socialist transition development. The first is characterized by political pluralism, which involved de facto authoritarianism (1989–1997); the second is the transition to electoral democracy and a move towards independence (1998–2006); and the third is the post-independence period or the consolidation process (Baća, 2017a; Bieber, 2003a; Komar & Živković, 2016). The macro transition processes can also be observed through two layers of reforms: extrinsic and intrinsic. The outside layer encompasses the creation of "stabilitocracy" of the state apparatus to uphold the reforms while maintaining an image as a reliable partner for the West (Kmezić & Bieber, 2021). The intrinsic layer refers to the domestic political projects that built an ethnic, political, and constitutional identity in Montenegro. The inherent layer will be elaborated on later in the chapter.

As of 2020, when the three-decade-long rule of the DPS ended, it was possible to identify a fourth period of Montenegrin transition. As this chapter will show, this is the period of a constitutional crisis and the inability to establish functioning institutions due to the "stabilitocracy" that the DPS carefully built with the support of EU partners (Kmezić & Bieber, 2021). On the economic level, states in transition had

to adopt institutional mechanisms that would create proper conditions for abandoning the communist mode of production. To prepare for and execute the privatization of property and resources and to develop fair and equitable terms for foreign investors to bring their business to the new market, among other things. Research indicates that slow reforms led to a "widening gap between the standard of living in Western Balkan countries and Central European countries" (Trivić & Petković, 2015). This plays a vital role in government changes in countries going through a transition. The simulation of economic reforms leads to a more significant disparity between ruling elites and citizens impoverished by failed privatization deals, which affects radical politics (Baća, 2017b). It is possible that transition in smaller countries would be faster and more efficient since the state's administrative apparatus could carry out swift reforms that would provide the expected results. However, that has not been the case. Several reasons exist, such as the role of kinship ties and high degrees of interpersonal relations that drive Montenegrin society (Sedlenieks, 2015).

On the political level, many former Yugoslavian republics were burdened with ongoing civil wars as well as the post-war period of reconciliation. Transition is about institutional mechanisms, market reforms, and transitional justice. The need to establish an independent judicial system that could provide for reparations to victims, enable truth-seeking, and assert the right to justice became part of the political aspects of transition and reform. During this first transition period and the formal introduction of political pluralism, Montenegro was led by the direct successor of the former League of Communists, now known as DPS (Komar & Živković, 2016). A major shift happened in 1997 when political elites decided to break ties with Milošević, entering the second transition period (Baća, 2017a; Bieber 2003b; Džankić, 2014). This period is marked by the state's preparations to regain its independence, the development of electoral democracy, privatization processes, domination of the externally funded CSO, the emergence of independent media, etc. (Baća, 2017a). As of 2006, Montenegro had entered a new era of reforms. It started with adopting the Constitution of an independent and internationally recognized state and its commitment to join the EU and NATO.

The second point of consideration is the type of transition: conversion, cooperation, collapse, and foreign intervention (Stradiotto & Sujian, 2010). During the earlier phases of the Montenegrin transition, conversion was the dominant mode. New political elites in the 1990ies were ex-communist politicians who took power and led the democratization. In such circumstances, the opposition was weaker. This was a "change from above" or "regime-initiated liberalization". In these transitions, "the incumbent elites are willing to initiate a change and seek reform and lead the reform process" (Stradiotto & Sujian, 2010). The DPS remains the only party in the former Yugoslavia and across the Balkans that maintained power throughout the transition period (Bieber, 2003b; Morrison, 2011). The domination of one party and ideologically affiliated smaller parties in Montenegro led to a democratization process and institutions entangled with the party's interests. The reforms brought about formal and institutional changes designed to maintain the power of DPS by

securing votes (Džankić & Keil, 2017; Komar, 2020). From a political and institutional point of view, all three periods of transition in Montenegro are periods of partocracy (Kmezić & Bieber, 2021).

After the downfall of the DPS, the fourth transition period could be seen as an opportunity for the cooperative mode of transition. In this transition mode, "the democratization is a result of the joint action by government and opposition groups", where compromise would be the critical element of governance (Stradiotto & Sujian, 2010). However, it seems that cohabitation is not an option. The polarization between the new majority and the new opposition has led to an institutional and constitutional crisis that will be depicted in practical examples and more detail later in the chapter.

12.3 Political Hegemony and Rule of Law

The previously described events, especially those in the last two years, can be summarized with Gramsci's interregnum diagnosis: "The old is dying, and the new cannot be born" (Achcar, 2022; Babic, 2020). DPS was not only a party that ruled for three decades, leading the "Movement for Independence," but one that also managed to re-brand itself as a "state-builder" with the infamous slogan: "Independence first, democracy second" or "first the state, then democracy" (Baća, 2017a; Morrison, 2009). Coupled with the deep national and ethnic divisions and non-participant political attitudes, the so-called "image of invincibility", where voters believe that the outcome of elections is known in advance, kept DPS in power long (Komar & Živković, 2016). In this way, in Gramsci's terms, a hegemonic system of governance was born.

DPS delineated two groups in its political programs and official discourses: "us" and "them." "Them" being all those who opposed independence and "us" being all those who supported independence and should be rewarded for building the state (Baća, 2017b; Džankić, 2014; Morrison, 2011). In such circumstances, DPS successfully told most voters that being against DPS also means being against the state. This essentially created a hegemonic culture, which, according to Gramsci, is a form of control exercised primarily through a society's superstructure by a hegemonic class exercising political leadership over subaltern types by winning them over (Ramos, 2022). The DPS represents such a hegemonic order, and when they lost the elections in 2020, that hegemonic order collapsed. The new one, however, remains unable to constitute itself (Pavlović, 2022). The decline of the DPS has continued even in the subsequent local elections, where it lost control in eleven of the fourteen cities it used to control. Their decline continued when the DPS lost the presidential election in April 2023.

The discourse of Montenegrin nationalism aims to build a Montenegrin national identity around two distinctive elements: language and culture (Malešević & Uzelac, 2007). In this way, building the national identity rests upon the premise of alienation from the region, and especially Serbia, by relativizing the historical dimension that it played. In that way, history is being re-read to undermine "the Serbian

dimension of Montenegrin cultural and political heritage and present it as inauthentic, fabricated and 'imported' as part of the enemy's assimilationist agenda" (Pavlović, 2022). Montenegrin nationalism makes a distinctive division between the patriots—the regime and its allies—and traitors—the opposition and opponents of independence (Baća, 2017a; Keiichi, 2007). This has been a discourse of the political establishment since the referendum for independence (Džankić, 2014; Jenne & Bieber, 2014).

Finally, the discourse of Montenegrin "Serbhood" is a traditionalist conception of the Montenegrin identity as a politically, culturally, and historically specific part of the Serbian ethnic being. In this discourse, Montenegrin Serbs are postulated to be an authentic contemporary expression of how the Montenegrin community has perceived itself during its modern history (during the rule of the Petrović-Njegoš dynasty). Unlike the first discourse that builds a Montenegrin community on the awareness of the common linguistic and cultural heritage that is distinct from the Serbian one. This discourse builds a Montenegrin community on the premise that its identity is not determined by culture or language, but by the awareness of a separate political subjectivity, grounded in the heritage of statehood (Pavlović, 2022). Additionally, "throughout its history, identity in Montenegro has been dualistic: Serb and Montenegrin were not mutually exclusive categories" (Džankić, 2014).

What are the effects of these discourses and such a long transition period? It is obvious that these processes are complementary and, to a certain extent, overlap. On the extrinsic level, Montenegro never genuinely committed to proper reform as it was burdened with private interests, clientelism and partocracy. DPS capitalized successfully on the "stabilitocracy". Although the stagnation of the EU accession was noticeable even before the 2020 elections, there was a sense of political stability that EU partners willingly or unwillingly accepted. Under such an arrangement, Western partners would turn a blind eye to international affairs in exchange for political stability and geopolitical loyalty (Bieber, 2020; Soyaltin-Colella, 2022). The "stabilocrats" are enablers of economic growth (Soyaltin-Colella, 2022). They govern through political patronage networks and are praised for providing regional security (Bieber & Tzifakis, 2019). This illustrates how the EU not only enabled this process but also "has been inadvertently consolidating authoritarianism by stabilizing corrupt regimes in the region" (Börzel, 2015; Soyaltin-Colella, 2022) as "it has involuntarily entrenched informal networks in the Western Balkans and enabled them to strengthen their grip on power" (Richter & Wunsch, 2020).

If the governments led by DPS in the past were truly committed to EU values, Montenegro would have become an EU Member State already. However, on the intrinsic level, political elites never managed to amputate the divisive discourses that prevented membership, as they had a particular role in society. To put it in a very Machiavellian manner: *divide to rule*. While the reform process was supposed to build appropriately functioning Montenegrin institutions that could uphold values, such as the rule of law, equality, and democracy, the divisive political discourses caused the transition to be but a simulation of the process itself. As a result, the values embedded in our constitution, as well as in Article 2 of the TEU, seem unattainable.

The minority Government gathered around the common goal of getting Montenegro back on the European pathway could not stand up to the burden of divisive politics. While the former opposition had one common goal, to dethrone DPS, the new opposition persisted with a very radical political agenda of "us" versus "them". This was recognized in the latest Progress Report, where the European Commission remarked that "there was no credible political dialogue and constructive engagement by political parties to enhance parliamentary accountability and government oversight" (Montenegro 2022 Report, 2022).

Another area for improvement is that, after the 2020 elections, it became apparent that only a tiny political fraction is leaning towards the center and center-left, with the majority on the right. The biggest opposition party and the biggest ruling coalition are on the same side of the ideological spectrum, with the only difference being that they serve opposite interests. A further issue is that some traditional smaller partners of the main parties are becoming more radicalized. Although there has been a surge in such a climate even in EU countries (Hungary, Poland, Italy, Sweden, and Finland being the latest), it is somewhat different in the case of Montenegro, as the state is yet to go through the cooperative transition period, where ruling and opposition parties compromise in achieving essential goals in justice reform to overcome the institutional and constitutional crises.

12.4 The Rule of Law

There are two unique ways that rule of law backsliding occurs in Montenegro. Both contribute equally to the issue of the legitimacy of the judiciary. The first one is the result of political instability and external processes. Political influence over judicial and prosecutorial councils remains a significant concern for international partners (Venice Commission Opinions, 2020). Because of the external processes, the judicial council is incomplete. Acting officials are the President of the Supreme Court and the Chief Supreme Prosecutor for a limited period. Polarization, tensions, and lack of constructive dialogue affect the proper functioning of Montenegrin institutions due to the continued stalling in decision-making processes and reform implementation. This lack of constructive dialogue directly produces the divisive political discourses described before. As a result, the European Commission finds that "the main judicial bodies, including the Constitutional Court, have been operating in an incomplete composition due to the Parliament's inability to elect new members, thus undermining their proper functioning. The Constitutional Court could not fulfill its role due to the absence of a quorum, amplifying political uncertainty" (Montenegro 2022 Report, 2022). The deficiencies in implementing some of the standards suggested by relevant international organizations and committees do not work in a country that lacks the political will to compromise (GRECO Report, 2020a, 2020b). Special co-rapporteurs from PACE have expressed their regret that the Constitutional Court remains blocked, reminding members of the Parliament that it is their constitutional duty to elect new judges (PACE Co-Rapporteurs Announcement, 2022).

Year after year, the European Commission Reports point to the country's limited progress in the judiciary and fundamental rights (Chap. 23), justice, freedom, and security (Chap. 24 finds that no progress was made regarding "a comprehensive reform of the electoral legal and institutional framework. As for the impact of the Organization for Security and Co-operation in Europe (OSCE) and its Office for Democratic Institutions and Human Rights (ODIHR) recommendations" (Montenegro 2022 Report, 2022), to strengthen the rule of law and uphold its international commitments, Montenegro should also undertake a comprehensive reform to harmonize the electoral legal framework and regulate all critical aspects of elections (ODIHR Report, 2020a, 2020b).

Despite many interpretations of what the rule of law means in different jurisdictions, in a recent decision, the Court of Justice of the EU rejected attempts by member states to use national identity to find constitutional justification for their illiberal and autocratic transformations (Faraguna & Drinoczi, 2022). Namely, in cases initiated by Hungary and Poland about the rule-of-law conditionality mechanism, the CJEU took an important step to protect the EU's core values, such as the rule of law and legal certainty. It did so by defining the constitutional identity of the EU as it stems from Article 2 of the TEU. According to the CJEU, this article contains the values given concrete expression in principles that are legally binding in the single common legal order of the EU. While the EU respects the diversity of national identities of the Member States, which are inherent to their political and constitutional order, the constitutional identity of the EU is reflected in the values prescribed in Article 2, which all Member States share "as a value common to their constitutional traditions, and which they have undertaken to respect at all times" (Faraguna & Drinoczi, 2022).

The justice system is not immune to the issues of interpersonal relations and connections with the executive and political parties. These interpersonal relations and connections were illustrated in the unwillingness of the prosecution to follow up on international and national money laundering schemes involving some of the highest-ranking officials in the country and their family members. The National Anticorruption Council also revealed a method that allowed judges and prosecutors to obtain state aid in purchasing numerous properties for much lower prices or get state-sponsored loans with highly low-interest rates. Certain Constitutional Court judges were also implicated in the scheme of favorable loans and housing established by the previous regime (Judges, Prosecutors, and MPs Received Apartments and Favourable Loans, 2022).

This further brings into question the legitimacy and independence of the judiciary as it had become part of the clientelist machinery. Some progress in remedying the situation was made when the former President of the Supreme Court and the incumbent President of the Commercial Court were arrested (Kajošević, 2022; Šemić, 2022).

The situations described inevitably reflect on the court's work, and the independence of the judiciary is tied to the election of judges, including the Court's President. This is not to say that the entire system is flawed, only that the judiciary is not immune to the persistent political climate. The old regime created it, and the new one has failed to address it adequately. Some advocate for a complete restart in the

justice system, suggesting that all judges should go through re-election. A comprehensive reform like that is being carried out in neighboring Albania. However, that could cause even more problems as the legitimacy and independence of the judiciary cannot be regained with re-election. This would be contrary to the principle of the permanence of the bench, leading to severe consequences for the overall institutional mechanisms in the country (Spaić, 2022). Public confidence in the court can only be regained by severing the influence of other branches of government and political discourses ingrained in Montenegrin society.

The second-way rule of law backsliding occurs in Montenegro as a result of the internal issues within the judiciary system. Again, two distinct phenomena are recognizable: the length of proceedings and the non-execution of decisions of the court.

The length of proceedings results from the need for more court capacity. Additionally, the constitutional complaint mechanism could be more efficient and require reform. The lack of power is a matter of court organization, which involves a bigger budget, capacity, know-how building, enhancing skills and employing versatile legal experts, and more cooperation with external experts through regional and European projects. Likewise, reforming the complaint mechanism first requires a thorough analysis with legal experts, academic engagement, and comparative constitutional law research, which will take time. Out of 62 judgments in cases against Montenegro in which the European Court of Human Rights (ECtHR) found violations, 28 were due to the length of the proceedings. This is one of the indicators that things need to change. However, due to the weak position of the court in the system and the political instability, it is doubtful that these changes will happen soon.

12.5 Challenges to Maintaining the Rule of Law

Challenges also arise between the Constitutional Court, as the highest institution to safeguard constitutional values and principles, and the Supreme Court, as the highest ordinary court that should ensure legal certainty, procedural transparency, and fairness of the law. The most recent example is the constitutional complaint, *U-III no. 1066/20*, which the plaintiff brought for the fourth time about the same legal matter. It is the most extended "different legal understanding" between the two courts. For nearly a decade, the applicant has been a hostage of legal uncertainty. Analysis shows that there is a tendency in the Supreme Court to decline the reasons for the revision given by the Constitutional Court, which the Supreme Court should follow according to Article 77(2) of the Law on Courts (Dika & Martinovic, 2018). When the Constitutional Court repeals an individual act and remands a case back to the authority, the latter shall respect the legal reasoning of the Constitutional Court stated in the decision and shall decide on the repeated proceedings within a reasonable time. The Supreme Court generally comes to the same conclusion as in the repealed

decision. In addition, not only does it not accept the argumentation and reasoning of the Constitutional Court, it provides a new explanation. It adds it to the original decision (Đuković, 2020b).

Trust in the justice system in Montenegro was additionally shaken in 2020 when the Constitutional Court elected a so-called "presiding judge", signaling a political division on the bench where none of the possible candidates had the required majority to be elected President. The Constitution prescribes that judges select the President of the Court from among themselves every three years, with the limitation that elected judges can serve only one term. According to the decision, the presiding judge was given to a former court president. Even though the Law and the Rulebook do not recognize this role, the judges proceeded to violate the Constitution. Further, according to the procedure defined in Articles 13 and 22 of the Law and Article 12 of the Rulebook, the oldest judge chaired the session for the President's appointment.

If none of the judges gets a majority vote, the President's duties shall be conferred to the Deputy President. If the court does not have a Deputy President to assume the office, then the role of the President shall be exercised by the oldest judge until the election of a President. In an attempt to provide sound legal reasoning, the court creatively found that Article 22 of the Law is not applicable, as it refers to the expiration of the President's office but not to its mandate. Linguistically that might be the correct reading, but it is obvious what the legislator's intention was: to ensure that the president's office is never vacant. Thus, legislators adopted a solution in which the oldest judge would assume the office by the power of Law (Đuković, 2020b). Almost a year later, the judges declared this decision unconstitutional, and the role of the President was assumed by the oldest among the judges as the Law mandates (Đuković, 2021).

The latest Report by the European Commission recommends that Montenegro address the lengthy trial duration and "ensure stronger understanding between courts" (Montenegro 2022 Report, 2022).

12.6   'Highjacked' and Backsliding of Constitutional Norms

On August 20, 2022, the Parliament passed a no-confidence motion on the 43rd Government, elected only slightly more than three months earlier. From that point on, the Government has operated under a technical mandate until the election of the new one. Due to the lack of provisions in the Constitution on this particular situation and the lack of Law on Government, the interpretation of this peculiar and novel situation in our history varies.

It is generally understood that Articles 103(1) and 95(5) of the Constitution apply even when a no-confidence vote occurs. Namely, according to the Constitution, the President of State, upon consultation with representatives of all political parties that have seats in the Parliament, proposes to the Parliament a candidate for the Prime Minister. He does so within 30 days from the constitution of the Parliament or, in this case, analogy dictates, within 30 days from the moment the Government lost the vote

of confidence in the Parliament. Upon consultation with some of the parties represented in the Parliament, the President rejected the proposal of the majority to name a candidate and instead called for snap elections, submitting an official proposal for the dissolution of Parliament. The respective committees in the Parliament rejected the proposal, and the Parliament rejected even putting the proposal on the session's agenda by a majority of votes.

Following this, three former ruling majority coalitions signed an initiative for the President's dismissal due to his violation of the Constitution. They claimed that the President violated Article 95(5) as he did not consult with the representatives of each party in the Parliament. According to the reports, some parties were not invited for consultation. However, the mentioned provision clearly states that the President is to interview the representatives of the political parties present in the Parliament. Therefore, his constitutional obligation is conditioned by an invitation sent to every political entity with representatives in the Parliament. While it is the President's constitutional duty to send the invitation, it is not the obligation of the invitee to respond. At that period, the court had been left without a quorum as the fourth judge on the bench retired. The Parliament cannot impeach the President without the court's decision. Making such a decision circumventing the court would involve a violation of the Constitution by the lawmakers since Article 98 stipulates that "the President of Montenegro can be dismissed by the Parliament when the Constitutional Court determines that the President has violated the Constitution". The procedure for the President's dismissal is inextricably linked with the procedure for deciding whether the President has violated the Constitution, which can only be done by the Constitutional Court (Article 149 of the Constitution and Article 79 of the Law on the Constitutional Court).

In March 2020, after dissolving the Parliament, the 'majority' initiated another impeachment claiming that the dissolution was unconstitutional. As mentioned earlier, under the pressure of the EU and the warning that any further accession talks would be suspended, the Parliament elected three out of four missing judges. While formally unblocking the Court, the election led to a stalemate. Thus, the Court could not decide whether the dissolution of the Parliament in March was unconstitutional (Court Announcement, 2023), and hence the elections were inevitable.

It is common that the Constitution is circumvented or that legal loopholes are exploited for political gain. In the absence of provisions regulating specific issues, either in the Constitution or relevant law, the Constitution is subject to a broad interpretation. Political parties try to assign meanings that benefit their interests and goals.

But, what is the effect of the President's rejection of naming a candidate for Prime Minister and instead sending a proposal for the Parliament's dissolution? First, the proposal to shorten the mandate of the Parliament is just that—a recommendation. The President does not have the constitutional authority to shorten the assignment automatically. In that sense, the Constitution is clear, as it is set on the principles of democracy and the rule of law; this means it is intended to limit the President's authority, not vice versa. Therefore, if the Parliament votes against the proposal submitted by the President, then due to the lack of specific constitutional provisions on

the matter, it can be assumed that the Parliament will continue with regular activities and that the President will be obliged to name a candidate for Prime Minister that has the support of the majority. Then, the consultation procedure should restart. If this does not happen, two things can occur: the Parliament can initiate the President's impeachment, and the 43rd Government can continue working until the next one is elected.

The President defended his position by stating that he was not convinced that a majority exists as no signatures supported it. However, the Constitution does not recognize nor require the majority's signatures supporting a candidate. The previous two coalitions, supporting the 42nd and 43rd Governments, did publish signatures. However, it was a mechanism by which those with the majority aimed to show the voters that they stood behind a particular candidate. This was the first time in Montenegro that a new party had been elected with a majority. Such a mechanism, however, only constitutes ordinary law-making.

Analyzed examples highlight the need to amend the Constitution and the Law on the President. It also signals the need to adopt a Law on Government and Parliament, which Montenegro still needs. This would also imply entrance into a new phase of transition, which would encompass the transformation of the political and legal system and the constitutional framework, bearing in mind the deficiencies of the previous solutions and the political processes that undermined the rule of law in the first place. Comparative constitutional law and its perspectives are valuable sources of approaches and methodologies supporting this endeavor (Jackson, 2012).

Additionally, in preparation for its membership in the EU, Montenegro's new constitutional framework must accommodate the EU's constitutional framework. Furthermore, "constitutional borrowing and transplantation of constitutional norms, structures, doctrines, and institutions is a fact of life" (Rosenfeld & Sajó, 2012). Scholars and constitution-makers should understand "how a foreign constitutional norm figures in its institutional setting and compares to seemingly similar norms in one's own and other pertinent constitutional systems" (Rosenfeld & Sajó, 2012).

12.7   Conclusion

This chapter overviewed the transition to EU membership in Montenegro and its effects on current affairs. While the literature recognizes three distinctive transition periods in Montenegro, this chapter suggests that the "consolidation transition phase" ended in 2020 when DPS lost the election. Thus, a fourth phase has begun. Additionally, it identified that, during the three decades of transition, the processes of reforms involved intrinsic and extrinsic layers. The first refers to the internal or domestic political projects built on the fusion of political affiliation and ethnonational identification, which made DPS the only party in the region to be in power for a long time. The second layer pertains to establishing "stabilitocracy", where DPS presented itself as the only reliable partner to the EU and West. Both layers facilitated

the long reign of DPS, but they have different effects on the institutional and constitutional crises described in the second half of the chapter. While the intrinsic layer plays a vital role in daily political altercations and hinders any chance of reaching a broad consensus in the Parliament on pressing issues, the extrinsic layer exposes the vulnerability of the institutional system that was built during the reign of DPS and how the incapacitated state apparatus resulted from "stabilitocracy" itself, which prevented it from undergoing profound political and social transformation.

The analysis indicates that Montenegro entered a new phase of transition in 2020, a period that essentially reveals the deficiencies of the political system, the weakness of the constitutional framework, an absolute disregard for any form of accountability, and the overall lack of political maturity required to elect new constitutional judges or organize snap elections that could bring clarity to political turmoil amidst the rise of the populist movement. The chapter thus contributes to the general knowledge about the transition process and the country's troubled path to becoming an EU member state, focusing on the correlation between the transition process, failed reforms, political hegemony, "stabilitocracy", and the ongoing constitutional and institutional crises in Montenegro which have inevitably led to the rule of law backsliding.

There is no democracy without respect for the Constitution and the Law. It is the starting point of the legal and political system. Operational state institutions and functional courts are the backbones of the rule of law. In failing to elect Constitutional court judges or to compromise the vacant positions in the highest seats of the justice system, the political parties disregard the rule of law principle. It is their constitutional obligation to elect judges and unblock institutions.

The shortcomings of the constitutional framework in Montenegro have been obvious in recent years. Even after sixteen years of independence, Montenegro is the only country in the region that needs a Law on the Government and Parliament. Under the current state of affairs, Montenegro's efforts and ambition to meet the rule of law interim benchmarks are futile.

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Chapter 13
OSCE Securitization and De-securitization-The Kosovo-Serbia Dialogue

Eni Lamçe

13.1 Introduction

Kosovo, the youngest Republic in Europe, declared its independence in 2008 but still faces issues of national legitimation since its Declaration of Independence was only supported by some members of the United Nations Security Council (UNSC). Unresolved territorial disputes with Serbia have deeply affected Kosovo's struggle to become a member state in international organizations compared to the rest of the South-Eastern European countries. However, it is essential to note that the question of Kosovo's eligibility in the international community is also associated with the role of the leading regional powers in the South-Eastern Europe, notably the Russian Federation, in its capacity as one of the five permanent members of the UNSC as it has continuously opposed Kosovo's membership in the United Nations (UN) as well as in the Organization for Security and Cooperation in Europe (OSCE).

Boyka Stefanova, in an analysis of the maturation phases of the OSCE, notes that "the Organization was excluded from the development of a conceptual solution to the Kosovo self-determination deliberations" (Stefanova, 2009). Though excluded from the self-determination deliberations, the OSCE has continuously and comprehensively assisted Kosovo's state-formation incentives through the activities of the OSCE Mission in Kosovo (OSCE, 2022). While legally explaining the involvement of international actors in Kosovo's state building, Dren Doli underlines that "the United Nations General Assembly, the five permanent members of the Security Council,

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the International Court of Justice, the European Union, the OSCE members have altogether played an important role" (Doli, 2019).

This research highlights the vital contribution that the OSCE has provided during the conflict period and when Kosovo's transformation led toward democratic governance. In light of the fourth level of analysis of Regional Security Complex Theory (RSCT) (Buzan & Waever, 2003) introduced by the Copenhagen School, this research examines the role of OSCE regional actors in the securitization and de-securitization processes towards the developments of Kosovo-Serbia relations and Kosovo's democratization path. As different scholars have put it, "securitization is a rule-governed practice, the success of which does not necessarily depend on the existence of a real threat, but on the discursive ability to effectively endow a development with such a specific complexion" (Balzacq, 2005). De-securitization on the other hand, according to RSCT, can be described as a "rather slow move out of an explicit security discourse, which in turn facilitates a less militaristic, less violent and hence more genuinely political form of engagement" (Hansen, 2012). While analyzing the Western Balkans in light of regional security complex theory, Pejic stressed that "full membership in these organizations provides a completely new quality to the countries and presents a new institutional mechanism for the realization of their national interests" (Pejic, 2016).

This study was conducted via official document analysis, both qualitative and quantitative, at the archives of the OSCE Documentation Center in Prague in the capacity of Researcher-in-Residence from October 2020 to March 2021.[1] Document analysis represents a critical research method for understanding the existing empirical evidence through content analysis and interpretation (Bowen, 2009). The qualitative analysis reflects the critical positions of regional actors in the OSCE debate. In contrast, the quantitative analysis demonstrates the interest of regional actors in the discussion based on the total number of statements concerning Kosovo-related developments and Kosovo-Serbia relations. This research thus provides an in-depth analysis of the OSCE debate during the Kosovo crisis, starting from 1995, when the OSCE was established,[2] to 2001, when the Federal Republic of Yugoslavia (FRY) was welcomed once again as an OSCE participating State. The study compares this period with the positive developments in Kosovo in recent years, starting from 2015, when Serbia was the first Western Balkan country to Chair the OSCE until 2020 and the Albanian OSCE Chairmanship. Hence, this research investigates the role that the regional actors, namely the United States of America (USA), the European Union (EU), and the Russian Federation, have played in Kosovo's domestic developments and relations with Serbia.

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[1] A total of 39 statements from the three main actors (the United States of America, the European Union, and the Russian Federation) were scrutinized for the period of 1995 to 2001, and a total of 37 statements were scrutinized for the period from 2015 to 2020 focused on the developments in Kosovo as well as Kosovo-Serbian relations.

[2] At the 1994 Budapest Summit, the OSCE participating States decided to rename the Conference for Security and Cooperation in Europe (CSCE) the Organization for Security and Cooperation in Europe (OSCE) starting from 1 January 1995. https://www.osce.org/files/f/documents/5/3/39554.

Aiming to bring to light the progress made on Kosovo's path to democratization, this paper reflects on the controversy of Kosovo's ongoing struggle to have a seat at the table. Kosovo has remained at the center of debate among OSCE regional actors in the South-Eastern Europe since the organization was created. These debates, be they on securitizing or de-securitizing issues of concern, determine the direction of the activities of the OSCE Mission in Kosovo while depriving Kosovo of the right to have its voice heard on important issues concerning its domestic security. Considering the positive transformation in Kosovo's democratic governance, this paper argues that it is only legitimate to grant Kosovo a seat at the table of the OSCE.

13.2 An Era of Securitization: The Kosovo Crisis

In light of Regional Security Complex Theory, this section provides an in-depth analysis on the politico-military dimension debate by the main OSCE regional actors during the crisis in Kosovo. The timeframe starts from 1995 with the creation of the OSCE until 2001 when the Federal Republic of Yugoslavia was welcomed once again as an OSCE participating State.

In late 1998, during the Kosovo war, the Permanent Council (PC), in line with the United Nations Security Council Resolution (UNSCR) 1203, decided to establish the Kosovo Verification Mission (KVM) with an initial 1-year mandate (OSCE, 1998f). Even-though the Ministers raised the issue of the un-cooperative stance of the FRY at the 6th Ministerial Council in Copenhagen, tensions rose even more in 1998. In this regard, at the Oslo Ministerial Declaration of 1998, the Ministers referred to the crisis in Kosovo as a priority of concern in the OSCE area by explaining that "the Kosovo verification mission (KVM) is the largest and most difficult ever put into the field by the OSCE. It marks the international community's recognition of the organization's developing potential and expertise to contribute to security" (OSCE, 1998h).

The KVM and the later OSCE Mission in Kosovo (OMiK) was the first large operation undertaken by the OSCE, and its functions varied from efforts toward the political settlement of issues of concern, elections monitoring, steps toward building democratic institutions, as well as training and assisting the police force in the country. The mandate of the KVM lasted less than one year because in mid-1999, the OSCE PC decided to close the KVM following the developments in Kosovo and established instead a task force (OSCE, 1999f) that would prepare for the opening of the OMiK.

Despite all efforts, a failure in preventive diplomacy is how experts in the South-Eastern Europe sub-region refer to the crisis in Kosovo (Ghebali et al., 2001). To understand the role of the OSCE in addressing the Kosovo crisis, it is necessary to analyze the regional actors' role in their securitization approaches. In this regard, this research investigates the role that the USA, EU, and Russian Federation played in arms control and border management, two critical securitization sectors covered under the umbrella of the Politico-Military Dimension of the OSCE.

13.2.1   The Role of the European Union

The EU placed particular importance on the situation in Kosovo compared to the other South-Eastern European countries since the crisis was severe and turned into a humanitarian catastrophe threatening the security of the South-Eastern European sub-region and the whole OSCE area. Moreover, it expressed strong disappointment toward Milosevic's regime and his violations of international commitments. Making continuous calls demanding the withdrawal of the Belgrade security forces from Kosovo, the EU emphasized in 1998 "that commitments made by President Milosevic in Moscow did not cover all the requirements set out in the Cardiff declaration…" (OSCE, 1998b).

Moreover, in its securitization approach, the EU made continuous contributions toward verification activities in implementing UNSCR 1160 and 1199 through the deployment of personnel to deal with the security aspects of the situation on the ground as well as through supporting the North Atlantic Council Organization (NATO) verification missions (OSCE, 1998e). The EU also noted that it "…supports NATO's AI verification mission; good coordination between air and ground verification are essential in verifying compliance" (OSCE, 1998g). Moreover, the EU pointed out that the reports presented by the Chair-in-Office (CiO) in 1998 concerning the crisis in Kosovo were alarming, considering that "…the Yugoslav authorities have placed anti-personnel land-mines at the border between Kosovo and Albania. These mines would immediately threaten refugees and other innocent civilians and constitute a deadly legacy for years to come" (OSCE, 1998d). This was an important securitizing EU call addressing land mining as a serious security threat in the region.

Additionally, the EU constantly underlined the significant role the European Union Monitoring Mission (EUMM) was playing on the ground. In 1998, at a PC meeting, it was highlighted that the "EU is determined to provide an increased monitoring presence in Kosovo. We call for a comprehensive approach to promote the early return of refugees. Unhindered access for international humanitarian organizations [is] an essential requirement" (OSCE, 1998b). For the EU, securitization also meant practical efforts toward border management, particularly regarding the Kosovo crisis, where special attention was placed on the essential role of regional cooperation. Therefore, the EU expressed the concern "… that VJ shelling has allegedly violated the international border…", by calling the authorities "…to do all in their power to reduce tensions over Kosovo" (OSCE, 1998d).

Later in 1999, as the situation worsened, the calls by the EU in the Forum for Security and Cooperation (FSC) of the OSCE increased. Its securitization approach shifted toward full commitment not only politically but also militarily in cooperation with the United Nations Mission in Kosovo (UNMIK) and the Kosovo Force (KFOR) (OSCE, 1999j). Regarding this cooperation, the EU placed particular emphasis on forming the multi-ethnic Kosovo Protection Corps (KPC), which would facilitate the protection of civilians in cases of emergency. The KPC aimed to facilitate the

implementation of the agreements and the demilitarization of the Kosovo Liberation Army (KLA) (OSCE, 1999g).

Regarding calls towards the FRY, the EU considered the emerging conflict in 1998 as an urgent matter which required rapid action and the re-establishment of a long-term Mission in FRY. But FRY refused to cooperate with the OSCE due to its expulsion from the Conference for Security and Cooperation in Europe (CSCE) debate in 1992—a decision taken due to its severe human rights violations. In this regard, the EU expressed "that distances of views over possible conflict-resolution and especially the lack of trust between communities in Kosovo strongly reinforce the need for high-level international involvement in the negotiation process" (OSCE, 1998c).

Another securitization incitive of the EU during the aggression of Milosevic's regime towards Kosovo was the imposition of economic sanctions towards FRY. However, in 2001, a decision on the establishment of the OSCE Mission to the FRY was adopted, which, as a result, led to a change in the policy of the EU about the sanctions implemented during the Kosovo war. In this regard, the EU decided to place significant aid programs and "… to lift all sanctions against the Federal Republic of Yugoslavia since 1998 except for the provisions affecting Milosevic and persons associated with him" (OSCE, 2000b). Another historical event that followed was the adoption of the declaration at the General Affairs Council (GAC), where the EU Foreign Ministers gathered in Luxemburg to praise the democratic changes occurring in the FRY after the fall of the Milosevic regime.

In the same year, though the relations of the FRY with Kosovo were heading toward a dramatic decrease in tensions, some violent activities continued to occur, particularly in the territory of Southern Serbia. In this regard, the EU expressed at one PC meeting that "As a contribution to confidence building, the EU has substantially increased its EUMM presence and strongly supports a process of constructive dialogue" (OSCE, 2001c). In its continuous calls, the EU condemned the violent attacks and illegal actions directed particularly toward both the ethnic Albanians and Serbians, while implying that political dialogue would be the only possible path towards a long-term solution, and emphasizing that "The EU urges these groups to abandon violence and respond positively to the new proposals and calls on political leaders in the region to use all available influence to stop the violence; the only long term solution is through dialogue and reconciliation" (OSCE, 2001b). This statement marks not only the start of the neutral approach of the EU towards the Kosovo-Serbia dialogue but also the start of the EU's interest in European Union integration of the South-Eastern European countries.

13.2.2   The Role of the United States of America

The role of the USA in the region has been vital, inclusive, and truly effective in promoting security and cooperation in the South-Eastern Europe, particularly from 1995 to 2001. The crisis in Kosovo offers proof of the importance of the USA's role,

as evidence shows that the US troops marked the highest numbers compared with the other allies. While by the time NATO acted, around 250,000 people were dead, and more than 2 million people were displaced from the territory of Kosovo; without the USA's role in the conflict, the damage would have been more severe (OSCE, 1999e).

According to the USA securitization approach, NATO involvement in the FRY was essential to prevent a further humanitarian catastrophe in Kosovo. It is of utmost importance to emphasize that the intervention of the USA and other NATO allies in the FRY did not come at a glimpse but after continuous efforts to find a political solution. It resulted from Milosevic's refusal to comply with UNSC resolutions, the decline of the Rambouillet political settlement, and every diplomatic attempt in this regard. It also came as a result of the deployment of more than 40,000 troops and 300 tanks from the Milosevic's regime in Kosovo; the continuous use of violence, murders, rape, and property destruction in Kosovo, leading to a severe humanitarian catastrophe; and, most importantly, the violation of all commitments made under international law (OSCE, 2000a). Initially, USA Secretary of State Madeline Albright, due to the continuous police violence, torture, and executions by Serbian forces towards Kosovo, gave the order to freeze consultations about the South-East Cooperation Initiative as well as the Dayton Peace Agreement Implementation with the FRY (OSCE, 1998a). However, that did not stop the Milosevic regime.

The USA was aware that, even after giving utmost priority to the emergency in Kosovo, it would not succeed in ending all of the inter-ethnic conflicts in the region. Still, rather it would mean putting an end to Milosevic's regime and its ethnic cleansing. In this regard, the United States of America stated that, in cooperation with the European Union, "we must do for South-Eastern Europe what we did for Western Europe after World War II and Central Europe after the cold war. Freedom, respect for minority rights, and prosperity are powerful forces for progress. They give people goals to work for; they elevate hope over fear and tomorrow over yesterday" (OSCE, 1999e).

In its securitizing efforts, as with the EU, the USA supported the civilian organization KPC, which it saw as an essential service aiming toward post-conflict reconstruction and demilitarization, particularly about demining (OSCE, 1999h). Moreover, efforts towards reconstruction were seen in the Rambouillet agreement which, as mentioned earlier, would include a broader cross-sector program covering infrastructure, rule of law, human rights, etc., all aimed towards strengthening democracy. The USA played an important role alongside the European Union in supporting these efforts.

For the USA, in a similar way as for the EU, regional cooperation between the South-Eastern European countries in times of conflict were of utmost importance. One important statement of the USA in this regard was directed to the solidarity shown by Albania, Macedonia, and Montenegro during the Kosovo crisis:

> Mr. Chairman we cannot thank enough the countries around Kosovo which have opened their borders and their homes to the refugees. The response of the Albanian, Macedonian, and Montenegrin governments is extraordinary. They have done what many of us around this table failed to do sixty years ago -- welcome the human misery created when a genocide last stalked Europe (OSCE, 1999c).

13.2.3   The Role of the Russian Federation

The Russian Federation also played the role of a dominant power in the region, but not in an inclusive manner in comparison to the USA and the EU. The empirical data show that the Russian Federation's involvement in the debate was more evident in 1999, with particular emphasis on opposing the use of military intervention in the FRY.

In a PC statement in 1999, the Russian Federation expressed that NATO air strikes and missiles in the territory of the FRY caused casualties in the population of the FRY, putting an emphasis not only on the Serbian lives lost but also on the Albanian lives. Therefore, according to Russian Federation, this had led to a humanitarian disaster caused by decisions taken without the authorization of the UNSC or qualification under international law. In Russian Federation's view, "NATO creates humanitarian disaster by the airstrikes and then conducts a ground operation to prevent this disaster" (OSCE, 1999d).

In this regard, the Russian Federation also called on several OSCE documents that would oppose this intervention, including the Helsinki Final Act decalogues:

> We would like to stress that the NATO countries are committing a flagrant, gross and continued violation of the principles enshrined in the Helsinki Final Act of sovereign equality, non-use of force or threat of force, territorial integrity of States, peaceful settlement of disputes, non-interference in internal affairs, respect for human rights, fulfilment of the commitments under international law. Justifying the use of force in circumvention of the UN charter and in violation of the Helsinki Final Act principles by referring to the 'humanitarian disaster', 'ethnic cleansing' and more over 'genocide' is legally groundless (OSCE, 1999d).

This is quite a contradictory perception from the Russian Federation when in fact all the above-mentioned decalogues of the Helsinki Final Act were initially and solely violated by Milosevic's regime before NATO had even thought of getting involved. However, looking at the historical developments, a shift in position by the Russian Federation regarding the violations of the FRY can be seen. The initial position was when the Federal Republic of Yugoslavia declared the Head of Mission to Kosovo *persona non grata.* Following this, the Russian Federation's calls in this regard started to take on a more serious tone by asking "…Belgrade to refrain from the implementation of the decision mentioned above and to create all necessary conditions allowing the OSCE mission to carry out fully its tasks following decisions of UNSC and OSCE" (OSCE, 1999a).

This tone can also be seen in the historical joint statement of Secretary Madeline Albright and the Russian Minister of Foreign Affairs Ivanov demanding that the FRY fully comply with the UNSC, particularly concerning police and military units, as well as to cooperate with the International Court of Tribunals of Yugoslavia (ICTY) and support the Kosovo Verification Mission (OSCE, 1999b). The cooperation of the Russian Federation in this regard was highly valued by the United States of America, who saw this mutual effort as a strategy to strengthen the "fundamental interest in a long-term, positive relationship with Russia. Russia is now helping to find a way for Belgrade to meet our conditions. Russian troops should participate in the force

that will keep the peace in Kosovo, turning a source of tension into an opportunity for cooperation, like our joint effort in Bosnia" (OSCE, 1999e).

The Russian Federation's "disappointment" started to decrease dramatically after the de-escalation of the conflict later in 2000, particularly as the Federal Republic of Yugoslavia was once again accepted as an OSCE participating State, having been expelled in 1992 due to severe human rights violations. After a decade of violations toward Kosovo Albanians, with the fall of Milosevic's regime in 2000, the FRY was approved to return to the OSCE. For the Russian Federation, this meant the beginning of a new era in establishing security in South-East Europe. In a statement later in 2001, the Russian Federation expressed that, although the conflicts in South-Eastern Europe varied, including humanitarian catastrophe, ethnic cleansing, refugee influxes, and the creation of displaced persons, "today it is obvious to everybody that this cannot be achieved either by air strikes or by the extensive military presence on the ground. Other approaches are needed, based in the first place on the political will of the States of the region and active assistance in the international community" (OSCE, 2001a, 2001b, 2001c). In this regard, the Russian Federation expressed its willingness to cooperate in joint efforts towards bringing a more prosperous future in the South-Eastern European sub-region in line with the UN Charter, Helsinki Final Act, and Charter of European Security.

13.3   De-securitization: The Roles of Regional Actors

While de-securitization refers to a more genuine political form of engagement, the political power or militaristic authority incentives no longer have a role to play. This endeavor comes mainly due to a positive turn of developments and normalization of the situation on the ground. Lene Hansen categorizes the de-securitization process into three forms: replacement, when an issue moves out of the security discourse, and another problem is simultaneously securitized; re-articulation, when active political solutions are given to address threats that have been securitized; and silencing when an issue disappears from the security discourse (Hansen, 2012).

The OSCE is well-placed in assisting Kosovo and Serbia in their democratization journeys through its field operations on the ground, namely the OSCE Mission in Kosovo (OMiK) and the OSCE Mission to Serbia. OMiK was established in 2000 following the closure of KVM and currently covers broad activities, including:

> protection of community rights; protection of cultural and religious heritage; monitoring the judiciary; gender mainstreaming; media freedom and development; promotion of anti-discrimination mechanisms; improving young people's participation in political and public life; countering terrorism and cyber threats; providing advanced police training and support to key policing and security strategies; and support to the implementation of agreements stemming from the European Union-facilitated dialogue between Prishtinë/Priština and Belgrad (OSCE, 2022).

The Mission to Serbia was re-established in 2001 and aimed at helping Serbia in cooperation with the governmental institutions, civil society, and media to "…build

strong, independent, accountable and effective democratic institutions… in the areas of rule of law and human rights; law enforcement; democratization; and media development" (OSCE, 2021).

As noted earlier, the empirical evidence proves that analyzing the role of the regional actors during the conflict period offers a good indicator of the power relationship of the regional actors during the Kosovo war. Therefore, investigating the role that these regional actors play in Kosovo's democratization path from 2015—when Serbia was the first Western Balkan country to chair the OSCE—until 2020—when Albanian OSCE Chairmanship occurred—is equally important, particularly because South-Eastern European countries have now become security providers rather than security-receivers.

13.3.1 The European Union

The European Union saw the work of the OSCE Mission in Kosovo as crucial to building a democratic and multi-ethnic society. It used a de-securitization approach to emphasize the rights of minorities. The EU supported the OMiK "… for its democratization and human rights activities". It highlights that functioning independent institutions, the fundamental freedoms legislation, and the anti-discrimination package should remain a priority (OSCE, 2015a). As indicated in a statement in 2015, the EU also de-securitized the issue of land disputes in Kosovo by commending "OMiK for its activities in the area of democratization and human rights which includes interfaith dialogue and working with civil society…", and proposed that OMiK takes "…a lead within the international community in a resolution of the land dispute between the Decani municipality and the Decani monastery" (OSCE, 2015c).

Another issue actively de-securitized by the EU was the impact of the domestic problems in Kosovo concerning migration flows toward the EU. In this regard, the EU expressed that the "Recent demonstrations in Pristina and the rise in irregular migration from Kosovo to the EU show that much remains to be done to address the root causes of popular discontent" (OSCE, 2015a). A high percentage of the Kosovar population is located in various European countries, which could reflect the lack of cooperation between the domestic political forces in promoting stability. In this regard, in 2016, the EU called on the government and opposition to respect majority rule as the basic principle of democracy; to ensure open and transparent debate in the Assembly on all issues, be they domestic or regional; and to enhance dialogue by improving communication, particularly regarding the dialogue with Serbia (OSCE, 2016b). These calls by the EU aimed to establish a genuine dialogue between the opposition and the government to look for shared solutions to enhance the Kosovo-Serbia dialogue further.

It is essential to mention that the role of the European Union in the Kosovo-Serbia dialogue, in principle, should be based on unbiased mediation and continuous efforts towards finding a solution to normalize the relations between the two countries, which, as illustrated earlier, have had a very tragic conflictual past. For the EU, it

was essential to de-securitize the issue of the uncooperative stance of the political parties in Kosovo. Therefore it called the "…opposition parties to respect the basic principles of democracy, including majority rule, and allow for a free and open debate in the Assembly on all issues regarding Kosovo" (OSCE, 2016c).

Thus, cooperation between the political parties on long-standing issues in Kosovo was vital for the EU and a strong determinant of the desired democratic and multi-ethnic Kosovo to represent a common language regarding the dialogue with Serbia.

In 2017, the position of the EU on the democratization in Kosovo shifted towards de-securitizing concerns on the freedom of media by expressing support for "…the Mission's work in the area of democratization, in particular regarding strengthening public oversight, coordination and communication between central and local governance, and its activities on strengthening media reporting, the freedom of the media and safety of journalists" (OSCE, 2017a). As the statement highlights, for the EU the principles of democracy are very closely associated with the role that media plays in communicating domestic and regional developments. In 2018, apart from reiterating its support for OMiK's efforts in ensuring the functioning of democratic institutions in Kosovo, the EU also de-securitized the importance of civic participation in decision-making (OSCE, 2018d). Furthermore, the EU supported OMiK's "…commitment to helping democratic institutions fulfill their role effectively in line with relevant international standards and good governance principles, particularly regarding strengthening public participation in decision-making and improving accountability and transparency of institutions" (OSCE, 2018a).

Lastly, following the positive developments in Kosovo as well as the willingness of both countries to proceed further in the Kosovo-Serbia dialogue, the EU highlighted in 2020, "both sides now must build on this positive momentum and make substantial additional efforts, to reach a comprehensive legally binding agreement. Such an agreement is urgent and crucial for both to advance on their respective European paths, in line with the European perspective of the region" (OSCE, 2020b).

13.3.2 The United States of America

In its de-securitization approach, the USA emphasized in 2015 that the Mission in Kosovo plays a crucial role in implementing programs related to promoting human rights, the rule of law, and democratization (OSCE, 2015b). In the USA' view, Kosovo has gone through dramatic changes in its efforts toward building democratic structures. However, as with the rest of the South-Eastern European countries, Kosovo faced deep polarization and a lack of cooperation between political forces. In the USA's view, "The freedoms of expression and peaceful assembly, including peaceful protest, are fundamental to any democracy. Kosovo's parliament should be a place where meaningful public policy debates are conducted and people listen to each other respectfully, even when they disagree" (OSCE, 2016a). The difficulty of the political leaders to find common ground on issues in Kosovo, be this domestically or regionally, has remained of high concern for some time. For the USA, these issues

deeply impact the progress of democratization in the country. Therefore, in its de-securitization approach, its calls were often directed at the political forces to not only look for solutions to enhancing genuine dialogue but also to cooperate with OMiK and other OSCE participating States on resolving the domestic concerns in the country.

In this regard, it is essential to mention that the USA has historically supported a democratic and prosperous Kosovo and has continuously promoted peace and stability by cooperating closely with the OSCE Mission in Kosovo. This can be seen in several statements, including in 2017 when the USA vowed to "continue to champion a democratic, multi-ethnic, inclusive Kosovo that is fully integrated into the international community and an integral part of a Europe whole, free, and at peace.", by adding that the USA looks "…forward to the day when Kosovo will be present in the Permanent Council as an OSCE participating State" (OSCE, 2017b). In its de-securitization approach, the USA put utmost importance in having Kosovo granted with a seat at the tables of the international community, including at the OSCE. The USA sees the presence of Kosovo officials at the chambers of the OSCE as a crucial step for the country to hear directly from the participating States' views on the issues affecting its democracy (OSCE 2017d). In this regard, later in 2018, the USA underlined:

> As Kosovo prepares to celebrate its 10th anniversary as an independent nation, the United States will continue its close partnership with you and the OSCE Mission in Kosovo (OMiK) to help Kosovo develop as a peaceful, stable, democratic, and multi-ethnic country at peace with its neighbors. Mr. Chair, the United States supports a democratic Kosovo that is fully integrated into the international community and part of a Europe that is strong and free. We look forward to the day when Kosovo will be present in the Permanent Council as an OSCE participating State (OSCE, 2018b).

The USA put great emphasis on the need to work on electoral oversight mechanisms as well as to address issues of concern with regards to the missing persons. Later in 2018, the USA also noted that the work of OMiK has been of high importance, particularly in ensuring that the voices of the youth are being herd. The USA expressed support for the "…exchange programs through the Dialogue Academy and through sports diplomacy. With Kosovo's large youth population in mind, OMiK has rightly fostered youth engagement in conflict resolution and political life and has promoted media and information literacy for young people" (OSCE, 2018e).

With regard to the Kosovo-Serbia dialogue, the USA also played a key de-securitizing role by ensuring the promotion of the normalization of relations as well as the full integration into the Europe Union of both countries as two democratic states. In a statement in 2019, the USA stressed that "All parties must de-escalate tensions, remove all obstacles to the Dialogue talks—this includes Kosovo lifting the tariffs—and focus on reaching a comprehensive agreement" (OSCE, 2019a). In this regard, the USA played an important role in 2020 as well by making possible the signing of the Agreement of the Normalization of Economic Relations between the two countries as a step forward which would ensure a prosperous and stable future not only for Serbia and Kosovo but also the entire region. The USA has played a significant role in gearing up for the European Union Integration of Kosovo and all

the South-Eastern European countries. It has lent its voice to grant Kosovo a seat at the tables of the international community continuously in its statements.

13.3.3   The Russian Federation

The Russian Federation is the only regional actor that applies silencing as a form of de-securitization concerning the developments in Serbia, aiming to vanish Serbia's domestic concerns from the OSCE's security discourse. Yet, for the Russian Federation, Kosovo has always been far from being democratic. This view in the form of a replacement approach to de-securitization was also noted in a statement in 2017 when the Russian Federation stressed that "to confirm the increasingly obvious divide between the reality in Kosovo and the declared goals of creating a safe and democratic society in the territory […] the time has come to replace the paradigm of blind and undemanding patronage from certain Western countries" (OSCE, 2017c).

Furthermore, these views were also reflected in a statement in 2018 when addressing the role of the Kosovo police, which, according to the Russian Federation, "cast a shadow over the many years of assistance that the OSCE has provided for their development. It is clear, as this latest case shows, that the work of the police in Kosovo is still far from democratic standards, to say the least" (OSCE, 2018c). These statements reflect that the Russian Federation refuses to see Kosovo as an independent state and its determinion to advance in its democratic path. This view was also reflected in a statement in 2020 when the Russian Federation referred to the Kosovo-Serbia dialogue, underlining that "because of the obstruction by the Kosovans, meaningful dialogue is once again impossible" (OSCE, 2020a).

13.4   Kosovo's Domestic Developments

While during the war on Kosovo under Milosevic's regime, it was highlighted that the lack of a multilateral securitization approach leads towards escalation of the conflict, on the contrary, when all actors chose to work together and cooperate, it led towards de-escalation. The quantitative analysis in this study, as illustrated in Chart 13.1, show that during the period from 1995 until 2001 the USA took a leading role in the debate opposing Milosevic's war on Kosovo. In the period of Kosovo's democratization illustrated in Chart 13.2, there was an equal interest in Kosovo developments between the United States of America and the Russian Federation, highlighting, however counter-arguments in their position on democracy.

Therefore, it is important to stress that considering the positive transformation in Kosovo's democratization during the second timeframe analyzed in this research, Kosovo's seat at the OSCE should be viewed as a benefit for all. First, it would allow Kosovo to directly hear and address the concerns of the regional actors regarding its domestic developments. Secondly, it enables the OSCE to handle all the security

Statements on Kosovo 1995-2001
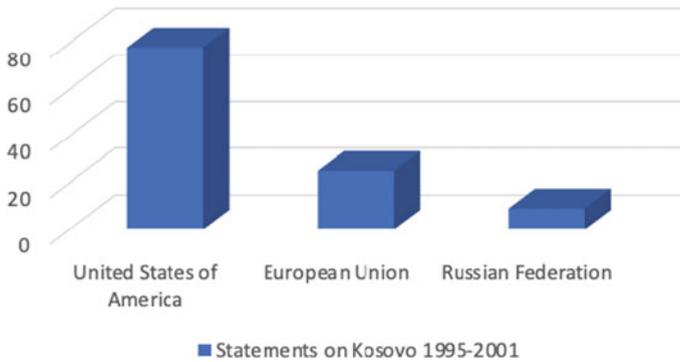
Chart 13.1   The total number of statements by regional actors on Kosovo from 1995 to 2001. *Source* Author's calculations based on the total number of statements found at the OSCE Documentation Center in Prague (DCiP)

Statements on Kosovo 2015-2020
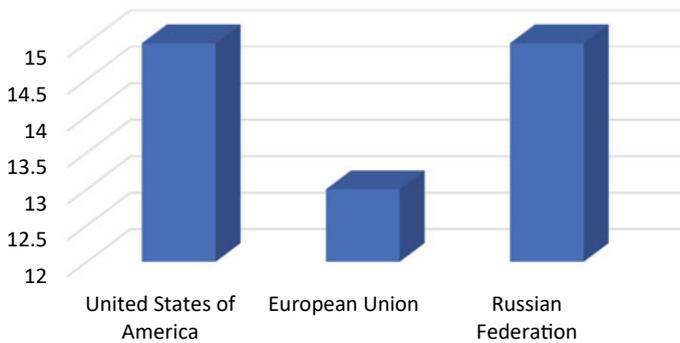
Chart 13.2   The total number of statements by regional actors on Kosovo from 2015 to 2020. *Source* Author's calculations based on the total number of statements found at the OSCE Documentation Center in Prague (DCiP)

aspects concerning the South-Eastern European sub-region inclusively and compre-hensively by facilitating direct dialogue between Kosovar and Serbian representatives and all actors involved. It is important to remember that, in democracy, one's voice is a fundamental right; therefore, a democratic Kosovo voice in the halls of Hofburg should be seen as such. Thirdly, and equally important, a seat at the table enables Kosovo to become a security provider along with its South-Eastern Europe neighbors (Table 13.1).

Table 13.1   South-Eastern Europe' seats in International Organizations

Western Balkan	OSCE membership	OSCE chairmanship	UN membership	UNSC seat	NATO membership	EU integration
Albania	19 June 1991	2020	14 December 1995	2022–2023	1 April 2009	Candidate negotiating
Bosnia and Herzegovina	30 April 1992	–	22 May 1992	2010–2011	Not an ally	Candidate country
North Macedonia	12 October 1995	2023	8 April 1993	–	27 March 2020	Candidate negotiating
Montenegro	22 June 2006	–	28 June 2006	–	5 June 2017	Candidate negotiating
Serbia	10 November 2000	2015	1 November 2000	–	Not an ally	Candidate negotiating
Kosovo	Not a participating State	Not a participating state	Not a member state	Not a member state	Not an ally	Potential Candidate

Source Author's tabulation based on data collected from Wikipedia

13.5   Conclusion

When comparing both the securitization and de-securitization eras, the empirical evidence clearly shows that the role of regional actors in Kosovo-Serbia relations does not reflect a common approach but rather a deep polarization in the perceptions of democracy. This polarization of perceptions and subsequent approaches does not positively impact establishing lasting peace, stability, and prosperity in the South-Eastern Europe sub-region. Instead, it deepens further the existing disagreements. The Austrian Political Scientist Univ. Prof. Dr. Heinz Gaertner refers to the OSCE founding document, the Helsinki Final Act, as a document which "... does not identify enemies, nor even opponents or adversaries. OSCE (2019b, p. 51) it calls for cooperative security and concludes that security is indivisible." As Kosovo suffers most from a lack of integration in the international community, including in the Organization for Security and Cooperation in Europe, its actors need to realize that, while they continue to be divided in perceptions, there have been times when South-Eastern European countries became more united in solidarity with regards to improving each other's security. These endeavors were particularly evident in the efforts of the Serbian OSCE Chairmanship in 2015 and Albania's OSCE Chairmanship in 2020, where these countries pledged to provide security from a regional and international perspective.

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Part II
Special Section: Crisis, War and Conflict in Ukraine

Chapter 14
Introduction to the Special Section

Crisis and Conflict in Ukraine

A. Mihr and C. Pierobon

In July 2023, the OSCE Parliamentarian Assembly adopted the Vancouver Declaration during its 30th Session, condemning Russia's aggression and war crimes in Ukraine and calling for an end to the nuclear threat escalation fuelled by Russia's invasion of and so-called "special military operation" in Ukraine on the 24th of February 2022. Russian parliamentarians did not participate in the Assembly (OSCE, 2023).

Ever since, this invasion has been declared a violation of international law by the OSCE, UN, and EU, and a "war of aggression against Ukraine" by the ICC. This Special Section is dedicated to the events unfolding since February of 2022 and the responses by different states, organizations, and actors toward these.

Ukraine and the Russian Federation are member states of the OSCE, an organization that launched a war crimes investigation into actions taking place in Ukraine soon after the start of the war. In March 2023, the International Criminal Court (ICC) at The Hague issued warrants of arrest for two individuals in the context of the war in Ukraine, namely Russia's President Vladimir Putin and his Presidential Commissioner for Children's Rights, Maria Alekseyevna Lvova-Belova. The Chief Prosecutor of the ICC argued that both bear responsibility for the war crime of unlawful deportation of population, particularly the abduction of Ukrainian children, and unlawful transfer of people from occupied areas in Eastern Ukraine to Russia (International Criminal Court, 2023).

Before the issuance of the warrant, in February 2023, one year into the war in Ukraine, the United Nations (UN) General Assembly passed an 11-paragraph UN Charter-based resolution with an absolute majority of votes demanding that Russia

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"immediately, completely and unconditionally withdrew all of its military forces from the territory of Ukraine and called for a cessation of hostilities" (UN, 2023).

The UN member states called it a "new chapter of history" in which the world faced a choice between two paths, one of solidarity and collective resolution in the face of threats to peace and stability, and one of aggression, war, normalized violations of international law, and collapsed global action.

As opposed to the timid reaction to the annexation of Crimea in 2014, the EU provided a timely and unified condemnation of the "Russian Federation's unprovoked and unjustified military aggression against Ukraine" (EEAS, 2022). The condemnation was followed by concrete actions comprising humanitarian, military, and financial support for Ukraine, and unprecedented sanctions against Russia. Since Russia's military aggression, millions have sought refuge in the EU and neighbouring countries. Around €668 million has been provided in humanitarian assistance to help civilians affected by the war in Ukraine. An EU Temporary Protection Mechanism was activated to provide displaced persons residing in Ukraine on or before the 24th February 2022, with residency rights, access to the labour market, and access to housing, social welfare, and medical assistance for two years. Around €18 billion worth of macro-financial aid has been allocated for short-term financial relief, immediate needs, and infrastructure rehabilitation. Military equipment, supplies, and military training for the Ukrainian Army were offered under the European Peace Facility (EPF) and the EU Military Assistance Mission (EUMAM). In addition, since February 2022, 11 sanction packages have been imposed to weaken Russia's economy and deprive the country of critical technologies necessary to wage war (European Commission, 2023). Whereas the idea of "Strategic Autonomy" had already been introduced in the Global Strategy of 2016, the conflict taking place at the borders of Europe—which has often been framed as an attack on European borders—has prompted the EU to become a more self-reliant actor when it comes to its access to energy resources,[1] as well as critical materials and technologies, including in the defence sector.[2] Yet, despite European and Western countries in general strongly condemning the Russian aggression in Ukraine as unlawful and a clear violation of the UN Charter and International Law,[3] leading countries from the Global South, which constitute more than half of the world's population, have consistently refused to take a side in the conflict.

The Special Section is dedicated to this New Chapter of History. It highlights different countries and international organizations' reactions and perspectives on the war of aggression against Ukraine from February 2022 until the dates of the writing of these chapters. All chapters reflect the analytical views and expertise of the authors.

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[1] See, for instance, the REPowerEU plan aimed at "rapidly reducing (…) dependence on Russian fossil fuels by fast forwarding the clean transition and joining forces to achieve a more resilient energy system and a true Energy Union" (European Commission, 2022).

[2] See for instance, Act in Support of Ammunition Production (ASAP) and European Defence Industrial Reinforcement through common Procurement Act (EDIRPA).

[3] Of note, in the emergency session of the UN General Assembly of 2 March 2022, 141 of the 193 members states voted for a resolution deploring Russia's invasion of Ukraine and calling for an immediate withdrawal of its forces (UN, 2022).

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Chapter 15
Ukraine's European Integration in the Context of Russian Aggression

Maryna Reznichuk

15.1 Introduction

In the autumn and early winter of 2021, the leading European and American mass media sources mentioned, for the first time, the threat of a Russian invasion of the territory of Ukraine (Nardelli et al., 2021; Röpcke, 2021; Sonne et al., 2021; Thumann, 2021). This information raised a wave of discussions among the representatives of the international community and in the domestic political environment of Ukraine.

On 24 February 2022, Russian President Vladimir Putin announced the start of the so-called "special military operation" on the territory of Ukraine, which *de jure* and *de facto* was nothing but an armed conflict under the definition of Article 2[1] common to all four Geneva Conventions (Geneva Convention, 1949). However, qualifying the illegal actions of the Russian Federation since 2014, including the unlawful annexation and the occupation of Crimea and the military actions in the Donetsk and Luhansk regions, is the task of international adjudication bodies (Korynevych, 2014) and beyond the scope of this study. This chapter aims to determine the political and legal consequences of Ukraine obtaining the status of a candidate for EU membership.

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[1] "In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

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Launching the military aggression on behalf of the Russian Federation marked an irreversible and full-fledged orientation of Ukraine's foreign policy towards the European Union. The further intensification of Ukraine's foreign policy ties with the EU will mean, *inter alia,* continuing the process of reforming Ukraine's legal system as an essential condition for future EU membership. It is important to note that Ukraine receives support on its integration path. After Ukraine has obtained candidate status, it is already possible to assess the type of support the EU provides to the country, both in the short- and long term. The EU's support packages aim to rebuild critical infrastructure and provide initial assistance for sustainable post-war reconstruction. It is also important to mention that Ukraine has gained access to financial instruments like the Instrument for Pre-Accession Assistance (IPA). The purpose of the Instrument is to support necessary reforms by providing financial and technical assistance. In the long run, it further promotes Ukraine's integration and reform.

Since its independence in 1991, Ukraine has faced difficult choices of strategic cooperation. With the start of the full-scale invasion of Ukrainian territories by the Russian Federation, it became possible to move away from the brittle policy of balancing Russian and EU interests. The European vector of Ukraine's integration has been a priority since Ukraine became independent. Nevertheless, the Revolution of Dignity (2013–2014) was triggered by the refusal of the former Ukrainian President Viktor Yanukovych to continue preparations for the signing of the EU-Ukraine Association Agreement. Furthermore, it demonstrated the Ukrainian people's endorsement of a trajectory towards European integration. Russia's invasion of the country has convinced even more people among the Ukrainian electorate of the advantages of pursuing this course. This chapter deals with the potential new challenges faced by Ukraine since it obtained EU candidate status, such as implementing the seven recommendations made by the European Commission, which is a prerequisite for the start of accession negotiations. Special attention will be paid to the process of harmonization of the actual legislation as well as to the economic consequences of the new strategic course characterizing Ukraine's relationship with the EU. The chapter shows that Ukraine's candidate status for EU membership is not merely a symbolic gesture of solidarity but a catalyst for change regarding Ukraine's strategic orientation towards the EU as a priority partner.

15.2 The Legal Framework of Ukraine's Cooperation with the EU

The legal system of Ukraine is currently being reformed to create the legal conditions necessary for applying the norms, directives, and regulations of the European Union. This process encompasses adaptation and harmonizing the national legislation to EU legal standards. These and other related questions could be addressed through a legal

framework regulating the relations between Ukraine and the EU within the context of an unprecedentedly comprehensive list of areas of cooperation between the Parties.

At this point, a short historical digression is necessary to understand this chapter's subject fully. A significant and, at the same time, symbolic event was the signing of the Declaration on State Sovereignty of Ukraine on 16 July 1990,[2] that is, shortly before Ukraine gained independence. Chapter X, International Relations, proclaims:

> The Ukrainian SSR acts as an equal participant in international affairs, actively promotes the reinforcement of general peace and international security, and directly participates in the general European process and European structures (Declaration of State Sovereignty of Ukraine, 1990).

The Declaration of State Sovereignty is one of the first official documents that records Ukraine's aspirations to cooperate with the European Union (at the time of the signing of the Declaration, the European Communities). Notably, the European Communities were among the first to establish official relations with Ukraine (Tragniuk, 2016). In the Declaration on Ukraine, the European Communities noted the democratic nature of the All-Ukrainian Referendum. They called on Ukraine to maintain an open and constructive dialogue with the EU.

Later, cooperation between Ukraine and the EU intensified further. On 14 June 1994, the Partnership and Cooperation Agreement (PCA) (The European Communities and their Member States and Ukraine, 1994) was signed. This agreement effectively regulated Ukraine's relations with the EU since it covered the cooperation's political, economic, and socio-cultural aspects, clarifying the collaboration's legal features and specifics. Thus, the PCA created prerequisites for Ukraine's transition to the subsequent integration stage with the EU (Reznichuk, 2020).

Unlike the PCA, the Association Agreement (AA) (European Union, 2014) provides for different economic integration and political association levels. More precisely, the contractual mechanism provides for several legal obligations on the part of the state, which Ukraine has undertaken to fulfill by harmonizing its legislation and joining the international agreements specified in the AA.

Ukraine's current legislation directly related to European integration policy consists of the Constitution of Ukraine, which was amended, *inter alia*, on 7 February 2019 through the Law of Ukraine No. 2680-VIII. The law confirms the irreversibility of Ukraine's European and Euro-Atlantic course in acquiring a full-fledged membership in the European Union and joining the North Atlantic Treaty Organization (NATO) (Constitution of Ukraine, 1996). Apart from the Constitution of Ukraine, one should note the AA between Ukraine and the European Union, the European Atomic Energy Community, and its Member States, which establishes an association between Ukraine and the EU, as a central source of European integration legislation of Ukraine.

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[2] "The Verkhovna Rada of the Ukrainian SSR […], state Sovereignty of Ukraine as supremacy, independence, integrity, and indivisibility of the Republic's authority within the boundaries of its territory, and its independence and equality in foreign relations" (Declaration of State Sovereignty of Ukraine, 1990).

This agreement defines a qualitatively new format of relations between Ukraine and the EU on the principles of "political association and economic integration". It serves as a strategic guideline for systemic socio-economic reforms in Ukraine (Information note, Cabinet of Ministers of Ukraine, n.d.). The economic aspects have been implemented in force in the Deep and Comprehensive Free Trade Area (DCFTA) since 1 January 2016 (European Commission, 2016). The DCFTA is an integral part of the Association Agreement. The AA further contains forty-four Annexes, three Protocols and the General Declaration. The Annexes function as an instruction of sorts for the main body of the AA, and at the same time form the basis for cooperation and the implementation of reforms aimed not only at regulating trade relations between Ukraine and the EU but also at establishing the successful functioning of the zone of free trade. Furthermore, they contain schedules and timeframes for approximating the country's legislation to the EU standards in areas mostly related to business and trade (Title IV of the AA).

Apart from the above-mentioned sources of Ukrainian legislation concerning European integration, one should also consider the normative legal acts that regulate cooperation with the EU within the framework of bilateral bodies established based on the AA. Notably, these are decisions the Association Council takes, binding for the Parties (paragraph 1 of Art. 463 of the AA). In addition to the Association Council, the Association Committee is empowered to make decisions in the cases provided for within the AA and in the areas where the Association Council has delegated its authority to the Committee (paragraph 2 of Art. 465 of the AA).

A separate framework regulating the European integration policy of Ukraine is constituted by the normative legal acts that take the successful coordination of European integration as their task. One such act is the Law of Ukraine on the National Program for Adapting Ukrainian Legislation to the Legislation of the European Union. There are also several resolutions, such as the Resolution of the Cabinet of Ministers of Ukraine on the establishment of a Commission for the Coordination of the Implementation of the Association Agreement, the Resolution of the Cabinet of Ministers of Ukraine on the Government Office for the Coordination of European and Euro-Atlantic Integration, and the Resolution of the Cabinet of Ministers of Ukraine on the Implementation of the Association Agreement between Ukraine as one of the Parties and the European Union, the European Atomic Energy Community, and their Member States as the other of the Parties.

In obtaining the new candidate status for EU membership, Ukraine also received new obligations to adopt further legislation and amend current laws contained in the Opinion of the European Commission of 17 June 2022 (European Commission, 2022). This opinion took note of Ukraine's significant successes in reforming institutions that guarantee democracy, the rule of law, human rights, respect and protection of minorities, and the country's economic performance. Nevertheless, further steps need to be taken in various areas that include strengthening the fight against corruption, reformation of the Constitutional Court of Ukraine, a continuation of judicial reform in Ukraine, implementation of legislation on strengthening measures to counter money laundering, adoption of an anti-oligarch law and of the so-called Media Law, and amendment of the bill on national minorities.

The Ukrainian government began developing most of the reforms mentioned in the Opinion of the European Commission long before June 2022 (European Commission, n.d.). Nevertheless, political disputes in Parliament between the coalition and the opposition have significantly slowed progress in reaching a political consensus for faster integration and obtaining EU candidate status. For example, the reform of the Constitutional Court of Ukraine (CCU) changing the procedure for the competitive selection of judges based on assessing the integrity and professional skills of candidates was one of the critical issues. The Venice Commission has repeatedly stressed the necessity of improving the current system on the principle of transparency and competitiveness (CDL-PI, 2020; CDL-AD, 2022).

Similarly, the so-called laws on oligarchs and media are areas in which the EU has made it clear that it expects significant developments in harmonizing national legislation with EU standards.

The Law on Oligarchs, officially the "Law on the Prevention of Threats to National Security associated with Excessive Influence of Persons with Significant Economic and Political Weight in Public Life," was adopted on 23 September 2021, and by June 2022, the President of Ukraine had signed a decree on the Establishment of the Register of Oligarchs. It is worth noting that the Register of Oligarchs is still being formed. It can be argued that until there is no Opinion of the Venice Commission on this law, it is impossible to answer whether this law satisfies the EU requirements.

Nevertheless, considering the speed of the political decision-making process in Ukraine, a political consensus works in the country's favor when it comes to achieving the goals set to obtain full membership in the EU. Three years ago, Ukrainian parliamentarians tried to adopt the "Law on Media." A draft Law was registered, but in May 2020, the Verkhovna Rada (parliament of Ukraine) returned the law for revision. Nowadays, however, an unyielding political will is written in this regard. On 30 August 2022, the Ukrainian parliament adopted in its first reading a new draft Law on Media (Verkhovna Rada of Ukraine, 2022a). On 29 December 2022, the President of Ukraine signed the law (Verkhovna Rada of Ukraine, 2022b). This is a significant political development since the law is part of the so-called European integration package, and its adoption will accelerate Ukraine's accession to the EU.

The existing political architecture of the Ukrainian parliament has undergone significant changes since Russia's full-scale invasion: this has manifested itself in the absence of an opposition wing. Following Presidential Decree No. 153/2022 (President of Ukraine, 2022), a Decision of the National Security and Defense Council of Ukraine of 18 March 2022 to suspend the activities of certain political parties has been enacted. Consequently, the parties specified in the decision have suspended their actions during the legal regime of martial law in Ukraine.

The composition of the parliament has therefore favoured to forming a unified, coherent position regarding Ukraine's future integration into Europe. Furthermore, the Russian Federation's invasion of Ukraine contributed to the elimination of pro-Russia-minded Ukrainian political parties that, in one way or another, had lobbied for the interests of the Russian government. The existing political consensus favors harmonizing the national legislation with the EU and facilitates the path toward negotiations on the country's EU accession.

15.3 Ukraine's Europeanization

The concept of *Europeanization* in the Ukrainian legal doctrine is a relatively new subject of study as Ukraine gained independence quite recently in 1991. Having reformed its legal system, which was composed to a significant part of Soviet legislation, and become an independent and full-fledged subject of international law, Ukraine gained the power to determine its foreign policy regardless of the political desires and whims of its neighbors. The new autonomous vector of Ukraine's foreign policy and the reform of its legal system is inextricably linked to the process of Europeanization. This process is often defined identically to that of *European integration* and even that of *Euroization.* Europeanization is in this chapter conceived of as the process of integration of the EU legislation into the legal order of Ukraine based on the country's commitment to international legal obligations within the framework of the European integration process. These obligations arise based on agreements between Ukraine and the EU, such as the AA, and Ukraine's accession to international documents and treaties.

Ukraine's new status as a candidate for EU membership raises the question of whether changes will be introduced in the existing AA or a new agreement will be adopted. Guillem Van der Loo and Peter Van Elsuwege, for example, believe that in combination with financial assistance and new forms of sectoral integration in EU key policy areas (for example, the transition to "green" and digital technologies), the current cooperation agreements remain the most appropriate tools for the further development of these bilateral relations (Van der Loo & Van Elsuwege, 2022). In addition, the dynamic nature of these agreements, combined with the genuine prospect of accession, implies that both the EU and Ukraine can reorient their arrangements to new and more ambitious forms of political association or economic integration and even adapt to the context of pre-accession, employing a staged approach (ibid.).

A change can already be observed in the EU's approach to its enlargement—for both candidate and full member status—based on the example of Ukraine. On 28 February 2022, Ukraine applied for membership in the European Union. By 7 April, Ukraine had already received the questionnaire required to obtain candidate status for EU membership. Nearly a month later, Ukraine handed the completed second part of the questionnaire to the EU. On 17 June, the European Commission recommended granting Ukraine the status of a candidate for EU membership, and on 23 June at the meeting of the European Council, the status of candidate country was granted (Council of the EU and the European Council, 2023).

It can be cautiously argued that Russia's full-scale invasion of Ukraine has contributed—if such a word may be appropriate—to this course of events. For the first time in history, the EU has given the status of candidate for EU membership to a country on whose territory a war is taking place and with parts of the territory temporarily occupied. Moreover, this decision was taken as a part of an unprecedentedly accelerated procedure.

Yet, what are the new challenges Ukraine faces after obtaining candidate status? Firstly, Ukraine, as a newly minted candidate for EU membership, needs to reconsider

the format of its cooperation with the EU. More precisely, the country needs to take into account the current realities and assess, from a practical point of view, the timing of harmonization of the Ukrainian legislation in accordance with the EU legal system. Furthermore, the implementation of the seven recommendations issued by the European Commission will not automatically lead to the start of the negotiations. To launch these, Ukraine will have to work on building consensus within the EU (Mathernová, 2022). Noteworthy, the process of negotiations remains the main challenge for Ukraine, considering the tragic and extremely unpredictable conflict taking place in its territory. Another factor contributing to the unpredictability of the negotiation process is a change in the procedure introduced by the EU. Indeed, on 5 February 2020, the European Commission proposed changing the EU accession process, indicating that it would be made more credible, dynamic, and predictable (European Commission, 2020). Concerning the Ukrainian case, it is difficult to argue that the accession procedure will be predictable for any Party. Among other things, the lack of predictability stems from the fact that the new procedural design is not being used in the Western Balkans (namely for Albania, Northern Macedonia, Montenegro, and Serbia), for whom this procedure was developed in the first place.

Finally, another major issue concerns the application of the AA between Ukraine and the EU in the territories temporarily occupied by Russian troops—that is, the territorial application of the provisions of this agreement. According to Article 483 of the AA, the territorial application of the Agreement's requirements covers Ukraine's territory. From the point of view of the national legislation, the territory of Ukraine temporarily occupied by the Russian Federation is an integral part of the territory of Ukraine, which is subject to the Constitution and laws of Ukraine, as well as international treaties (Verkhovna Rada of Ukraine, 2014). The European Union and the UN General Assembly have repeatedly affirmed their commitment to Ukraine's sovereignty, political independence, unity, and territorial integrity within its internationally recognized borders. In particular, the UN General Assembly has emphasized both the invalidity of the so-called "referendum" held in Crimea on 16 March 2014 and the invalidity of the pseudo-referendums held on the territory of the so-called Luhansk and Donetsk People's Republics as well as in Kherson and Zaporizhzhia regions (UN General Assembly, 2014, 2022).

15.4 Ukraine's EU Candidate Status: A Favor or Well-Deserved Reward?

The possibility of Ukraine obtaining candidate status for EU membership began to appear less illusory and distant with the beginning of Russia's full-scale invasion on 24 February 2022. Recalling the historical events that preceded the country's long-awaited signing of the Association Agreement with the EU, questions arise about how fast European integration would have proceeded if Russian troops had left the country in peace, ceasing military aggression on its territory.

This question has no unequivocal answer. It has to be studied comprehensively, considering the political situation and the existence of a political consensus in the EU regarding the response to the armed aggression of the Russian Federation since 2014. Indeed, only with the beginning of the full-scale invasion and war of agression by the Russian Federation the European Union started forming a unified position. This included condemning the armed aggression of the Russian Federation, imposing sanctions that significantly weakened and continue to weaken the Russian economy, and closing the issue of commissioning the Nord Stream-2 gas pipeline. Thus, obtaining the status of a candidate for EU membership in such a short time can be seen for Ukraine as a "reward" for the courage shown in the war.

Nonetheless, while Ukraine received the status of a candidate country for membership in the European Union on 23 June 2022, this significant historical event resulted from the fact that Ukraine had begun its European integration path long before the AA with the EU. This chapter provided an overview of the acts of national legislation that set down Ukraine's aspirations to harmonize its laws with the standards of the EU. On 5 September 2022, the EU and Ukraine held the 8th meeting of the Ukraine-EU Association Council in Brussels. The Association Council strongly approved Ukraine's steps to bring its legal system closer to the EU standards. Among other points, the Association Council appreciated Ukraine's decision to ratify the Istanbul Convention and the appointment of a new Head of the Specialized Anti-Corruption Prosecutor's Office. The Association Council also noted the progress achieved through reforms in anti-corruption, anti-fraud, anti-money laundering, and the rule of law (Council of the European Union, 2022).

Ukraine faces a complicated and bureaucratic path toward joining the EU as a full member. However, as mentioned above, the military actions on the country's territory are unpredictable factors that can both speed up the process of obtaining membership and slow it down. As noted by Olha Stefanishyna in this regard:

> We do not want the process of our accession to the EU to be a bureaucratic one. Of course, we, as a state, are demonstrating our ability to go through all the necessary legal procedures related to membership, but we do not want politicians and the EU leaders to reduce this process to bureaucracy. Taking into account the challenges that Ukraine is facing, and the fact that the devotion of the Ukrainian people and Ukraine to the principles of democracy is obvious, as well as the fact that we have fulfilled almost 70% of all obligations under the Association Agreement, gives us the possibility to say that we do not have to be evaluated from zero, that political decisions have to be made instead. And we want to get such political clarity by the end of the year (Stefanishyna, 2022).

15.5   Conclusion

Emerging from the collapse of the Soviet Union, Ukraine did not act as a separate subject of international law endowed with the ability to determine its country's foreign policy independently. Having acquired independence, Ukraine has changed the vector of its foreign policy more than once, with its geopolitical location counting

as a significant determinant. The first normative legal acts adopted by Ukraine as an independent state to define its foreign policy vector were aimed at European integration. Post-Soviet Ukraine has gone through a series of tragic events linked to its citizens' attempt to defend their right to choose an independent development path. The European Union, Ukraine's prioritized partner in a significant list of cooperation areas, strongly encouraged European integration. The political instruments that have accelerated Ukraine's European integration are the European Neighborhood Policy and Eastern Partnership, which aims to strengthen relations with the EU's eastern neighbors.

The regulatory framework for cooperation between Ukraine and the EU includes the Partnership and Cooperation Agreement and the Association Agreement, among other documents. The latter can be considered a symbol of the Ukrainian people's struggle to join the European family. After all, the Revolution of Dignity taking place in Ukraine in November 2013 was accompanied by demands to sign the AA with the EU and return to a course of European integration, as well as by demands for the resignation of the government led by the pro-Russian President Yanukovych—the leader who refused to sign the AA and later fled from the country to Russia. It is inevitable to draw a connection between the tragic events of 2013–2014, which resulted in a local military confrontation in eastern Ukraine and the illegal occupation of Crimea, and the beginning of the full-scale army invasion by the Russian Federation of the territory of Ukraine on 24 February 2022.

Despite Russia's aggression, Ukraine has strengthened its position on EU accession, and the EU responded positively by granting the country the status of candidate for membership. A new form of cooperation has been launched between the Parties, and its results largely depend on Ukraine's fulfillment of the obligations defined in its AA with the EU.

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Chapter 16
Italian Governments and Political Parties Vis-a-Vis the War in Ukraine

Valerio Alfonso Bruno and Federica Fazio

16.1 Introduction

Russia's war in Ukraine, and whether to provide military assistance to Ukraine, remains a controversial issue in Italian politics at both the government and political party levels. The bloody war unleashed by the Russian Federation on February 24, 2022, was, alongside the COVID-19 pandemic, the primary focus of the former Prime Minister Mario Draghi's national unity government. Draghi's military assistance to Ukraine, the authors believe, was the main, although not the only, reason behind the political fallout in the summer 2022. This support remains critical and seemingly unwavering under the current Prime Minister Giorgia Meloni and her right-wing coalition government.

Therefore, this chapter aims to dive into the positioning of the previous and the current Italian governments and how the political parties have been positioning themselves vis-à-vis the Ukrainian war. Draghi's government, its response to the conflict, and its military, political, humanitarian, and economic support to Ukraine is one aspect of this chapter. Another one is the posture of the Meloni executive concerning

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the invasion will also be discussed. Then, in the second part of the chapter, the attention will shift to the main Italian political parties–namely Fratelli d'Italia, Lega, Forza Italia, Partito Democratico, Movimento Cinque Stelle, Italia Viva and Azione, also known as Terzo Polo, and their leaders' positions.

16.2   Draghi's Government Vis-a-Vis War in Ukraine

Since Russia's unprovoked and unjustified invasion began on February 24, 2022, Italy has supported Ukraine's sovereignty and territorial integrity in international fora and assisted it militarily, humanitarian, and economically. The government led by "Statesman of the Year"[1] Mario Draghi did not hesitate to condemn the war, stand with Ukraine, and take all necessary measures. On February 25, just one day after the Kremlin launched its military aggression, then-Prime Minister Draghi declared a state of emergency to provide Ukraine with the support and assistance it so desperately needed, and still needs. Three days later, on February 28, Mr. Draghi declared a new state of emergency, this time with the aim of specifically addressing the economic and humanitarian fallout from the war in Ukraine. The two decree-laws, which became known as "the Ukraine decree" (Official Gazette, 2022a) and "the Ukraine decree bis" (Official Gazette, 2022b), include a set of urgent measures in the military, humanitarian and economic sphere designed to address the Ukraine crisis. The first would be later converted into law, while the second incorporated into the law and abrogated during the conversion process (Official Gazette, 2022e).

Mario Draghi's government condemned Russia's decision to invade Ukraine and all the attacks and illegal annexation attempts that have taken place since February 24 in the strongest possible terms. Contrary to how past administrations reacted to Russia's invasion of Crimea, Draghi took an unequivocally firm stance towards Russia's war of aggression in Ukraine. Not only did Draghi distance Rome from Moscow (and Beijing), reversing decades of dependence on Russian energy, and vocally reaffirm the importance of the transatlantic bond with Washington through NATO, the G7, G20 and other international formats (Coratella & Varvelli, 2021), but he also pushed for EU sanctions against Russia and for granting Ukraine official EU candidate status (Fazio, 2022).

Despite initially opposing measures involving energy imports from Russia (Financial Reuters, 2022a; Times, 2021) and cutting Russia out of the SWIFT international banking payments system (Saini, 2022), the former Head of the European Central Bank would eventually be the one to pressure for a "price cap" on Russian gas (Euractiv, 2022) and for sanctions targeting Russia's Central Bank (Pop et al., 2022).

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[1] On September 19, Italian Prime Minister Mario Draghi received the 2022 World Statesman Award from former US Secretary of State Henry Kissinger at the 57th Annual Awards Dinner of the Appeal of Conscience Foundation, for "his long-time multi-faceted leadership in finance and public service that has benefited Italy and the European Union and has helped international cooperation". See https://www.governo.it/en/articolo/il-presidente-draghi-riceve-il-world-statesman-award/20540.

Draghi notoriously supported Ukraine's bid for EU candidacy and persuaded French President Emmanuel Macron and German Chancellor Olaf Scholz during a joint trip to Kyiv last June. The picture of the "Big Three" European leaders united around a table on a train *en route* to Kyiv will undoubtedly go down in the history books. Draghi also held repeated calls with Ukrainian President Volodymyr Zelensky and Russian President Vladimir Putin to convince the Russian President to sit at the negotiating table and agree to a ceasefire. He might not have succeeded in his intent, still, his repeated calls with Putin contributed to unblocking over 20 tons of grain stuck in Ukraine's Black Sea ports, avoiding a food catastrophe (Orlandi, 2022).

In the UN, Draghi's government was among the main sponsors. It was actively engaged in drafting Resolution ES-11/1 on the aggression against Ukraine adopted in the 11th emergency special session of the United Nations General Assembly (UNGA) with 141 in favor, five against (namely Russia, Belarus, North Korea, Syria, and Eritrea) and 35 abstained (including China) (Al Jazeera, 2022). Two months later, Italy's then-Minister of Foreign Affairs Luigi Di Maio presented a four-step peace plan to UN Secretary-General Antonio Guterres involving: (1) a cease-fire accompanied by supervisory mechanisms and the demilitarization of the front lines, (2) an international political guarantee about Ukraine's neutrality, which would leave its EU candidate status untouched, (3) a bilateral agreement between Presidents Putin and Zelensky on the future of Crimea and the Donbas region, and (4) a multilateral peace agreement between the EU and Russia. The EU would essentially drop its sanctions in exchange for a staged withdrawal of Russian troops from Ukrainian territory (Ciriaco, 2022). The plan did not go down well with Kyiv (Reuters, 2022b) or Moscow (Ansa, 2022a, 2022b), however, and was quickly put aside.

16.3   Humanitarian and Economic Assistance

In 2022, Draghi's Italy donated a little over €130 million in humanitarian aid to Ukraine (of which €110 million was in direct budget support) through the Italian Agency for Development Cooperation (AICS) (Open AID–AICS, n.d.). Since February 2022, Italy has supported humanitarian initiatives in Ukraine by various international organizations (the EU, the UN, the OSCE, the OECD), NGOs, and civil society organizations.

Within the EU framework, Italy has provided Ukraine with in-kind assistance (e.g. medical supplies and healthcare materials, shelter items, and vehicles) through the EU Civil Protection Mechanism (EUCPM) (European Commission, 2022a; 2022b), an EU mechanism established by the European Commission in 2001 to facilitate cooperation between EU member states and participating countries in the event of both natural and man-made disasters (European Commission, 2022a). Italy also supported the Commission's decision to allocate up to €9 billion to support Ukraine's relief and reconstruction (European Council, 2022). It contributed to the approval on May 24, 2022, of a Council of the EU's regulation allowing for temporary trade

liberalization and other trade concessions related to certain Ukrainian goods to help the faltering Ukrainian economy (Council of the EU, 2022a, 2022b, 2022c).

In the UN, Italy voted in favor of the UNGA Resolution on the humanitarian consequences of the aggression against Ukraine adopted on March 24 (UN, 2022a), the resolution suspending Russia from the Human Rights Council on April 7 (UN, 2022b), and that condemning Russia's attempted illegal annexation of four Ukrainian regions (Donetsk, Kherson, Luhansk and Zaporizhzhia) on October 12 (UN, 2022c). Moreover, the country joined UN Agencies on the ground. It contributed to financing a €10 million project in cooperation with UNHCR in Moldova to help improve the country's reception and assistance capacity, explicitly focusing on minors and vulnerable people in need. Additional projects were developed in cooperation with the IOM and UNICEF.

In the OSCE, Italy supported the decision to activate the OSCE Moscow Mechanism on the Human Dimension and launch a mission of experts to address Russia's human rights violations and abuses committed on Ukrainian soil. The mechanism allows OSCE participating States to request that an ad hoc mission of independent experts be launched to investigate adherence to the OSCE's human dimension commitments in their own territory or in that of another OSCE member (OSCE, n.d.).

In the OECD, Italy played a key role in the decision adopted by the Council to suspend Russia's (and Belarus') participation in OECD bodies (OECD, 2022a). In addition, as Chair of the 2022 Ministerial Council Meeting, Italy pushed to discuss the crisis in Ukraine at the Council meeting at the ministerial level that took place in Paris in June 2022 (OECD, 2022b).

Additionally, in its role as President of the Committee of Ministers of the Council of Europe, on March 16, 2022, the country presided over the Committee's decision to exclude the Russian Federation from the Council of Europe after 26 years of membership (Council of Europe, 2022).

It is also worth mentioning that Italy has actively supported Ukrainian initiatives meant to address ongoing human rights violations. In March 2022, the country joined a group of International Criminal Court (ICC) member countries in their referral of the situation in Ukraine to ICC Prosecutor Karim Khan (ICC, 2022). It also committed a voluntary contribution of €500 million to the Trust Fund established by the Office of the Prosecutor in response to his request to all State Parties to the ICC to assist his overburdened office. The Italian government also expressed its availability to deploy national experts to support the Court's investigations and has made additional contributions to the trust fund for victims. Furthermore, when Ukraine applied to the International Court of Justice (ICJ) to initiate proceedings against the Russian Federation under the Convention on the Prevention and Punishment of the Crime of Genocide, not only did Italy support the move but, in a joint statement (EEAS, 2022), it also expressed its intention to intervene in the proceedings and share its interpretation of some essential provisions of the 1948 Genocide Convention, to avoid any misinterpretation or abuse of the Convention mentioned above.

At the national level, Italy has implemented the Council of the EU Implementing Decision (EU) 2022/382 of March 4, 2022 (Council of the EU, 2022a, 2022b, 2022c), to provide temporary protection in EU countries for people displaced by the Russian

invasion of Ukraine following EU Directive 2001/55/EC. According to the UNHCR (2022), as of October 2022, over 170.000 Ukrainian refugees have sought shelter in Italy, making it the fourth European destination for fleeing Ukrainians after Poland, Germany, and the Czech Republic. This led Draghi's government to adopt several measures between March and September 2022 (Department of the Civil Protection, 2022a, 2022e; Official Gazette, 2022c, 2022d, 2022f, 2022g, 2022h) to accommodate and integrate fleeing Ukrainians. These involved the Department for Civil Protection (Department of the Civil Protection, 2022b, 2022c, 2022d, 2022f, 2022g, 2022h, 2022i, 2022j, 2022k, 2022l, 2022m), regions, provinces, prefectures, local authorities, the third sector, and civil society. Over €800 million (ONUItalia.com, 2022) were spent to support Ukrainian refugees in Italy throughout Draghi's tenure.

On February 24, Italy sent an offer of humanitarian assistance to the Ukrainian government through the EU *Common Emergency Communication and Information System (CECIS),* a mechanism established by the European Commission in 2001 to facilitate communication and information sharing during civil protection assistance interventions.[2] The offer was accepted by President Zelensky the next day, as were the other two offers the Italian government would submit on March 4 and 5, 2022. Since then, the Italian Ministry of the Interior has progressively increased the capacity of both, first, *the Reception and Integration System (SAI)* and, second, *the Centers for Extraordinary Hospitality (CAS)* reception systems. In addition, to make Italy's response at the national level more uniform, the Department for Civil Protection adopted a plan for the reception and assistance of Ukrainian people, as well as additional measures to increase receptive capacity. The Department, regions, autonomous provinces, prefectures, local authorities, and the third sector all play an important role in providing first reception services. Additionally, regional coordination structures have been created to adequately manage reception services and ensure assistance is given to all new arrivals.

In conclusion, Mario Draghi's support for Ukraine was steadfast on all fronts: political, economic, humanitarian and military. Appearing in front of the UNGA for the last time as Prime Minister of Italy last September, Draghi defended that support and stressed that 'helping Ukraine protect itself wasn't just the right choice to make, it was the only choice' (Draghi, 2022).

16.4 Meloni's Government Vis-a-Vis the War in Ukraine

Fratelli d'Italia was the undisputed winner of the Italian election held on September 25, 2022. The election was characterized by a high level of abstention and hence the lowest turnout ever at under 64%, and saw the victory of the right-wing coalition, with 43.79% and 44.02% preferences obtained, respectively, in the Chamber of the Deputies and the Senate of the Republic (Bruno, 2022b, 18–19). The party led by

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[2] For more information on CECIS, please visit https://ec.europa.eu/echo/policies/disaster_response/cecis_en.htm

Giorgia Meloni obtained an excellent performance in both Houses, with around 26% of the vote. In comparison, her opponent, Matteo Salvini's League, emerged weakened with about 8.8%, followed closely by Silvio Berlusconi's Forza Italia, at slightly above 8%. On the other hand, the center-left coalition, led by the Partito Democratico of Enrico Letta reached about 26% in the two Houses of Parliament, the Movimento Cinque Stelle led by Giuseppe Conte 15.5% and Azione-Italia Viva about 7.7%. The results thus showed a certain continuity, while also making it undeniable that there has been an intra-coalition balance shift, continuing a process already begun several years ago (Castelli Gattinara & Froio, 2021).

It is still too early to express an opinion on whether Meloni's government has handled the Ukraine 'dossier' with continuity or change compared to the approach taken by the Draghi government. From the information and statements of the new executive members, starting with Crosetto and Tajani, respectively Ministers of Foreign and European Affairs, and Giorgia Meloni herself, it is very likely that Italian policy towards Ukraine will be marked by continuity with the previous executive. In fact, the sixth inter-ministerial decree for arms shipment to Ukraine in 2023 was officially passed in January 2023 (Ministry of Defence, 2023f), in continuity with the previous five decrees managed by the Draghi government.

16.5 Italy's Political Parties Vis-a-Vis the War in Ukraine

Except for only the Fratelli d'Italia, all Italian parties supported the executive led by Mario Draghi until the day of his resignation, announced on 14 July and formalized a week later on 21 July 2022. As we have observed, the government crisis of July 2022 involved complex dynamics that cannot be ascribed to one political party and one dossier. It is undeniable that, already by the spring of 2022, numerous tensions, particularly with the Five-Star Movement (Fazio & Bruno, 2022), had destabilized the executive with Italy's military aid to Ukraine and compliance of the annual defense budget with NATO country defense expenditures as envisaged by NATO.

16.5.1 Fratelli d'Italia

Fratelli d'Italia (FdI, Brothers of Italy), just like PD under Letta's leadership, has unhesitatingly supported military and economic aid for Ukraine and sanctions on Putin's Russia, both during Mario Draghi's government (when it was the only opposition party) and in the current governing majority, where it represents the central party of the coalition that won the September 25, 2022 election. From the beginning of the Russian invasion of Ukraine, Meloni had indicated that FdI fit fully into the shared line drawn by the European institutions and the Atlantic alliance. Already in March 2022, Meloni said,

An unacceptable aggression has been made against Ukraine. [...] It is right for the Italian government to remain united with the allies and move with them. On arms, I remember that the Latins used to say that if you want peace you must prepare for war. The government is doing well, we have approved what has been done so far. Even if the executive is not proving to be listened to internationally. Draghi continues to be excluded (Amato, 2022).

It is important to note that the strongly "Atlanticist" and "pro-European" line of FdI has often been viewed with suspicion in Italy and abroad, as on some occasions, Meloni and other party members have not hidden their admiration for Putin's Russia. For instance, in her autobiography, Meloni states, "[...] but Russia is part of our European value system, defends Christian identity and fights Islamic fundamentalism" (Meloni, 2021: 317).[3] However, on these points, even before Meloni was sworn in as Italy's new Prime Minister, she had reiterated,

One thing I have been, am, and will always be clear about. I intend to lead a government with a clear and unequivocal foreign policy line. Italy is fully, and with its head held high, part of Europe and the Atlantic Alliance. Those who do not agree with this cornerstone will not be able to be part of the government, at the cost of not being in the government,

and then

Italy with us in government will never be the weak link of the West, the unreliable nation so dear to many of our detractors. It will relaunch its credibility and thus defend its interests. On this I will demand clarity from all the ministers of an eventual government. The first rule of a political government that has a strong mandate from the Italians is to abide by the program that the people voted for (Sky, 2022b).

Even at the political program level (Fratelli d'Italia, 2022), FdI has clearly reiterated its alignment with NATO and the European Union. In point 25 of that program it is written,

For a foreign policy focused on the protection of the national interest and the defense of the Homeland. Full respect for our international alliances, including by adjusting Defense allocations to the parameters agreed upon in the Atlantic Alliance. Standing alongside our international allies in supporting Ukraine in the face of aggression by the Russian Federation. Relaunching the system of European integration, for a Europe of Homelands, founded on the interest of peoples and capable of facing the challenges of our time.

After the victory in the general election of September 25, 2022, in one of her first statements as PM (27 October 27, 2022), Meloni said in the Senate of the Republic that "The only way to facilitate a negotiation is for there to be a balance between the forces on the ground", and "peace is achieved by supporting Ukraine, allowing it to defend itself, is geopolitics" (Fatto Quotidiano, 2022).

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[3] In this chapter all translations from Italian have been produced by the authors. Originally: "[...] ma la Russia è parte del nostro sistema di valori europei, difende l'identità cristiana e combatte il fondamentalismo islamico."

16.5.2   *The* Lega

The right wing, *Lega* (the League) led by Matteo Salvini, is the Italian political party that has maintained the most ambiguous positioning concerning the support for Ukraine and the condemnation of the war unleashed by Russia. The proximity of the Salvini-led party to Putin, his political party (United Russia), and his power circles is a topic that continues to be much debated despite some evidence concerning funding for the League (La Stampa, 2022). Salvini and other members of the League have on many occasions stated that they do not view either Italy's sending of arms to Ukraine or its support for sanctions against Russia favorably. In May 2022, Salvini said, "I have talked about ceasefire and disarmament, so these go by a stop of sending weapons" (Adnkronos, 2022a). Salvini had repeatedly expressed to then PM Draghi his disagreement with sending Italian arms to Ukraine without success. There have also been significant clashes with ally Fratelli d'Italia regarding sanctions against Russia. During the election campaign in September 2022, Salvini had expressed, provoking dry remarks from Meloni, the belief that "Sanctions are fueling the war. Many businessmen are asking me to review them. The Italians are losing out, and the Russians are gaining, so in Brussels, there is someone who has miscalculated", and, still on sanctions, "They are not working, rethinking the strategy is essential to save jobs and businesses in Italy" (Giustetti, 2022).

The League's poor electoral performance (just over 8%) in the general election of September 25, 2022, could have a significant impact in the coming months on the durability and stability of the Meloni's government, as Lega may be tempted to bring down the current government rather than continue to lose party consensus (after all, the instability of the Italian political system is a well-known and well-documented fact).

16.5.3   *Forza Italia*

Forza Italia's positioning vis-à-vis the issue of support for Ukraine has always been controversial. Notably, statements by the former party president Silvio Berlusconi have often diverged from the party's official line, with numerous "corrections" by the party coordinator Antonio Tajani and communications officers who have often spoken of phrases being analyzed "out of context". The European People's Party (EPP) has found itself forced, on numerous occasions, to have to reiterate on social media and with much embarrassment, the alignment of Forza Italia and Berlusconi with its own positions (EPP, 2022a) or even show satisfaction with Forza Italia's election results, confident that "Forza Italia will guide the next government into a path that serves the best interests of the Italian people as part of a strong and stable Europe" (EPP, 2022b).

On the one hand, on almost every occasion concerning a vote in parliament, Forza Italia supported the government led by Draghi. On the other hand, back in May 2022, Silvio Berlusconi had already clearly stated,

> We have no leaders in the world, we have no leaders in Europe. One world leader who was supposed to approach Putin at the mediation table called him a war criminal and said he had to leave the Russian government. NATO said that the independence of the Donbass would never be recognized […] You understand that with these premises, Mr. Putin is far from sitting at a table (Sky, 2022a).

Moreover, as for the Draghi government crisis, while it is true that the Five-Star Movement triggered it with several dossiers, including military support for Ukraine and the annual defense budget, it is undeniable that Forza Italia and the League also contributed to the downfall of the government headed by the former president of the European Central Bank, saying that they would not support a government also formed by the Five-Star Movement (Rai News, 2022).

The second time, on 18 October 2022, in an audio recording (it is unknown whether it was recorded with or without Berlusconi's knowledge), it is possible to hear the president of Forza Italia stating, among other things, that Russians feel at war with Italy because Italy gives weapons to Ukraine (Open, 2022).

In conclusion, as for the League, statements and declarations by Silvio Berlusconi on Russia and Ukraine (but not only on these topics), whether recorded voluntarily or not, risk jeopardizing Italy's right-wing coalition and the Meloni executive in the next months.

16.5.4   *Partito Democratico*

The *Partito Democratico* (PD, Democratic Party) under the former Prime Minister Enrico Letta consistently supported the then Prime Minister Draghi government's policies on the war in Ukraine, even when part of the party did not seem to agree with the line held by the secretary completely. In fact, albeit with some nuances,[4] the leadership of Letta has always shown agreement with Draghi on support for Ukraine in terms of humanitarian, economic and military support for Kiev and sanctions against Russia (Antonini, 2022). On 25 April 2022, the news of Letta being contested during the celebration of the *Festa della Liberazione*, a national holiday of the Italian Republic commemorating the liberation of Italy from Nazi-fascism, the end of the Nazi occupation, and the definitive fall of the fascist regime, caused a sensation. During the demonstration in Milan, Letta was labelled a "servant of NATO" by a large group of demonstrators, who intended to chase the PD secretary away from the procession (Ansa, 2022a, 2022b).[5] After the general election of 25 September 2022,

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[4] In June 2022, Letta had, for example, stated "A peace that is not completely just is more just than the continuation of war", see: Palma (2022).

[5] Similarly, on 5 November 2022 Letta was contested during a demonstration for peace in Rome. See: Adnkronos (2022c).

with the PD obtaining a modest electoral result (19% in the Chamber of Deputies and in the Senate of the Republic), Letta announced a party congress and primaries (March 2023) to elect a new secretary (Floridia, 2022), resulting in the election of Elly Schlein. Now, it is not easy to understand whether the new PD secretary will confirm Letta's line, who decided not to run again (i.e. strong support for Ukraine) or will opt for a different line closer to that one expressed by the Five-Star Movement led by Giuseppe Conte (Cundari, 2022).

16.5.5   Movimento Cinque Stelle

Movimento Cinque Stelle (M5S or Five-Star Movement) is the Italian party that more fiercely has disagreed on supporting Ukraine with weapons, both during the Draghi and Meloni executives.[6] As Bruno (2022b: 168–169; see also Bruno & Cozzolino, 2022; Fazio & Bruno, 2022) has pointed out, until the resignation of Draghi in July 2022, the party led by former PM Giuseppe Conte had, since September 2019, been in an alliance with the PD that saw the two parties form a government (Conte cabinet II), and later supporting the Draghi executive. In this period, the ideological stance of the M5S had seemingly shifted from ambiguous populist positions to pro-EU, moderate and liberal positioning. This shift, strongly supported by at the time foreign minister Luigi Di Maio, seemed to hold firm until the debate on arming Ukraine following Russia's invasion in late February 2022. In fact, the political willingness of the executive branch to arm Ukraine inflamed discussions over defense investments and increases to the country's defense budget. On 21 June, Di Maio quit the M5S: the *casus belli* were indeed the supply of arms to Ukraine and, more generally, Italy's international positioning, namely its support for NATO and recent EU decisions which had, according to Di Maio, been insufficiently supported by the M5S, currently led by Giuseppe Conte. Earlier, in spring 2022, a heated debate among the political forces supporting the government led by Draghi took place. Draghi appeared rather appalled (going as far as to inform Italian President Sergio Mattarella) by the remarks made by Conte, who argued against increasing the Italian defense budget at a point when the country was still grappling with the COVID-19 health crisis and its socio-economic fall-out. Subsequently as we have seen, for various reasons (related both to local situations and Italy's international positioning), a government crisis was triggered, first by the M5S' hesitations and then by Lega and Forza Italia's lack of confidence in the Draghi executive, leading to election in September 2022.

Following the general election of 25 September 2022, the M5S obtained only 15,5% and the beginning of November 2022, Giuseppe Conte stated about the war:

> There are citizens marching, telling the Italian government, and others, that we are tired of this strategy, which only envisages military escalation. We want a peace negotiation, a difficult one, to be built, but we must make it. This cry rises loudly from the silent majority

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[6] However, it is important to note that during the parliamentary votes the Movement's MPs voted in favor of sending weapons, following the line of the Draghi cabinet.

of the country. [...] I heard Minister Crosetto saying that the government is preparing to make the sixth arms shipment to Ukraine. The government does not dare to proceed without having consulted parliament, all the more so since it is no longer a government of national unity but a political one (Sole 24 Ore, 2022).

It is therefore possible to say that the Five-Star Movement since the leadership of Conte is increasingly trying, also at the level of narratives, to position itself as a pacifist party, an alternative to center-left PD and attentive to the discontent of Italians who are suffering from inflation due to the energy crisis.

16.5.6 *Italia Viva and Azione*– **Terzo Polo**

Italia Viva (Iv), and his leader, Matteo Renzi, have always been in support of Draghi's government, including on military supplies to Kyiv. Former Prime Minister, Renzi has on numerous occasions labeled as crucial the sending of arms to Zelensky, while never ceasing to emphasize the importance of seeking a diplomatic solution. Even his current ally in the Third Pole, the leader of the recently established party Azione, Carlo Calenda, has called the military support of Kyiv "a painful but necessary decision to contain Putin's threat to the West" (Caruso, 2022). The two parties obtained 7.7% of the vote in the latest Italian general election. They campaigned intending to represent the continuation of the "Draghi agenda" (Bruno, 2022b, 169–170) regarding foreign policy. Calenda has often been very critical of other Italian parties, such as the PD and the Five-Star Movement, accusing the former of being internally divided and the latter of wanting Ukraine's surrender to Russia (Cataluddi, 2022; Tag24, 2022).

16.6 Conclusion

In this chapter we have investigated the positioning of the Italian governments concerning the war in Ukraine, both the previous one led by Mario Draghi and the current one led by Giorgia Meloni, leader of Fratelli d'Italia, the main party of the right-wing bloc that won the September 25, 2022, the general election in Italy. Additionally, we have examined the positioning of the other main Italian parties on the Ukraine's "dossier", including military, humanitarian and, more generally, political support for the country led by Zelensky. Regarding the first aspect, the Draghi executive was at the forefront in supporting Ukraine from the start of the conflict on February 24, 2022. At the national, European, and international levels, Draghi went to great lengths to contribute to a cohesive and robust line in favor of Ukraine, even coming under much criticism in Italy. While it is not possible to say that military support for Ukraine and the alleged increase in annual military spending to comply with NATO agreements and to which Italian governments had agreed earlier, were some reasons for the Draghi government crisis, these are certainly among what led

to disagreement with the Five-Star Movement. Concerning the "transition" from the Draghi government to the Meloni government, as we have seen, now, it is not possible to say that there are any differences in Italy's approach to and positioning of Ukraine. This may be interpreted as a sign of continuity. In fact, during the election campaign and after the election victory, current PM Meloni reiterated that Italy under her government would not represent the weak link between Europeanism and Atlanticism in the West. Regarding the second point (the positioning of the leading Italian parties), we have seen that the party most opposed to sending arms to Ukraine is currently the Five Star Movement, in substantial continuity with (some of) the motivations that contributed to the fall of the Draghi government.

On the other hand, the League and Forza Italia continue to move inconsistently and unevenly, with statements often against sending arms and other support to Ukraine that are then downplayed and/or denied by the official organs of the two parties. This dossier may contribute to future crises within the current governing majority. Fratelli d'Italia, the party that unquestionably emerged as the winner of the September 25 election, has always stated (even at the level of its electoral program) that it wants to continue to support Zelensky's Ukraine, in substantial continuity with what it has said since the beginning of the conflict. The PD led by Elly Schlein is currently in still "waiting" phase as the PD is, internally, a very divided party. Finally, the Third Pole consisting of the parties of Renzi and Calenda, remains a big supporter of the Draghi agenda and support for Ukraine, including on the level of armaments to be shipped to Kyiv.

To conclude, as far as the "Ukraine dossier" is concerned, the transition between the technocratic national unity government led by Mario Draghi and the right-wing political government led by Giorgia Meloni seems, for the time being, to have taken place under the sign of continuity. However, only the months to come will confirm whether this holds true or not and whether the current alignment will allow the right-wing coalition to persist.

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Chapter 17
Shaping German Feminist Foreign Policy in Times of Conflict in Ukraine

Chiara Pierobon

17.1 Introduction

Russia's aggression against Ukraine launched on 24 February 2022, has caused European political leaders to question the existing European security architecture. Observers agree that "even if the war in Ukraine ends or becomes a frozen conflict, members of the European Union and NATO will need to prepare for a long-term confrontation with Russia" (Puglierin, 2022). In her official statement of 27 February 2022, European Commission President Ursula von der Leyen talked about "a watershed moment" for Europe, announcing that "for the first time, the European Union will finance the purchase and delivery of weapons and other equipment to a country that is under attack" (European Commission, 2022). Similarly, in his address to the *Bundestag* (federal parliament) on the same day, German Chancellor Olaf Scholz of the Social Democratic Party (SPD) referred to this time as a *Zeitenwende* (historic turning point) for the European continent leading Germany to reinvent itself as a European security actor (German Federal Government 2022). Scholz's *Zeitenwende* comprises a dramatic shift in the country's defense spending with the launch of a EUR 100 billion special fund for immediate investment in military capacity and a commitment to invest more than 2% of the nation's annual GDP in defense (Tausendfreund, 2022).[1] The new spending goals were accompanied by a new defense posture, with the government announcing Germany's new deployments to NATO's eastern flank and the abandonment of "a long-standing policy of blocking weapons from being delivered to conflict zones" (ibid.). In addition, a more confrontational approach has emerged in the past year and a half, as testified

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[1] For the past 20 years, the country consistently spent around 1.3% of its GDP in defense annually.

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by the speech given by Foreign Minister Annalena Baerbock (Green Party) on the same day. During her speech, the Foreign Minister emphasized,

> "This war is an attack against our peace in Europe. This war is an attack against our freedom. This war is an attack against international law. Right up to the last minute, we tried diplomacy. The Kremlin strung us along, lied to us and rejected everything we Europeans stand for. Putin wanted this war–whatever it would take. Russia ruthlessly attacked Ukraine" (German Federal Foreign Office, 2022a).

Germany's paradigm shift needs to be contextualized in the framework of an overall reshaping of the security and foreign policy fields initiated by the new Social Democrats/Greens/Free Democrats' "Coalition Agreement 2021–2025" signed in December 2021. Indeed, two main intertwined goals were set up in the new government program: the elaboration of a new National Security Strategy (NSS) and the development of a Feminist Foreign Policy (FFP) for Germany. With the conflict in Ukraine, the discussion on what a feminist peace and security policy could look like has become even more relevant, bringing to light a tension between more pragmatic and normative FFP proponents. More precisely, whereas the FFP-pragmatists, including the German government, consider FFP "compatible with measures such as arms delivery for acute defense", the proponents of a normative approach are "against arm support to Ukraine and the logic of military deterrence that are rather framed as a manifestation of patriarchal structures and modus operandi" (Dinkel et al., 2022: 3).

Since the development of a feminist foreign policy for Germany started only in the spring of 2022, it is too early to measure its impact on the ground. Therefore, the focus of this chapter is placed on discourses and narratives produced and circulated by the current government that led to the official publication of Federal Foreign Office Guidelines "Shaping Feminist Foreign Policy" on 1 March 2023 (Federal Foreign Office, 2023). The chapter approaches the current elaboration of an FFP for Germany from a framing perspective, looking at "signifying work or meaning construction engaged in by" the German Federal Office (Snow, 2013) and, specifically, by German Foreign Minister Annalena Baerbock. The development of an FFP for Germany represents a new national priority with international implications since, as highlighted by Foreign Minister Baerbock, this policy can only be shaped globally (German Federal Foreign Office, 2022d). As such, it should be contextualized in the framework of a global emancipatory movement that enhances the representation and participation of women and more marginalized groups in foreign and security decision-making processes that started before the war in Ukraine. At the same time, the chapter reveals that the current armed conflict in Ukraine has been used in the speeches of Foreign Minister Baerbock to develop and articulate the substance of a German FFP in practice.

To highlight the specific feminist perspective of Germany's new foreign policy, this chapter familiarizes the reader with the broad confines of international scholarship on feminist foreign policy. It looks at the involvement and contribution of women to the current conflict in Ukraine. It then turns to the German case and briefly describes the processes through which the new NSS and FFP agenda have been elaborated, as well as the main instruments and stakeholders involved in the process. The

fourth section presents the main results of the analysis of Foreign Ministry Baerbock's speeches, focusing on how the German feminist foreign policy was framed in the context of the war in Ukraine. By way of conclusion, the study emphasizes the novelty of Germany's FFP regarding both its conceptualization and its implications vis-à-vis the current conflict and draws attention to the challenges that still lie ahead in its implementation, especially when it comes to resource allocation and actual representation of women and more marginalized groups in foreign policy-making processes.

17.2 Feminist Foreign Policy in the Context of the War in Ukraine

The current debate around a feminist foreign policy is grounded in UN resolution 1325 on Women, Peace, and Security (WPS) adopted in 2000, which acknowledged for the first time the critical role women could play in matters of peace and security as well as the gendered impact of conflict. In the last two decades, this Resolution has developed into a much broader framework emphasizing the importance of "gender mainstreaming" and "gender balancing" for enhancing political participation, combating sexual violence in conflict, and countering violent extremism (Achilleos-Sarll, 2018: 35). Although a single and cohesive definition of FFP is missing, a consensus has been reached that FFP goes beyond gender mainstreaming and towards more controversial politics that challenge and renegotiate the power hierarchies and gendered institutions currently defining foreign and security realms (Aggestam & Bergman-Rosamond, 2016). Indeed, conventional analysis is seen as unable to recognize how "gendered discourses and gendered identities—intersecting with other identity markers—produce oppressions that inform the process, the production, and the consequences of foreign policy" (Achilleos-Sarll, 2018: 38). It is in this framework that FFP tends to question traditional categories such as states, nations, and sovereignty as socially constructed and as manifestations of a militarized patriarchal system that has produced a stereotypical and gender-differentiated understanding of the role and obligations of female and male citizens vis-à-vis the state in times of peace and of war.

FFP seeks to include a gender equality lens in all spheres of foreign policy, ranging from women's representation in public life, economic empowerment, and conflict resolution to freedom from psychological, physical, and sexual violence and the promotion of sexual and reproductive health and rights (Zhukova, 2021: 1). It comprises post-colonial and post-structural, liberal feminist and radical perspectives calling for transformative thinking to address the invisibility of gender and the absence of women in international relations by embracing their stories and lived experiences (Shepherd, 2015; Aggestam et al., 2019: 23). The most common narrative of states and international organizations are liberal feminism that supports legal reform for gender equality and women's human rights and seeks to integrate women into

existing institutions as well to promote them into leadership positions. Remarkably, liberal feminism is not against militarism but allows pragmatism and idealism to co-exist in an FFP (Zhukova et al., 2022: 201). By contrast, more radical theorizations of FFP tend to reject masculine hegemonies represented by state-militarized security structures and responses that are seen as fueling and funding conflicts (True, 2015).

While the concept of FFP is new for Germany, the phenomenon is not recent in the rest of Europe. Sweden has developed the oldest and most comprehensive FFP concept, launched in 2014 around the formula of the 3Rs—Rights, Representation, and Resources. In this context, "Rights" refers to the promotion of human rights for all, especially women and other marginalized groups, and entails the proactive protection (prevention) of these as well as the establishment of justice should these rights be violated (accountability). "Representation" is related to the inclusion and participation of women and marginalized groups in foreign and security policy decision-making at all levels. "Resources" refers to the adequate provision of resources, including discrimination-sensitive budgeting (Dinkel et al., 2022: 4). By actively promoting various aspects of the FFP in multilateral and bilateral relations, Sweden has acted both as a role model and as a norm entrepreneur spreading its feminist values to other countries via multilateral and bilateral relations (Sundström & Elgström, 2020: 418, 420). Nonetheless, despite being a pioneer in the field, Swedish FFP has been criticized for its binary non-inclusive focus on women as a sex rather than gender, ignoring in its original formulation the rights and needs of LGBTQ individuals (Thompson & Clement, 2019) and for allowing the sale of weapons to repressive regimes which violate women's rights (Robinson, 2021).[2]

Recently other European countries such as Denmark, France, Luxembourg, the Netherlands, Norway, and Spain have adopted more gender-sensitive approaches in foreign policy and have prioritized spending for gender equality and direct funding to women's rights organizations as part of their foreign assistance (Thomson et al., 2021). At the EU level, at the end of 2020, the European Parliament called on the EU to foster gender equality and mainstreaming in its foreign and security policy following developments at the EU member-state level (European Parliament, 2020). In the same year, the European Commission presented a new Gender Action Plan on gender equality and empowerment in external relations (GAP III 2021–2025), foreseeing that 85% of official development assistance (ODA) should go to programs that include gender equality as a significant or main objective (European External Action Service, 2020). Similarly, since 2019, the Organization for Security and Cooperation in Europe (OSCE) has strengthened comprehensive security by advancing gender equality, which is seen as a prerequisite for achieving and maintaining stable, prosperous, and peaceful societies in the OSCE area. The project "WIN for Women and Men" provides an example of this engagement aimed at increasing women's participation in conflict prevention, mediation, and other forums and processes of

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[2] Noteworthy, in October 2022 Sweden's Minister for Foreign Affairs Tobias Billström announced the country's intention to abandon its FFP since "the label obscures the fact the Swedish foreign policy must be based on Swedish values and Swedish interests" (Walfridsson 2022).

comprehensive security, emphasizing the impact on women of the conflict currently taking place in Ukraine (see, for instance, OSCE, 2022).

Since 2014, the number of women joining the Ukrainian Armed Forces has more than doubled, and their role in the Ukrainian Army has increased in importance as they have succeeded in accessing positions previously held only by men (Rzegocki & James, 2022). If around 30,000 women were in the armed forces in Ukraine at the beginning of the war, making up about 10%, they now account for 22.8% of the total (ibid.). At the same time, as men of military age are forbidden from leaving the country, it is mainly women and children who have become refugees. Women-led groups and civil society organizations (CSOs) have quickly reacted to the immediate priorities of their communities and provided internally displaced people (IDPs) with assistance to meet their basic needs in terms of food, shelter, and psychological and medical assistance. Despite their critical role in the humanitarian response, women-led CSOs have pointed out how women are still excluded from essential decision-making processes at all levels. As one representative of a local organization emphasized:

> The war started on February 24, 2022, and once again, it showed how much women are ignored at the level of coordination and making decisions. Their suggestions and needs are ignored, and instead priority is given to the needs of Teroborona (voluntary local defense group), mostly represented by men, who dictate what to do and how to behave. At the same time when it comes to humanitarian needs of IDPs, locals, and households – women do most of the work – they drive, provide hospitals and locals with medication and food, they care about their disabled relatives and children. And this all remains unnoticed again and again (UN Women, 2022: 5).

Remarkably, the war in Ukraine has highlighted the centrality of women's NGOs in preventing, responding to, and documenting violence, particularly gender-based violence in conflict situations. The alleged war crimes committed by Russian soldiers and fighters in towns like Bucha and Irpin have shocked the world. Ukrainian civil society has engaged in documenting the atrocities happening on their doorstep and, with the help of volunteers, is collecting "the testimonies of real people" that in the future could be used to prosecute Russian soldiers in domestic as well as international courts (Worley, 2022). In addition, in the past months, sexual abuse and violence against women and girls have been systematically carried out in Ukraine to achieve military and political goals. In this context, women's civil society organizations are currently offering survivors of war rape confidential access to medical treatment (including safe anonymous abortion), and psychological and legal services, the latter also in preparation for trials at national and international war crimes courts (OSCE, 2022: 27).

As the analysis of Baerbock's speeches will reveal, holding the perpetrators of this violence accountable represents one primary objective of Germany's FFP in Ukraine. Yet, before looking at the singularities of German feminist engagement in the war, the chapter will first examine the overall process of shaping an FFP that started in March 2022. As in Sweden, the theorization of a Feminist Foreign Policy for Germany is seen not only as a matter of foreign affairs but also as a national

security priority, as testified by the vision accompanying the development of a new National Security Strategy (NSS) for the country.

17.3   Germany's Feminist Foreign Policy

The development of a new comprehensive NSS was identified in the new Coalition Agreement of December 2021 as an ambitious goal to be accomplished within the first year of governing. From the outset of the process on 18 March 2022, several stakeholders, including not only state actors and agencies such as the German *Bundestag* and relevant Federal Ministries but also ordinary people, were involved in elaborating the new Strategy. This represents a significant change to how foreign policy is formulated, at least theoretically, since a closed field usually shaped by a limited number of state actors and officials was open to the public's participation. In Baerbock's vision, foreign policy is connected to human security as defined by members of the broader public based on "their fears" but also on the "opportunities and focal points" that they see for greater international involvement, thus ensuring that the new NSS "reflects a broad public consensus" (German Federal Foreign Office, 2022c). To this end, in-depth discussions with representatives from civil society, think-tanks, academics, and experts were organized. Foreign Minister Baerbock conducted security policy trips throughout Germany and dialogues on current security challenges with the public took place in selected German cities.

Based on the official document presented on 14 June 2023, Germany's NSS was formulated in line with its feminist foreign and development policy (see German Federal Government, 2023: 14, 29, 42, 52, 67). FFP is a topical area of engagement for the current Social Democrats'/Greens/Free Democrats' government coalition and another manifestation of Germany's *Zeitenwende* in foreign policy. Although, during her 16 years of mandate, the former German Chancellor Angela Merkel of the Christian Democratic Party (CDU) was considered the world's most powerful woman, she always resisted the role of the feminist leader. Indeed, Dr. Merkel preferred to be seen as "the federal chancellor of all people in Germany" and rather emphasized how "parity in all areas just seems logical to me. That's not something I have to bring up" (Petzinger, 2021). In contrast, in their "Coalition Agreement 2021–2025", the parties comprising the current German government explicitly agreed to pursue an FFP whose essence was described as follows:

> Together with our partners, we want to strengthen the rights, resources and representation of women and girls worldwide and promote social diversity in the spirit of a feminist foreign policy. We wish to appoint more women to international leadership positions and ambitiously implement and further develop the National Action Plan for implementing UN Resolution 1325 (Bundesregierung, 2021: 144).[3]

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[3] Translated from the original version in German: "Gemeinsam mit unseren Partnern wollen wir im Sinne einer Feminist Foreign Policy Rechte, Ressourcen und Repräsentanz von Frauen und Mädchen weltweit stärken und gesellschaftliche Diversität fördern. Wir wollen mehr Frauen in internationale Führungspositionen entsenden, den Nationalen Aktionsplan zur Umsetzung der UN-Resolution 1325 ambitioniert umsetzen und weiterentwickeln ".

The German Foreign Office and its Foreign Minister Annalena Baerbock together with the Federal Ministry for Economic Cooperation and Development and its Minister Svenja Schulze (SPD) have been engaged in promoting a more gender-sensitive discourse in international affairs. For instance, on its webpage the Federal Ministry for Economic Cooperation and Development has introduced the idea of a feminist development policy framed as able to transform international cooperation. More precisely, German feminist development policy is described as "centered around all people", tackling "the root causes of injustice such as power relations between genders, social norms and role models", and as a "powerful approach to take sustainable development forward and assert human rights—world-wide and regardless of gender and any other personal traits" (German Federal Ministry for Economic Cooperation & Development, 2022). As with the new NSS, the articulation of Germany's new feminist approach to development cooperation is conceived as a participatory process engaging high-ranking participants and practitioners from civil society and international organizations (but not necessarily regular citizens) through events such as the international conference "Feminist Development Policy—Transforming International Cooperation" hosted in 2022 by the Federal Ministry for Economic Cooperation and Development. It is worth mentioning that Germany's feminist development policy was also officially presented on 1 March 2023 (German Federal Ministry for Economic Cooperation & Development, 2023).

Foreign Minister Baerbock has duly prioritized the development of an FFP. Her work in this field is well documented on the webpage of the German Foreign Office, where FFP is featured as one of six main foreign policy topics together with climate crisis prevention, humanitarian assistance, human rights, and the NSS (German Federal Foreign Office, 2022j). The German Federal Office framed FFP as "based on the conviction that gender equity and equal participation are preconditions for long-term peace and security in the world" (German Federal Foreign Office, 2022b). Germany's conceptualization was originally based on the formula "3R + D," where the aim is to promote the rights, representation, and resources of women and marginalized groups, as well as to enhance diversity in foreign affairs (Ibid.)[4] Although the task of formulating Germany's new feminist foreign policy was mainly that of the staff of the Federal Foreign Office both in Germany and abroad, the involvement of international partners, experts, and civil society representatives was also foreseen. An example of this involvement is offered by the international conference "Shaping Feminist Foreign Policy" at the Federal Foreign Office in Berlin on 12 September 2022. Foreign Minister Baerbock explicitly dedicated the meeting to the women and girls in Afghanistan (German Federal Foreign Office, 2022d). A series of workshops brought together high-level experts from the public sector, civil society, and academia who explored the practical aspects of a feminist foreign policy, identified possible responses and concrete steps to tackle current

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[4] "D" stands for diversity, highlighting an intersectoral approach that does not focus exclusively on women (Dinkel et al., 2022: 4). Interestingly enough, the FFP Guidelines published by the Federal Foreign Office in March 2023 are grounded in the 3R formula and explicitly refer to Rights, Representation and Resources as the major goals of Germany's Feminist Foreign Policy (German Federal Foreign Office 2023: 11-12).

challenges from a feminist foreign policy perspective and shared lessons learned and best practices in this field (German Federal Foreign Office, 2022k). Remarkably, one of the high-level segments of the conference was focused on "Feminist foreign policy in times of war in Europe", offering a venue to reflect on:

> why is feminism repeatedly used as an irritant in the cultural war between (Western) modernity and (Russian) tradition often proclaimed by Putin and his consorts […] what Putin's war of aggression means from a feminist point of view: What gender relations are affected by war? How can feminism contribute to different, more forward-looking, de-escalating and more humane politics? How can art and literature give a voice to those who often remain mute in the news? (German Federal Foreign Office, 2022l).

17.4 German FFP and the Russo-Ukrainian Conflict

On the webpage of the German Foreign Office, a collection of speeches given by the Foreign Minister Annalena Baerbock, together with the latest articles and press releases concerning the process of development of Germany's FFP, is available in German and English. This exploratory study analyzed a sample of speeches in the English language—official version or official translation—delivered by the Foreign Minister Baerbock between 24 February and 24 October 2022. Particular attention was given to the framing processes through which the German FFP was articulated. In this context, frames are defined as "principles of selection, emphasis, and presentation composed of little tacit theories about what exists, what happens, and what matters" (Gitlin, 1980: 6) and as "patterns of cognition, interpretation, and presentation, of selection, emphasis and exclusion, by which symbol-handlers routinely organize discourse" (ibid.: 7). More precisely, the chapter understands framing processes as "select[ing] some aspects of a perceived reality and mak[ing] them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation" (Entman, 1993). The selected speeches were analyzed using the software Nvivo. A list of relevant categories and concepts was developed during the analysis (Strauss & Corbin, 1998).

From Foreign Minister Baerbock's speeches, a clear theorization of Germany's FFP emerges. Baerbock conceives FFP as an approach that tackles the world's inequalities in the twenty-first century and permeates the entire foreign and security policy, making it more comprehensive. It is built around "human security" and focuses mainly on women and marginalized groups. Baerbock sees the root of Germany's FFP in Sweden's experience and its approach based on the 3 Rs: Rights, Resources and Representation" (German Federal Foreign Office, 2022d). The first R—rights—is described by her as "the right to protection. Where we cannot guarantee protection, we need to call those who infringe upon and violate rights to account" (ibid.). In this regard, Baerbock refers to Germany and other countries efforts to bring before courts perpetrators of crimes (such as slavery and rape) committed against Yazidis as a building block of a *shared* (emphasis added) feminist foreign policy. In her vision, women and girls should be seen not only as victims of conflicts but also

as part of the solution, as "decisive actors when it comes to negotiating peace agreements" (ibid.) and must, therefore, be represented accordingly. Germany is already engaged in this field, assisting women in Chad who serve as mediators in conflicts between farmers and herders and promoting the participation of women in conflict prevention in Iraq as one of the largest donors of the Women's Peace and Humanitarian Fund. Germany's conceptualization of FFP has further developed the Swedish 3R formula by introducing a new dimension—Diversity—putting "the spotlight on people, regardless of their background, gender, belief or whom they love" (ibid.), at least in its first phase of conceptualization.

Whereas in the Green Party 2021 election platform FFP was explicitly described as having "the goal of a world order in which the rule of the strongest does not resolve conflicts, but around the negotiating table" (Tausendfreund, 2022), the very confrontational approach characterizing Baerbock's words casts doubt on the viability of this option in solving the current conflict in Ukraine. On the contrary, her speeches contain extreme accusations against Russia, particularly against its President, Vladimir Putin. For instance, during her speech at the United Nations Security Council Briefing on the "Maintenance of Pace and Security of Ukraine" on 23 September 2022, Minister Baerbock urged Russia to stop the suffering in Ukraine (German Federal Foreign Office, 2022e). Baerbock's speeches highlight how "the feeling of being threatened by Russia was never completely erased in Central and Eastern Europe, even before 24 February" (German Federal Foreign Office, 2022i). Germany's foreign minister describes the European approach as naïve and as falling short since "the annexation of Crimea and what happened in Donbas were only a prelude to what has been unfolding in Ukraine since 24 February: further efforts to subjugate Ukraine entirely—the Russian President is making no bones about it" (ibid.). Putin is identified as the primary person responsible for what is occurring in Ukraine, and despite the fact that "half the world has done everything to re-establish peace in recent months, has worked to ensure the horror of this war finally ends; although half the world is begging the Russian President to finally withdraw his troops, he is at this time not recruiting negotiators but more soldiers to make further inroads into Ukraine" (German Federal Foreign Office, 2022h). In addition, "by blockading ports and bombing silos in Ukraine, Russia has disrupted the international grain trade—and intensified the global food crisis triggered by bad harvests in different parts of the world" (ibid.). Baerbock also strongly condemned the "sham referendums" in the occupied territories and the "horrendous crimes" perpetrated by Russian soldiers and fighters particularly in eastern Ukraine, where they raped women, abducted children, shot at a mayor distributing bread to his people and "at a conductor who does not want to make music with the occupiers" (German Federal Foreign Office, 2022i).

In Baerbock's framing, the conflict in Ukraine has changed how international security is understood, switching the attention from internal to interstate disputes and violent conflicts. Although civilian instruments are needed even more than ever to create long-term peace, Russia's aggression in Ukraine has led to conceptualizing security in military terms; as Baerbock highlighted:

> Security means, first and foremost, the safety of life–not having to be afraid of being shot on the street or killed in a bomb attack. That is why we supply heavy weapons so that Ukraine can defend its citizens (German Federal Foreign Office, 2022g).

Interestingly enough, the German Foreign Minister tends to frame the conflict in Ukraine from an FFP perspective, highlighting, for instance, how "Russia's horrific war" is affecting especially women, the elderly, and children that are particularly exposed to brutality and hardship as they are "attacked due to their gender" or "cannot receive the treatment they so urgently need" (German Federal Foreign Office, 2022d). In juxtaposition to a more normative interpretation of FFP, Ms. Baerbock accepts military assistance to Ukraine and, on the contrary, reassures that Germany will "continue to support Ukraine intensively with arms" (German Federal Foreign Office 2022i). This decision is framed as a value-based resolution since Ukraine is supplied with armaments not only "to save lives, but, I hope, also to demonstrate our trust and solidarity" for a country that "as it fights for survival […] is also defending European freedom" (ibid.).

At the same time, the economic, political, and military support offered to "courageous people in Ukraine to defend themselves" is presented as only one aspect of Germany's engagement in the war. In this regard, the Foreign Minister has stressed that another crucial contribution is "to bring charges concerning sexual violence and crimes committed against women" (German Federal Foreign Office, 2022d). Germany's Federal Public Prosecutor General has already opened an investigation into war crimes and crimes against humanity in Ukraine, and Germany will "back Ukraine in its case against Russia at the International Court of Justice" (German Federal Foreign Office, 2022e). The following quote is emblematic of the country's FFP approach to the war in Ukraine, placing the focus on the first "R" for Rights: i.e., the advancement of human rights, especially those of women and other marginalized groups in terms of both proactive protection of rights (prevention) and the establishment of justice (accountability) (Dinkel et al., 2022: 4):

> There must be no impunity. This is our pledge to the victims. Especially to the most vulnerable: women and girls but also the elderly. Not just because we know that it is the weakest who suffer most during armed conflict. But also because we know that unless women are safe, no one is safe (German Federal Foreign Office, 2022e).

The importance of the proactive protection of rights and the establishment of mechanisms of justice for victims of war violence and crimes was recently translated into Baerbock's call for a new format of court to punish Russian leaders for the crime of aggression that cannot be prosecuted by the International Criminal Court (ICC). This special tribunal should be based on Ukrainian criminal law but located outside Ukraine and should receive international financial support and involve international prosecutors and judges.

17.5   Discussion

Since the beginning of the war, Germany's military support for Ukraine has expanded quantitatively and qualitatively. Whereas in the first phase of the conflict, Germany's support was limited to essential equipment such as helmets, the country now provides heavy weapons, including armored personnel vehicles, rocket launchers, and air defense systems (Fix, 2022). Despite Minister Baerbock's renewed promise of further military aid, Germany has been reluctant to abandon its pacifist post–World War II tradition. Germany's reluctance has been also the result of the internal fragmentation characterizing the current government coalition. While the Green Party and the Free Democratic Party have favored more military support for Ukraine, the Social Democratic Party has been more cautious. Although Germany is one of the largest producers of Leopard battle tanks worldwide, Chancellor Scholz refused for months to deliver such tanks to Ukraine, arguing that this could trigger a broader war (Karnitschnig, 2023). Indeed, for Germany, the current conflict does not represent an immediate threat to its security; the country is more concerned about the risk of a broader confrontation between Russia and NATO (see Kapp and Fix in this volume). Additionally, the German government's half-hearted support for Ukraine has hurt its reputation, especially in Eastern European countries such as Estonia and Poland, whose confidence in Germany's reliability remains low (see Dyduch and Góra and Veebel and Ploom in this volume).

Chancellor Scholz's position mirrors a particular caution characterizing public opinion in Germany. Indeed, recent data show that while 72% of Germans feel threatened by Russia, most of them (52%) also want the government to continue acting cautiously in international affairs, and more than two-thirds were against Germany taking a leading role in the military field (Schwarz, 2023). Similarly, out of 41 percent of respondents supporting a more substantial presence of Germany in Ukraine, only 14% favored more military support (ibid.). Moreover, a striking divide has emerged between West and East Germany. For instance, while 47% of the respondents in West Germany demand more toughness toward Russia, the percentage in East Germany is 31. Likewise, while 34% of respondents in East Germany believe that the government is doing "too much" to support Ukraine, the percentage in West Germany is 18 (ibid.) Nevertheless, in recent months Germany has significantly increased its military support to Ukraine, with its bilateral commitment reaching EUR 17 billion in July 2023 (Kiel Institute for the World Economy, 2023).

17.6   Conclusion

German feminist foreign policy is a new phenomenon, a manifestation of the *Zeitenwende* promoted by the new Government Coalition and, as in Sweden in 2014, especially by the Social Democratic and the Green Parties. The articulation of German Foreign Policy has been set as a priority of the German Foreign Office and as a central

component of the NSS. The task of shaping an FFP for Germany occurs within and beyond the country's borders. Through her speeches at international forums and events, Foreign Minister Baerbock has promoted a more gender-informed international discourse and agenda and an image of Germany as a champion of gender equality and inclusiveness. Through dialogue-based public diplomacy involving both state and non-state actors (as at, for instance, the conference on "Shaping Feminist Foreign Policy" taking place in September 2022), the current German Foreign Office has operated as a norm entrepreneur that seeks to shape global developments in a gender-sensitive direction (Aggestam & Bergman-Rosamond, 2016). Foreign Minister Baerbock's framing efforts have complemented another important dimension emerging from the current *Zeitenwende,* especially after 24 February 2022: the abandonment of Germany's anti-militaristic position that has been held since the end of World War II. The development of Germany's FFP has occurred during a time of war, leading to an increase in military spending and a military response in terms of the export of arms taking place under a female defense minister (who stepped down in January 2023) and in a time when more women than ever are represented in the armed forces. At the same time, the new Government Coalition finds itself under heavy national and international pressure, with Germany's allies believing that the country is not doing enough to support Ukraine. Heated discussions took place among FFP proponents when, at the end of April 2022, the German Bundestag took the decision to supply heavy weapons to Ukraine (Dinkel et al., 2022: 2).

The analysis of Baerbock's speeches reveals that the current government is neither "struggling to define which actions would be appropriate for a short-term application of FFP in crises" (ibid.: 3), nor unable to explain "how and why" weapons need to be delivered. It is undeniable that the current German FFP has been significantly affected by the Russo-Ukrainian war and that, without the current conflict, it would have looked different: more focused on climate security and cybersecurity and less on military security. Remarkably, in Baerbock's version, there is no contradiction between FFP and military response in Ukraine, as the latter is framed as a way to realize the first "R": i.e., to protect the rights of women and vulnerable people who cannot defend themselves.

Following the Swedish example, another peculiar element of Germany's FFP is its framing as a domestic issue: a way to promote social inclusion "because no country in the world, no economy, no society can afford to exclude half its population from public life" (German Federal Foreign Office, 2022f). This is done in theory and practice, as testified by the participatory approach chosen for elaborating the FFP and the NSS. The involvement of civil society and academia representatives in *ad hoc* events on FFP and of ordinary people in security-related dialogues and discussions provide good examples of how the second "R" of FFP has already been implemented on the ground. Germany's FFP can also be seen as a vital component of its public diplomacy efforts critical for reaching the foreign and domestic public to ensure support for international policymaking and actions through participation and representation. Interestingly enough, a fivefold increase in German soldiers declaring themselves conscientious objectors has been registered since Russia's full-scale invasion of Ukraine began. German public opinion is fragmented about the country's position

vis-à-vis the war and the role it should play in European security. This undoubtedly represents a challenge for a Minister who wants the new German foreign and security policy to reflect broad public consensus while meeting international expectations and commitments. In addition, much remains to be done to make sure that the diversity characterizing Germany and its over 84 million residents—and, primarily, the voices and experiences of people with migratory backgrounds (including 750,000 female refugees fleeing the war in Ukraine)—are represented in current foreign and security decision-making processes.

Another challenge, but also an opportunity, for Germany's FFP is represented by the third "R"—resources—which has been an almost neglected aspect in Baerbock's speeches of the past months.[5] The allocation of special resources for FFP is a *conditio sine qua non* for the promotion of the rights of women and more marginalized groups and their representation in decision-making processes. This chapter emphasized the centrality of women's CSOs in Ukraine in providing internally displayed people with food, shelter, and medical and psychological assistance, as well as in preventing and responding to gender-based violence and in documenting violence including war rape. Although women do most of the humanitarian work, they are still ignored when it comes to coordination and decision-making. The amount of resources invested to support women-led organizations and grassroot initiatives, the capacity to reach out and fund those which work on the frontline and in direct contact with most vulnerable and marginalized groups, and the audacity to make funding conditional upon women's representation in coordination and decision-making processes concerning humanitarian aid can be used in the near future to assess the extent to which German FFP represents a reality on the ground.

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[5] Remarkably, based on the FFP Guidelines of the Federal Foreign Office, Germany will "allocate 85% of project funding on a gender-sensitive basis and 8% on a gender-transformative basis by 2025, taking the OECD criteria as a guide" (Federal Foreign Office 2023: 4).

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Chapter 18
Polish Reactions to Russian Aggression Against Ukraine

Joanna Dyduch and Magdalena Góra

18.1 Introduction[1]

Russia's war of aggression against Ukraine, which began in February 2022, shattered the post-Cold War security architecture. It also destroyed the sense of security of the entire continent. The Central and Eastern European (CEE) member states of the European Union (EU) were the key countries that first responded with political and military support for Ukraine and with efforts to provide a safe shelter for millions of Ukrainian civilians fleeing the country. Poland—the biggest state in the region and a neighbor to Ukraine—has traditionally positioned itself as an advocate of Ukraine's integration with Western structures, especially the EU, and has supported such initiatives as the Eastern Partnership within the European Neighbourhood Policy. However, under its current right-wing populist government, in power since 2015, Polish foreign policy (including its Eastern dimension) has undergone significant politicization, with more polarized opinions, particularly regarding integration with the EU (Góra et al., 2022).

In this chapter, we analyze how the established features of Polish foreign policy guided its response and what frames were employed in reaction to the war by governing and opposition actors in Poland. The opening date for our analysis is February 24, 2022, when Russia started its full-scale aggression against Ukraine. However, to contextualize the powerful narratives in the public discourse and the

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Polish politicians' reactions, we placed it in the longer Polish foreign policy perspective. We aim to explain attempts at strengthening allied response within the North Atlantic Treaty Organization (NATO) and the EU and mobilizing international public opinion toward helping Ukraine. This required the suspension of domestic political disagreements over foreign and European policy and the government's ongoing dispute with the EU over infringements of democratic standards and the rule of law. Bearing the above-mentioned in mind, we answer the question of how Polish foreign policy has changed due to the Russian war of aggression against Ukraine. Furthermore, we aim to address the problem of Polish European policy's coherence in light of the need to strengthen the security-oriented alliance between the EU and NATO.

In this chapter, we analyze the official reactions to the war, encompassing the political and social realms in particular related to reactions to refugee influx and political and military support for Ukraine. We assume that, although Poland's foreign policy agenda has been reframed due to Russian aggression on Ukraine, especially when it comes to operational goals, the set of Poland's self-prescribed foreign policy roles has turned out to be stable and has served as a stabilizing factor in responding to the heightened threat. In addition, we focus on the impact politicization, stemming from domestic political rivalry, had on Polish responses. We assume that the external threat has silenced the internal, highly politicized debate and, to some extent, suspended the domestic political conflict; thus, it has enabled a return to the main traditional features of foreign policy and consolidated the above-mentioned self-prescribed roles. Furthermore, we explain the attempts at strengthening allied response within NATO and the EU and at mobilizing international public opinion. The chapter is structured as follows. Firstly, we briefly discuss the theoretical framework applied to the Polish foreign policy reaction. Next, we describe key narratives that have taken hold in Poland in the aftermath of the aggression. Subsequently, we discuss the humanitarian response and Warsaw's relations with the USA, NATO, and the EU in detail. Finally, we discuss how Polish elites envision the future of a democratic Ukraine in Europe.

18.2   Polish Foreign Policy—Theoretical Framework

Theoretically, this chapter is anchored in two streams of literature. Firstly, we employ role theory. Specifically, we discuss how the established roles characteristic of Polish foreign policy have been reinterpreted in response to Russian aggression in the immediate neighborhood of Poland (Chappell, 2021). Secondly, we draw from a reflection on how external conditions impact the domestic politicization of foreign policy, building on existing research on the politicization of European and domestic foreign policy (Biedenkopf et al., 2021; Costa, 2019). The combination of both approaches allows us to demonstrate the key new or re-interpreted frames on the Polish response to the war.

Polish foreign policy is guided by key features derived from the centuries—long historical experience of unfavorable geopolitical conditions and specific domestic

factors. Since the 1990s, the country has gone through a fundamental redefinition of its foreign and security policy and symbolically "turned west" (Kuźniar, 2009). However, as Laura Chappell argues, nine specific elements have continued serving as foundations of Polish foreign policy:

> Atlanticism, skeptical multilateralism (except the EU and NATO), pro-EU, a focus on regional security and territorial defense, pro-active regarding the use of force, nothing about us without us, being a reliable ally, acting as a bridge between East and West and supporting countries' self-determination (Chappell, 2021, 235).

These elements might be narrated and framed differently in response to external and domestic factors, as authors employing role theory in foreign policy analysis often stress (Cantir & Kaarbo, 2016; Kaarbo & Cantir, 2017). The conceptions of roles are relatively stable over time, as they are derived from collective memory, identity, past experiences, and all other elements of strategic culture (Breuning and Marijke, 2011; Harnisch, 2014). Their patterns are "intersubjective products of the geography, history and socialization of states (or units)" (Schmitt, 2017, 253). However, the roles are reactive to internal and external cues. Internally, the way these roles are imagined and performed results from domestic power games, as in Putnam's two-level game (Putnam, 1988), and domestic role contestation (Góra et al., 2019; Kaarbo & Cantir, 2017; Koenig, 2016; Niemann & Hoffmann, 2019). Externally, turbulent events may change how the leadership and elites perceive threats and frame the dominant interpretations of these events (Entman, 2004, 2007). Framing entails "selecting and highlighting some facets of events or issues, and making connections among them so as to promote a particular interpretation, evaluation, and/or solution" (Entman, 2004, 5). In addition, frames fulfill important functions of "problem definition, which often virtually predetermines the rest of the frame, and remedy, because it directly promotes support (or opposition) to public policy" (ibid., 6). In other words, foreign policy leaders and elites are the first to react to external events, especially those of significant importance, and thus promote key narratives to the audience through selected frames. It is important to stress that, in the context of the Russian war of aggression, a high level of cognitive uncertainty contributes as a facilitating factor in Entman's cascading structure of framing within foreign policy. In addition to that, as the psychological perspective on foreign policy demonstrates, when uncertainty is high, leaders often use specific heuristics, and role conceptions serve precisely as a heuristic, allowing for faster decision-making (Rapport, 2017).

From another perspective, one of the coping strategies in reacting to a dramatic worsening of security conditions is the suspension of domestic political conflicts and a mechanism known as "rallying around the flag" (Chowanietz, 2010; Lee, 1977). The phenomenon itself "refers to short-run increases in the popularity of incumbents in response to (international) crises, mostly in the form of military or security threats" (Steiner et al., 2022, 3). This effect was visible in the highly polarized Polish society in response to Russia's war of aggression (Horonziak, 2022). Moreover, before 2022, this polarized domestic context contributed to the country's foreign policy politicization and the growing divergence of views on external relations between key parties (Góra, 2021). Politicization refers to a situation whereby

an issue enters "into the realm of [much broader] public choice" (Zürn, 2019, 978) and becomes the subject of public debate involving citizens. Defined as "making previously unpolitical matters political" (Zürn, 2019, 978), politicization is characterized by three elements: the increased salience of an issue, the broadened scope of the actors engaged in debates, and the growing polarization of opinions (De Wilde, 2011). Politicization often results from triggering events concerned explicitly with security (Hegemann & Schneckener, 2019). In the Polish context, the key growingly politicized dimension refers to European integration (Góra et al., 2023). As the ruling coalition has become engaged in a long-lasting rule of law dispute with the European Commission (EC), the relations between the country and the EU have formed an essential subject of political rivalry. The conflict with the EU has had a long-lasting impact on how Poland has developed its relations with Ukraine, with whom Poland's leaders were in contact in the first moments after Russia's aggression against Ukraine.

18.3   Poland and Ukraine Before the War—Foreign Policy Perspective

Since the beginning of the democratic transformation in Poland, independent Ukraine has remained one of its most important neighbors. Bilateral relations have evolved due to various reconfigurations of political strategies in both states and dynamic changes in their international environment. The unequivocal support for Ukrainian independence was not only a departure from any narrative of returning Poland to pre-1939 borders but also an effect of a long-lasting campaign initiated by intellectual emigree circles around "Kultura"[2] in Paris led by Jerzy Giedroyc and Julian Mieroszewski, which later spread among Polish opposition circles under Communist rule (Urbańczyk, 2015). The relations, officially initiated in December 1991, were not easy since they had to go through a process of reconciliation with the burden of complicated shared history (Copsey, 2008). Nevertheless, the concept of an independent Ukraine, linked with the Western structures of NATO and the EU, was deeply rooted in how Poles perceived Europe's security vis-à-vis the threat from Russia (Brzezinski, 1997; Chappell, 2012, 2021; Haukkala, 2020). Without a doubt, 2004 brought significant changes for both countries. Ukraine's Orange Revolution and Poland's accession to the EU substantially changed mutual Polish-Ukrainian perceptions and both countries' foreign policy orientation. Poland wanted to see itself as an ambassador of the EU's Eastern policy, with a vital part of it addressed in Ukraine (Copsey & Pomorska, 2010, 2014). Ukraine, meanwhile, as it embarked on the path of change initiated at the turn of 2003/2004, strongly emphasized its historical and geographical belonging to the European community and, consequently, its integration aspirations.

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[2] Kultura, known also as "Paris-based Culture", was a Polish-émigré literary-political magazine, published from 1947 to 2000 by Instytut Literacki.

Poland's direct and indirect involvement during the pro-European changes in Ukraine culminated in Euromaidan in 2014. It strengthened mutual relations while impacting Polish foreign policy activities under the EU Common Foreign and Security Policy. The official position of subsequent Polish governments regarding Ukraine's European aspirations has been clearly supportive. From Warsaw's perspective, Ukraine's possible accession to the EU and NATO would change the architecture of the European security and political system. Poland would no longer be a peripheral-border country, but would instead move towards the geopolitical center of the system. Furthermore, Ukraine's inclusion in Euro-Atlantic structures would weaken Russia and direct its imperialist ambition toward Central Asia.

Nevertheless, bilateral diplomatic dialogue was not free from disagreements, mainly rooted in a shared and complicated Polish-Ukrainian history.[3] Poland's efficiency in advocating for Ukraine's European foreign policy goals was challenged by the domestic uncertainty and unstable situation in Ukraine itself - among other things, one could point to the repeated political crises and corruption (Leszczenko, 2013). Moreover, the process of Polish foreign policy's Europeanization, along with Western European-driven tendencies to normalize and stabilize relations with Russia (especially during the time of the Civic Platform coalition government of 2007–2015), affected Poland's perception of its relations with Ukraine and pushed Warsaw to assess them more pragmatically. Moreover, Poland's international advocacy of Ukraine's Euro-Atlantic orientation weakened. Such a foreign policy turn on the part of Donald Tusk's government was harshly criticized by opposition parties.

It is very true that Poland's foreign policy in general and Warsaw's vision of relations with its Eastern neighbors, especially Ukraine, changed after the 2015 election. The Law and Justice (Prawo i Sprawiedliwość, or PiS) led government almost immediately entered into a dispute with the European Commission (EC), other European institutions, and influential member states (France and Germany). This change did not, however, signal any substantial warming of relations with eastern, non-EU countries. As assessed by Andrzej Szeptycki, the first years of PiS's government were a difficult period in mutual ties, mainly due to the growing conflict over memory, commemoration, and historical politics in Poland and Ukraine, which favored the national rhetoric (Szeptycki, 2020). Gradually, Polish diplomacy became even less interested in investing in the EU's Eastern policy and promoting Ukrainian foreign policy objectives in Brussels. At the same time, Ukraine, under the leadership of President Petro Poroshenko, prioritized cooperation with Germany. While these symptomatic developments did not prevent Polish ruling party politicians from condemning and criticizing Russian aggression on Ukraine and the annexation of Crimea in 2014, or the subsequent ongoing military conflict in Donbas, the official Polish narrative on Ukraine's international future was almost entirely deprived of prospects for EU membership. Polish officials publicly doubted, for a variety of reasons, whether the implementation of the Partnership Agreement would eventually result in Ukraine's accession to the EU (Szymański, 2016).

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[3] This refers especially to the legacy of Stefan Bandera and the Ukrainian Insurgent Army (for more, see also Stryjek and Konieczna-Sałamatin, 2021).

One should also remember that, in the period between 2015 and the lead-up to the Russian aggression in February 2022, Polish-Ukrainian relations were strongly influenced—and, therefore, cooled—by the clashing memory politics adopted by both countries (Magda, 2017). In July 2016, the Polish Parliament adopted a Resolution "On the Preservation of the Memory of Victims of Genocide Committed by the Ukrainian Nationalists Against the Citizens of the Second Rzeczpospolita between 1943 and 1945", which recognized the Volyn massacre[4] as a "genocide" and declared July 11 the National Day of Volyn Genocide Victims Remembrance. In turn, the Verkhovna Rada, the Parliament of Ukraine, issued a statement accusing Poland of the "politicization of tragic chapters of the Ukrainian-Polish history" and fueling the anti-Ukrainian attitudes in a time of Ukraine suffering, as the aggressor (i.e., Russia) was using a historically related narrative to delegitimize the Ukrainian state (Cherviatsova, 2018).

This short overview of Polish-Ukrainian relations reveals some of the role conceptions. Poland was taking on a leading position among other CEE countries in the Eastern Partnership (EaP) initiative, acted as a bridge between the East and West, and supported countries' self-determination. However, Warsaw's difficulties in bilateral relations with Ukraine and the European partners demonstrated that these roles—strongly internalized in Poland—were contested externally. At the same time, the Russian strategy toward Poland and the CEE region was to undermine Polish aims in the region by treating CEE actors as pawns in the game between great powers rather than fully-fledged international actors (Fedorov, 2013).

18.4 Reactions to Russia's Aggression in Poland

Polish society and political elite responded with unprecedented unity, expressing clear and unconditional support for Ukraine and Ukrainians in defending themselves against unprovoked Russian aggression. This stemmed from Poland's own multiple historical experiences of wars of aggression by various previous Russian regimes and was hence profoundly rooted in a strategic cultural distrust towards the transformational paradigm underpinning relations with the Russian Federation since the early 1990s (Góra et al., 2022).

Polish political actors insisted on interpreting the 2022 events as a continuation of aggression that started in 2014, when the Russian military attacked Ukraine, albeit with a limited territorial objective. This significant frame highlights a long-lasting Russian strategy to destabilize Eastern Europe and prevent Ukraine from integrating with the West. It also puts into perspective the unsuccessful European attempts at curbing Russian aggression, such as the Normandy format (Cross & Karolewski, 2017; Helwig, 2020).

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[4] "Wołyń massacre" (1943–1944) refers to ethnic cleansing of the Polish population on the Wolyn voivodeship, carried out in German-occupied Poland by the Ukrainian Insurgent Army (UPA) and a local Ukrainian population.

As early as a decade earlier, Poland was dubbed a "new Cold War warrior" due to its traditional perception of territorial threats and the alleged transactionalism of Western governments (particularly Germany), as well as its position regarding Europe's dependence on Russian energy as a structural feature that gave Moscow room for assertiveness (Leonard & Popescu, 2007). This was illustrated by how Polish opposition to the Nord Stream 1 and 2 projects had annoyed its Western partners for years and was frequently explained as an allegedly subconscious Polish complex and inherent Russophobia (Bouzarovski & Konieczny, 2010; Siddi, 2020). In the aftermath of Russian aggression, many political actors in Poland—both in government and opposition—expressed a bitter sense of satisfaction that their pessimistic assessment of Putin's motives had been rather more correct than the transactional approach adopted by Berlin or Paris (Sikorski, 2022).

Finally, the war strengthened another long-lasting and deeply anchored element of Polish foreign policy: the role of distant friends in dark hours. Poles are ardent Atlanticists—mostly, despite the political divisions—and are at the same time rather distrustful of European strategic and geopolitical ambitions separated from NATO (Cross & Karolewski, 2017; Fried & Wiśniewski, 2021; Zaborowski, 2019). In the immediate aftermath of the Russian attack, Warsaw's key security provider and ally were in Washington. Moreover, Poland's initial strong and unequivocal response to the situation in Ukraine, along with its emphasis on the role of NATO and the USA, paved the way for Poland—led by a right-wing government entangled in a bitter rule of law dispute with the EU and not on the best terms with the Biden administration—to return to the center of European and allied politics. In the following section, we detail the three essential aspects of Polish reactions to Russia's war of aggression: humanitarian aid to Ukrainian migrants, participation in the Western alliance for Ukraine, and visions of post-war reconstruction and democratization.

18.5   Humanitarian Power

The unjustifiable Russian aggression on Ukraine prompted one of Europe's most significant migration flows since World War II. Up to 3.5 million Ukrainian refugees arrived in Poland alone in the days and weeks following Russia's brutal assault (Duszczyk & Kaczmarczyk, 2022). Although far from unexpected, the magnitude of that wave took EU state actors, specifically border countries, by surprise (Byrska, 2022). The first responders were often citizens and civil society organizations that mobilized themselves to an unprecedented degree and offered help, often in private homes and local community facilities. The degree of support provided to Ukraine and Ukrainian refugees was outstanding. It was met with awe in Western capitals, given Poland's hesitance to accept migrants during the 2015/2016 crisis and even in response to a weaponized migration crisis on the Polish-Belarussian border a few months earlier (Thevenin, 2023).

The humanitarian response to a crisis of this magnitude is best illustrated with a government estimate according to which, in the first month following the Russian aggression, Poland accepted approximately 2.2 million refugees.[5] This was assisted by a political consensus—a novelty in the highly polarized Polish politics. The ruling party, its minor coalition partners, and the opposition alike endorsed the provision of aid to Ukraine and Ukrainian refugees, including the extension of all social benefits.

In addition to that, the government and the opposition made joint efforts to suppress any political forces in Poland that may have been interested in politicizing the issue of Ukrainian refugees and Poland's unequivocal aid to the Ukraine, including military assistance. The far-right, ultra-nationalist actors with links to Russian funding sources (Balfour et al., 2019) made attempts to mobilize the Polish society against Ukraine and Ukrainians. But thanks to the united front of mainstream actors and the media, the issue was securitized, while the efforts of the fringe players were effectively suppressed. However, the far-right groups and movements continued to attempt uploading these themes to the public debate and use them as a polarizing strategy, playing out old motifs of identitarian frames anchored in a contested past and unfinished reconciliation, mentioned earlier in this article. For instance, anti-Ukrainian slogans appeared during celebrations of the Polish Independence Day on November 11 (Wiadomości, 2022). Strikingly, however, they were displayed—this time—not only by far-right and marginal groups. They were legitimized by the participation of the minor coalition partner, United Poland (Solidarna Polska, SP), and some PiS politicians. This fact indicates a potential danger that, when the domestic politics and competition heightens before the national election planned for Autumn 2023, the theme of refugees and, more generally, Polish aid to Ukraine may become politicized given that it could help mobilize hesitant voters. A crisis related to the import of Ukrainian grain to Poland, which erupted in April 2023—when after farmers' protests, Poland banned (temporarily) agricultural products from Ukraine—may serve as an example of not only contestation of Poland's "unconditional" support but also of the erosion of the consensus surrounding foreign policy priorities.

As demonstrated above, Polish society showed unprecedented solidarity in individual and collective efforts to help Ukraine and Ukrainians. However, the price for that support is increasingly felt in Poland, as in all of Europe. The soaring fossil fuel prices have contributed to already accelerating inflation. The costs of living have increased while wages are effectively frozen. So far, the discontent has not been directed at the Ukrainians. Nevertheless, various studies show that the level of solidarity as measured by active engagement in help is slightly decreasing (Kacprzak, 2022).

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[5] According to the Polish Border Guard, by June 10, 2023, over 12.5 million Ukrainians fleeing the war have arrived in Poland since the beginning of the war. However, 10.7 million people have returned to Ukraine since February 2022. It is estimated that there are currently (as of June 2023) about 3 million Ukrainian citizens in Poland, but a substantial part of that group had already lived in Poland before Russia's aggression.

18.6 Military Support and Alliances

Poles' immediate reaction to the Russian war of aggression against Poland's neighbor and strategic partner was to ally and provide weapons deliveries to Ukraine. One of Warsaw's vital foreign policies, Atlanticism was immediately activated, as the USA was the first ally to reach out to. American leadership was already closely engaged in support for Ukraine following the massive Russian military build-up at its borders in the Autumn of 2021. Americans have provided Ukraine with training, access to intelligence, and non-combat military equipment ever since the 2014 Russian aggression and annexation of Crimea (Welt, 2019). Even if the new administration led by Joe Biden was rather critical toward the Polish right-wing government, given its conflicts with the EU and its close relationship with the Trump administration (Shapiro & Pardijs, 2017), Poland soon became a key ally in the American strategy for Ukraine and in the concept of deterrence on NATO's eastern flank (Gilliam & Van Wie, 2022).

Overall, in the first month of the aggression, Poland became the second-biggest aid provider for Ukraine after the USA, followed by the UK, Canada, and Germany (Antezza et al., 2022). By the end of April 2022, Poland had delivered 2.39 billion euros worth of aid to Ukraine, including 1.46 billion euros in military support (ibid.). Over the same period, Poland was the third-biggest aid provider as a percentage of GDP (after Estonia and Latvia). In the first month, the aid amounted to 0.43% of the country's GDP (compared to 0.05% for Germany and 0.053% for the USA) (ibid.). Poland delivered crucial combat equipment and weaponry, most significantly tanks. Additionally, the Polish government provided advanced air defense for Ukraine. As of the end of November 2022, Poland had delivered 3.1 billion Euro worth of aid—a number that placed it fifth in the ranking of donors in absolute terms (after USA, EU, UK, Canada, and Germany), but third in terms of aid as a percentage of GDP (Antezza et al., 2022).

This military support was widely endorsed by Polish society and primarily interpreted as arming a neighbor defending the entire West, including Poland, along with Western values of democracy and human rights, against a barbaric regime. Old tropes of Polish strategic culture—is located on the fault line between civilizations and acting as the *antemurale* (bulwark) of Western civilization (Góra & Mach, 2011)—returned, only this time it was Ukraine that was serving as the defender of Europe and European values. In October 2022, 84% of Poles supported weapons deliveries to Ukraine (compared to the EU average of 60%) (Hoffmann, 2022). Poland also hosted important donor conferences mobilizing allies to support Ukraine (The Chancellery of the Prime Minister, 2022). Another dimension of the Polish reaction was the mobilization of European actors, traditionally more skeptical as regards the use of force in international relations (Everts & Isernia, 2015).

To Poland's astonishment, the EU defied its reputation for caution and restraint. Within a few days of the Russian attack, the block's leaders announced an unprecedented decision to finance arming Ukraine with lethal weapons (Trenkov-Wermuth & Zack, 2022). This was followed by the activation of the European Peace Facility

(EPF) funded by member states and a green light to the amassing of military support for Ukraine (Council of the EU, 2022). Poland demanded the expansion of the EPF from the EU and pushed for the maximization of consent in line with the priorities explained above. Similarly, Warsaw backed the implementation of sanctions targeting Russia. In December 2022, Polish Prime Minister Mateusz Morawiecki stated:

> I'm being honest and straightforward: Poland supports stronger sanctions and calls upon other countries, in particular Germany, France, and the Netherlands, to make the sanctions airtight, to strengthen them and prolong them (PAP, 2022).

On such occasions, the Polish government's representatives often criticized other EU partners, particularly France, for its allegedly soft stance toward Russia and attempts at maintaining contacts with Vladimir Putin. In most CEE countries, including Poland, the approach was to push for Russia's defeat, arguing that peace negotiations with Moscow may only be pursued after assuring full territorial integrity of Ukraine (including Crimea) (Liik, 2022).

Even if the strategy of mobilizing European partners to support Ukraine within the EU was a key aim of the Polish government, relations with Germany were further politicized by the PiS government and deteriorated. The widespread criticism of Germany's lukewarm military support for Ukraine and continued engagement with Russia was heard right from February 2022 across the political spectrum in Poland. Most notably, in a speech at the German Council of Foreign Relations in Berlin, former Polish Minister of Foreign Affairs and opposition politician Radosław Sikorski stated in a bitter remark on the German foreign policy toward Russia:

> The trouble was, of course, that you didn't consider Poland a frontline state because you didn't consider Russia a threat. That's why there was not even a squeak of concern among your politicians or in the press when Russia deployed nuclear-capable Iskander missiles in Kaliningrad with the range to reach Berlin. (…) So, you didn't listen to our warnings and got it wrong. In Russia, we've been proved right. I don't expect you to apologize for 30 years of your patronizing tones; I expect you to listen to what we say now (Sikorski, 2022).

He was not alone in that view. Eugeniusz Smolar—another expert linked to the opposition—stated:

> German governments, political parties, and business acted in narrow German interests, facilitating Russia's preparation of its aggressive plans, continuing a 'dialogue' devoid of signs of any verifiable progress (Smolar, 2022).

The criticism voiced by the governing PiS and its leader has been different in tone. The party has harshly commented on how the new German coalition, formed in 2021, approached European integration, especially on how it supported the EC in its dispute with Poland on the rule of law. Making explicit references to the memories of Germany's Nazi past, still strong in Poland, Jarosław Kaczyński stated in December 2021: "The hard times have come for the Europeans. Germany has put its cards on the table and wants to build a Fourth Reich. We will not allow it" (Wróblewski, 2021). Since then, Germany has become a convenient object for attacks from the ruling party, further fuelled by Berlin's hesitant position on supporting Ukraine. This

serves primarily domestic purposes: Germany has become yet another actor presented by PiS in populist terms as alien and threatening to Poland and the Polish Nation (Cadier & Szulecki, 2020). Smolar referred to this as the "nationalist-sovereignist perspective of the Prawo i Sprawiedliwość [which reveals] the complexes of its leaders and supporters towards Western Europe" (Smolar, 2022).

German reactions and responses to Polish critics were relatively moderate. They indicated that German politicians were more interested in keeping the disputes down and not escalating them onto such uncomfortable topics as accusations of insufficient help for Ukrainians, relations with Russia and the Kremlin, or Polish reparation claims (Dempsey, 2022). Overall, such disputes are detrimental to the unity of Western support for Ukraine. Even if Germany's pacifist approach is not well received (and not only in Poland), the country is a key aid provider for Ukraine, remains an influential actor in the EU, and is an indispensable ally in NATO.

The most significant change in Poland's international cooperation sparked by the Russian war of aggression concerned its strategic partner—Hungary. The two countries—both characterized by an illiberal trend (Bustikova & Guasti, 2017; Krastev, 2018; Zielonka & Rupnik, 2020)—had been cooperating closely since 2015 to block any sanctions within the EU resulting from Article 7 of the Treaty of Lisbon. The cooperation was anchored in a long history of friendly relations. However, the pro-Russian position taken by Viktor Orban's government was negatively received in Warsaw (Sadecki, 2022). The key lines of disagreement between Warsaw and Budapest were the volume of aid for Ukrainian refugees, Hungary's efforts to hinder weapons deliveries to Ukraine and stir up disagreements within NATO, and its opposition to collective EU sanctions against Russia, explicitly concerning energy. Warsaw also did not welcome Hungary's veto of the aid package for Ukraine for 2023 (Schultheis, 2022). However, even as the Polish government has been in open conflict with the European Commission over linking access to the Recovery and Resilience Facility with adherence to democratic standards, it has simultaneously started distancing itself from Orban's foreign and security policy vision. In 2023, Polish Minister of Foreign Affairs, Zbigniew Rau, admitted: "We do not agree with Hungary's position on the war in Ukraine and find it difficult to understand and accept it; this, unfortunately, affects our bilateral relations" (Papiernik, 2023).

18.7   Democratization of Ukraine and New Candidate for the EU

In June 2022, the EU offered Ukraine candidacy status in an unprecedented political move. While Ukraine's membership in the EU is still a distant prospect, this political gesture created a stable anchor for the country's post-war transformation and guaranteed a long-term political perspective. In Poland, the announcement was met with strong support across the political spectrum. It was perceived as fulfilling

a long-lasting policy preference (and a promise of financial support for Ukraine), albeit under unpleasant circumstances (Matera, 2022).

The Sejm (the lower chamber of the Polish parliament) adopted a resolution urging the EU to grant Ukraine candidacy status (Krzysztoszek, 2022) almost immediately upon the Russian invasion in February 2022, while in May 2023, the Senate (the upper chamber) voted unanimously in favor of a resolution on Ukraine's fast-track NATO accession (Senat Rzeczypospolitej Polskiej, 2023). Warsaw cooperated with other actors in the region to push for the decision. The same month, CEE state leaders declared:

> We, the Presidents of the EU member states: the Republic of Bulgaria, the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland, the Slovak Republic, and the Republic of Slovenia strongly believe that Ukraine deserves receiving an immediate EU accession perspective. Therefore, we call on the EU Member States to consolidate the highest political support to Ukraine and enable the EU institutions to conduct steps to immediately grant Ukraine an EU candidate country status and open the process of negotiations (President of the Republic of Poland, 2022).

In 2022, Poland strengthened the EU's collective response to support Ukraine financially. This impacted its already weakened strategic partnership with Hungary (Tamma, 2022), which vetoed the 18-billion-Euro aid package for Ukraine in December 2022. At the same time, it pushed Poland closer to the position of other countries in the region as well as the Nordic states, primarily Sweden, which took the presidency in the Council of the EU in January 2023 (Erlanger, 2023). The stakes were high, especially for Ukraine, with predictable and continuous payments necessary to support the country's shattered budget.

Simultaneously, the EU has stressed that Ukraine must comply with overall accession criteria. In programming documents for the aid package, the EU emphasized compliance with its principles, including, for instance, a tough stance on preventing corruption. In particular, the EU stressed that "in addition to promoting deeper political ties, stronger economic links and the respect for common values, the agreement has provided a framework for pursuing an ambitious reform agenda, focused on the fight against corruption, an independent judicial system, the rule of law, and a better business climate" (European Union, 2022).

In that area, the Polish government strongly supports the EU's efforts to push the enlargement measures and overall democratization process of post-war Ukraine. As analysts claim,

> Only the combination of three elements—a strategic decision in favour of the enlarged EU, an increased commitment to supporting Partnership for Enlargement countries, and a firm stance on principles and values—will enable the true realization of the aspirations of Ukrainians and other societies in the EU's European neighborhood and meet the interests of the EU itself (Buras & Lang, 2022).

This will be difficult for vulnerable countries such as Ukraine and, as the Poles realize, EU enlargement is a complex and lengthy procedure (Orzechowska-Wacławska et al., 2021). Therefore, there will be a need to support Ukraine in the process, also by building additional channels of communication and mutual

learning throughout the period of transformation and democratization. CEE countries, including Poland, are expected to take a leading position in such processes, given their traditional support for enlargement (Góra, 2019). However, the efficiency of such support will be a function of these countries' positions within the EU and, specifically, the outcome of the rule-of-law crisis (Müller, 2015).

18.8   Conclusion

This chapter aimed to trace the changes in Polish political narratives as a reaction to the Russian war of aggression against Ukraine. As the above analysis shows, on the one hand, the substance and nature of Polish internal discourse about the relations with Ukraine and key foreign policy direction towards Ukraine have been reframed. On the other hand, the message Poland has aimed to convey internationally regarding Russian aggression was built on the perception of the Eastern neighborhood deeply rooted in the Polish political culture. This, in turn, may be better understood by acknowledging the importance of traditional roles in foreign policy internalized by Polish political elites. Those roles are structured far beyond the limits of governments' periodic changes and/or the scope of ideological differences between the main Polish political actors. They also serve as key heuristics allowing for a fast reaction in existential threats to national security.

Hence, unsurprisingly, the actions that, according to Poland, need to be taken by the international community, especially within NATO and the EU, should focus on humanitarian support to Ukrainian civilians suffering from the war, military assistance, and fostering democracy. In Polish eyes, this is primarily because Ukraine defends Europe and its values from horrifying threats.

The change characterizing the framing of Polish foreign policy is the emergence of striving to strengthen European unity and a need to suspend domestic political conflict and partisan rivalry, at least to the extent it regards or may affect Ukraine and related agendas. In the face of the (real and tangible) threat in Poland's Eastern neighborhood, at least for the time being, the processes of politicization as defined in this chapter have not only been put on hold but, one could even argue, have been reversed in some instances. This is in line with the literature which stresses the link between politicization and securitization, understood as the suspension of normal political conflict and bargaining (Hegemann & Schneckener, 2019).

As for Polish motivations for the massive and multidimensional support provided for Ukraine and Ukrainians, the dominant argument in the mainstream Polish narrative stems from the assumption that support provided to Ukraine is a means of self-defense.

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Chapter 19
German, French, and Polish Perspectives on the War in Ukraine

Caroline L. Kapp and Liana Fix

19.1 Introduction

Europe's past approach towards Russia and Ukraine, before the full-scale invasion in 2022, was marked by a significant divergence among three key member states: Germany, France, and Poland. Traditionally more assertive towards Russia than Germany and France, Poland has viewed Germany's and France's attempts at dialogue and mediation with Russia skeptically—such as in the Normandy format, established as a diplomatic platform after the annexation of Crimea and the war in Ukraine in 2014—and has warned against renewed aggression. Germany and France continued to hope that, despite the annexation of Crimea in 2014, engagement with Russia in some compartmentalized areas could prevent the worst and mitigate further destructive Russian behavior.

Russia's full-scale invasion of Ukraine on 24 February 2022 has changed the consensus in Europe. Those member states—predominantly in Central and Eastern Europe—warning for years against an aggressive Russia felt vindicated that their "Cassandra calls" of the past were justified. Other member states began soul-searching to pinpoint what they had missed in past policies and which mistakes to avoid in the future. Overall, Europe has been united in its condemnation of the war and support policies for Ukraine. However, during the war, disagreements emerged on the scope of support for Ukraine, the endgame in Ukraine, the risk of escalation, and the future of European security.

In this chapter, we will tackle the extent the war in Ukraine has indeed led to a convergence of previously diverse views in Europe on Russia and Ukraine and what role the concept of a war of aggression has played in contributing to this convergence.

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We also aim to identify which points of divergence continue to exist and how these are influenced by the respective countries' policies towards Russia and Ukraine before the outbreak of the war.

For the first 16 months of the war, from February 2022 to May 2023, we analyze public statements, speeches, and media reports on the respective countries' positions and changes in these positions. We also evaluate domestic political dynamics and divergent views in the above-mentioned countries. The selection of Germany, France, and Poland is based on their past level of influence on European Russia policy. Poland's position can be taken as representative of the view of many Central and Eastern European states, while those of Germany and France were often representative of Western European states. Germany and France were the primary actors in the Russian-Georgian war in 2008 and in crisis management efforts after the annexation of Crimea in 2014, with changing leadership roles (Fix, 2018, 2021). France's traditional focus remains the South of Europe, whereas Germany looks more towards the East and North. Therefore, this country selection promises a representative view of divergent European perspectives on Russia and the war in Ukraine.

The conclusion will summarize the findings from the analysis, arguing that the war in Ukraine has indeed led to a significant convergence in European positions on Russia and towards Ukraine. All three countries classify Russia's war against Ukraine as a war of aggression and have mobilized necessary financial, military, and diplomatic resources to support Ukraine. However, this convergence does not extend to the question of an endgame in Ukraine, i.e., how a war of aggression should be concluded, as well as the associated risks of escalation and the future of European security. Should Ukraine pursue a complete military victory over Russia and retake all its territories, including those occupied since 2014, by military means? Or should the war be concluded by a negotiated settlement, including potential territorial concessions? Which escalation risks are associated by Europeans with the respective outcomes, especially concerning the use of nuclear weapons and a widening of the war to a NATO-Russia conflict? Lastly, the question of Europe's future relationship with Russia and how relations with an aggressor should be navigated in the years and decades to come will be addressed.

19.2   A War of Aggression and European Perspectives

A war of aggression is defined as a military conflict that, in contrast to a war of self-defense or a war with justification, aims to exert control over another country's territory and lacks the attributes of self-defense or justification. The United Nations Charter prohibits using force not sanctioned by the UN Security Council or performed out of self-defense. Any such application of force is considered a violation of the principle of sovereignty codified in international law. The International Criminal Court is responsible for holding accountable crimes of aggression. According to Tom Dannenbaum, a war of aggression is considered a crime not because "the criminal wrong of aggressive war is inflicted on the attacked state" but "because it entails killing without

justification". This unjustified killing also explains why aggression stands "alongside genocide, war crimes, and crimes against humanity" (Dannenbaum, 2017).

Despite Russian propaganda portraying the attack on Ukraine as a war of self-defense, other states have not taken this posture seriously. Instead, the coalition supporting Ukraine has emphasized Ukraine's right to self-defense in a war of aggression. This mutual understanding has created a unifying effect on supporting countries. Ukrainian and European leaders have repeatedly framed the war in starkly contrasting terms: between justice and injustice and between autocracy and democracy. The legal dimension of a war of aggression, and the normative dimension that comes with it, has played an essential role in the support for Ukraine—to the extent that it resulted in efforts to establish a legal framework for the prosecution of a war of aggression even before the end of the war. For example, the European Union has supported the establishment of a special tribunal to investigate and prosecute possible war crimes in Ukraine. The clear-cut legal and normative dimension of the war in Ukraine as a war of aggression has also influenced the position of key EU member states.

19.2.1   Germany: Between Commitment and Hesitation

On 27 February 2022, 3 days after Russian forces invaded Ukraine, and under the fear of a potentially successful Russian occupation of Ukraine, German Chancellor Olaf Scholz delivered his "*Zeitenwende*" speech in the German *Bundestag* (parliament). *Zeitenwende* refers to a historic turning point or the change of an era. During his speech, Scholz announced drastic changes to the country's defense policy, including a commitment to spend more than two percent of GDP on defense, a NATO benchmark Germany has long failed to meet. The speech also promised to send additional deployments to NATO's eastern flank, provide weapons to Ukraine, reduce energy dependence on Russia, continue participation in NATO's nuclear sharing program, and acquire armed drones (Scholz, 2022). Germany has played a significant role in Western alliance efforts to halt Russia's war of aggression, even considering its enormous dependence on Russian gas.

Nevertheless, Germany has hesitated to explicitly support Ukraine in retaking all of its territory—including those occupied since 2014. Instead, Germany is balancing a fear of escalation with the importance of the principle of territorial integrity. This fluctuation, torn between commitment and hesitation, has shaped Germany's perspective on the war in Ukraine.

In February 2022, Scholz characterized Russia's invasion of Ukraine as a war of aggression waged "in cold blood". The German government has sustained this characterization throughout the course of the war. Scholz later expanded the scope of concern, arguing that "[Russian President] Vladimir Putin and his enablers… consider their war against Ukraine to be part of a larger crusade, a crusade against liberal democracy" (Reuters, 2022b). This classification inevitably raised the stakes for all parties to the conflict; Germany perceives the war in Ukraine as a threat to European security and the European order, not only as a threat to Ukraine. However,

unlike Poland, Germany does not see the war as an imminent threat to its borders or territorial integrity, as it is not an immediate neighbor of Ukraine. This physical separation—where Germany is no longer a frontline NATO state as it was during the Cold War—has influenced Germany's perspective on the war.

Germany's initial approach toward sanctions also reflected its fluctuation between commitment and hesitation. The European Union's unprecedented, rapid implementation of, and subsequent adherence to, a sanctions regime against Russia exceeded expectations. The German government played a crucial role in preparing and implementing the sanctions. However, outrage over Russia's brutal war in Ukraine led to calls for further-reaching steps, initially omitted from the sanctions package—such as removing Russian banks from the SWIFT banking network. Germany initially hesitated to join the SWIFT sanctions out of fear that it could affect the country's energy supply—particularly its ability to pay utilities to Gazprom. Because of Germany's energy concerns, Gazprombank remained excluded from SWIFT sanctions against selected Russian banks. Gazprombank continued to process payments for Russian gas until the shutdown of Russian supplies to Germany.

Further, despite announcing plans to terminate dependence on Russian oil by the end of 2022, Germany pushed back against efforts by some member states to also include Russian gas in the sanctions regime out of concern for lack of alternatives and the security of not only its own but also Europe's energy supplies (Reuters, 2022a). Germany's dependence on Russian gas exceeded the average dependence of European countries, and would have been further entrenched by the Nord Stream 2 pipeline—a dependence that Poland and the USA repeatedly warned against, which was canceled only a few days before the invasion (Bennhold and Solomon, 2022). In reaction to Russia's termination of gas supplies, Germany and the European Union have significantly reduced their dependence on Russian gas. Yet, no sanctions on Russian gas have been introduced. Instead, the European Union has established an oil price cap to reduce Russian profits. Overall, Germany has participated in a rigorous sanctions regime but was initially unwilling to commit swiftly to cutting off Russian energy imports due to its own and Europe's dependence—which would have reduced Russia's financial capacity to wage war.

German commitment imbued with hesitation was also a leitmotif of Germany's deliverance of military support. This was particularly the case before the Russian invasion; Germany declined to supply substantial military aid, opting instead to offer to send steel helmets to Ukraine (Kirschbaum, 2022). This represented a continuation of Germany's past approach since 2014, which has argued that there was no military solution to the conflict. Germany has steadily increased military support to Ukraine throughout the conflict, including delivering German-made battle tanks. But Germany has upped its contributions slowly and only when pushed by international and domestic pressure. Germany's eastern neighbors, including Poland, have perceived this hesitation as a reluctance to commit to the Ukrainian cause. This view is aggravated by how long it took Germany to responded to Ukrainian requests for German-made Leopard battle tanks (Fix, 2022). Members of Germany's governing coalition were divided on the issue, as was public opinion (ZDF, 2022). This initial hesitance was due to Germany's concerns that delivering Western-made battle tanks

could escalate the war. Germany's hesitation was only overcome after the United States had approved the delivery of US battle tanks. This reluctance has damaged Germany's reputation, especially in Central and Eastern Europe.

Germany's concerns about escalation have also influenced its thinking about potential endgames to the war. A statement released by the G7, including Germany, committed its members to return all Ukrainian territory to Ukraine without specifying the military or diplomatic means (G7 Statement on Ukraine, 2022). German chancellor Scholz has repeatedly expressed that Russia will not win the war. Still, he has avoided calling for a Ukrainian "victory", suggesting a hesitant stance towards the military reconquest of Ukraine's entire territory, including Crimea, and a concern for the war spreading beyond Ukraine's borders. Members of Germany's governing coalition disagree over a preferred outcome of the war (Pierobon, 2023). Annalena Baerbock, Germany's foreign minister and a member of the Green party, has not hesitated to call for a Ukrainian victory and rejected suggestions that Ukraine could accept Russian territorial gains in return for a peace agreement, calling such proposals naïve (Baerbock, 2022).

In contrast, some parliamentarians of the Social Democratic Party have been more hesitant and argued for more efforts to reach a stage of negotiations. Rolf Mützenich, parliamentary leader of the Social Democratic Party (SPD) in the German Bundestag, has been critical of Baerbock, arguing that Germany should lean more heavily into diplomatic options (ZDF, 2022). These divergent voices within the party also play a role concerning the position of the Social Democratic Chancellor, Olaf Scholz.

Germany's gradual increase of military support and its cautious positioning on the question of an endgame in Ukraine can be attributed mainly to a fear of escalation—particularly nuclear escalation in Ukraine, as well as an unintended escalation that could lead to a direct conflict between Russia and NATO (Reuters, 2022b). These two scenarios evoke memories of the Cold War and related escalation concerns among the German public. "We are supporting Ukraine", Scholz said, "We are doing it in a way that is not escalating to where it is becoming a war between Russia and NATO because this would be a catastrophe" (Bennhold, 2022). Scholz initially framed the delivery of battle tanks as a red line that, if crossed, could prompt escalation. He changed this position after the United States agreed to deliveries. The possibility of an escalation over Crimea is an even more significant concern for Berlin. There is also a vital concern about weakening support from the West in a drawn-out war.

Overall, Germany's perspective on the war in Ukraine and the future of European security has been significantly colored by a fear of escalation, causing the government and public to oscillate between commitment and hesitation. Germany's main objective is to return to a peaceful Europe, which is not necessarily equal to an unequivocal Ukrainian military victory.

19.2.2   France: The Long Shadow of Versailles

France has played an essential role in the Western alliance from day one of Russia's invasion of Ukraine. Politicians in Paris have remained committed to supporting Ukraine throughout the war. President Emmanuel Macron's government has also emphasized a need for international organizations to hold Russia accountable for its aggression. However, even more so than Germany, France has concerns about the future of European security and Russia's role. In the early months of the war, Macron went so far as to insist Russia not be "humiliated", warning the Western alliance against repeating Europe's mistakes of the twentieth century (La Dépêche, 2022). The historical lesson of the Treaty of Versailles and Paris's long-standing relationship with Russia, with both countries seeing themselves as "great powers" in Europe and beyond, shaped France's approach to the war in Ukraine. While France was not dependent on Russian energy to the extent Germany was, it also does not feel the looming threat of Russia in the same way that Poland does.

Like Chancellor Scholz, Macron has described the conflict as a war of aggression waged by Russia and framed the war as a conflict of values. Speaking at the UN General Assembly, Macron emphasized the exceedingly high stakes of the conflict. He argued that the world must choose "between war and peace" and criticized states for adopting a neutral position (Macron, 2022b). By putting the conflict in such stark terms, Macron demonstrated France's commitment to Ukraine. Still, he remains more hesitant regarding Ukraine's stated ambition to re-establish its pre-2014 borders, including Crimea, militarily.

France has remained in lockstep with the EU in implementing swift and far-reaching sanctions against Russia. French Prime Minister Elisabeth Borne urged the National Assembly to maintain and harden sanctions to "make the cost of war unbearable for Russia" (Radio France Internationale, 2022). There has been pushback to this stance from the far right in France, most notably from Marine Le Pen. But the presidential election in France had no impact on the Macron government's Ukraine policy. Beyond sanctions, France has provided Ukraine with many heavy weapons.

France's military contributions to Ukraine initially lagged behind those of Germany and Poland, although not all financial assistance has been disclosed. In the first months, France also contributed €100 million to finance humanitarian aid to Ukraine and sent 1,400 tons of aid materials to Ukraine and surrounding countries. Macron increased funding to supply Ukraine with weapons, agreed to train 2,000 Ukrainian soldiers, and offered to support intelligence efforts. Much like Germany, however, France is troubled by a fear of escalation. France's territorial integrity is also not on the line, so the stakes of the conflict are lower than they are for Poland and other Eastern European nations. After repeated Russian nuclear threats in October 2022, Macron stated that France would not deploy nuclear weapons in response to a Russian nuclear strike on Ukraine or "in the region". He explained that this policy was in line with French practices because such a response would not be in the "vital interests of [France]" (Caulcutt, 2022). This surprised many observers, as France's nuclear deterrence policy was usually one of carefully calculated ambiguity. French

Armed Forces Minister Sebastien Lecornu has warned Russian Defense Minister Sergei Shoigu against nuclear escalation (France24, 2022).

The fear of escalation has caused France to think about a negotiated outcome to the war that could lay the intellectual foundations of future European security. Macron has explicitly kept communication lines open with Moscow to contribute to a negotiated development. However, at times Macron's statements have been contradictory; for instance, in December 2022, he compared Crimea to the historical question of Alsace-Lorraine for France to explain why it is solely Ukraine's decision to determine the future of Crimea—a surprisingly strong and explicit statement in favor of a potential military reconquest of Crimea.

France's position on the war is influenced by its past relationship with Russia, with both countries seeing themselves as "great powers" in Europe and beyond. In the years before the war, France pursued a bilateral "strategic dialogue" with Russia. This effort reflected France's desire to establish a balance of power in Europe in the tradition of the great powers. Macron tried to establish France as the leader of the EU towards Russia, which other European states, including Poland, viewed skeptically. It contributed to the continued wariness of France's motivations. The month before Russia's invasion, Macron started to harden his stance towards Russia amid the Russian military build-up at the Ukrainian border. Still, he pushed for diplomacy and, like Scholz, visited Moscow weeks before the invasion.

A few months after Russia's invasion, Macron suggested that the West had made mistakes in the past toward Russia and that more efforts were needed to push Putin toward peace. "Never give in to the temptation of humiliation, nor the spirit of revenge," Macron said, "because these have already in the past wreaked enough havoc on the roads to peace", pointing again to the history of Versailles (Macron, 2022a). This plea has two likely roots. First, Macron is convinced that a negotiated conclusion to the conflict must also consider Russian security interests. Macron's statement confirmed in December 2022 that Russia will also need, and has the right to, security guarantees. Second, Macron favors a reintegration stance towards Russia, hoping it will help foster an enduring European security post-conflict. From Macron's perspective, the Treaty of Versailles and the German humiliation after World War I only plunged Europe into conflict several years later.

19.2.3 Poland: An Unconditional Ukrainian Military Victory

Like its European neighbors, Poland quickly agreed to EU sanctions in response to Russia's invasion of Ukraine. It has held firm within the Western alliance and pushed its European neighbors towards even stronger sanctions. Poland has also assumed an outstanding role in military support for Ukraine, and it has become the main platform for Western weapons transits. In contrast to Germany and France, Polish leaders are more forward-leaning and have a more assertive perspective on the conflict than their Western counterparts, despite the convergence of views with Germany and France after the invasion (Dyduch & Góra, 2023). Poland views the war and Russia's

aggression as an existential threat to Polish security and has subsequently committed large sums of military, financial, and humanitarian support to Ukraine to reinstate Ukrainian territorial sovereignty completely.

Polish President Andrzej Duda, a member of the populist PiS party, has, like his Western counterparts, framed the conflict as a war of Russian aggression. "First of all", Duda said in an interview, "nobody attacked Russia… The Russian aggression in Ukraine is an unprovoked aggression" (PBS, 2022). He went further, using rhetoric like that of Scholz and Macron, to build a narrative that this is a "war against our common principles and values, against all of humanity" (Duda, 2022). Much like in Germany and France, this framing has raised the stakes and, together with a substantial threat perception in Poland, allowed for unprecedented cooperation surrounding support for Ukraine.

Before the conflict, the Polish-Ukrainian relationship was rife with tensions. However, since the outbreak of the war, Poland has been one of Ukraine's fiercest advocates and most loyal allies. Unlike Germany, which agreed to reach NATO's benchmark—spending two percent of GDP on defense—following the outbreak of war, Poland promised to surpass its threshold, settling on a goal of four percent. As a member of both NATO and the EU, Poland has pushed these organizations to take a hard stance against Russia, maintain sanctions, and increase support. Poland has also acted as an advocate of Ukraine to the United States, which has been the largest aid provider throughout the conflict. Poland has made enormous contributions to Ukraine, taking a leading position when it comes to the amount of aid provided in percentage of the country's GDP. In the first six months of the conflict, Poland committed over $3.7 billion in total assistance to Ukraine, surpassing, in terms of GDP, many of its fellow EU countries with more considerable spending power, including Germany and France. Poland has also served as a staging ground for weapons deliveries and humanitarian aid and accepted over 1.5 million refugees from Ukraine. Duda has taken pride in how readily the Polish people have welcomed Ukrainian refugees.

While in close harmony with Germany and France in describing the conflict, Poland has taken a different stance on escalation and the preferred outcome of the war. Poland does not appear to have the same fear of Russian escalation that Germany and France have displayed. When asked about the possibility of escalation, Duda said, "Russia, which has never used nuclear weapons so far… would break all the taboos. And I believe that the Russian authorities know that perfectly well" (PBS, 2022). This attitude was apparent in March 2022 when Poland proposed a deal to send Soviet-made MiG-29 fighter jets to Ukraine. Ultimately, the United States rejected the proposal, calling the idea that the United States would deliver those jets "untenable" and pointing to concerns about escalation (Gera et al., 2022). Poland did not harbor similar fears but did not want to move forward without the United States. Over a year later, the United States changed its position and agreed to train Ukrainian pilots on Western-made F-16 jets.

Poland prefers to reestablish Ukraine's borders to their pre-2014 status, if necessary, by military means. "Ukraine has to regain control over its internationally recognized borders… so that Russians are forced to withdraw from Ukraine to give back

the occupied lands to Ukraine," the Polish President urged the UN General Assembly (Duda, 2022). Duda and his Minister of Foreign Affairs, Zbigniew Rau, describe this as necessary for rebuilding peace and maintaining freedom and democracy against a Russian imperialist tradition.

This strong Polish perspective can be attributed to historical and security motivations. Poland and Russia have a highly contentious history. Poland broke out under Soviet rule in 1989. Duda evoked this history in his speech to the United Nations: "We know what Russian terror means, what Russian occupation means," he told the General Assembly. This history makes Poland more sympathetic to Ukraine's plight. Beyond historical tensions, Poland—sharing a 330-mile border with Ukraine—perceives a real and immediate security threat. Thus, in addition to considerations for general European security, Poland feels a more direct threat to its territory than Germany and France. In a 2021 speech highlighting Russia and Ukraine's shared history, Russian President Vladimir Putin cast Poland as an enemy (Putin, 2021). According to recent polling, 9 out of 10 Poles view Russia as a major threat (Poushter et al., 2022). On November 14, 2022, a missile from Ukrainian air defense crossed the Polish border, killing two Polish citizens. While escalation could have a devastating impact on Poland, its position in an at-risk neighborhood makes Poland more willing to take risks to remove this threat. For Poland, a resounding Russian defeat must be the endgame in Ukraine. Poland's location and history have resulted in a commitment to an unequivocal Ukrainian military victory. At the same time, Germany and France are more concerned with escalation management and the future architecture of European security.

The differences between the German and Polish approaches have strained relations between the two countries. Since the start of the war in Ukraine, voices in the Polish government have criticized Germany's hesitation in Ukraine. Warsaw initially rebuffed a German offer to station a Patriot air defense system in Poland, suggesting that Germany send the anti-missile system to Ukraine instead. In a move that further revealed worsening relations between the two countries, Foreign Minister Rau signed a diplomatic note in October 2022 demanding nearly €1.3 trillion in World War II reparations from Germany. Poland has turned to South Korea as an alternative and faster arms supplier. In September 2022, South Korea signed its largest-ever arms deal with Poland. Such divisiveness in Europe may worsen as the war drags on and could lead to disagreements about military aid provision and the best path forward for Ukraine and European security.

19.3 Conclusion

The analysis and comparison of German, French, and Polish positions towards the war against Ukraine in the first 16 months demonstrate a significant convergence in European perspectives. The three countries have all condemned the war of aggression in similar terms, which has helped to create discursive clarity on the origins of the war and its legal and normative foundations, encouraged the countries to adhere

to a comprehensive sanctions regime, and resulted in the provision of military aid. They have also converged on assessing Russia as a threat to European security. Russia's war against Ukraine has united Europe, resulting in European leaders' solid reactions and responses. Nevertheless, divergences emerged over how the war has been perceived in Germany, France, and Poland, as the desirable outcomes, as well as the risk of escalation. Polish leaders perceived the war and Russia's aggression as a potentially existential threat to their security. Subsequently, they committed large sums of military, financial, and humanitarian support to Ukraine to achieve a complete Ukrainian military victory. Anything short of that would risk, from a Polish perspective, a renewed Russian attack not only on Ukraine but potentially also on alliance members in the East, including Poland.

German and French leaders were more hesitant to call openly for a Ukrainian military victory, as Russia's aggression has been perceived as a threat to the European security order but not directly to their security and territory. Their concerns are driven to a dominant degree by escalation fears between NATO and Russia. For Poland, Russian aggression is the main threat to its security; for Germany and France, a NATO-Russia escalation is considered the main threat. This has led to an ambiguous German and French stance when it comes to the question of a negotiated outcome versus a military victory by Ukraine. France, in addition, warned at the beginning of the war against the humiliation of Russia, alluding to the historical example of Versailles and the need for security guarantees with Russia. Here, France diverges in its view on the future European relationship with Russia, aiming towards more inclusiveness than Germany and Poland.

These divergences align with the respective countries' past legacies and approaches. Germany's fear of escalation is driven by its historical experiences during the Cold War, a wish to prevent a return, and a culture of military restraint, which Berlin promised to overcome with the *Zeitenwende*. France's great power tradition and past engagement with Russia explain its willingness to think more openly than others about a future relationship with Russia and its potential pitfalls, even if decades away. It also includes a grain of understanding for the grievances of Russia as a once great power. Poland's position is influenced by its history as part of the Soviet bloc and the experience of Russian domination—which eventually made Warsaw more clairvoyant on Russia's intention and aggression against Ukraine than others. Despite the convergence after Russia's attack on Ukraine, the long-lasting legacies of the past continues to influence European perspectives today. In particular, the deteriorating relations between Germany and Poland especially under the PiS government, at a time of war in Europe, are of concern. The once-praised "Weimar Triangle" between Germany, France, and Poland has lost momentum. Without US leadership, these divergences would be even more apparent.

The divergence and convergence of European perspectives are essential to recognize and factor into future policy-making and analysis. While these divergences have changed throughout the war—some widening, some narrowing—they remain essential for the question of how the war can be concluded and whether European unity will be maintained. The tectonic plates in Europe are shifting, but they have not settled yet.

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Chapter 20
Estonian Fears, Hopes, and Efforts–Russian War Against Ukraine

Viljar Veebel and Illimar Ploom

20.1 Introduction

Estonia, as a small country, next to a big empire, has had a traumatic historical experience with Russia as its neighbor. The historical context includes an occupation spanning for more than 300 years, first by the Tsarist Empire and afterwards by the Soviet Union. During those centuries, the Russian authorities carried out numerous deportations to Siberia, confiscated property, enforced collectivization, and committed illegal killings.

Following the large-scale aggression of Russia against Ukraine in 2022, a mainstream viewpoint has emerged in Estonia media concerning how to assist Ukraine, how to respond to Russia, what to expect from the North Atlantic Treaty Organization (NATO) allies, and how to deal with the inner cohesion of Estonian multi-ethnic and multi-lingual society. The least problematic issue is how to help Ukraine, with Estonia emerging as the top donor nation *per capita* in 2022 (Hankewitz, 2022). Concerning the response to the Russian aggression in Ukraine, most Estonian public and elite support significantly more severe sanctions than have been enacted. Although there have been voices that have demanded the direct intervention of NATO in the conflict, the most vital consensus is behind the view that the West should not get directly involved in this war of aggression but instead indirectly support Ukraine to a greater degree.

The chapter will commence by examining the factors that led Russian President Vladimir Putin to opt for a military intervention in Ukraine. It will also assess whether

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there exist alternative courses of action, potentially more advantageous or less detrimental to both Russia and Ukraine, which are being considered by the West and the People's Republic of China (PRC). It also explores what else can be expected from President Putin regarding aggressive ambitions in Central and Eastern Europe (CEE), and how the European Union (EU) and NATO should respond to Russia's maneuvers and threats to secure Estonia and the rest of the Baltic States. Finally, the chapter delves into the perspectives and inclinations of various social and political groups within Estonia concerning the Russian aggression in Ukraine.

20.2   Russia's *Russkiy Mir* and Near Abroad Ambitions

Although Russia's aggressive stance has significantly shaped Estonia's contemporary perception of the country in recent decades, the deeper source of the ill feelingsrelies on Estonia's painful historical experience with Russia consisting of numerous deportations to Siberia, illegal killings, confiscation of property and relocation of ethnic Russians to Estonia (Kasekamp, 2017).These feelings are also aggravated by the still unresolved challenges of social segregation between Estonian and Russian-speaking communities and the concomitant security threats emanating from Russia (Taagepera, 2009).

Recent history witnessed the incorporation of the territory of Estonia into the Tsarist Russian Empire in the early 18th century, which lasted for most of the 18th and 19th centuries. In addition to previous periods of partial Danish, Swedish, and Polish occupations, the most enduring and extensive occupation was carried out by German crusaders, commencing in the thirteenth century and persisting until the eighteenth century, when the Russian Empire assumed control of Estonian and Latvian territories. Nevertheless, it is the last few centuries of rule by Tsarist Russia, and especially the harsh Soviet occupation that followed (Kasekamp, 2015) that hold significant historical importance.

The high–water mark of the painful history of Soviet occupation in Estonia is the massive killings and the deportation of tens of thousands of Estonian citizens to Siberia in the 1940s. This fact has played a key role in creating solid anti-Russian positions among the political elite and the citizens. The Soviet occupation alone caused Estonia to lose over 20% of its population and around 15% of its territory (Kangilaski et al., 2015).

Although the collapse of the Soviet Union in 1991 might have been a harbinger of better relations between the neighbors, relations with now-independent Russia remained complicated. In response to Estonia's refusal to offer unconditional citizenship to local Russian speakers, the first and most pro-democratic Russian government led by President Boris Yeltsin enacted economic sanctions against Estonia early in the 1990s (Veebel, 2022).

During the last two decades, the Estonian elite has been primarily concerned about Russia's near abroad and "borderization" policy (Toal & Merabishvili, 2019). Russia appears to rely on a geopolitical reading of its identity as a traditional land power,

which necessitates maintaining physical control and a sphere of influence over its border regions to guarantee safety and security (Karaganov & Suslov., 2019). Over a decade, the Kremlin has promoted a narrative of a "Global Anti-Russia" in the form of NATO threatening Russia's independence. The "color revolutions" have been especially troubling to the Russian leadership. In this context, gaining control over its neighbor's territory, resources, infrastructure, strategic locations, and military capabilities becomes a rational strategy from a geopolitical perspective to avoid a situation in which the competing global powers United States of America (USA) and the United Kingdom (UK) gain control over the countries bordering Russia (Karaganov & Suslov, 2018).

Russia's policy has provoked intense apprehension among its closest neighbors. Therefore, since the Russian war in Georgia in 2008 and the 2014 annexation of Crimea, Estonia has committed to using all of its diplomatic and media capabilities to warn its allies within the EU and NATO about Russia's aggressive ambitions. Despite its membership in the EU and NATO, the Estonian political and military elite feared that Russia would use the same arguments and actions against the Baltic States.

20.3 *Russkiy Mir* Concept and Soviet Nostalgia

Understanding Russian neo-imperial ambitions in the post-Soviet space is worth becoming versed in the *Russkiy Mir* concept. Within the frame of this concept, the Kremlin attaches to countries such as Ukraine and the Baltic States and emotional geostrategic value. The notion of *Russkiy Mir* has been developed as an ideological tool in Russia since the late 1990s (Svarin, 2016). It refers to a mythical ideal of Russian culture and the Russian language. Russia has been forging narratives enabling it to consolidate a national spirit. Vital in this regard have been the memories of WWII and the unique role the Soviet Union played in it (Persson, 2022).

Nevertheless, in recent years, this has gradually evolved into the idea that Russia should protect and support anyone who identifies as Russian, speaks Russian, and considers Russia their cultural pivot. What is peculiar is that, by enhancing this idea and targeting the diaspora, the Kremlin expected these narratives would create conditions for the stronger allegiance of the Russophone population to Russia. At the same time, through its actions, the Kremlin has also attempted to fracture its neighbors' multi-ethnic and multi-lingual communities (Sazonov et al., 2022).

In the eyes of Russia's political elite, Russia has so-called privileged interests and status, in a way unique and—as they argue—historically specific relations with neighboring countries (Veebel, 2017). This also applies to partly Slavic–populated regions (Berls, 2023). Protecting those identifying as Russians has served as a source of legitimacy for Russian political leaders in recent decades. As Vladimir Putin has asserted, "Millions of Russians and Russian-speaking people live in Ukraine and will continue to do so. Russia will always defend their interests using political, diplomatic and legal means" (Prague Post, 2014). The Russian Federation used this

justification in 2014 after Russia occupied Crimea. It is likewise possible to quote former Russian Prime Minister and President Dmitry Medvedev: "Protecting the rights and interests of Russian citizens abroad remains our most important task" (Estonian Public Broadcast, 2016). The Kremlin had used this logic of justification since the war against Georgia in 2008 when it copied the precedent of Kosovo and started using it for its security purposes. While Moscow has remained thoroughly critical of the intrusion of the West into the sovereignty of Serbia, it can be argued to have mirrored the formal logic of that precedent. Thus, the Kremlin can be seen to have applied lawfare here (Ingimundarson, 2022).

When launching a war against Ukraine in 2022, Russian President Vladimir Putin had reason to believe that a significant share of the people living in Ukraine would support Russia's military invasion or that it would at least help him divide society and create internal tensions and chaos in Ukraine (The Kremlin, 2022), resulting in the autonomy or separation of some regions (Illarionov, 2022). In this way, Putin expected to gain control over Ukraine. As it turned out, this judgment was largely unfounded, and in practice, Russia had minimal success only in the East and South of Ukraine. Thus, Putin could not mobilize the support of Ukraine's Russian-speaking community and use it for Russia's benefit. There are various reasons for this failure.

To some extent, those who supported Russia had already left Ukraine for Russia. Likewise, the Russian-speaking community in Ukraine had no authoritative leader under whose flag Russian-speaking Ukrainians could rally. The attempt to reinstate former Ukrainian President Viktor Yanukovych in this role was bound to be unsuccessful. Thus, considering also the failure of occupying Kyiv, the Kremlin couldn't set up an alternative to the current Ukrainian administration.

20.4   Russian Versus Estonian: Narratives and Attitudes

Due to historical reasons, many Estonian speakers still perceive Russian speakers as occupants. The latter are seen as people sent to Estonia after the Second World War by the Soviet authorities to replace the Estonians recently deported to Siberia. Altogether, more than 30,000 people constituting 3% of Estonia's population, were deported, although at least 25% of these returned from Siberia after the death of Stalin. During the Soviet period, this created a fear that Russophones would gradually replace the Estonian-speaking population. Today, while Russian speakers form around 25% of the Estonian people, they represent about 50% of the population in Tallinn, Estonia's capital, and more than 90% of the populations of Narva and Kohtla-Järve, two cities among the five largest cities in Estonia (Statistics Estonia, 2023).

Furthermore, there is a long-standing citizenship challenge involving Russian speakers residing permanently in Estonia, who do not have Estonian citizens among their parents or grandparents. Even if people in this group do not have any other form of citizenship, they cannot automatically apply for Estonian citizenship. As a precondition, they must pass the combined exam on Estonian language and culture

successfully and can only start the application process afterwards (Estonian Police & Border Guard Board, 2023). Altogether there are around 400,000 Russian speakers in Estonia, of whom 100,000 have Estonian (and EU) citizenship, 100,000 have Russian passports, and 200,000 do not have any citizenship, holding only permanent residency status (The Estonian Cooperation Assembly, 2022).

The differences between the two main language groups in Estonia encompass various facets and have significant consequences, with Estonian-speaking and Russian-speaking communities in Estonia differing significantly in terms of their attitudes towards the EU, NATO, and Russia. A significant implication that concerns the security and foreign policy of Estonia is the diverging attitudes towards the international organizations Estonia belongs to as well as towards Russia. The Estonian speakers are mostly positive towards NATO and the EU and critical towards Russia. In contrast, local Russian speakers see the logic of Estonian relations with the EU, NATO, and Russia the other way around. For example, according to the 2021 RAIT Faktum & Ariko study, Russia is regarded as an aggressive and hostile actor by 70% of Estonian speakers, a view shared by only 20% of Russian speakers. Interestingly, the opinion of NATO is the opposite, with 80% of Russian speakers seeing NATO as a hostile and aggressive actor and 75% of Estonians fully supporting NATO membership and its presence in the region (RAIT Faktum & Ariko, 2021).

Although the situation depicted requires government intervention to prevent increasing tensions and potential escalation within Estonian society, both the current and past administrations have instead acted with a degree of unawareness regarding this risk, despite the intricate security circumstances. Russian populated regions are treated very similarly to the rest of Estonia, without the implementation of additional programs for integration. The Estonian Public Broadcasting Company covers Russian language media; however, the Russian language channels covered by state-owned media are less popular among Russian speakers in Estonia, who tend to watch the more entertaining Russian channels (Estonian State Chancellery, 2022).

In 2022 and 2023, the differences in understanding of Russian actions in Ukraine and expected engagement towards the Baltic states had only grown between Estonian and pro-Kremlin Russian speakers. The main reason for this is the success of Russian propaganda and the removal of several well-known Soviet time war monuments (Brüggemann & Kasekamp, 2008) by the decision of the Estonian government (Republic of Estonia Government Office, 2023). The most considerable tensions appeared in August 2022 around removing the T-34 tank monument in Narva (The Guardian, 2022). Altogether there are calls to remove or release at least 200 monuments that are seen as having propaganda value for Russia and pro-Kremlin groups (Republic of Estonia Government Office, 2023).

The picture depicted above is increasingly complicated by the large influx of Ukrainian refugees following Russia's invasion in 2022–2023, as Ukrainian refugees also use the Russian language for everyday social communication. Ukrainian refugees exceeded 40,000 by August 2022 and reached 70,000 in June 2023, accounting for around 6% of the current Estonian population. The Ukrainian refugees are welcomed as victims of Russia but also as a valuable boost to the labor force

for the aging Estonian society (Statistics Estonia, 2022). At the same time, nationalist and populist political groups (represented in the Estonian Parliament by EKRE Party) see them as a source of corruption, prostitution, diseases, money laundering, and tensions with local Russian speakers (Jakobson & Kasekamp, 2023).

There are different views among the language groups in Estonia regarding the Russian aggression in Ukraine. Among Estonian speakers, there is a strong inclination toward advocating for a robust response against Russia. They express satisfaction with Europe's support for Ukraine and the imposition of sanctions on Russia (Estonian Ministry of Interior, 2022a). At the same time, Russophones in Estonia mainly support Russia's official claims about the Ukrainian war. They are, therefore, not only critical of but even angry towards the Western and Estonian responses. Finally, the Russian-speaking non-Russians mostly support Ukraine (as most of them are Ukrainians) and the Western and Estonian support packages to Ukraine, as well as the sanctions against Russia (Estonian Ministry of Defence, 2022a).

20.4.1   Related Rise of Energy Costs and Inflation

In most energy sectors, affordability is the main issue. Even as Estonia itself consumes very little Russian gas, oil, and electricity, the absence of these from the European market is raising the prices of other suppliers to new heights, making them unaffordable for many social groups. This has a powerful impact on less well-off groups, such as local Russian speakers in Estonia, whose average income is 25–30% lower than the national average (The Estonian Cooperation Assembly, 2022).

As far as electricity is concerned, Estonia produces almost as much electricity as it consumes. Nevertheless, deficits and high prices are very present in the Estonian market under EU conditions. The closure of the Ignalina nuclear plant in Lithuania aggravated this. More solar and wind energy investments would help, but these are currently hindered by bureaucratic rules that do not allow small private producers to join the market quickly enough. Regarding gas, Estonia uses it in a minimal amount. While the country used to rely on Russian gas in the past, nowadays Estonia is switching to liquefied natural gas (LNG), with a new terminal finalized in Paldiski and a partnership agreement with Finland to share LNG resources (Estonian Ministry of Economy & Communication, 2022). High prices and unaffordability will thus continue to present significant challenges. In turn, oil-based fuels for the future will primarily originate from European markets.

Finally, oil shale is a sector that must be addressed within the Estonian economy as a provider of both energy and employment. The industry is relevant for Estonia economically, producing about 5% of the country's GDP and employing approximately 2.5% of the total labor force. It has enormous importance in regional, socioeconomic, and security-related terms. A recent study (Praxis, 2020) concludes that closing down the oil shale industry in the Ida-Virumaa region could mean that at least 8,000 people will be at risk of poverty. Closing local oil shale mining companies also have a broader negative impact on the tax revenues of local governments

in the region which, in turn, affects the potential for economic growth in this area. The situation is complicated because mostly Russian-speaking people live in the Ida-Virumaa region and work in the oil shale mining industry there. The loss of jobs could lead to increased regional social and financial tensions, potentially prompting some Russian speakers to actively align with pro-Kremlin sentiments.

Growing energy prices have also caused a rapid growth of inflation, reaching 20% in May 2022 and continuing to show double digits in the first half of 2023 (11% in May 2023) (Euro-area statistics, 2023).

20.5   Policy Trends in Estonia in 2022–2023

According to the recent studies of the Estonian State Chancellery (Estonian State Chancellery, 2022) and Estonian Ministry of Interior (Estonian Ministry of Interior, 2022a), Estonians are sensitive to any Russian interference in Estonia and Europe. Any signs of such activity on behalf of Russia find much attention in traditional media and on social media. Russian interference is often suspected even without facts supporting it. Estonians see other Europeans as more blind or even naïve. Thus, they believe that the latter needs to be warned (Veebel, 2022). Based on media statements and the author's interviews, many Estonian militaries (Herem, 2022) and political elite consider only the US capable of deterring or adequately responding to Russia. Nevertheless, collective effort from other NATO member states is believed to have a good effect (Laanet, 2022) potentially.

Next to the West, a critical question touches on the role of non-Western third nations such as China and Turkey as de facto friendlier nations towards Russia. Their primary objective is to establish alternative trade channels to replace those disrupted by Western sanctions and the voluntary withdrawal of Western companies from Russia. The measures by which the rest of the world shares the West's condemnation of Russia are vital. Based on the interviews conducted by the authors of this chapter, according to the Estonian elite, global views and third countries' policies will ultimately play a crucial role, and the West should actively try to engage these third countries as allies. The view is that Estonia should engage with everyone who can help defeat Russia. The role of third countries, such as China, India, Brazil, Egypt, Vietnam, and Bangladesh, is crucial. Russia aims to mitigate the impact of Western sanctions by engaging in trade with these nations. These states may also help Russia to access technologies sanctioned by Western countries. In Estonia, it is primarily the position and role of China that is debated, sometimes India as well, while the role of other countries is somewhat neglected. The most complicated questions often concern the positioning of the closest Western allies. Some of these have already started to support Russia. From the Estonian perspective, Italy, Greece, Bulgaria, and Turkey have been doubtful partners in the past due to their relations with Russia.

20.5.1 Estonian Donations to Ukraine

Since the beginning of the conflict, Estonians have continued to support Ukraine with both military and humanitarian aid and have also supported the delivery of large-scale private aid to Ukraine. Per capita, Estonia has been among the biggest donors of military and other assistance to Ukraine and in May 2022 Estonia was the leading nation in the world (Hankewitz, 2022). Altogether, by May 2022, a total of €230 million worth of military aid had gone to Ukraine from Estonia in the form of around 3,000 EUR-pallets and 20 machinery units. In addition to Javelin anti-tank missiles and 122 mm−155 mm howitzers, Estonia had sent minesweepers, anti-tank grenade launchers, guided anti-tank systems, and other military and supporting equipment. Estonia has also delivered 4 × 4 armored vehicles to Ukraine. By August 2022, the Estonian government had provided Ukraine with a total of €250 million in military aid, including howitzers, anti-tank munitions and weapon systems, grenade launchers, communication equipment, light weapons, tactical gear, medical supplies, and food (Rojoef, 2022). However, by the end of 2022, Estonian defense forces reached their limits of assistance to Ukrainians, as further help is only possible by sacrificing Estonian own readiness and capabilities.

Next to the gunnery and munitions, Estonia has deployed military personnel supporting the UK's initiative to train Ukrainian forces. The country also sent medical supplies and set up a field hospital for Ukrainian troops in partnership with Germany.

According to the Estonian Minister of Defence, Hanno Pevkur, the Estonian Defence Forces are exceptionally proficient in training reservists for combat in an intense conventional war against a larger adversary—meaning, precisely for the kind of war that Ukraine is in right now". Also, "our moral responsibility is to continue supporting Ukraine. They are fighting for our shared values, and if there is anything we can send to Ukrainians, we must do so" (Estonian Ministry of Defence, 2022b). This way, Estonia has donated one-third of its military budget to embattled Ukraine to strengthen its fight against Russia.

In addition, the Estonian government has helped to deliver tens of millions of euros worth of privately collected aid, all of which reached Ukraine. As to humanitarian aid, the Estonian people, government, and private sector have given over €20 million to Ukraine (Estonian Centre for International Development, 2023). Even if shocking, the war in Ukraine has not been surprising for Estonians.

Alongside the public sector, non-governmental organizations have been active and successful in helping Ukraine. Volunteer groups like "*Slava Ukrainu"* have also bought, donated, and delivered many SUVs and ambulance cars requested by the Ukrainians (Estonian Public Broadcasting, 2022a).

Another example of voluntary aid concerns medical equipment. In February, the National Defence Promotion Foundation, with the Estonian Reserve Officers' Association, started a charity campaign to support purchasing and sending medical equipment and supplies to Ukraine to help treat the wounded. By mid-May, the donation campaign had successfully raised over 2 million EUR, of which 1 million had

already been used to provide aid to Ukrainian hospitals directly. So far, the Estonian Chamber of Commerce and Industry (ECCI) has successfully dispatched two humanitarian aid shipments to the border between Poland and Ukraine. These shipments included essential medical equipment that was handed over to the Chernihiv and Dnipro chambers of Commerce, respectively. The Ukrainian government then provided these supplies to local hospitals and the front lines (Estonian Chambre of Commerce & Industry, 2022). In addition, the ECCI's campaign has supported the purchasing and delivery of 12 fully equipped ambulances to Ukraine. Likewise, it helped with crises and psychological assistance for refugees, especially children.

In March 2022, a consignment of essential medicines worth €200,000 was sent to Ukraine, including 9,000 medical packages. In addition, they are presently in the process of finalizing an extra 4,500 first aid kits. This campaign has also provided backing for the creation of the DocuMental health support program aimed at assisting those affected by the war. Furthermore, it has financially supported the Triumf Hero Development program, offering free mental health support for children in the Ukrainian language. Together with the Tallinn Children's Hospital Support Fund, the campaign also supported the purchase of two respirators for the Kyiv Children's Hospital (Estonian Chamber of Commerce and Industry, 2022).

According to the Kiel Institute for World Economy, per GDP, Estonia has donated far more to Ukraine than any other nation, including the US, the UK, and other larger European economies. Back in April, it was estimated that Estonia had donated 220 million EUR; considering the country's population, it is the largest donor per capita (Hankewitz, 2022). Along with Estonia's donation, its fellow Baltic state Latvia donated nearly one-third of its military budget to Kyiv. In contrast, Poland donated almost 13% and Slovakia 11.6%, according to an infographic accompanying a tweet by the Andalou Agency (Donmez, 2022).

20.5.2 Internal Activities: Deterrence and Information

The Russian war against Ukraine has revealed the weaknesses of Estonia's deterrence posture and defense capabilities. As a result, efforts have been initiated to reevaluate Estonia's defense strategy and enhance its military capabilities and equipment. Central objectives include doubling the size of the Defence League and procuring mid-range air defense and MLRS rocket launchers. The main acute concern touches on Estonia's ability to improve the effect of the NATO collective deterrence posture simultaneously (by additional deployments and exercises) in the region and to strengthen its national defense capability quickly enough to avoid possible Russian aggression in the upcoming years. The budgetary limits have caused the most considerable complications, long procurement cycles of weapon systems, and the current high demand for weapon systems in the global market. On the positive side, budgetary concerns have been bypassed in 2023 and the coalition has supported extraordinary allocations to the defense forces for reforms and capability building.

NATO's collective deterrence in the Baltics has relied on a model of deterrence by punishment (Freedman, 2021), stationing only so-called trip-wire troops to be located in the three small states. However, as the Ukrainian war has demonstrated that Russia may embark on risky, if not irrational conventional attacks, the need for a permanent stronger presence in the Baltics, amounting to deterrence by denial (Veebel, 2018), has become a new accepted norm.

Before the Russian attack against Ukraine on 24 February 2022, it was considered that a Russian-initiated imperial war could expand from Ukraine to Moldova and potentially involve Belarus but would not reach NATO territory. Nonetheless, since the launch of the conflict, this position has changed based on Russia´s aggressive rhetoric and conduct. It is believed that Putin could target NATO territory, even with nuclear assets. Estonian Chief of Defence General Herem argues that if Russia is not defeated in Ukraine, an attack against the Baltic States will follow in the coming years (Herem, 2023a). Accordingly, Estonia is preparing for a possible full-scale conventional conflict with Russia. Against this backdrop, the current deterrence level is insufficient to counter Russian ambitions. In parallel, Estonia supports Ukraine as much as possible, hoping that Russian losses will postpone, if not prevent, Russian military action against the Baltic States.

According to the interviews conducted by the authors, the role of the allies is also crucial to achieve effective deterrence by denial. In that regard, there are concerns in Estonia regarding its strategic partners. While the US and the UK are considered to meet Estonia´s needs and expectations, the same cannot be said for France, Germany, and Italy. Thus, although not directly applicable, the Estonian elite has confirmed a longtime trust in NATO and relative distrust in the EU's defense arrangements. At the same time, Baltic cooperation and unity have been working well, and the partnership with Poland has become more assertive. Both are also considered vital for Estonia's survival.

Even while Russian aggression against Ukraine was, in general, expected and foreseen in Estonia, the amplitude of the war and Russian tactics used in Ukraine have initiated changes on a strategic level in terms of the deterrence and assurance posture, as well as redefining benchmarks in terms of fighting capability (firepower, ammunition reserves, etc.) and social resilience.

NATO has received the need to switch from deterrence by punishment to deterrence by denial. At the Madrid summit in 2022, the North Atlantic Council considered the assets and structures needed to prevent Russian aggression and decided to deploy a division to each Baltic state, including a division headquarters (North Atlantic Treaty Organisation, 2022). Estonia has also prioritized additional consultations on allied assistance in case of regional escalation. In terms of individual defense, an immediate need for mid-range air defense capabilities has been recognized, as has to improve the readiness and size of the paramilitary National Defence League, increasing its active membership from 10,000 to 20,000. To meet the immediate needs for development, extraordinary budgetary allocations to the Defence Forces of €800 million to €1 billion were approved for new capabilities, building up ammunition reserves, and developing new structures (Estonian Ministry of Defence, 2022c).

Views on a future European relationship with Russia differ significantly between ethnic groups and political parties. The future trajectory of relations with Russia following the conclusion of the war in Ukraine largely hinges on the war's outcome. The current governing coalition and most Estonian speakers in Estonia would prefer a scenario where Russia does not succeed in the war in Ukraine. They hope that, combined with sanctions, this might lead to a change in the leadership in the Kremlin. On the other hand, elderly and Soviet nostalgic people in Estonia believe that the conflict will end with Russia retreating to a new, more favorable border and resisting any discussions related to compensation, resulting in minimal changes (Estonian Ministry of Interior, 2022b). The radical pro-Putin group—represented mainly by Russian speakers in Estonia—follows the narratives of the Russian propaganda and believes that Ukraine is controlled by Nazis and Western anti-Russian states which are planning to attack Russia and that the only way to stop this process is via the complete occupation, demilitarization, and denazification of Ukraine. They expect that Russia will successfully reach Kyiv and force a regime change. The West is expected not to respond as it cannot match Russian conventional superiority and nuclear threats and, after a decade or so, will accept the new status quo.

20.6 Conclusion

Among the Estonian political elite, the Russian war against Ukraine was expected to continue after the end of 2023. Estonian predictions on this mostly follow those by US and UK official sources. The main question for Estonia is if and when, after the war in Ukraine, Russia might be ready and motivated to challenge NATO in the Baltic states. If the aggression comes, there is still time to prepare both in terms of national defense capability building and strengthening NATO´s deterrence efficiency in the region through additional deployments, exercises, and commitments. Meanwhile, it is well realized that current defense costs for Estonia are not sustainable in the long term and may not yield rapid results when not assisted by other member states of the alliance.

The discussion of what victory would entail in the Ukrainian conflict has been a topic that Estonian public debates, including both the media and politicians, have generally avoided. The best possible outcome for Estonia is that the war will cause regime change in Russia and bring more, even partially, democratic forces to power. However, Ukraine is only expected to be able to liberate some of its territoryes and obtain war reparation payments from Russia. Its military and economic weakening might also be sufficient to secure the Baltic states for the upcoming 3–5 years. For this, Russia needs to suffer 50% more losses in Ukraine and struggle with internal complaints and a loss of public support (Herem, 2023b). The impact of economic sanctions is present, but it is slow, and it started to have economic effects from the end of 2022, while there are no visible effects on Kremlin's public popularity even in June 2023.

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Chapter 21
Greece's Response to Russia's War on Ukraine

Panagiota Manoli

21.1 Introduction

Russia's military assault on Ukraine on 24 February 2022 marked a turning point in European and global security and ended more than four decades of the post-Cold War era. The war, designated by Russian President Vladimir Putin as a 'special military operation' to 'de-nazi-fy' and demilitarize Ukraine, surprised the international community. Nevertheless, several weeks before the assault, western leaders and agencies had evidence of Russian plans to invade Ukrainian territory. Russian officials denied such claims repeatedly, with Russian Deputy Foreign Minister Sergei Ryabkov arguing in January 2022 that Russia 'will not attack, strike, invade, quote-unquote, whatever Ukraine' (Kiely & Farley, 2022). The effects on Europe have been significant as the continent has witnessed the first war of such scale engaging European countries in the post-war period. Since the beginning of the conflict, the option of using nuclear weapons by Moscow has also been on the table, leading analysts and policymakers to draw parallels with the Cuban Missile Crisis of 1962. The President of the USA, J. Biden, commenting on the threat level, argued that 'we have not faced the prospect of Armageddon since Kennedy and the Cuban Missile Crisis' (Sanger, 2022).

Following the invasion of Ukraine, the European Union (EU) and the North Atlantic Treaty Organization (NATO) replied immediately and vocally, first, condemning Russian aggression as a violation of international law; second, stating their diplomatic and military support for Ukraine; and third, announcing measures to sanction Russia. Greece, a member of the EU and NATO, fully aligned with its Western allies and did not opt for a 'fence sitting' policy despite strong pro-Russian public sentiment and a long-standing bipartisan policy of engaging with Russia.

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Greece's positioning in the war in Ukraine reflects its traditional foreign policy preference for collective solidarity and the status quo.

21.2   Greece's Policy: Continuity and Change

The response of Athens to the Russian invasion of Ukraine on 24 February 2022 marked a discontinuity from the past. First, it ended a somewhat cautious policy towards the Ukrainian conflict that had been followed since 2014; second, it ended a long-standing policy of non-military engagement in regional conflicts; and third, it ended a dominant 'Russia first' approach in Greece's Black Sea policy. The positioning of Athens, however, did not depart an inch from the fundamental pillars of its foreign policy as a status-quo power, namely the inviolability of the principles of territorial integrity, sovereignty, and the peaceful settlement of disputes.

When Russia annexed Crimea in 2014, Greece held the rotating Presidency of the Council of the European Union. At that time, its ability to take any initiative in mediating the Ukrainian conflict was extremely limited as the country's diplomatic capital and credibility had been severely diluted by a severe financial crisis which was also consuming all its resources. The Greek Presidency had prioritized issues related to Eurozone governance, migration, and the EU maritime policy rather than EU foreign policy. Nevertheless, during the Greek Presidency, on 21 March 2014, the political part of the Association Agreement between Ukraine and the EU was signed. On several occasions in 2014, Athens used its term at the Presidency of the Council to issue statements on the situation in Ukraine condemning the violation of the principles of international law and of the Organization for Security and Co-operation in Europe (OSCE) by Russia (OSCE, 2014a, 2014b). At all international fora such as the OSCE, the Council of Europe, and the UN, the Greek government took a firm stance in supporting Ukrainian sovereignty but still stood in favor of a 'functional' relationship between the EU, NATO, and Russia (Prime Minister Office, 2021).

In the run-up to the invasion, Athens pursued a policy against alienating Russia following a similar approach of other EU countries such as France and Germany. In this regard, Athens followed the same pattern as in previous cases, such as the annexation of Crimea in 2014 and the war in Georgia in 2008, condemning Russian illegal acts but calling for engagement with Moscow. On 18 February 2022, a few days before the invasion, Greek Foreign Minister Dendias had a meeting with his Russian counterpart summarizing the Greek position on Ukraine along three axes: the need for immediate de-escalation, Greece's support for the implementation of the Minsk 1 and Minsk 2 agreements, and the security of the Greek community in Ukraine, in particular in the broader area of Mariupol and near the contact line (Kanonidou, 2022). Before the war, in December 2021, Greek Prime Minister Kyriakos Mitsotakis met President Vladimir Putin in Sochi, where several bilateral agreements were signed. At the Press Conference, Mitsotakis acknowledged the importance of maintaining a dialogue with Russia, explaining that 'Russia is part of the European

security architecture and for this reason, many countries are interested in its participation in a dialogue, especially between Russia and the EU and Russia and NATO' (The Russian Presidency, 2021). The prime minister also raised concerns around the escalation of the Ukrainian crisis in the hope of a diplomatic solution, arguing that 'the Minsk agreements must be observed, among other accords' (The Russian Presidency, 2021).

When Russia invaded Ukraine on 24 February 2022, the Greek government displayed remarkable speed in its response, immediately condemning the Russian aggression and moving away from its previous policy of balancing EU/NATO responses with perceived national security concerns that Russia could support. The statement issued by the Greek Ministry of Foreign Affairs on 24 February 2022 referred to the Russian attack on Ukraine as 'a flagrant violation of International Law and universal Values… [which] undermines European Peace and Security', expressing solidarity with Ukraine (MFA, 2022a). Numerous official statements followed contemning Russian policy, including Moscow's decision to illegally annex Ukrainian territories occupied by its military forces (Donetsk, Luhansk, Zaporizhzhia, and Kherson regions), which was once more called 'a flagrant violation of International Law and null', a decision that 'Greece does not recognize' (MFA, 2022e).

Evacuating Greeks from the war zone in Ukraine and providing shelter to Ukrainian refugees preoccupied the Greek authorities in the first days of the war. Athens took measures to implement the EU directive of opening its borders to Ukrainian nationals through actions such as the integration program Helios. Helios provided a housing allowance, Greek language courses, and vocational guidance services for asylum seekers. According to the Greek authorities, 70,676 refugees from Ukraine had crossed the Greek border since the beginning of the war by July 2022. However, several refugees used Greece as a stopover to go to other European countries, as shown by the applications submitted to recognize refugee status. By the end of July 2022, a total of 19,273 online applications were submitted, resulting in the issuance of 18,048 Temporary Protection Permits. In February 2023, it was estimated that approximately 22,000 Ukrainian refugees were still in Greece, primarily women and children (UNHCR, 2023).

As sanctions became the primary tool of the Western response, Athens also adhered to these despite the cost to its recovering economy. Athens had raised several concerns on the first set of sanctions in 2014/15, which were agreed upon in response to Russia's annexation of Crimea and intervention in the Donbas area. However, since 2022, it has conformed to several succeeding sanctions, including blocking Russia's currency reserves, restrictions on economic cooperation and mobility, diplomatic sanctions, and sanctions on the energy sector. In this context, Greek authorities temporarily seized a Russian-flagged oil tanker carrying a crew of nineteen Russians in April 2022, and Greek airspace was closed to Russian airlines. Greece's full implementation of the Western sanctions led to a war of statements, unusual for traditionally good Greek-Russian relations. The Greek MFA accused Moscow of spreading fake news and disinformation.

The spokesperson for the Russian Ministry of Foreign Affairs, Maria Zakharova, accused Athens of 'Russophobic hysteria cultivated by the authorities due to the decision to suspend practically all bilateral types of cooperation, including Common Tribute Years (Ekathimerini, 2022). Bilateral relations were further strained when, in April 2022, the Greek authorities declared twelve members of the Diplomatic and Consular Missions of Russia to be *personae non gratae* in protest against the war crimes committed in Bucha. A couple of months later, Moscow responded with the decision to declare eight members of the Greek Embassy and the Consulate General in Moscow as *personae non gratae*. In July 2022, Moscow included Greece in the list of 'unfriendly' countries established in May 2021, restricting the number of local staff hired at Greece's diplomatic missions in Russia to thirty-four (The Russian Government, 2022).

At the EU level, Ukraine's application for membership, submitted on 28 February 2022, has been supported by Athens on geopolitical grounds. However, Greece opposes the fast-track process that some Eastern European countries put forward for Ukraine. Greek society is among the least supportive of Ukraine's accession to the EU. According to a survey by Euroskopia conducted between 8 and 11 March 2022, 39 percent of Greeks interviewed responded negatively to Ukraine's EU membership (Newmoney, 2022). Interestingly, when the European Parliament voted overwhelmingly to accept Ukraine's application to join the European Union, two of the 13 EU MPs who voted against it were Greeks from the far right and the far left.

At the diplomatic level, Athens supported initiatives in support of Ukraine, such as sponsoring the draft Resolution on aggression by the Russian Federation against Ukraine in violation of the Charter of the United Nations, which was submitted to the UN Security Council on 25 February 2022 but was vetoed by Russia. Its voting in favor of Ukraine's territorial integrity in all Resolutions at the General Assembly of the UN reflects Greece's traditional position of not objecting to any common position concerning this principle.

The Russian invasion of Ukraine has also been condemned by the Greek Orthodox Church and the Ecumenical Patriarch Bartholomew (Ecumenical Patriarchate, 2022), exacerbating long-standing rifts between the Greek Orthodox world and the Russian Church. The Russian Orthodox Church—whose leader, Patriarch Kirill, has been under sanctions by the EU—has endorsed the Russian invasion of Ukraine as a war against 'evil forces' (Rhodes, 2022), a stance that has deepened the confrontation with the Ecumenical Patriarchate based in Istanbul which is the head of worldwide Orthodoxy. Moreover, the Holy Synod of the Church of Greece, employing an encyclical letter read in all the churches of the country, condemned the invasion of Russian troops and the war in Ukraine, making its structures (Hostels for Refugees and Migrants of the NGO Synyparxis of the Church, the NGO of the Archdiocese of Athens Apostoli, etc.) available for the hosting of Ukrainian refugees. Tensions between the two Patriarchates had deepened considerably following the decision of the Ecumenical Patriarchate to give the Ukrainian Church autocephaly (independence) in 2018.

Yet, the government's decision to provide military assistance to Ukraine marked a significant milestone in Greek foreign policy. Greece has never sent weapons abroad as a matter of principle, except for the Patriot Air Defence System sent

to Saudi Arabia in 2022, or had direct military involvement in regional conflicts. Even during the Yugoslav war in the 1990s, Greece was not involved militarily but had only permitted the use of its territory to transit NATO troops within the context of its membership in the alliance. Nevertheless, it was among the first countries to support Ukraine by supplying it with military aid (Kalashnikov assault rifles, rocket launchers, and ammunition) within its participation in NATO and the EU and in solidarity with Ukraine (Ministry of Defence, 2022). It also reached an agreement with Germany to provide infantry fighting vehicles (IFVs) to Greece in exchange for Greece transferring Soviet-style weapons to Ukraine. Access to the port of Alexandroupolis in north-eastern Greece was also offered to support military aid to Ukraine and strengthen NATO's eastern flank as it provides access to Ukraine via Bulgaria and Romania. The issue of Greece's military assistance to Ukraine has become the main point of domestic political debate.

The strong condemnation of Russia's aggression also departed from the balancing act reflecting Athens' 'Russia first' approach to Black Sea security matters involving Moscow. Before the war, Greece was often accused of not openly supporting EU positions regarding Moscow-driven protracted conflicts as in Abkhazia and South Ossetia or concerning EU sanctions on Russia. Despite elements of continuity in Greek foreign policy, Russia's military attack on Ukraine has been a turning point, setting limits on any support for Russian views and positions that Greece, traditionally friendly towards Russia, can provide. At her speech at the Parliamentary Assembly of the Council of Europe on 22 June 2022, the Greek President E. Sakelaropoulou said that Russia's aggression against Ukraine represented 'a direct and frontal challenge to liberal democracy and European values' (Council of Europe, 2022). In explaining the Greek position in favor of the decision to expel Russia from the Council of Europe, she stressed the need for unity against aggression. She argued in favor of the Parliamentary Assembly's proposal to establish an *ad hoc* international tribunal to investigate the crime of aggression against Ukraine, expressing Greece's interest in the Mariupol region, where a Greek community has lived for centuries. Minister of Foreign Affairs Nikos Dendias also participated in a Ministerial Conference focused on accountability for Ukraine in the Hague (on 14 July 2022), co-organized by the Dutch government and the International Criminal Court. Greece also abstained from the General Assembly of the Parliamentary Assembly of the Black Sea Economic Cooperation (PABSEC), held in Moscow on 6–9 June 2022, as a protest against Russia's aggressiveness.

21.3 Framing Greece's Policy

How can Greek positioning on the war in Ukraine be explained? For the Greek economy coming out of a decade-long, severe financial crisis, the economic consequences had to be weighed heavily when shaping the Greek policy on the war in Ukraine. The war itself and the subsequent wave of sanctions have led to disruptions in the global supply chain, currency fluctuations, and soaring energy prices.

These factors have exerted pressure on national economies and the overall well-being of societies, even those situated far from the military conflict. Nevertheless, the economic factor did not weigh heavily on shaping Greece's response to the war due to shallow inter-dependencies between Greece, Russia, and Ukraine. Overall, Russia plays a minor role in Greece's foreign trade, except for energy, mainly gas imports. Russia's weight in Greek exports is meager, only about 0.81 percent before the war (Manoli, 2020: 506). Bilateral trade and economic relations have been on a steady decline since the first round of sanctions was imposed on Russia in response to the annexation of Crimea. Between 2013 and 2017, Greek exports of agricultural products, which constitute its main goods exported to Russia, declined by 80 percent (Manoli, 2020: 506). The flow of foreign direct investment between the two economies is minimal, making it a non-critical factor in Greece's stance on Ukraine and the economic sanctions imposed to Russia (Nakou, 2022). Greek stock FDI in Russia was 46 million USD, and Russian stock FDI in Greece was 733 million USD in 2018, accounting for just 0.6 percent of total FDI in Greece. However, sanctions on the energy sector raised concerns for the Greek government. Greece has had a significant dependency on Russian energy imports, with Russian sources accounting for 39 percent of the country's natural gas imports and 26 percent of its oil imports in 2020. In this respect, Greece looked for alternative energy providers to reduce its dependence on Russian natural gas and moved fast towards the Liquefied Natural Gas (LNG) option.

Thus, national security preferences and expectations deriving from its role in the EU and NATO rather than economic factors constituted the critical determinants of Greek policy. As discussed in this section, four parameters weighed heavily on Greek positioning vis-à-vis the Russian war on Ukraine. First, the existence of a population of Greek origin in the war zone topped Greece's agenda at the first stage of the invasion and led to an active role by Athens in raising the humanitarian dimension of the war. Second, national security preferences underpinned the immediate and solid response of the Greek government to Russian revisionism and military aggression. The policy of Greece in support of international law and the principle of territorial integrity and sovereignty is directly linked to its national security concerns in addressing what is perceived in Athens as the existential threat of (Turkish) revisionism in the Aegean Sea and the Eastern Mediterranean. Third, Greece's integration into the EU and NATO structures and its interest in further consolidating its place in the Euro-Atlantic community determined the measures Athens implemented to support Ukraine and sanction Russia. Fourth, the long-standing, bipartisan policy of 'Russia first' had defined Greece's policy in the run-up to the invasion but collapsed on the day of the invasion.

21.3.1   Greeks in Ukraine

The protection of the population of Greek origin in Ukraine, especially in the conflict zone along the Black Sea and the Azov Sea coast, was put forward by Athens as its

main policy priority even before the war was launched. On 31 January 2022, just days before the war erupted, Foreign Minister Dendias visited the Greek community in Mariupol with a message of de-escalation. Three days before the war started, on 21 February 2022, at the EU Meeting of Foreign Affairs held in Brussels with the presence of the Ukrainian Foreign Minister Kuleba, the Greek Foreign Minister Dendias raised the issue of the security of the Greek minority again on the contact line around Mariupol (Liberal, 2022).

'For Greece, the protection of civilians and the provision of humanitarian aid to the Greek Diaspora in Ukraine constitutes a top priority, especially in the Black Sea coastal cities, such as Mariupol and Odesa, where the Greek Diaspora has lived for centuries', Greek Foreign Minister Dendias stated in an interview on 17 April 2022 (MFA, 2022c). Greeks were established on the territories running from the Donbas to Odesa in the seventh century BC and have been there for centuries, being, among others, the founders of Mariupol in 1780. Over the centuries, the status of the Greek population in the region has changed, but 100,000–120,000 people remained in the area before the 2022 war. The pro-Russian versus pro-Ukrainian orientation of the Greek community has been a matter of discussion as the population lives in an area where Russian influence is historically significant and most of the community is Russian speaking. Still, since the war began, the Greeks of Ukraine pledged more allegiance to Kyiv (Taxydromos, 2022), although relations between the Greek community and Kyiv have not been untroubled. An issue of tension has been the legislation on 'The Indigenous Peoples of Ukraine', adopted by the Ukrainian parliament on 1 July 2021. This legislation did not grant indigenous status to the Greek-origin population in Ukraine, leading to accusations of discrimination against Kyiv. The law aims to protect the rights of autochthonous ethnic groups in the territory of Ukraine who do not have a state outside of the Ukrainian state. However, only three such groups were declared indigenous (Crimean Tatars, Karaites, and Krymchaks), all living in Crimea (Ukrinform, 2021), creating a reaction among other ethnic groups. Speaking of the Greek community in Ukraine, Foreign Minister Nikos Dendias, while visiting Mariupol and Sartana on 1 February 2022, just a few days before the Russian invasion, said that 'besides issues of security, it also faces serious issues with welfare and living', and reiterated that 'the Greek state will help as much as possible in resolving these issues' (Naftemporiki, 2022a).

As soon as the war erupted, human losses were marked within the Greek community, causing a reaction from the Greek government, which was 'appalled' by the death of ethnic Greeks. Athens expressed its discontent with Russia's use of Chechen fighters in Mariupol and organized three operations to evacuate Greeks from Ukraine, namely the 'Nostos I' to get Greeks and Cypriots out of Kyiv, 'Nostos II' in Odesa, and 'Nostos III' to evacuate Greek citizens from the city of Mariupol. Greece's consul general in Mariupol, Manolis Androulakis, was the last EU diplomat to leave, assisting dozens of ethnic Greeks in evacuating the city. Still, it is estimated that most Greeks chose to remain in Ukraine at that time. On February 26, 2022, the Russian envoy was summoned to the Foreign Ministry, which condemned the bombing of civilians in Sartana, a town on the north-eastern outskirts of the city of Mariupol, which had resulted in the death of two ethnic Greeks (MFA, 2022b). Greece sent

humanitarian aid missions, and the Greek Foreign Minister visited twice the region of Odessa, after the war started, in April and July 2022. The Greek government raised the issue of Mariupol in international fora so that the perpetration of war crimes could be investigated. In April 2022, a letter was sent to the Prosecutor of the International Criminal Court asking for an investigation into the crimes committed in Mariupol and the villages of Sartana and Volnovakha (MFA, 2022b). On 12 July 2022, amidst the war, N. Dendias visited Odessa, where an agreement was signed to digitize historical documents and books related to the city's Greek community.

21.3.2   Greece's Power Considerations

A key pillar of Greek foreign policy, as is the norm with relatively small powers in the international system, is the respect for the rules and principles set out by international law and the participation in alliances that serve these principles. The resolute policy of Greece in firmly defending the principle of territorial integrity and sovereignty is directly linked to its national security concerns about the Turkish claims over Greece's sovereign rights and sovereignty and concerning the Cyprus issue. Greece has often attempted to internationalize the problem of the revisionist policies in the Aegean Sea and the Eastern Mediterranean and has pushed for EU sanctions on Turkey. The *casus belli* with which Ankara threatens Athens, the violation of Greek and Cypriot territorial waters, and the 'Blue Homeland' (Mavi Vatan) doctrine are viewed by Athens as key manifestations of Ankara's revisionism (MFA, 2022d). Prime Minister Mitsotakis, in his speech at the United States Congress in May 2022, indicated a parallel between Putin's and Erdogan's policies:

> 'Mr. Putin is striving to create a world in which power is for the strong state but not the small. A world in which territorial claims are made on the basis of historical fantasies and enforced by aggression rather than decided by peace treaties. A world in which armies rather than diplomats settle disputes. He will not succeed. He must not succeed. He must not succeed, not only for the sake of Ukraine but also in order to send a message to all authoritarian leaders that historical revisionism and open acts of aggression that violate international law will not be tolerated by the global community of democratic states. The language of resentment, revisionism and imperial nostalgia shall not prevail' (Prime Minister Office, 2022b).

Despite significant differences, the Ukrainian and Cypriot conflicts share similarities. They constitute cases of invasion and illegal occupation in the name of population protection, followed by secession and/or declaration of state-like entities that are either illegally recognized by the aggressor or annexed. The two conflicts were linked in the speech of Prime Minister K. Mitsotakis to the USA Congress in May 2022. The Cypriot President Nikos Anastasiadis has often argued that Russia's invasion of Ukraine uses the 'same arguments that Turkey used to invade Cyprus' in 1974, drawing a parallel between 'similar actions of certain countries' which 'seek, through revisionism, to overturn either geographical or historical data records' (Kefalas, 2022). Greece and Cyprus have been further alarmed by the parallel drawn between the Russian separatists fighting in Ukraine's Donbas region and the ethnic Turks

of the self-proclaimed Turkish Republic of Northern Cyprus by Russian Foreign Minister Sergey Lavrov on 21 February 2022 (Kyriakides, 2022).

The war in Ukraine has reaffirmed the essential pillar of Greek foreign policy in preserving sovereignty and peaceful resolution of disputes. Still, it has also become a turning point in the Greek doctrine of non-engagement militarily in conflicts, especially in neighboring areas. Though somewhat symbolic, the military aid Athens sent to Ukraine was framed within moral arguments but was linked to national security interests as Athens hoped for reciprocal gains. Prime Minister Mitsotakis made this clear when explaining how the decision to provide military aid to Ukraine, apart from being 'morally just' was also beneficial for Greece's national interests. Mitsotakis argued that Athens would have no moral standing to ask for similar assistance if it found itself in the same position, especially compared to other European countries, threatening Greece's sovereignty (Stamouli, 2022). Thus, Greece became an active advocate of a strong Western response to Russia's invasion of Ukraine and abided by the decisions of its EU and NATO allies on the basis of the collective 'solidarity' that has also often been evoked by Athens. By sending military aid to Ukraine, Athens signaled that it would use any means, including military options, to counter revisionism in its border regions.

Greece's response to the war in Ukraine has thus been filtered by its core security concerns, framed in normative argumentation. The war presented an opportunity for Athens to consolidate and upgrade its place in the Euro-Atlantic community after a decade of a severe economic crisis that undermined its credibility as a European ally. Russia's invasion of Ukraine reaffirmed Greece's Western path and deepened US-Greek military cooperation amidst the threats challenging NATO's eastern and south flanks. At the same time, the war constituted a case to illustrate Greece's geostrategic importance, which had been weakening in the previous decades. The port city of Alexandroupolis, at the north-eastern part of the country and the entrance of the Dardanelle Straits, has become essential in facilitating the transit of American military equipment to Eastern Europe and Ukraine, circumventing the Bosphorus Straits.

The Alexandroupolis port had come to the forefront in the 2000s when Russia, Greece, and Bulgaria agreed on the Burgas-Alexandroupolis oil pipeline, which would have given Russia more influence in the region. Instead, the port is now developed into a center for liquefied natural gas (LNG) coming from international markets, a project supported by the European Commission and the US. Thus, dismantling energy relations with Russia provided a new window of opportunity for Greece to underscore its role in Europe's energy security while also boosting projects on exploiting and transiting natural resources in the Eastern Mediterranean. The launch of the LNG terminal project in Alexandroupolis in May 2022, which is expected to be operational by the end of 2023, will cover domestic needs and provide energy to neighboring countries in Southeast Europe. A second floating LNG facility, licensed in Thrace's sea, could potentially supply Moldova and Ukraine with LNG.

21.3.3   Dismantling the Greek–Russian Relationship

The Greek response to the Russian invasion of Ukraine on 24 February 2022 turned Athens from a 'friend' to an 'unfriendly' country for Moscow. In his speech before the Greek audience in Athens on 2 December 2009, Russian Foreign Minister Lavrov had stressed that 'there are few other countries that are so closely related as Russia and Greece with such a long history of sincere friendship' (Lavrov, 2009). However, in July 2022, Russian Prime Minister Mikhail Mishustin signed a degree including Greece and other European countries among the states committing hostile acts against Russian diplomatic and consular missions abroad. What did it take to unfriend Greece?

In the post-Cold War era, Greece attempted to balance its obligations as an EU/ NATO member on the one hand with its special relationship with Russia on the other hand. Such positioning has reflected a need to balance 'integration' in Euro-Atlantic structures and 'exceptionalism' (Triantaphyllou, 2018: 107–117). Despite adopting a norm-based approach in positing regional security issues, Athens has considered Russia an indispensable part of the European security architecture. It thus made use of its Chairmanship at the OSCE to launch the Corfu process in June 2009 to accommodate Russian concerns and take forward the dialogue on Euro-Atlantic and Eurasian security. Greece was also among the old EU/NATO member states that objected to offering a Membership Action Plan to Ukraine in the NATO Bucharest Summit of 2008.

Notwithstanding cultural and historical linkages at a societal level, Greek-Russian mutual understanding in the post-Cold War era was underscored by shared views on global issues (especially in the 1990s). As one of the European states for which Moscow did not pose a security threat, Greece has advocated in favor of strategic partnership and sectoral cooperation between the EU and Russia, and, until recently, it was one of the least anti-Russian countries globally. As Siakas and Paschalidis (2021) have argued, Greek Russophilia is of two types: the soft approach, expressed as a positive predisposition towards Russia, and the hard-core approach, which advocates an embrace of Russia by breaking with Greece's ties to the West. While pro-Russian views have declined drastically since the invasion of Ukraine, differences from the wider European public remain apparent evident. A Eurobarometer poll on 6 May 2022 showed that 53 percent of Greeks supported sanctions against Russia, compared with a European Union average of 80 percent. Just 40 percent of Greeks supported financing weapons purchases for Ukraine, versus 67 percent of Europeans (European Commission, 2022). Another survey conducted by Politico in March 2022 showed that 60 percent of Greeks found Russia's invasion of Ukraine 'unacceptable', compared with 86 percent, 82 percent, and 78 percent in Spain, Germany, and France, respectively (Psaropoulos, 2022).

Still, the New Democracy government broke ties with the public's Russophilia and took sides, engaging diplomatically and militarily in support of Ukraine. 'We took sides. Unequivocally. We stand by Ukraine against [Russian President Vladimir] Putin's aggression … He will not succeed', Prime Minister of Greece,

Kyriakos Mitsotakis, told a joint session of the US Congress on 17 May 2022. Russia's decision to illegally annex the occupied territories of Ukraine (Donetsk, Luhansk, Zaporizhzhia, and Kherson regions) was accordingly described as 'illegal', a 'flagrant violation of International Law', and 'null'. The aggressive revisionism paradigm put forward by Moscow posed a direct challenge to Greece's security premises with Turkey. Putin's tactics in Ukraine, and especially Russia's justification based on historical revisionism, echoed in Athens those of Turkish President Erdogan, who in his visit to Athens in 2017 referred to the need to revise the Treaty of Lausanne of 1923, which defined Turkey's modern borders and Greek-Turkish relations (Lang, 2017).

Bilateral relations with Russia had been shaken since the financial crisis that brought Athens close to economic collapse. When the SYRIZA-ANEL coalition took power in 2015, the Greek government came up with alternative views on fiscal policies and foreign relations, including with Russia, hoping the latter would come to its rescue as a lender. This, however, did not happen as Moscow offered moral support and long-term cooperation but no financial aid. The expulsion of twelve Russian diplomats in Greece on national security grounds in the summer of 2018 marked a significant deterioration of Greek-Russian relations. Since then, bilateral relations have never fully recovered despite the visit of Prime Minister Mitsotakis to Moscow on 8 December 2021. However, what has alarmed Athens has been Moscow's deepening alliance with Turkey, the selling of S-400 missiles to Ankara, and Russia's silence over Ankara's policies in the Aegean and Eastern Mediterranean. The wars waged against Christian orthodox peoples (as in Georgia in 2008) further diluted the perception of Moscow as the protector of the Orthodox world.

The political system and the public have come to regard Russia with almost equal suspicion to the US, while pro-Europeanism has strengthened. A survey of Greek opinion conducted by the think-tank *Dianeosis* just after the war in Ukraine broke out asked Greeks to pick a single reliable ally. Only 4.8 percent picked Russia, 6.7 percent picked the US, and 65 percent chose France, with Greece recently signing a defensive alliance (Georgakopoulos, 2022). The war in Ukraine was a wake-up call reminding Athens of its place in the West, both culturally and geopolitically, and of the importance of NATO/EU membership in addressing security threats.

21.3.4 Domestic Political Debate

All parties in the Greek Parliament have sided with the government in condemning the attack of Russia in Ukraine. At the same time, all have raised concerns about the ramifications of the war on Greek-Turkish relations. The standard line across the Greek political spectrum has been that Russia's aggressive war has clearly violated the Charter of the United Nations and universally accepted rules for resolving transnational disputes peacefully. All parties have also commented on the need for the Greek state to take the initiative and stand by the population of Greek origin in Ukraine,

most of which lived in the war zone. Still, there are essential deviations in their positions on a series of related issues; Russia's accountability for the war, the alignment of Athens with the EU and NATO, the type of assistance Athens should provide to Ukraine, and how the war could end. These deviations were exposed at a high-level meeting in the Hellenic Parliament on 1 March 2022, at which the New Democracy government informed all the parties of its policy on the war in Ukraine and the repercussions for the country (Prime Minister Office, 2022a).

Military assistance to Ukraine was the most debated issue domestically. The socialist PASOK-KINAL party was the only opposition party that sided with the government on this issue. In contrast, all other parties objected, calling for the government to send only humanitarian aid. The left-wing opposition party SYRIZA claimed that 'the direct involvement of Greece in the war in Ukraine, which is dangerous for our national interests, is increasing with each passing week, at the same time as the tension on the part of Turkey is escalating' (Greek City Times, 2022). He criticized the government for joining forces with the EU even though the EU has not taken action to halt revisionist claims and impose sanctions against Turkey for violating Greece's sovereign rights and the Cyprus issue (SKAI, 2022). Along the same line of argument, the leader of the party of National Solution, Kyriakos Velopoulos, disapproved of the government's decision to send military assistance to Ukraine, arguing that Russia and Ukraine are pro-Turkey, thus Greece should not take a position (Proto Thema, 2022). SYRIZA saw the offer of an EU candidate status to Ukraine positively and called for targeted sanctions on Russia that would make Russia come to the negotiation table but not establish a new economic Cold War. Following other Eurosceptic political forces, it blamed the West, particularly the US and the EU, as primarily responsible (SYRIZA, 2022). The Greek Communist Party (KKE), framed the war in Ukraine as an imperialist war (KKE, 2022) while joining forces with other Communist parties to 'denounce the activity of fascist and nationalist forces in Ukraine, anti-communism and the persecution of communists, the discrimination against the Russian-speaking population, the armed attacks of the Ukrainian government against the people in Donbas' (SolidNet, 2022). The leader of the Greek Communist Party, Dimitris Koutsoubas, noted that 'the formal start of the new war was the unacceptable military intervention of Russia which promotes its plans of capitalist unification and exploitation of peoples and for this, the KKE condemned it unequivocally from the first moment' (Naftemporiki, 2022b). But he accused the West of provoking this war due to the 'methodical economic, political and military encirclement of Russia by the USA, NATO, EU' (ibid). The leader of MeRA25, Yanis Varoufakis, also called on SYRIZA and KKE to join anti-war action and stop the government from exposing the country (ERT, 2022) and argued that the solution would be the neutrality of Ukraine. He also saw that the developments in Ukraine had weakened Europe and presented an excellent opportunity to strengthen the diplomatic role of Turkey.

The speech of Ukrainian President Zelenskyy at the Hellenic Parliament on 7 April 2022, upon the invitation of the Greek Prime Minister, became another occasion for political debate. The Greek President Sakellaropoulou was present in Parliament in an act of solidarity, but not all parties were represented. SYRIZA and KINAL

welcomed the invitation, while the Communist party objected, arguing that the government of Zelenskyy is a puppet regime of the US-NATO-EU, all of which share the same responsibility as Moscow for the sufferings of the Ukrainian people. Beyond the Communist Party, those who boycotted the speech by Zelenskyy included the right-wing populist Elliniki Lysi (Greek Solution) party and several members of the opposition SYRIZA party who decided not to participate.

21.4 Conclusion

The war in Ukraine matters to Greece for two main reasons. First, as an aggressive inter-state war, it posed a fundamental challenge to the fundamental premises of the national security strategy of Greece, a small power and the only EU/NATO country whose sovereign rights are contested militarily by a regional power under a casus belli threat. Just in 2020, Athens and Ankara came close to military conflict over sea boundaries in the Eastern Mediterranean. As a small power, Greece has framed its foreign policy on two fundamental principles of international law, both undermined by the Russian invasion: national sovereignty and territorial integrity. Second, the Russian invasion of Ukraine constituted an attack on the liberal European order, norms, and security architecture to which Greece is a constituting part, and it challenged NATO and the EU, Greece's two primary security providers. As for any relatively small power, multilateralism and alliance-building have been critical pillars of Greek security policy. The return to spheres of influence competition by global forces underscores Athens' place in the Euro-Atlantic community of states. The war in Ukraine has provided the Greek government with an opportunity to firm its belonging in Western society and upgrade the country's geostrategic importance at a time when its security preferences coincide with those of its allies.

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Chapter 22
Tarafsız: Turkey's Impartial Stance Vis-a-Vis Russia's War Against Ukraine

Eleonora Tafuro Ambrosetti

22.1 Introduction

The full-scale war waged by Russia against Ukraine since February 2022 has many key players beyond the aggressor and the victim. Turkey is definitely one of these; it has acted as a mediator since the early days of the invasion and tried, so far, successfully, to balance being pro-Ukrainian without being openly anti-Russian. For example, Ankara and the United Nations (UN) played a pivotal role in brokering the Black Sea Grain Initiative, widely known as the 'grain deal', an agreement to restart crucial grain exports out of Ukraine's Black Sea ports. At the same time, it did not join Western sanctions against Russia. It took advantage of Russia's vulnerable position to seek a discount on its Russian gas imports, which comprise roughly 45% of total gas imports (Soylu, 2022), and boost its ambition of becoming an energy hub for Europe.

Turkey's positioning in this war matters not only because of its precious, although not always selfless, mediation but also because of its broader role in the Black Sea region and the 'neighbourhood' shared by the EU and Russia. Turkey is a North Atlantic Treaty Organization (NATO) member and, at least formally, a European Union (EU) candidate; it also holds significant diplomatic, strategic, and economic ties with Russia. Over the last ten years, Ankara's foreign policy has grown more assertive, becoming more active in the Middle East, South Caucasus, and the Eastern Mediterranean. This increased assertiveness goes hand-in-hand with a deterioration of relations with the West to the extent that a growing number of scholars (Alpan, 2021; Aydın-Düzgit & Kaliber, 2016; Sipahioğlu, 2017) openly talk about the De-Europeanization of Turkey's foreign policy, understood as 'the loss or weakening of the EU/Europe as a normative/political context and as a reference point in domestic settings and national public debates' in Turkey (Aydın-Düzgit & Kaliber, 2016: 5).

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This chapter maintains that Turkey's positioning vis-à-vis the war confirms the academic literature's descriptions of Turkey's foreign policy as growing more independent and seeking to balance its external relations. It claims that Ankara's approach to the war is based on pragmatic interests, status claims, and regional security balance. Turkey's stance depends on its relationship with Russia alongside Ankara's political dynamics and regional role. In its strategic partnership with Russia, Turkey has shown a mix of competition and cooperation rooted in economic and energy interdependence growth and the convergence of Moscow and Ankara's security interests in Eurasia. (Demiryol, 2015: 65). At the same time, it is vital to consider the evolution of Turkey's image, especially the discursive shift in national self-perception towards a more distinctive civilization based on Islamic identity (Tetik, 2020) and its pivotal role in its region (Udum, 2020). Questions remain on this approach's sustainability, especially in the case of a further military – and, possibly, nuclear – escalation.

22.2   Turkey's Relations with Russia

Turkey's reaction to the unlawful Russian aggression on Ukraine in 2022 tried to balance pursuing a political and primarily economic alignment with Russia while maintaining positive ties with Ukraine. Therefore, it is worth unpacking the complex relationships binding Turkey and Russia on the one hand and Turkey and Ukraine on the other. An abundance of academic literature has looked at the growing ties between Moscow and Ankara and the ever-increasing political convergence between the regimes of Vladimir Putin and Recep Tayyip Erdoğan. This chapter maintains that Russia and Turkey have converged and become increasingly politically aligned internationally due to pragmatic trade or energy-related interests as well as their growing discontent at and criticism of European and USA policies. Despite this, Ankara has managed to juggle its partnership with Russia with a positive relationship with Kyiv and its commitments and obligations deriving from its NATO membership.

Turkey and Russia have shown elements of convergence over the last few years, whether in terms of their 'similar logics of power accrual and maintenance' (Öktem & Akkoyunlu, 2016: 470), their strict control over the Internet (Parkinson et al., 2014), widespread anti-American rhetoric (Özpek, 2021; Warhola & Bezci, 2013), or because in both countries 'forms of democracy have been suborned by majoritarian nationalism, bolstered to varying degrees by the security state' (de Bellaigue, 2016). Furthermore, several authors (Börzel, 2015; Göl, 2017; Isaac, 2017; Kirişci, 2016; Türkmen-Dervişoğlu, 2015) explicitly refer to Turkey and Russia as illiberal democracies, that is democratically elected regimes 'routinely ignoring constitutional limits on their power and depriving their citizens of basic rights and freedoms' (Zakaria, 1997: 22). For instance, Göl (2017: 958) maintains that the 'promising "Turkish model", a mix of economic development and democratic reforms, turned into authoritarian rule and, similar to Russia, gave rise to illiberal democracy: Erdoğan 'authoritarianism is not a new type of political Islam, but old-school nationalism combined with illiberal democracy, as seen in Putin's Russia' (Göl, 2017: 964). According to

Kirişci (2016), Turkey wants to build a new international order with actors, primarily Russia, that have 'challenged, if not worked to undermine, the values of the international liberal order.' In these regimes, although democracy is formally present, civil societies face severe constraints—i.e., lack of civil liberties—and, therefore, are prevented from actively participating in the decision-making process.

The increasing political convergence of the Russian and Turkish governments in terms of their illiberal nature, high level of confrontation with the West, and pragmatic economic, political, and energy interests explain the increase in Russian-Turkish cooperation in several domains. Focusing on Syria, Kostem (2020) uses the concept of alignment. This security-based partnership involves expectations of policy coordination to explore the ever-growing cooperation between Ankara and Moscow since the summer of 2020. However, Kostem also maintains that while '[s]ince 2016, Russian-Turkish cooperation has rapidly transformed into a new form of informal geopolitical alignment, […] there are important obstacles for the transformation of this informal alignment into a more durable form of partnership' (Kostem, 2020: 796). This alignment between Russia and Turkey had been facilitated by their 'shared aversion to what they perceived as the USA encroachment in their sphere of influence, i.e., the Black Sea/Caucasus region and the Middle East' (Demiryol, 2015: 66). Trade interests were also pivotal in facilitating policy coordination in security terms. Russia is a key trading and energy partner for Turkey; in 2021, the trade turnover between the two countries was 35 billion dollars, an increase of 57% compared to 2020. Moreover, in 2021, Turkey got up to 45% of its natural gas, 17% of its oil, and about 40% of its coal from Russia (Ibadoghlu, 2022). Energy ties are so crucial—for Turkey in particular, but increasingly for Russia too—that there is a tendency to politicize and even securitize them (Baev & Kirişci, 2017).

Several analysts and journalists use a popular label to describe the Russian-Turkish relationship as a 'marriage of convenience', especially in the Syrian war, where the two countries have managed to work together despite starting from very different positions (Barkey, 2017; Kardaş, 2019). The idea behind this concept is that both countries have found a way to cooperate and cohabitate in different shared neighbourhoods (mainly the South Caucasus and the Middle East) based upon compartmentalization and ad hoc pragmatic interests rather than a value-based alliance. On the other hand, Balkan Devlen prefers talking about a 'marriage of Inconvenience'; given that there are a lot of inconvenient developments on the ground for Turkey and Russia, and each side's position creates inconvenience for the other. Ankara and Moscow need to find a compromise solution, a modus vivendi.[1] Devlen also highlights the instrumental nature of this 'marriage of Inconvenience', whereby Ankara instrumentalizes its relationship with Moscow as a lever in its relationship with the West.[2]

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[1] Balkan Devlen, Director of the Centre in Modern Turkish Studies (MTS) at the Norman Patterson School of International Affairs at Carleton University, personal communication, September 28, 2022.

[2] Ibid.

22.3   Turkey's Relationship with Ukraine

Turkey-Ukraine relations have already been in the international spotlight after Russia annexed Crimea in 2014. However, a quick Google Scholar search reveals that only some academic articles deal with this subject. According to Yevgeniya Gaber, such scarcity results from two interrelated reasons: First, despite numerous regional experts, there are almost no experts on Turkey in Ukraine, just as there are no experts on Ukraine in Turkey. Second, Turkey-Ukraine relations are also a new topic: it was only after 2014 that Ukrainians started looking at Turkey as a security actor rather than a pure trade partner and vice versa.[3] This does not mean diplomatic relations have not been consolidated throughout the years. Ukraine and Turkey have a long history of bilateral political and people-to-people ties. After the break in direct bilateral engagement caused by the centralist foreign policy of the Soviet Union, the re-establishment of the diplomatic relations between Ankara and Kyiv was sealed by the signing of the Friendship and Cooperation Agreement in 1992. However, 'despite the ongoing diplomatic track and economic cooperation, until recently, Turkey rarely dominated Ukraine's foreign policy agenda, whereas Ukraine was hardly regarded as a truly strategic partner by Turkey' (Gaber, 2021: 688).

In the past ten years, relations between Turkey and Ukraine have leaped; with establishing the High-Level Strategic Council (HLSC) in 2011, they gained strategic partnership status. Furthermore, a visa-free regime between Turkey and Ukraine was enacted in 2017, boosting bilateral trade and tourism. According to official Turkish data, trade volume between Turkey and Ukraine in 2019 amounted to 4.8 billion US Dollars, and 1 million 600 thousand Ukrainian tourists visited Turkey in 2019 (Turkish, 2022).

In the years before the February invasion, Turkish-Ukrainian relations grew more vital from a political and security viewpoint. Ankara saw its partnership with Kyiv as instrumental in turning Turkey into an influential regional power in the Black Sea basin, while Ukraine saw Turkey as a critical defence partner. Given Kyiv's need to modernize its armed forces, Ankara's role in selling advanced drones and helping Ukraine build its first modern corvette has been crucial (Kusa, 2022).

Turkey's link to the Crimean Tatars, a Turko-Muslim nation, has also been a bonding factor with Ukraine. Following the 2014 annexation of Crimea, Russian authorities have been blamed for mistreating the Crimean Tatar people. In particular, Moscow's authorities are accused of arbitrary arrests, systematic stalking, and intimidation of regime opponents; unwarranted searches of the homes of Crimean Tatar community activists; forced passport station and conscription into the Russian occupation army; and intentional destruction of the Crimean Tatar cultural legacy and language (Morkva, 2021). Since 2014, the leader of the Crimean Tatar Turkish people, Mustafa Abdülcemil Jemilev, widely known by his descriptive surname Kırımoğlu (Son of Crimea), has vocally condemned Russia's persecution of Crimean Tatars.

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[3] Yevgeniya Gaber, a nonresident senior fellow at the Atlantic Council in Turkey, personal communication, October 3, 2022.

He claims Tatars make up roughly 13% of the Crimean population. Still, the demographic situation is rapidly changing because of the resettlement of one million ethnic Russians from the Russian Federation to Crimea and because high numbers of Crimean Tatars—300,000 since 2014—have fled (Anadolu Ajansi, 2022). Turkey never recognized Moscow's 2014 annexation of the Crimean Peninsula and kept treating the leaders of the Majlis, the Crimean Tatar parliament in exile that was banned by Russia, as its formal interlocutor. It has often spoken out in favour of Crimean Tatars. It has organized high-level prisoner swaps, like the 2017 liberation of Crimean Tatar political detainees Ahtem Chigoz and Ilmi Umerov, in exchange for two Russian operatives jailed in Turkey for their alleged role in the murders of several Chechen dissidents (Zaman, 2022).

Nevertheless, the case of Crimean Tatars exemplifies very well the limits of Turkey's solidarity with Ukraine and condemnation of Russian actions. Despite the sometimes harsh rhetoric, Ankara chose not to sever ties with Moscow. On the contrary, Turkish officials often stress that a neutral (*tarafsız*) position enables Ankara to mediate in the conflict. This approach—in stark contrast with the vast majority of NATO countries, which according to Erdoğan, 'mainly act on sanctions' (TCC, 2022)—will be unpacked in the next section.

22.4 Tarafsız: Turkey's Stance Vis-a-Vis the War

Since the early days of the invasion, President Erdoğan has condemned Russia's military aggression and lamented the war's human costs. At the same time, he has stressed Turkey's 'special and exceptional position' because of its geographical location and its NATO membership: 'First of all, Ukraine and Russia are our neighbours from the Black Sea. We have deep-rooted, multidimensional, close relations and strategic partnerships with Ukraine. We take care to have a constructive and mutually trust-based dialogue with our other neighbour, Russia' (TCC, 2022).

In line with this approach, Turkey has exercised its authority over the Turkish Straits under the 1936 Montreux Convention to prevent the Russia-Ukraine war from further escalating and, after some initial hesitancy widely seen as an attempt not to upset Russia, on 1 March 2022 it closed the Dardanelles and Bosphorus straits to all military vessels.[4] Moreover, Ankara has set up numerous diplomatic initiatives to solve the conflict or tackle specific dimensions of it. After two meetings between delegations of the Ukrainian and Russian governments in Belarus in February 2022, a Turkey-Russia-Ukraine Trilateral Foreign Ministers meeting was held on 10 March 2022 in Antalya, hosted by Turkish Foreign Minister Mevlüt Çavuşoğlu (Turkish, 2022). Later, on 29 March 2022, Erdoğan welcomed delegations from both countries

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[4] Turkey's decision to implement a total ban on warships transiting the straits, and not just on Ukrainian and Russian warships, has raised legal controversy for its incompatibility with the Montreux convention. According to Overfeld (2022), under Article 19, Turkey cannot formally or de facto close the straits to all warships because, by doing so, it violates the right of nonbelligerent warships to transit.

in Turkey, while in April, he coordinated a prisoner swap between the USA and Russia (Damilano, 2022). In September 2022, Turkey's mediation facilitated an unexpected prisoner exchange deal between Ukraine and Russia, releasing over 250 captives, 215 Ukrainians, and 55 Russian and pro-Russian fighters. According to an article published by the state broadcaster TRT, the September swap proves that 'Turkish President Recep Tayyip Erdoğan continues to be the most trusted arbiter between Russia and Ukraine' (TRT, 2022).

Even if the tripartite meetings did not hold the expected results, the organization of the talks and the April prisoner swap further bolstered Erdoğan's diplomatic credentials. They paved the way for Turkey's most successful mediation initiative, the 'grain deal'.

The Russian invasion of Ukraine had a massive impact on global food security. According to EU data, Ukraine accounts for 10% of the world wheat market, 13% of the barley market and 15% of the maize market. It is the most essential player in the market for sunflower oil (over 50% of world trade) (European Commission 2022). Even if food availability is not at stake in the EU, the war affected costs throughout the food supply chain and disrupted trade flows from and to Ukraine and Russia. Turkey is one of the largest wheat importers in the world after Egypt and China, the largest flour exporter and the second-largest pasta exporter in the world. Figures released shortly before the invasion show that Russia and Ukraine are the primary wheat sources for Turkey, with Russia taking the lion's share, but imports from Ukraine rising to a record high in 2021 (Argus media, 2022). Hence, the supply disruption caused by the fighting has constituted a serious problem for Turkey and provided additional impetus to Ankara's diplomatic efforts in this domain. On 22 July 2022, the United Nations and Turkey brokered the Black Sea Grain Initiative, known as the 'grain deal'. The deal allowed exports of grain, other food, and fertilisers from Ukraine to resume to the rest of the world through a safe maritime humanitarian corridor from three key Ukrainian ports: Chornomorsk, Odesa, and Yuzhny/Pivdennyi. Furthermore, it established a Joint Coordination Centre in Istanbul, comprising representatives from Russia, Turkey, Ukraine, and the UN, tasked with overseeing the deal's implementation (UN News, 2022).

At the end of October 2022, President Putin pulled out of the deal because of the alleged lack of maritime safety that resulted in a drone attack on its fleet in the port of Sevastopol, which he blamed Kyiv for. As fewer vessels kept leaving Ukrainian ports despite Russia's withdrawal (BBC, 2022), Turkey and the UN worked hard to save the deal. Then, in a relatively quick U-turn, Russia agreed to rejoin the deal. The whole story was read as an example of Russian weakness and miscalculation on the one hand and Turkey's increased leverage on the other. At the same time, however, Russia's first withdrawal revealed the fragility of this agreement, which was canceled again by Russia in July 2023. At the moment of writing, Turkey is leading international efforts to revive the deal.

Even if it has failed to mediate a ceasefire, Turkey has kept trying to bring the two warring sides to the negotiation table. In his speech to the 77th General Assembly of the UN in September 2022, Erdoğan said, 'We need to find a reasonable, fair and

viable diplomatic solution together that will give both sides an honourable exit from the crisis.' He also reiterated the importance of the grain deal, calling it 'one of the greatest achievements of the United Nations in recent decades' (UN, 2022). This approach confirms Turkey's ambition to boost its mediator and 'bridge' role, a key goal Ankara holds that will be analysed in more detail in the next section.

22.5 Turkey's Motives

Three factors help explain Turkey's approach vis-à-vis the war in Ukraine: Ankara's desire to boost its international status; the Turkish balancing strategy in its foreign policy; and economic interests, which make maintaining cooperation with Russia a priority. Russia's invasion and war of aggression have allowed Turkey to bolster its image as a mediator and improve its international status. This is not a new endeavour for Turkey's Justice and Development Party (AKP) under President Erdogan's rule. Since the early 2000s, Ankara has offered to mediate several crises in its neighbourhood, including Bosnia and Herzegovina and Serbia Trilateral Summit initiative (Turkish MFA, 2013). In tandem with Russia and Iran through the Astana group, the Turkish government aimed to influence the Syrian conflict in the Middle East. Erdoğan has also used the Turkey-led Organization of Turkic States to offer assistance and mediation in Kazakhstan during the unrest in January 2022 and between Armenia and Azerbaijan reemerging war since 2020 (Daily Sabah, 2022), but in all cases without much success.

The academic literature stresses that impartiality and neutrality are vital features of a mediator and, indeed, Turkey has often highlighted the need for keeping a neutral (*tarafsız*) approach. However, the literature 'largely ignores the fact that when the mediator is a state, mediation often becomes a tool of foreign policy, if not the foreign policy itself' (Akpınar, 2015: 2). Indeed, the mediator can aim at 'enhancing his reputation or pleasing his constituency' (Wall, 1981: 160). In turn, a country's diplomatic clout can raise other actors' perceptions of that country's position in the global order, thereby improving its status (Paul et al., 2014). Turkey's constructive role was hailed by several international leaders—including high-ranking members of the US government, with which Ankara has been facing an increasing number of issues and disagreements, especially since the failed coup in 2016 (Kutlay & Öniş, 2021). White House National Security Council spokesperson John Kirby commended Guterres and Erodgan for the great achievement of the 'grain deal' (Al-Monitor, 2022). US National Security Adviser Jake Sullivan said on Twitter: 'I would like to thank the Turkish government for helping facilitate the exchange of prisoners between Ukraine and Russia, building on their leadership on the grain deal' (Sullivan, 2022). Both Russian and Ukrainian officials have praised Turkey's mediation. Kremlin spokesman Dmitry Peskov commended Turkey's mediation strategy, marking its clear difference from Western ones (Hurriyet Daily News, 2022). Ukrainian Foreign Minister Dmytro Kuleba praised Turkey for mediating negotiations to end the ongoing war, adding that 'Turkey and Ukraine have a relationship

based on trust' (Daily Sabah, 2022). It is possible that, for many Ukrainians, Turkey's *tarafsız* approach and its closeness to Russia pose a severe credibility question. As Kusa (2022) remarks, 'Both the Ukrainian government and public will always question Turkey's positions and its reliability as an ally, and Ukraine's growing dependence on the EU and the United States may exacerbate that trend, especially if Turkey continues to drift away from the West'. At the same time, the Ukrainian government has refrained from openly criticizing Turkey, being aware of Ankara's centrality from a security and economic standpoint. According to Devlen, 'Kyiv is not very happy about [Turkey's] balancing act, but it does not have much choice; it would not be wise or politically advisable for Ukraine to criticize Turkey for that, at least for now'.[5] For the time being, therefore, Ukraine's options are somewhat limited.

For Turkey, its mediation in the war is likewise an occasion to acquire more weight as a regional actor and carry out a balancing strategy in two domains: its relationship with Russia on the one hand and with the USA and the EU on the other.

The war may grant more leverage to Turkey in its relationship with Russia. The relationship has often been described as asymmetric, given that Russia is a much more powerful player both in economic and political terms. However, the nature of this asymmetry is 'dynamic and subject to change', and Turkey has started a process of 'dependency reduction on Russia, both geopolitically and structurally (energy-wise)' (Dalay, 2021). The war in Ukraine could help Turkey achieve more independence and leverage. As shown by the signing and resumption of the grain deal, Turkey has an increasingly influential role in this war, and it is unlikely that this political and diplomatic capital will fade away soon, even if the fighting stops. In turn, a much more economically vulnerable and politically isolated Russia could be in a weaker position vis-à-vis Turkey. Not to mention that, for Russia, Turkey remains one of the main channels of communication with the West. As Gaber claims, 'There are several European politicians [willing to talk to Putin], but president Erdoğan is a better and more vocal communicator for Putin's messages than any of them'.[6]

Given its augmented sway, Turkey is likely to act in a more pragmatic—even cynical—way towards Russia, using its leverage in the context of the war to extract benefits from Moscow in other contexts. One example is the Syrian war, where Ankara required Russian compliance in pursuing its fight against the Kurdistan Workers' Party (PKK) and strengthening its presence in Idlib. The issue is all the more critical given that the presence of millions of Syrian refugees is putting growing stress on Turkey's social services, and this has become one of the hottest issues in the May 2023 campaign for the presidential election. If it is true that a weakened Russia may bring about advantages for Turkey, it is equally true that Ankara does not consider Russia's defeat as a beneficial scenario. On the one hand, a quick Russian win would confirm Russia's image of mighty military power and role of security provider to many neighbouring states in the region, including Turkic states in which Ankara has been carrying out intense foreign policy. On the other hand, as Galip Dalay highlights, Ankara is 'against an excessive weakening of Russia because it would mean a

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[5] Devlen, personal communication, September 28, 2022.

[6] Gaber, personal communication, October 3, 2022.

Western resurgence'.[7] This stance is only apparent though it confirms the 'adversarial cooperation' (Dalay, 2021) which characterizes the relationship between Moscow and Ankara.

Turkey also aims to carry out a balancing act in its relationship with the US and the EU. The shift towards a 'post-Western' order has increased Turkey's quest for 'strategic autonomy' and its shift away from the West, causing the phenomenon of 'de-Europeanisation' of Turkey's foreign policy mentioned earlier in this chapter. As Kutlay and Öniş (2021: 1096) remark, 'for most of the post-1945 period, Turkey was firmly embedded in the Western alliance. However, relations began to change in the second decade of AKP rule, with the West increasingly reframed as the significant 'other' in Turkish foreign policy, especially in Turkey–EU relations.' From Ankara's perspective, therefore, it is understandable that a growing presence and influence of NATO countries, and especially the USA, in the Black Sea—considered by Turkey as its backyard—constitutes a problem. For this reason, Turkey has also invested in its relationship with Kyiv. According to Gaber, Ukraine matters to Turkey precisely because it offers a chance to 'deter Russia without necessarily getting more NATO involved', acting as a 'counterweight to Russia but without being part of the collective West'.[8] The similar 'adversarial cooperation' logic described for Russia-Turkey relations applies to some extent to Ankara's relationship with the West—and with Ukraine, given its increasing dependence on and identification with the 'Western camp'. Gaber reports a widespread view among Turkish pro-government experts who think that the West wants to weaken Russia (and Turkey) using Ukraine; for them, a clear Ukrainian victory would mean 'no counterweight to the Western presence', so 'Turkey wants Ukraine to win without Russia losing'.[9]

Economic interests also form part of Turkey's strategic calculus in the framework of the war. In an effort to portray itself as a neutral country able to mediate in the conflict, Ankara did not join the West's sanctions against Russia; trade with Moscow, on the contrary, increased substantially. According to a study by the Central Bank of Finland, between February and July, Turkey increased its exports of goods and products to Russia by 42%; in August alone, the increase reached 87% compared to the same period in 2021, according to data from the Turkish Exporters' Assembly (Bourcier, 2022). A New York Times investigation has registered a 198% increase in Turkey's overall trade with Russia since the invasion of Ukraine, a growth second only to India's (Gamio & Swanson, 2022). Turkey is not alone in keeping trade links with Russia very much alive. Instead, it is part of a broader trend that sees many countries pragmatically keeping economic ties with Russia despite the war, especially in the Global South. After all, Russia's global exports grew after it invaded Ukraine, even in many countries that have vocally opposed Russia—much to the frustration of Western officials, 'who had hoped to undercut Russia's war effort by punishing its economy' (Gamio & Swanson, 2022).

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[7] Dalay, conversation with the author.

[8] Gaber, personal communication, October 3, 2022.

[9] Gaber, personal communication, October 3, 2022.

For Ankara, energy is an essential aspect of trade cooperation with Russia, mainly because Erdoğan did not want to take risks of energy shortages or excessive rises in energy prices in the runup to presidential and parliamentary elections in May 2023. Despite an attempt to reduce energy dependence on Russia, Turkey still imports almost half of its gas and about a quarter of its oil from Moscow, and Turkey doubled its imports of Russian oil this year (Reuters, 2022). In a meeting in Sochi in August, Putin and Erdoğan discussed expanding Turkish-Russian energy cooperation. The Turkish president exploited this opportunity to ask for a discount on natural gas (Ahval News, 2022). The discussion continued in a meeting on the sidelines of the Shanghai Cooperation Organisation (SCO) summit in Astana in October, where Russia's President proposed to his Turkish counterpart the creation of a 'gas hub' in Turkey to export gas to Europe (Bolton, 2022). The 'gas hub' project, which has been discussed for years, faces several objective challenges: from logistics issues linked to increasing the amount of Russian gas delivered to Turkey through the TurkStream pipelines to the lack of competitiveness of Turkey's subsidized domestic gas market. Yet, the plan is widely described by Turkish pro-government media as an achievement and promising development, even more so as EU countries are in the middle of an energy crisis due to, among other things, decoupling from Russia as a reaction to the war in Ukraine.

22.6   Perceptions and Attitudes in Turkey

On the eve of the American war against Iraq in 2003, thousands of Turkish citizens joined anti-war protests against USA foreign policy in the Middle East. Public opinion polls at that time showed that more than 90% of Turks opposed the war. Such large manifestations impeded a proposal to allow American troops to invade Iraq from Turkish soil from passing in the Turkish Grand National Assembly (Kiratli, 2018). Despite 145,000 Ukrainian refugees in Turkey, according to UNHCR October 2022 data, and the vocal outreach activities of Tatar activists, no such shows of condemnation of Russia's actions have occurred since the start of the invasion. Rallies did take place in several Turkish cities, driven by the members of the Ukrainian community living in Turkey. However, they usually failed to gather more than tens, at maximum hundreds, of people. At the same time, shameful episodes like a group of Fenerbahce fans chanting the name of the Russian leader against the Ukrainian team Dynamo Kyiv in a July match (Al Jazeera, 2022), although not necessarily indicative of diffuse Putinism among the population, placed the spotlight on the phenomenon of Turks' 'lack of empathy' with Ukraine.

While an in-depth analysis of societal attitudes falls beyond the scope of this chapter and would require a separate study, it is essential to touch upon the main factor behind this 'lack of empathy', that is, anti-Westernism. Anti-Western sentiments, especially anti-American sentiments, are diffuse within the population and contribute to informing the government's policy choices. Turkey's divisions between East and West are not new, but they are both connected and gaining relevance in light of the

country's quest for growing strategic autonomy in foreign policy. In a Metropoll poll from January 2022, 37.5% of respondents declared that Turkey should prioritize the EU and the USA in its foreign affairs, while 39.4% said they preferred Russia and China; in a Metropoll poll from March 2022, shortly after the invasion of Ukraine, the percentage of Turks still thinking that relations with Russia and China should be given priority had decreased but remained around 30% (Dağı, 2022).

Anti-Americanism has deep roots and sharply increased in the 2000s due to the war on Iraq. In the words of Güney (2008: 476), 'The war on Iraq, started by the USA in March 2003, had significant repercussions for the long-lasting strategic partnership between the two countries by creating a serious crisis of confidence on both sides and eventually putting the alliance under scrutiny.' Anti-Americanism grew after the 2016 failed military coup in Turkey, primarily because the USA has refused to extradite Fethullah Gulen, a cleric who has lived in self-imposed exile in the USA since 1999 and whom Turkey considers responsible for the coup attempt. Pro-government media have increased their anti-American rhetoric in the framework of shrinking civil rights and media freedom in Turkey after the coup. According to a 2020 study, Turkey's 'domestic media framed and reported the US-related news with a more negative slant, including offensive and pejorative narratives about the United States of America and its politics' (Onat et al., 2020: 139). Today, a very high number of Turks, almost 60%, consider the US as the biggest threat against Turkey's national interests, double the number of those indicating Russia (Ünlühisarcıklı et al., 2022). A perceived lack of solidarity from EU leaders after the coup attempt also reignited anti-EU sentiments that were already widespread due to frustration with Turkey's stagnated membership process. However, trust in the EU is higher compared to the USA (Ünlühisarcıklı et al., 2022).

Anti-Americanism can also explain why the Turkish public's approval of NATO has consistently been the lowest among member countries since 2011, ranging between 15 to 25%, spread across the political spectrum (Tremblay, 2022). This, in turn, explains why so many Turks blame NATO and the West for the war in Ukraine and have a more acquiescent and understanding approach towards the aggressor. A March 2022 Metropoll survey revealed that only 33.7% of respondents blamed Moscow for the war, while nearly half held the United States and NATO responsible (Yazıcıoğlu, 2022). These polls and the lack of massive anti-war rallies do not mean that Turks are not worried by Putin's war or that empathy and solidarity towards Ukrainians are nonexistent. They could be taken as anecdotal evidence that Turkish society has turned more inward-looking due to the backsliding of democracy and drastically worsening living conditions in the country. As a Turkish civil society activist remarked, society has been in 'survival mode' for a long time.[10] These behaviors could also point to a broader political trend that sees Turkey and other emerging countries being increasingly supportive of a multipolar vision of international relations. A vision according to which Turkey's influence and independent foreign policy can thrive without necessarily picking a side.

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[10] Turkish civil society activist and expert, personal communication, November 5, 2022.

22.7   Conclusion

This chapter has analysed Turkey's *tarafsız*, hence neutral, approach to Russia's war against Ukraine. One can conclude that Turkey's attempt to perform a 'balancing act' between antagonistic sides—Russia and Ukraine (and the West)—confirms the interpretations in the academic literature of Turkish foreign policy as growing more assertive, independent, and seeking to strike a balance in its external relations. Turkey's reaction also seems to clarify its preference for a multipolar world in which the West is not the only center of power. A multipolar world order—even if asymmetric—allows middle powers like Turkey to sway between pro-Western and anti-Western attitudes without necessarily committing to either side.

The analysis also raises an important question: how sustainable is Turkey's neutral approach? As the war keeps raging—and its outcome is far from certain at the moment of writing—the success of Turkey's leadership and role as a mediator in the war seems to indicate Ankara's growing influence thanks to its autonomous foreign policy. President Erdogan, after his reelection in May 2023, has reiterated his willingness to continue acting as a mediator. In early June 2023, for instance, he held separate phone calls with Ukrainian and Russian counterparts, offering to create an international mechanism to investigate the collapse of the Ukrainian Nova Kakhovka dam, for which Ukraine and Russia blame each other (Akin, 2023). Yet, there are limits to this approach, and future military developments can call its sustainability into question. The Western factor limits Turkey's ability to exploit Russia's economic isolation, for instance, when it comes to sanctions.

Turkey has received heavy pressure from the USA and the EU to join sanctions or block Russia's attempts to evade sanctions through the Turkish banks integrated into Mir, Russia's domestic payments system. At the end of September 2022, Turkey bowed to US pressure and announced that its banks, still processing Russian payments, were withdrawing from the Mir system (Jones, 2022). Western pressure, which could intensify in light of a military war escalation, could also significantly jeopardize Turkey's impartial approach. Indeed, if the conflict extends beyond the two fighting parties, Turkey would be forced to abandon its 'balancing act' and pick a side, particularly in light of its NATO membership. In Devlen's words, 'anything that reduces Turkey's room for maneuver is a concern for Ankara. In particular, Russia's possible, although unlikely, use of nuclear weapons'.[11]

It is reasonable to expect that, in the near term, Turkey will remain an indispensable intermediary in the conflict. It is also expected to capitalize on its diplomatic gains to further boost its international status, and to use the latter as a lever in its relationship with Russia and the West. However, a potential vertical and horizontal escalation, as well as pressure from Ankara's Western partners, may undermine the sustainability of Turkey's *tarafsız* approach.

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[11] Devlen, personal communication, September 28, 2022.

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Chapter 23
The United Nations
and the Russian-Ukrainian War

Georgios Kostakos

23.1 Introduction

As though the world did not have enough problems to deal with, the Russian invasion of Ukraine, which started on 24 February 2022, complicated things further after more than two years of COVID-19 pandemic disruption to societies and economies, with intensifying climate change impacts, and rising energy and food prices. The promise of a better world, most recently articulated globally some thirty years ago with the end of the Cold War, has been gasping for breath for years and now seems to have left us for good. A year after the Russian invasion of Ukraine, some would argue that this was the beginning of World War III, with intense fighting, inflammatory rhetoric, and periodic threats of nuclear war.

The ominous signs have been there for some time: years of political and social instability in Ukraine after it gained its independence, the expansion of the North Atlantic Treaty Organization (NATO) eastwards, the annexation of Crimea and Sevastopol by Russia in 2014, Russian interventions in parts of Georgia and Moldova, and decreasing trust and cooperation between Russia and the West. However, when those Russian troops started to amass on the border with Ukraine several months before the invasion, alarm bells should have rung, and some firefighting, or rather fire prevention, should have taken place. Instead, the sliding into a foretold war proved unstoppable, while UN-stoppable it should have been.

This chapter attempts to provide an overview of the efforts of the United Nations (UN), or lack thereof, to prevent and/or stop the Russian invasion of Ukraine and/or help de-escalate the violence and find a peaceful solution to the conflict. The UN is here considered to be any of the following: the 193 UN member states and their respective governments; intergovernmental organs such as the UN Security Council, the General Assembly, and the Human Rights Council; judicial organs such as the

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International Court of Justice and the UN-associated International Criminal Court; the UN Secretary-General and the Secretariat; as well as the broader UN system. The period discussed involves the lead-up to and immediate aftermath of the Russian invasion. It does not include an examination of the UN's role in and around Ukraine in the preceding years except for occasional explanatory references. The data is derived from resolutions, meeting records, and reports of UN bodies and officials, as well as reports and expert analyses published in various media and available online. Following this introduction, a section addresses the failure in conflict prevention, while the remaining sections deal with the different UN actor responses once the war has erupted. The conclusions assess the overall handling of the conflict and pose broader questions and concerns on the future of the UN and its role in providing a significant global public good: peace and security.

23.2   The UN's Non-prevention of a War Foretold

The signs were becoming more transparent by December 2021 that the build-up of Russian troops near the border with Ukraine could mean an imminent invasion. The US assessment in mid-January 2022 was that a military attack "could happen anytime between mid-January and mid-February" (Chance & Atwood, 2022). Sanctions had started to be imposed on Russia by the West with its annexation of Crimea and Sevastopol in 2014. These were intensified around the time of the Russian invasion, given the recognition by Russia of the self-proclaimed independence of the Donetsk and Luhansk pro-Russia-separatist-controlled areas of Ukraine on 23 February 2022, just a day before the full-scale invasion (European Commission/Finance, 2022; US Department of State, 2022).

Still, the invasion was not prevented. The intention to invade was repeatedly denied by senior Russian officials, who simultaneously demanded that Ukraine not become a NATO member (Bunyan, 2022). The UN Security Council met on 31 January 2022 at the request of the US to consider Russia's deployment of troops near its border with Ukraine as a threat to international peace and security. Russia rejected the allegations as a USA attempt to mislead the international community and interfere in its internal affairs (United Nations, 2022a). Despite continued USA warnings and high-level contacts with the Russian side to avert the imminent invasion, there was widespread incredulity that it would happen; even President Volodymyr Zelenskyy of Ukraine played down the probability of that happening just a few days before it did (The Irish Times, 2022).

One week before the invasion, on 17 February 2022, the UN Security Council held a meeting following a letter submitted by Russia regarding the implementation of the Minsk Agreements of 2014–2015 in resolving the conflict over the separatist Russian-speaking movements in Eastern Ukraine. From the discussion at this meeting, it became clear that there was a long history of grievances between Ukraine and Russia and that the measures included in the Minsk Agreements had yet to be implemented to the mutual satisfaction of all parties (United Nations, 2022b).

   Speaking at the meeting on behalf of the UN Secretary-General, Ms. Rosemary DiCarlo, UN Under-Secretary-General for Political and Peacebuilding Affairs, pointed to the complex and long-standing character of the issues underpinning the eight-year-old conflict in Eastern Ukraine, noting their connection to "the larger issues relating to the European security architecture". She also stated that "[o]n 14 February, the Secretary-General [had] expressed his deep worry regarding a potential military conflict in Europe". The Secretary-General had "remained fully engaged with key actors, including the Russian Federation and Ukraine governments, and has reiterated the same unambiguous message: there is no alternative to diplomacy". (United Nations, 2022b). Nonetheless, Russia went ahead with its "special military operation," a euphemism for the invasion, on 24 February 2022.

   What more could the UN Secretary-General have done, if anything? In the months or weeks before the invasion, as tension was escalating through rhetoric, as well as the sanctions and the independence declarations mentioned earlier, he could have used his prerogative under Article 99 of the UN Charter to "bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security". If that did not lead to any concrete result, the Secretary-General could have made the symbolic gesture of showing concern by visiting Moscow and Kyiv, as well as Washington and Brussels, to appeal for calm and peaceful talks between the parties. However, he did not do any of these things, choosing instead the expression of worry mentioned earlier.

23.3   Intergovernmental Body Reactions

From the start, there was no chance for the Russian invasion of Ukraine to be condemned by the UN Security Council because of the Russian veto. Russia has this prerogative as one of the five Permanent Members of the Security Council, occupying the place of the now-dissolved Soviet Union, which remains listed in the UN Charter (Articles 23.1 and 27.3), as its successor state. The day after the invasion, on 25 February 2022, Russia used its veto to prevent the Council from adopting a draft resolution submitted by Albania and the USA. The resolution, which would otherwise have been adopted, as 11 Security Council members voted in favor, with three abstaining, namely China, India, and the United Arab Emirates, would have deplored Russia's aggression against Ukraine and demanded its immediate and unconditional withdrawal from the territory of Ukraine (United Nations, 2022f). The exact same configuration of votes could not stop the Security Council from adopting a procedural resolution, for which a negative vote does not count as a veto, that passed the item on to the UN General Assembly. An emergency special session of the Assembly was thus called because of "the lack of unanimity of [the Security Council's] permanent members… [that had] prevented [the Council] from exercising its primary responsibility for the maintenance of international peace and security" (United Nations, 2022g).

The 11th Emergency Special Session of the UN General Assembly opened on 27 February 2022, and since then, convening on and off, has adopted several resolutions.[1] A significant majority of UN member states have been voting in favor of these resolutions, reaching a peak of 143 votes on the 12 October 2022 resolution condemning Russia's annexation of four Ukrainian regions (A/RES/ES-11/4). The usually five negative votes increased to 24 for the 7 April 2022 resolution that suspended Russia's membership in the UN Human Rights Council (A/RES/ES-11/3). This resolution also saw an increase in abstentions (58 from the usual 35–38), as well in non-participation (as many as 72 countries for resolution (A/RES/ES-11/5 on the furtherance of remedy and reparation for the aggression against Ukraine).

Adding the abstentions and the non-votes and taking into account the fact that China, India, Pakistan, and South Africa were consistently among the abstaining states, it becomes evident that those sitting on the fence and refusing to take sides in this conflict represent some of the leading powers of the Global South, and more than half of the world's population in total. Moreover, the General Assembly resolutions do not have the "teeth" or enforcement authority that Security Council resolutions would have if adopted under Chapter VII of the UN Charter ("Action concerning threats to the peace, breaches of the peace and acts of aggression").

Turning to the UN Human Rights Council, in addition to Russia's suspension from membership by the UN General Assembly for reported "…gross and systematic violations and abuses of human rights" in Ukraine (United Nations 2022j), Russia has been the subject of several resolutions of the Human Rights Council itself. For example, at its thirty-fourth special session in May 2022, the Council adopted – with a vote of 33 in favor, 2 against, and 12 abstentions – a resolution on the deteriorating human rights situation in Ukraine as a result of the Russian aggression. The Council demanded an immediate cessation of hostilities against Ukraine and requested the Independent International Commission of Inquiry (discussed later in this chapter) to investigate potential war crimes and crimes against humanity, including their gender dimension, in four regions of Ukraine: Kyiv, Chernihiv, Kharkiv, and Sumy, during the period of late February and March 2022. The aim would be to hold those responsible accountable (OHCHR, 2022b).

Intergovernmental bodies of the broader UN system also took decisions that directly or indirectly castigated Russia for its aggression. Thus, accused of breaching the Chicago Convention rules on international aviation, Russia failed to be reelected for another three-year term on the ICAO Council at the ICAO Assembly session held in Montreal on 1 October 2022 (Charpentreau, 2022) while remaining a full member of the organization (TASS Russian News Agency, 2022). Reacting to pressure in various forms in other international fora, the Russian government and parliament were considering taking the initiative of withdrawing from those bodies, including the World Health Organization (WHO) and the World Trade Organization (WTO)

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[1] See UN General Assembly Resolutions Tables / Resolutions Adopted by the General Assembly – Emergency Special Sessions, Dag Hammarskjöld Library, United Nations. Last accessed on January15, 2023 at https://research.un.org/en/docs/ga/quick/emergency.

(Aapur and Furlong 2022). On other occasions, Russia was accused of obstructionist tactics that prevented international bodies from reaching decisions based on consensus, such as at the 10th Review Conference of the Nuclear Non-Proliferation Treaty in August 2022 (UN News, 2022d).

23.4 International Courts and Investigations

On 26 February 2022, two days after the Russian invasion, Ukraine filed "an application instituting proceedings against the Russian Federation" before the International Court of Justice (ICJ), the principal judicial organ of the United Nations. Ukraine challenged Russia's assertion that acts of genocide had occurred in the Luhansk and Donetsk regions of Ukraine, which Russia had used as an excuse for its invasion. By a vote of 13 to 2, the ICJ agreed with Ukraine and, among other things, asked Russia to "immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine" (ICJ, 2022).

Ukraine is not a state party to the Rome Statute, the treaty establishing and governing the International Criminal Court (ICC) operation. Nevertheless, Ukraine has accepted the Court's jurisdiction over alleged crimes committed on its territory since November 2013. The current situation was referred to the ICC in March–April 2022 by 43 state parties. Investigations opened on 2 March 2022, and the scope of the case under investigation "encompasses any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person from 21 November 2013 onwards" (ICC, 2022; Khan, 2022).

Established by the UN Human Rights Council in March 2022, the Independent International Commission of Inquiry on Ukraine (OHCHR, 2022g) concluded in September 2022, based on the evidence it had gathered, that war crimes had been committed in Ukraine. They included ill-treatment, torture during unlawful confinement, and sexual and gender-based violence crimes. Investigations continued and criminal and other accountability recommendations would follow (OHCHR, 2022e).

23.5 The Response of the UN Secretary-General and UN System Executives

The UN Secretary-General (SG) took a principled stance from the beginning of the Russian invasion of Ukraine. Speaking at the UN General Assembly on the recognition by Russia of the separatist Ukrainian regions of Donetsk and Luhansk the day preceding the invasion, SG Guterres clearly stated that "the decision of the Russian Federation to recognize the so-called 'independence' of Donetsk and Luhansk regions – and the follow-up – are violations of the territorial integrity and sovereignty of Ukraine and inconsistent with the principles of the Charter of the

United Nations" and called for "restraint, reason, and de-escalation". The Secretary-General also "urge[d] all parties to make full use of Article 33 of the Charter and its diverse instruments of pacific settlement of disputes" and expressed his full commitment to "support all efforts to resolve this crisis without further bloodshed," offering his good offices (United Nations, 2022c). On the day of the invasion, 24 February 2022, the SG pronounced, "It is wrong. It is against the Charter. It is unacceptable". He noted that it was "not irreversible" and appealed to President Putin to "Stop the military operation. Bring the troops back to Russia". He stressed the commitment of the UN and its humanitarian partners "to staying and delivering, to support people in Ukraine in their time of need… working on both sides of the contact line, always guided by the humanitarian principles of neutrality, impartiality, humanity, and independence" (United Nations, 2022d).

The above statements clearly describe the position held consistently by the SG in the weeks and months of war that followed the Russian invasion. It has been a position of principle, based on UN Charter core precepts, and operationalized through humanitarian lenses, apparently conditioned by Guterres' two terms as UN High Commissioner for Refugees before his election to the office of UN Secretary-General. Is this stance best suited for a highly political situation involving a forceful intervention by a powerful state and permanent member of the UN Security Council against a neighboring state supported by the mighty West, with a prolonged separatist insurgency within the latter state?

The sense that the SG was not proactive enough in helping to end the Russia-Ukraine war, combined with the danger of the UN proving irrelevant and meeting the fate of the League of Nations as World War III engulfs humanity, prompted almost three hundred former UN system staff[2] to address a letter to Secretary-General Guterres in mid-April 2022, "implor[ing]" him "to intensify your personal efforts, deploying all capabilities at your disposal and acting upon lessons learnt from previous conflicts, for the cessation of hostilities and conflict resolution through peaceful means" (Wintour, 2022). A few days later, reportedly "yield[ing] to pressure from Western governments and former U.N. officials", Mr. Guterres, "the reluctant peacemaker", visited Ankara, Moscow, and Kyiv, in that order (Lynch, 2022). On that occasion and throughout, including during the high-level meeting of the UN Security Council in the margins of the opening of the 77th Session of the UN General Assembly in late September 2022 in New York, the leitmotif of the UN Secretary-General's speeches has remained tough messaging to Russia with appeals for an end to the hostilities and peaceful resolution of the conflict without any concrete initiative to advance that (United Nations 2022i).

A significant achievement for the UN and its Secretary-General was the deal reached in July 2022 to resume food and fertilizer exports from three Ukrainian Black Sea ports. The deal, born with the Turkish government's support, eased the worldwide food emergency through increased availability and reduced prices, which is essential for developing countries. A parallel Memorandum of Understanding (MoU) signed

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[2] For full disclosure, the author of the present chapter was one of the signatories and a facilitator of this former UN system staff initiative.

by the UN and Russia provided full access to Russian food and fertilizer products, including ammonia, to global markets. The deal was extended for four months in mid-November 2022, despite Russian complaints about problems with its implementation caused by sanctions, which endangered further extensions (United Nations, 2022i; Reuters, 2022; Nichols, 2022).

The UN and its Secretary-General also backed the International Atomic Energy Agency (IAEA)'s Support and Assistance Mission to Zaporizhzhya (ISAMZ), which visited the nuclear power plant on 1 September 2022 and established a permanent presence there to monitor the situation. Located in an area occupied by the Russian forces early in the war, the Zaporzhzhya power plant had seen intense shelling. It was "one step away from a nuclear accident", according to IAEA Director General Rafael Mariano Grossi. Initial consultations had begun in September 2022 with Ukraine and Russia to establish a Nuclear Safety and Security Protection Zone around the plant, as called for by Mr. Grossi (IAEA, 2022). At the country's request, IAEA nuclear safety and security experts were expected to be stationed at all nuclear power plants in Ukraine in early 2023 to help prevent a nuclear accident under the continuing military conflict (IAEA, 2023).

In parallel to the prolonged war misery and the inability and/or lack of political will to end it, the UN system's humanitarian assistance has remained indispensable for alleviating the suffering of large parts of the Ukrainian population. A couple of days after the invasion started, Secretary-General Guterres appointed a close associate from his previous position as UN High Commissioner for Refugees to be the UN Crisis Coordinator for Ukraine (UN News, 2022a). The UN and humanitarian partners launched a flash appeal for a combined US$1.7 billion on 1 March 2022 for urgent humanitarian support to people in Ukraine and refugees in neighboring countries. The appeal was revised to US$2.25 billion in April 2022 and was supposed to reach almost 9 million people. Actions financed include convoys with supplies to hard-to-reach areas, multipurpose cash to hundreds of thousands of people, and providing aid as close as possible to people in need (OCHA, 2022). At the beginning of 2023, humanitarian assistance was estimated to have reached 14 million people within Ukraine, with a flash appeal requirement of US$4.29 billion and actual funding of US$3.42 billion (UNOCHA and HDX 2023). The Office of the UN High Commissioner for Refugees (UNHCR) has played a unique role in supporting the millions of Ukrainians who have either sought refuge in neighboring countries or became internally displaced people (IDPs) within Ukraine, to avoid the consequences of the war (UNHCR n.d.).

Serious concerns about Russian attacks on civilian populations, disrespect for humanitarian law, and apparent war crimes have been expressed by the UN High Commissioner for Human Rights, Special Rapporteurs, and other human rights experts. Then High Commissioner Michelle Bachelet, speaking to the Human Rights Council on 5 July 2022, said that the "high numbers of civilian casualties and the extent of destruction caused to civilian infrastructure continued to raise significant concerns that attacks conducted by Russian armed forces were not complying with international humanitarian law". Interestingly, the High Commissioner also said, "On a much lower scale, it also appeared likely that Ukrainian armed forces were not

fully complying with international humanitarian law in eastern parts of the country" (OHCHR, 2022c). The plight of civilians and the number of victims has been closely monitored by the UN Human Rights Monitoring Mission in Ukraine, documenting violations of international humanitarian and human rights law since the start of the invasion (OHCHR, 2022a). The situation in Russia itself has been the subject of press statements by UN officials, including the High Commissioner for Human Rights, on issues such as the arrest of protesters against the partial mobilization of troops (military draft) that President Putin announced in September 2022 (OHCHR 2022f), and the persecution of human rights defenders under the "fake war news" law introduced after the invasion of Ukraine (OHCHR, 2022d).

23.6   Conclusion

With the war between Russia and Ukraine still raging as of January 2023, when this chapter is being finalized, the findings described in the previous sections are quite concerning with regard to the inability of the UN to prevent such a major and primarily foreseen conflict, as well as the failure of its Security Council to deal with an armed conflict that involves one of its five permanent members as an aggressor. While robust political responses by the UN General Assembly and the Human Rights Council have partly compensated for this, the UN Secretary-General, the top-most official associated with global peacemaking, has proved unwilling or unable to engage in peacemaking beyond statements of principle and humanitarian action. All this bodes porly for the UN and, more importantly, for a world with increasing geopolitical rivalries among significant powers that undermine efforts to achieve global goals for peace and sustainable development.

Addressing the Security Council on 5 April 2022, Ukraine President Zelenskyy challenged the Council to either remove Russia from its membership to prevent it from blocking decisions on its aggression or dissolve itself if it could do nothing but talk (UN News, 2022b). As emotionally charged this may have been, and coming as it did from the leader of a state under attack by one of the veto-yielding P5 Security Council members, one should not declare the UN's death prematurely. The history of the UN's creation shows that "the Security Council is functioning exactly how it was supposed to work." If the veto right had not been given to the big powers, Stalin would not have agreed to have the Soviet Union join the UN, nor would the US Senate have ratified the UN Charter in 1945 (Weiss, 2022). In fact, the veto has been used over the years by all of the P5 to protect their vital interests at critical moments (United Nations, 2022k).

This does not mean that the Russian invasion of Ukraine and Russia's use of the veto to ensure no decision can be reached by the Security Council against it does not cast into doubt the legitimacy of the UN and its Security Council. It certainly adds fuel to the debate about the UN 2.0 that Secretary-General António Guterres has ignited through his *Our Common Agenda* report of September 2021 (United Nations, 2021). UN Charter Article 109, which provides for a long-overdue

Charter review conference, is increasingly cited as the way forward. A decision to that end could be made at the Summit of the Future proposed by the UN Secretary-General in *Our Common Agenda* and now scheduled to take place in September 2024 (Lopez-Claros & Perell, 2022). In the meantime, the UN General Assembly resolution demanding that, when a P5 uses their veto prerogative, they have to appear before the Assembly to explain themselves is a modest but symbolically important step towards greater accountability and restraint (Government of Liechtenstein, 2022; UN News, 2022c).

Overall, the UN system responded to the Russian invasion of Ukraine from the very beginning, making up for its inability to get a resolution past the Russian veto on the Security Council with an Emergency Special Session of the UN General Assembly and resolutions passed comfortably there, even if with no binding power. The Human Rights Council and the Independent International Commission of Inquiry that it created found evidence of war crimes and crimes against humanity. Reactions against Russia in other UN system organizations such as ICAO, the statements of the UN Secretary-General, the High Commissioner for Human Rights, Special Rapporteurs, and others, have all stood up to Russian aggression with conviction and determination and mobilized significant humanitarian assistance to help Ukrainians in their country and as refugees abroad.

The UN failed in conflict prevention despite the intensifying signs during the days and weeks before the Russian invasion of Ukraine. The biggest test for its survival, though, lies with the role that the UN will play, if any, in ending the violence, establishing a process for the peaceful resolution of the conflict, and avoiding intentional or accidental nuclear war. The grain, fertilizer, and Zaporizhzhya deals are worth significant praise. Still, UN diplomacy and the Secretary-General's good offices seem to be deployed with extreme caution, or not at all, regarding the core of the conflict itself. The fact that the world's most significant powers face off here may explain this stance. However, suppose the UN wants to remain relevant and valuable after this "World War III" type situation. In that case, it will have to show that it has a vision, is ready to mobilize for an inclusive future and can proactively represent humanity's common good. The jury is still out on that.

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Chapter 24
OSCE's Resilience in Times of War

Jelena Cupać

24.1 Introduction

The Russian invasion of Ukraine in February 2022 has created an existential crisis for the Organization for Security and Cooperation in Europe (OSCE), further compounded by the fact that the war is occurring between its two core participating states. The problem is that the OSCE has no sanctioning powers over its participating states, such as Russia, for violating its comprehensive, cooperative, and indivisible security concept. But also that the war is jeopardizing many of its vital organizational functions, from adopting a budget to extending the mandates of its field operations. Many commentators and practitioners wonder if the Organization can survive under such enormous pressure and, if yes, in what form. However, such queries about the OSCE's current predicament and future outlook are rarely followed by an analysis of its resilience grounded in research on international organizations (IOs). Using primary sources such as landmark OSCE documents, as well as information provided by the secondary literature, this chapter aims to do just that. It seeks to offer an informed assessment of the OSCE's resilience and spell out what it might mean for its short- and long-term prospects.

In recent years, International Relations scholars have turned their attention to a more systematic study of IO resilience and fragility (Debre & Dijkstra, 2021; Eilstrup-Sangiovanni, 2020, 2021; Gray, 2018, 2020; Hirschmann, 2021). As a result, we now have a rich catalog of insights into how specific formal characteristics of IOs, such as their issue area, membership, and the quality of their bureaucracy, relate to their chances of failing during or persevering through economic, political, and security upheavals. The chapter leverages these insights to evaluate the OSCE's prospects amid the war in Ukraine. However, it does not stop there. It also introduces another dimension of IOs' resilience, namely their relationship with the environment

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in which they operate. By drawing on the concept of ontological security, the paper proposes that if this relationship has been ineffective for years, the external shock will not affect an IO as severely as initially assumed. Resilience can thus paradoxically be found in those aspects of an organization previously seen as dysfunctional. In the case of the OSCE, this refers to the long-standing tendency of participating states to use its high-level fora not to affect Europe's security constructively but primarily to air their grievances about such developments as NATO's expansion and democratic deterioration.

With this in mind, judging by formal organizational criteria such as issue area, membership/participation, age, and the strength of its bureaucracy, the OSCE emerges as a highly fragile IO. Considering that the reforms necessary to make this IO more resilient are unlikely when participating states' preferences diverge strongly, the pressure of the war in Ukraine is likely to lead to the OSCE's organizational decline. This will likely take the form of organizational shrinking, understood here as a reduction to its forum function (e.g., the Permanent Council) and the limitation (or even abolishment) of its more practical bodies and engagements. However, this shrinking is unlikely to favor cooperation. Instead, it is more likely to mean a reduction to the OSCE's conflictual domains, those that the shock of the war has not damaged but further reinforced, namely the perpetual blame and shame games among its participating states.

24.2 The Resilience of International Organizations

International Relations scholars have only recently begun focusing more systematically on the resilience of IOs, pursuing questions such as why some IOs survive longer than others and why some thrive. In contrast, why others never seem to find their footing, and why many never even get off the ground. It may be surprising that these questions are being raised only now if we know that nearly 40% of all IOs created since 1815 no longer exist (Eilstrup-Sangiovanni, 2020, 2021). However, the relative success of multilateralism after the Second World War, especially after the Cold War, has drawn scholarly attention toward prominent and influential IOs while glossing over those that hobbled in the background (Gray, 2018, 2020). Recent challenges to IOs underpinning the liberal international order, from Brexit to Donald Trump's threats to withdraw the USA from NATO, have provoked a shift in focus. By creating and exploring comprehensive IO datasets and delving into the histories of failing IOs, scholars are beginning to outline the factors responsible for the resilience and fragility of IOs.

Accordingly, Mette Eilstrup-Sangiovanni (2018, 2021), who has been at the forefront of IO resilience research, has observed that, while it is not unusual for IOs to die during peacetime, they are far more likely to disband during significant economic and geopolitical turmoil. And this observation holds equally true for large-scale geostrategic upheavals such as the two world wars and regional developments such as

the Great Depression and decolonization. However, although external shocks generally increase the chances of IO death, there are significant differences between organizations: while some quickly falter under external pressure, others show remarkable levels of resilience. To find out why this is the case, Eilstrup-Sangiovanni has examined the individual characteristics of IOs. She has thus demonstrated that, compared to other types of IOs, international security organizations have the highest mortality hazard. From 1815 to 2016, they were more than twice as likely to die in the studied period than technical organizations (Eilstrup-Sangiovanni, 2021, p. 287). The difference is explained by the political salience of the issue area: international security organizations are at risk of succumbing to the same animosities they are tasked to manage.

Membership or, more precisely, participation in the OSCE's case, too, is a strong predictor of IO resilience and fragility. To begin with, IOs with global membership have been significantly more durable than regional organizations. Historically, European IOs have had the highest hazard rates. Since 1815, they have been seven times more likely to die than global IOs, with only three surviving the First World War. African and American IOs have fared slightly better, being six times more likely to die than global organizations. Statistically significant numbers cannot be calculated for Asian IOs as they are young and few in number (Eilstrup-Sangiovanni, 2020, pp. 354–356).

Eilstrup-Sangiovanni has also found a correlation between the number of member states and IO resilience: the more members an organization has, the less likely it is to dissolve, and vice versa (Eilstrup-Sangiovanni, 2021, p. 287). The correlation is explained by the greater availability of human and budgetary resources that might counteract temporary disruptions and allow for experimentation and innovation, essential hallmarks of organizational adaptability. At the same time, a large membership increases the likelihood that, even in times of crisis, an organization will continue to be valuable to at least some member states, who will, as a result, invest resources in maintaining it.

Age also appears to play a role in IO resilience. The frequency of IO deaths is highest in the first three decades of their existence. Mortality rates drop markedly when they are between 30 and 50 years old and are the lowest when they reach 50 and beyond (Eilstrup-Sangiovanni, 2021, p. 287). Accordingly, the older an IO is, the less likely it is to die. The reasons for this are multiple, from the vested interests of their members and better embeddedness in the environment to more robust learning and coordination capacities.

IO resilience is also affected by bureaucracy-related factors. Large numbers also contribute to greater resilience: the larger the bureaucracy, the more vital an IO is and the more likely it is to survive (Debre & Dijkstra, 2021; Gray, 2018, 2020; Hirschmann, 2021). Maria Debre and Hylke Dijkstra's research shows that the size of IO secretariats is particularly significant. Organizations with secretariats that have more than 50 staff members are considerably less likely to dissolve (Debre & Dijkstra, 2021, p. 322). The quality of bureaucracy also matters, with high levels of bureaucratic professionalization and autonomy positively associated with resilience (Gray, 2018; Hirschmann, 2021). A large and high-quality bureaucracy has the ability and

resources to improve cooperation between member states, especially during crisis periods when compromise seems out of reach and requires some form of mediation. Such bureaucracy can also recognize and realize opportunities for keeping an organization afloat, such as finding alternative financing models or building coalitions with civil and private sectors. However, it is essential to recognize the limitations of bureaucracy. Sometimes even a strong bureaucracy might choose to hunker down, thus being less effective in influencing the course of a struggling organization (Hirschmann, 2021, pp. 1965–1966). This scenario can happen when tensions between member states are so high that bureaucratic activity, including more vigorous defense of organizational principles, might be interpreted as favoring one side in the dispute.

24.3 International Organization's Resilience Vis-a-Vis Their Environment

These general insights into IO resilience are highly valuable as they provide us with tools to more systematically assess the resilience of individual IOs such as the OSCE when confronted with external upheavals. However, there are still domains that this relatively young research has overlooked. One is the nature of the relationship between an IO and its environment. Here, the environment refers to extra-organizational developments in the geographical region and the issue area in which an IO is active. From this perspective, for example, NATO's eastward expansion and the Russian invasion of Ukraine would be seen as developments in the OSCE's environment, even though both involve the OSCE's participating states.

As time passes, each IO develops a special relationship with its environment. Some become highly skilled problem solvers with significant influence over environmental developments, while others merely reflect environmental challenges and fault lines, having little or no impact on them. Most IOs find themselves on the spectrum between these two extremes, often even fluctuating between them during their history. However, extreme fluctuations are rare. Much more often, IOs develop stable patterns of interaction with their environment. These patterns influence how an IO will perceive an external shock and, in turn, how resilient it will be to it. Accordingly, the intensity of the external shock might not be interpreted solely based on some objective measure of the shock's severity and the features of an IO's institutional design. It may also depend on whether it will fundamentally change the pattern of the IO's relationship with its environment and, consequently, the way the IO is used to functioning as an organization.

A successful IO, accustomed to shaping its environment by solving its problems, can be vulnerable to external shocks that prevent it from having the same impact. In contrast, an IO such as the OSCE, which has long had a problematic relationship with its environment, and whose participating states and bureaucrats have struggled to create and implement impactful policies, could fare much better. An external

shock may not disrupt its already strained operations, making it more resilient than initially thought. This would represent a maladaptive rather than adaptive resilience, but resilience nonetheless. It is important to emphasize that this observation may not only apply to an entire organization but also to some of its aspects. Therefore, an external shock might affect an IO's relatively functional and dysfunctional aspects differently, rendering some more resilient.

24.4 Ontological Security and International Organizations

An assertion that an IO that has for years looked like an "inert zombie", to quote Julia Gray, might be less vulnerable to external shocks than a thriving organization that possesses many of the qualities discussed earlier, may seem counterintuitive, bordering on paradoxical. However, it is not unfounded. It is rooted in the concept from social psychology known as ontological security. The concept has been used extensively to explain the behavior of states but has only recently been picked up by IO researchers (e.g., see Browning, 2018; Della Sala, 2018). Despite its lofty name, ontological security is a relatively simple concept. It describes an actor (be it an individual, a state, or an organization) with confidence in the consistency of its social and material environment and the continuity of its self-identity (Giddens, 1991). An actor with such confidence can continue to exist as an unchanged entity. In other words, an ontologically secure actor, including an IO such as the OSCE, knows its place in the world and how to act within it (Cupać, 2020, p. 11).

The concept of ontological security is blind to what the environment should look like or how an actor should behave. Instead, the emphasis is on the relationship between the two and the conditions an actor has learned to navigate. That is why even a relatively chaotic environment can give an actor a sense of security if that is what it is accustomed to. Additional disruption in such an environment would likely affect it less than an actor adapted to more orderly surroundings. This observation, however, should not be understood deterministically: plenty of successful IOs will adjust to external shocks, and plenty of "zombies" will encounter their breaking point. When using ontological security to assess an IO's resilience, it is, therefore, best to take a closer look at the history of its relationship with the environment. This approach cannot produce accurate predictions about an organization's survival. Still, it can offer a new perspective on where an IO is heading and whether something can be done.

24.5   The OSCE's Resilience Evaluated through Formal Factors

With these above-mentioned theoretical insights in mind, this section of the paper aims to assess, as systematically as possible, the OSCE's resilience against the background of the Ukrainian war. To begin with, as an international security organization caught in one of the worst security crises in Europe since the Second World War, the OSCE is on shaky ground. Russia's violation of its fundamental principles and the corresponding indignation of the vast majority of its participating states hinder the Organization's current functioning and call into question the viability of any strategy that would punish Russia and preserve the OSCE simultaneously. However, the OSCE has one advantage concerning its issue area. While it is primarily a security organization, its comprehensive approach to security has led it to engage in numerous activities typically found in general-purpose IOS, from human trafficking and education to gender equality and minority rights. These areas of engagement might be used to keep the OSCE afloat until conditions become more favorable in the politico-military domain.

Like its focus on security, regional membership and European focus might also be read as factors hampering the OSCE's resilience. At the same time, however, it should not be overlooked that the OSCE is the world's largest regional IO, counting 57 participating states spread across three continents. This size might award it with certain benefits relating to resiliency, such as greater chances for the emergence of a group of states interested in maintaining the Organization and providing it with more significant resources, including extra-budgetary donations.

The resilience of the OSCE, as measured by its age, puts it in a relatively good position. The Organization is 48 years old, approaching the 50-year benchmark, after which Ios are least likely to dissolve. But here, too, the OSCE comes with a footnote. For 20 of those 46 years, it functioned as a series of conferences. Only in the past 26 years has it developed into a fully institutionalized organization, albeit without legally binding status. This might signal that the OSCE still needs to create robust learning and coordination mechanisms to help it overcome the crisis. However, these characteristics can be correctly assessed only through in-depth comparative analysis. Here, age should be read only as an indicator.

At first glance, the size of the OSCE's secretariat might spell good news for the Organization's resilience, for it consists of several hundreds of staff members, well above the 50 found in the most resilient IOS. However, due to high staff turnover, a problem further aggravated by the annual budget cycle, the OSCE generally lacks stable bureaucratic expertise and policy continuity (Knill et al., 2016). It is, therefore, not surprising that, in a study of fourteen IOs, its secretariat ranks as the least autonomous (Bauer & Ege, 2016). The role of the Secretary-General does not improve this image, considering that it consists of day-to-day administrative tasks, supporting the Chairperson-in-Office, and reporting, without agenda-setting powers, to the Permanent Council. As a result, the position mainly attracts career

diplomats with little ability to influence participating states or implement significant organizational reforms.

All these factors—security as a problem area, a regional and European focus, age, and an inefficient bureaucracy—paint the OSCE as an organization with a high risk of dying as it faces the Ukrainian war. However, it also displays several idiosyncrasies, namely a broad conception of security and large membership, which may be the reason for a slightly more optimistic assessment. While these might prove valuable in the future, their positive effect on the OSCE remains absent for now. The tensions raised by the Russian invasion of Ukraine in the Organization's politico-military dimension also reverberate in normative disputes in its economic, environmental, and especially human rights dimensions, making separating conflict areas and possible cooperation challenging.

24.6 The OSCE's Resilience in a Historical Perspective

While the Russian invasion of Ukraine has brought the OSCE to the brink of collapse in 2022, it is well known that the Organization struggled long before Russia's attack, even before Russia annexed Crimea in 2014. Following the end of the Cold War, the OSCE contributed significantly to managing security problems of a smaller scale through its field missions and to facilitating democratization through activities such as election monitoring, promotion of minority rights, and judicial reform. Yet, its high-level decision-making bodies (Ministerial Councils, Summits, and the Permanent Council) have gradually deteriorated into fora reflecting developments and disputes from the Organization's environment, with little or no power to influence these.

The start of the OSCE's deterioration is usually dated to the early 2000s. However, a closer reading of its history reveals that it began much earlier, with common purpose among participating states already visibly diminishing in the second half of the 1990s. During this period, against the background of NATO's intention to expand eastward, the OSCE participating states started negotiations on the "Common and Comprehensive Security Model for Europe for the Twenty-First Century". However, despite its grandiose name and ambition, the negotiations saw five years of gradual widening of the rift among the participating states. Seeking to counterbalance NATO's expansion, Russia was trying to establish the OSCE as the principal security organization in Europe. At the same time, the West wanted to turn it into just one "building block" in the continents' intricate security architecture. This period also saw the renewed prominence of the concept of sovereignty. The West evoked it to justify the right of states to join preferred security treaties and alliances freely. At the same time, Russia referred to it to challenge the idea that internal affairs could be of direct and legitimate concern to all participating states. On the whole, by primarily reflecting their understanding of the developments in the OSCE's environment, talks on the Security Model downgraded the OSCE from a chief builder of the New Europe, as it was imagined in the early 1990s, to just a "*forum* providing directions and

giving impulses to the shaping of the New Europe" (Decisions of the Copenhagen Ministerial Council Meeting 1997).

These divergences continued into the 2000s, manifesting in even less dialogue and compromise. In the 1990s, summits were held regularly; however, between 2000 and 2010, no single summit occurred. Ministerial Council meetings, although uninterrupted, often ended without a usual final joint declaration. The words of the OSCE's Chairman-in-Office, Belgian Foreign Minister Karel De Gucht, during the 2006 Brussels ministerial, encapsulate well the condition in which the Organization found itself at the time. De Gucht asserted that the OSCE had for long been in an "introspective episode," making the organization "anemic if not stagnant," with the looming threat of becoming "paralyzed" (OSCE's Belgian Chairmanship Press Release, 2006).

The impetus to overcome this state of affairs came after the 2008 financial crisis and the Russian war in Georgia when the OSCE embarked on the Corfu Process initiated by former Russian President Dmitry Medvedev. This round of dialogue was aimed at "reconfirming, reviewing, and reinvigorating" the OSCE's concept of comprehensive, cooperative, and indivisible security. However, in the end, it, too, reflected the developments from the OSCE's environment and the dissatisfaction that accompanied them rather than establishing the OSCE's influence over European security affairs. Accordingly, Russia wanted to focus on the politico-military dimension, insisting that, with NATO's expansion, that is the area in which most violations of the OSCE's principles were happening. The West, by contrast, claimed that European security was threatened the most in the economic, ecological, and human dimensions by certain OSCE states refusing to adhere to democratic governance and human rights. The Corfu Process ended at the 2010 Astana Summit with a short declaration. Despite evoking the ambitious concept of a security community, it delivered little by way of moving the OSCE forward. The Czech Republic went so far as to assert in its interpretative statement accompanying the declaration that: "This opportunity was lost. So was the relevance of the OSCE" (Astana Commemorative Declaration 2010).

Following the Astana summit, the concept of a security community lingered in discourse as an aspirational ideal to commemorate 40 years since the Helsinki Final Act. Nonetheless, it was widely acknowledged among observers and practitioners that the Organization was moving in the opposite direction. The Russian annexation of Crimea in 2014 and subsequent military engagements in Donbas made this glaringly apparent. While the OSCE's Special Monitoring Mission to Ukraine (SMM) was, for a while, seen as the Organization's success, it could not make up for the severely eroded trust and confidence among its participants and the absence of genuine dialogue that would honor the idea of comprehensive, cooperative, and indivisible security.

This overview of the OSCE's recent history shows that the Organization has had a limited impact on European security in the last twenty-five years. While its field missions and democracy and human rights-promoting activities have had many triumphs, the Organization has nevertheless remained trapped, constantly reflecting dividing lines from its environment, unable to overcome them despite several initiatives. In such circumstances, the OSCE's rich normative catalog has been used far

less for building Europe's security and much more for participating states' blame games.

If we refer back to ontological security, this long-standing weakness of the OSCE can be reinterpreted as a potential source of maladaptive resilience amid the challenges of the Ukrainian war. Arguably, the war has brought about earthshaking disruption to several domains vital for the OSCE's survival, from struggles to adopt a unified budget and select a new Chair-in-Office to effectively reducing the Human Dimension Implementation Meetings (HDIM) to a civil society event. However, such or similar damage has yet to be done to the OSCE's relationship with its environment, as reflected in the quality of the dialogue among its participating states in high-level fora. Considering that the quality of this dialogue, and consequently the OSCE's impact on European security, has been at a low level for a quarter of a century, the OSCE can continue functioning as it is accustomed. Participating states can continue with their blame games uninterrupted and may even be able to reinforce their positions. In other words, the OSCE can persist as an essentially unchanged entity in this organizational aspect. This means that the Organization possesses a certain level of maladaptive resilience, significant for analytical and practical purposes. As shown in the concluding section, this approach could point to a way the Organization could persist until conditions are met for its reinvigoration.

24.7   Conclusion

The above analysis leaves little room for optimism: the OSCE is a highly fragile international organization. On the one hand, it seems that its chances of surviving the war in Ukraine would be greater if it scored better on the formal factors of institutional resilience, such as having a more robust bureaucracy or established flows of extra-budgetary funding. On the other hand, there are reasons to believe that even if its institutional design pointed toward a more resilient IO, such a design would still not insulate it from high-flying tensions among its participating states. As we see now, even those aspects of the OSCE previously considered moderately functional, such as field operations and monitoring mechanisms, are vulnerable to the participating states' sharply diverging security interests and normative preferences. Even a strong bureaucracy would be hard-pressed to keep the Organization afloat in such circumstances without being accused of siding with one of the parties.

Therefore, if the OSCE prevails in the short term amid the war in Ukraine, it will likely do so through some form of organizational contraction. Given the OSCE's history, it seems likely that in this scenario, it would be reduced to a forum, albeit a maladaptive one. Here, the participating states would primarily air their grievances about each other's conduct, as they have in the last 25 years, rather than a forum capable of constructively affecting European security. However, while this maladaptive resilience can keep the Organization going for some time, participating states need to see value in interacting in this way. Such value might exist, for if the OSCE were allowed to collapse completely, the states would lose a forum in which they

communicate their security preferences and red lines and a shared catalog of norms upon which such preferences and red lines can be justified. In more concrete terms, for the Western states, this might mean using the OSCE to signal to Russia that it should not expect a compromise on established rules and principles. They might emphasize that they will not accept negotiations on zones of influence or any discussion of European security in similarly retrograde terms, including if Russia manages to keep parts of Ukraine under prolonged occupation.

However, for this kind of pressure on Russia to pay dividends in the war's aftermath, the Western states must also constructively engage with other OSCE participating states. It should not be overlooked that, of the OSCE's 57 participating states, 23 are neither EU nor NATO members. Although many of these states are related to the EU and NATO through various arrangements such as accession talks and the Partnership for Peace, the OSCE remains the only security arrangement that jointly connects them to the West. Most of these states are located in the Western Balkans, the Southern Caucasus, and Central Asia, regions in which Russia has long been highly influential as a factor of stability and confrontation. Loosening security ties with these regions would risk bringing them under Russia's more significant influence or create an opportunity structure for reigniting many of their long-standing conflicts. Here, one only needs to think about the futures of Transnistria, Nagorno-Karabakh, South Ossetia, and Abkhazia. With all this in mind, the Western states could use even the truncated OSCE to deepen security relations with these regions through a creative combination of diplomatic co-optation, material incentives (where possible), and potentially even an invitation to contribute to the shaping of the vision of European security after the war in Ukraine.

Suppose the OSCE manages to prevail in the Ukrainian war and does so with 57 participating states willing to deepen their cooperation. In that case, its relaunch should come with well-thought-out reform, not a return to the pre-war status quo. The discussion of IO resilience above points to bureaucracy as the area to which the most attention should be paid. Accordingly, the Secretariat and the position of the Secretary-General should be strengthened and given more autonomy. The Secretary-General should have agenda-setting and certain decision-making powers *vis-á-vis* the OSCE's state-run bodies, the ODIHR, and field missions. The position should also be turned into that of an actual voice for the OSCE. Coalition building with the media, peer organizations, certain participating states, and the civil, private, and academic sectors has long been a part of the Secretary-General's repertoire in the OSCE. But with more authority and autonomy, this practice could be extended further, yielding much-needed returns such as greater organizational visibility and legitimacy and more significant epistemic and, perhaps even, material resources. However, as pointed out earlier, while institutional reform would increase the OSCE's resilience, it cannot provide a solid shield against the kind of tensions it is currently experiencing. The reform of the OSCE should therefore be thought of primarily in a preventive sense: as an insurance policy against similar strains emerging again in the future.

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Chapter 25
Transitional Justice in Ukraine

Anja Mihr

25.1 Introduction

On 17 March 2023, the International Criminal Court (ICC) in The Hague issued warrants of arrest for two individuals in the context of the war in Ukraine, namely Russia's President Vladimir Putin and his Presidential Commissioner for Children's Rights, Maria Alekseyevna Lvova-Belova. The Chief Prosecutor of the ICC argued that both bear responsibility for the war crime of unlawful deportation of population, especially the abduction of Ukrainian children, and unlawful transfer of people from occupied areas in Eastern Ukraine to Russia (ICC, 2023). For many observers in the field of Transitional Justice (TJ) it was seen as a milestone in the future reckoning with systematic human rights violations in the context of the war in Ukraine. If the process against these two alleged perpetrators and victimizers is successful, and many more war criminals to come, it will be the basis for many more TJ measures.

A month before the warrant, in February 2023 and one year into the war in Ukraine, the United Nations (UN) General Assembly (GA) passed an 11-paragraph UN Charta-based resolution with an absolute majority of votes, namely 41:193 member states, reiterating its demand that Russia 'immediately, completely and unconditionally withdrew all of its military forces from the territory of Ukraine and called for a cessation of hostilities' (United Nations General Assembly, 2023).[1] The UN member states called it a 'New chapter of history' in times of *Zeitenwende* (turn of an era) when the world is facing choices between paths, the one of solidarity and collective resolution of threats to peace and stability or a path of aggression, war, normalized violations of international law and collapsed global action. And only

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[1] The results were 141 Member States in favor and seven against—Belarus, the Democratic People's Republic of Korea, Eritrea, Mali, Nicaragua, Russia, and Syria. Among the 32 abstentions were China, India and Pakistan.

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in November 2022, six months after the investigations into war crimes in Ukraine began, the UN General Assembly (GA) sought to hold Russia as an aggressor that ought to be accountable for possible war crimes. The resolution, passed by a vote of 94 to 14, with 73 abstentions, condemned Russia's violation of international law and paved the way for the arrest warrant by the ICC in 2023. In July 2023, the EU and the ICC established the International Centre for the Prosecution of the Crime of Aggression Against Ukraine (ICPA), operating at the EU facility of Eurojust in The Hague. The ICPA supports the preparation of crime of aggression cases by securing crucial evidence and facilitating the process of case building at an early stage.

Much earlier, though, shortly after the war began in February 2022, the UN Human Rights Council (HRC) already passed resolutions on possible war crimes and crimes against humanity based on their investigations. The councils' investigators had recorded 159 witnesses of assault, harassment, torture, and other war crime atrocities in Ukraine.

Against this backdrop, several international organizations, including the UN, Council of Europe and European Union, NGOs, independent observers, investigators, and media, had from day one been collecting information and reporting on the destruction, deaths, and injuries for which Russia is responsible. The registry has been at full speed, and soon, thousands of pieces of data and evidence were collected and stored on different platforms and in various archives worldwide.

Even before the first trials on war crimes in Ukraine began in the summer of 2022, the UN and others had called for a reparation mechanism and fund for victims and survivors of the war. The EU, private donors, and other governments have contributed to this from day one.

This has marked the beginning of a Transitional Justice process in Ukraine that could last for decades, regardless of how long this war will last. It aims to hold perpetrators and war criminals to account, reckon with past injustice and war crimes, vet and lustrate perpetrators and bystanders, and compensate victims. This effort seeks to leverage democratic institutions and processes in Ukraine. Before the war, the country suffered from high corruption levels and low rule of law. Holding perpetrators to account on all sides, regardless of nationality, could be a chance for Ukraine to restore and leverage the rule of law. Nevertheless, it is a unique process because it is multi-level and multi-stakeholder based, using evidence from NGOs, the UN, OSCE, the EU, and other governmental and non-governmental investigators. Such a process needs careful assessment of the data and evidence provided because fake data and manipulation of narratives and proof have been part of this war from day one (Porciuncula, 2021). 'Disinformation and cyber war', the 'cell phone war', and a 'hybrid war' are just a few of the metaphors used to describe this war thus far.

Disentangling the array and different levels of stakeholders in this process will be the main challenge for advocates of TJ. The extent to which they manage to organize and lead the various stakeholders toward a structured and sequenced TJ process will determine the success and impact of TJ in consolidating democracy in Ukraine. International Human Rights Law (IHRL) and International Humanitarian Law (IHL) are critical legal benchmarks to assess and evaluate the data and information received as the basis for any accountability process. I hypothesize that the success of the TJ

process depends on who will be taking the lead in disentangling the plethora of actors, donors, institutions, governments, and organizations that all hold a claim to providing evidence and data for a thorough TJ process once the war ends.

25.2 Investigation into War Crimes

A few months after Russia's invasion and war of aggression in Ukraine, in July 2022, the Organization for Security and Cooperation in Europe (OSCE) published its first report on possible war crimes in Ukraine, calling it Violations of International Humanitarian and Human Rights Law, war Crimes, and crimes against Humanity committed in Ukraine from April to June 2022 (OSCE, 2022). This was later used as the background source for the UN resolution in the GA.

The investigators and forensic researchers authorized by the OSCE found clear patterns of violations of international humanitarian law (IHL) by the Russian forces (Benedek et al., 2022). They reported on the conduct of hostilities, the treatment of the inhabitants of occupied territories, and the treatment of prisoners of war. The latter was concerned for parties in a conflict in which civilians were killed and injured, and civilian objects such as hospitals, cultural property, or schools were damaged or destroyed. Violations of international human rights law (IHRL), including the most fundamental human right, to life and the prohibition against torture, were reported on in the areas under the effective control of Russia and its military forces.

Against this backdrop, the TJ process in Ukraine had already started when the first international investigators set foot into the areas where these violations occurred (Mihr, 2020a, 2020b). Legal and political accountability through tribunals or domestic courts or bringing war criminals to justice at the ICC or the International Court of Justice (ICJ) in The Hague are just a few possibilities that started with the ICC warrant against President Putin and Commissioner Lvova-Belova in March 2023. Other methods, such as public and formal recognition by both sides of the conflicting parties in the form of apologies and memorials, as well as compensation and reparation funds for victims and survivors, are other means of reckoning with the past. Disarmament of mercenaries on all sides, vetting and lustration programs and further reconciliation, and (re-)education programs for combatants, victims, and victimizers are also options (Hazan, 2010).

While the war is ongoing and even during cease-fire or peace talks, recording and reporting measures are pivotal for any TJ process that can take years, if not decades. Military commanders or mercenaries, private or government funded, such as the Russian oligarch-funded Wagner Group, the Ukrainian International Legion of Defense of Ukraine, and other privately organized armed and non-governmentally funded groups, are part of the investigations and potentially war crime tribunals.

The war in Ukraine has been privatized and funded, and even commercialized in a way that no other international war has ever been before. The complexity and number of private and governmental actors involved will be the main challenge for TJ to disentangle in terms of the interconnectedness, the line of command, and, ultimately, those

responsible for war crimes. Ukrainian and Russian Oligarchs, private entrepreneurs, non-governmental organizations (NGOs), independent observers, researchers and media, IT billionaires, and multi-millionaires from around the world have donated and funded armor, technology, and combatants on all sides in a way not seen elsewhere in modern warfare. In a TJ process, each of them ought to be under investigation. It is the first *glocalized* war in which globally different actors engage with local ones. Foreign governments and NATO have granted credit and sent military equipment without getting directly involved, the ICC, the Council of Europe, and the UN set frameworks, and citizens worldwide have donated money for humanitarian aid and war machinery. Millionaires and oligarchs have funded their special military units alongside the official army combatants on the Ukrainian and Russian sides. This is unprecedented in Europe.

25.3   Reckoning War Crimes and Crimes Against Humanity

The OSCE report of summer 2022 on war crimes and crimes against humanity made clear that any TJ process will execute criminal justice in two ways: first, in front of a Special Tribunal on Crimes of Aggression for Ukraine if the ICC cannot deal with aspects of it. Secondly, in front of the ICC for the individual responsibility of President Putin, for example, and when dealing with reparation funds for victims and survivors of the war. Torture, rape, killing of civilians and prisoners of war, abduction of children and adults, disappearances, hostilities, and destruction of hospitals and other public infrastructure are the tip of the iceberg regarding war crimes and crimes of aggression in and against Ukrainian territory and civilians. Vulnerable groups, such as women, children, older persons, or persons with disabilities, have been strongly affected, and the constant violations of IHRL have produced millions of refugees and internally displaced persons. These violations likely amounted to crimes against humanity (Benedek et al., 2022).

From day one, the ICC has emphasized individual accountability as equal to state accountability concerning past injustices. In this context, retributive justice is defined by the retroactive clause, which enables perpetrators to be charged only under the laws of the past regime unless they have committed crimes against humanity, such as genocide, systematic rape, or torture. The main challenge to possible trials is the immunity of heads of state, such as Russia's President Putin. However, the ICC has already waived this immunity for cases of war crimes and possible genocide—if the evidence provides proof of these. For a Special Tribunal on Ukraine, as anticipated by the Ukrainian government, the immunity of commanders and heads of state is not seen to be an issue without being challenged by Russian lawyers under IHL.

According to the Geneva Convention, a war crime is a breach of IHRL and IHL committed against civilians or combatants during an international or domestic armed

conflict (International Committee of the Red Cross, 2014).[2] Another aspect, namely crimes of aggression, is, according to the UN Charta, that of 'waging aggressive war', meaning the planning, preparation, initiation, or execution of an armed conflict and war by a military person, such as Commander in Chief, to exercise control over or direct the political or military action of one state against another. These crimes lie not only within the ICC juridical mandate since July 2002 and fall under its universal jurisdiction. They can also be prosecuted by any country and court in the world if their national jurisdictions allow for that. Not surprisingly, since day one of the war in Ukraine, the ICC began investigating potential crimes following a referral by 123 ICC member states. Although neither Ukraine nor Russia is a member of the ICC, and since Russia is a permanent member of the UN Security Council, a UN mandate or deferral to the ICC is most unlikely. A warrant was issued in March 2023 allowing individual member states to arrest and prosecute Vladimir Putin and Maria Lvova-Belova if they set foot on that countries territory. Thus, the ICC can investigate and issue arrest warrants, but whether it can hold trials on this specific case remains to be seen. More likely, there will be a spin-off independent tribunal on the war crimes and crimes of aggression in Ukraine.

The EU, the US, Canada, and the Ukrainian government have supported the idea of a Special Tribunal on Crimes of Aggression to try perpetrators separately from all possible sides. In July 2023, the EU Agency for Criminal Justice Cooperation (Eurojust) together with third party states has proactively created the International Center for the Prosecution of the Crime of Aggression against the Ukraine (ICA). One of the most significant caveats for this tribunal and the ICA will be who will act as independent investigators, interlocutors and prosecutors, who will be sitting as judges on the bench and whether all defendants will be allowed access to lawyers and a transparent defense process to avoid winners' justice.

According to the Rome Statute of 1998, War Crimes and Crimes against Humanity fall under the jurisdiction of international criminal law (ICL) determined by IHRL and IHL, aiming to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes in the future. Furthermore, every State must exercise its criminal jurisdiction over those responsible for international crimes, which in the case of Ukraine allows any ICC member state to prosecute war criminals under their jurisdiction in their countries. Alleged war criminals, against which there is an international warrant (or not), can be extradited, held in custody, and tried anywhere if the country of their residence or choice of travel is willing or able to do so. This allows the global community to try and hold to account oligarchs, private

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[2] Crimes against humanity include, for example: murder, extermination and genocide, deportation, or forcible transfer of population; imprisonment or severe deprivation of physical liberty; and/or actions against individuals or groups of people violating fundamental rules of international law. In addition, there has been evidence of torture; rape, sexual slavery, enforced prostitution, enforced disappearance of persons, and intentional aggression against civilians causing great suffering; these violent acts have led to serious injury to the body or mental or physical health that qualify as crimes against humanity as outlined in the OHCHR; International Human Rights Law Instruments and Mechanism.

United Nations (2022).

entrepreneurs, mercenaries, and anybody who has been a combatant and responsible, partly or wholly, for the war crimes and crimes against humanity mentioned above.

This means that if alleged war criminals cannot be tried at the ICC, they can be in foreign domestic, international, or hybrid or special tribunals for Ukraine if ICL is applied. Apart from child abduction, thus far, there is evidence suggesting that at least some patterns of violent acts which have been repeatedly documented during the conflict, for instance, targeted killing, rape, abductions, or massive deportations of civilians, qualify as a widespread or systematic attack against a civilian population and are therefore war crimes. Any charges pressed against war criminals in the case of Ukraine will set benchmarks for TJ. It is against these benchmarks that any international and domestic compensation and/or reparation actions and policies need to be measured. The same is true for the TJ vetting and lustration processes of individuals and groups of people and communities who must pass the test of whether and to what extent they have been complicit in war crimes.

The outcome of the trials will determine the intensity and standards of vetting and reintegration or rehabilitation of war criminals. It will help to determine the amount of compensation and reparations and who will eventually pay for the destruction and harm committed. The EU has approved the possibility of seizing the Russian Central Bank's assets, and Russian oligarchs whose assets have been frozen as part of the sanctions (Associate Press, 2023). This action is intended to contribute to the reparations for the estimated damage of over 140 billion dollars caused by the Russian invasion in Ukraine. In this contest, the willingness of Russia's post-war elite to collaborate in any TJ process will give way to the possible lifting of so-called 'smart-sanctions' and conditional sanctions against Russia and against those individuals listed by the EU, the US, and other states that have issued restrictive measures against Russia since 2014 (Council of the European Union n.d.). The OSCE, in its statements, also recommends that these individuals pay for reparation to victims of IHL and/or IHRL violations.

Ukraine's President, Volodymyr Zelensky, has been endless in his efforts to highlight the importance of TJ not only after but already during the war as a preventive mechanism to diminish the escalation of war crimes (United States Institute for Peace 2022). According to his government, any tribunal should identify the political and individual criminal responsibility for a military invasion, military occupation, annexation using force, bombardment, and military blockade of ports, such as at Mariupol and Odesa.

25.3.1   The Disinformation and 'Cell Phone War'

In this war, evidence of crimes of aggression has primarily been recorded with cell phones and mobile devices, giving this war the title of a 'cell phone war'. This has allowed not only victims to record and report on atrocities but also Ukrainian forces to locate and tap Russian soldiers' cell phone calls to pinpoint their locations and provide evidence that these soldiers committed war crimes.

Intelligence services around the world have begun campaigns to counter disinformation. Canada's government, for example, publishes daily fact-checked information on Russia's disinformation and propaganda to achieve its objectives (Government of Canada, 2023). Most private, public, media, and military-driven initiatives inside Ukraine record and report daily and even hourly, but the 'fact and fake news war' is undoubtedly a stronghold fuelled by all sides.

Thousands of pieces of evidence, films, photos, stories, and data need to be assessed and put into the context of the severity of war crimes. Coincidentally or not, the 2022 Nobel Peace Prize was awarded to human rights advocates from Belarus, the Russian human rights organization Memorial, and the Ukrainian Center for Civil Liberties. All three NGOs have in common that they have been reporting and recording from and beyond the front lines on human rights abuses, war crimes, and crimes against humanity over the years, particularly since February 2022. The initiatives by NGOs and civil society, such as #HoldRussiaAccountable, the Reckoning Ukraine Project (The Reckoning Project 2022), and Amnesty International's Crisis Evidence Lab (Amnesty International's Crisis Evidence Lab, 2022) are just the tip of the iceberg.

Obtaining the most accurate, reliable, and credible evidence on what happened and who is responsible is pivotal for the success and outcome of any TJ process and, subsequently, non-recurrence. This means holding even individuals to account for crimes, including the founder of the Wagner Group, Yevgeny Prigozhin. an influential millionaire from St. Petersburg. Evidence suggesting the involvement of Priogozhin and his mercenaries in alleged war crimes has been derived from cell phone records. As a result, Priogozhin is now restricted from traveling to Europe or any country supporting an arrest warrant against him. The UN has supported inquiries and composed a list of potential people to be held accountable (United Nations General Assembly, 2022). This could later include even Minster of Defence, Sergei Shoigu, and dozens of other oligarchs and war supporters. Even if they, or President Putin, will never see an international courtroom from inside, their assets in Europe and overseas have been frozen and their mobility dramatically restricted. They will thus remain under quasi-house arrest in Russia for the rest of their lives or be traded as a pledge to the ICC in exchange for Russia to rejoin international organizations, participate in international events or lifting sanctions.

25.4 Preconditions for Transitional Justice in Ukraine

Legal accountability for crimes against humanity is only part of a thorough TJ process. A TJ process can also use historical measures to reckon with the crimes, such as memorials and museums, educational and informative measures such as school curricula, social media films, theatre plays, novels, academic conferences, online and offline public debates, and interpersonal reconciliation programs, bringing together, for example, youth from Russia and Ukraine. Facts, evidence, forensics, data, stories,

testimonials, and witnesses are the prerequisites for every legal, political, and historical TJ process that reckons with the past. Thus, TJ combines all these processes and is two-fold (Hakeem et al. 2021).

TJ has both backward-looking and forward-looking components. Retributive justice measures look back at what happened. They aim to bring perpetrators to justice, acknowledge and atone with victims, pay individual compensation and country-wide reparations, and set new laws to prevent similar atrocities and crimes from happening again. Overall, any TJ measure, whether criminal, restorative, retributive, compensatory, or atoning, is best to be applied after the war and all sides have agreed to atone for possible war crimes—at least to some minimal extent. As long as one party, in this case, Russia, has not reached that catharsis and needs to cooperate either with the ICC or the EU in exchange for the lifting sanctions, there will be no thorough TJ process.

While the war is ongoing in Ukraine, the NGOs, the independent observers, the media, and even the Russian diaspora, with its social media channels, mostly Telegram, can pressure the aggressors to stand up to their wrongdoings. After fact-checking and clearance of data, it can later be used in trials and during investigations and inquiries to prove whether and to what extent war crimes were committed (Olson et al., 2010). Restorative justice is the forward-looking component of TJ, namely, to restore, repair, commemorate, acknowledge, educate, and raise awareness among populations and key stakeholders on all sides to avoid recurrences and re-building trust among citizens and in public institutions. Restorative justice is pivotal for any post-war period and reconciliation process between Russia and Ukraine in the foreseeable future. Non-recurrence would entail the restoration of full sovereignty to Ukraine over its territory as well as a political and, ideally, democratic regime. Ukrainian President Zelenskyy paraphrased this in his address to the US Congress on 21 December 2022, claiming, 'The Russian tyranny has lost control over us' (Zelenskyy, 2022). Yet, the war's outcome and the extent to which Russia and Ukraine will be willing and able to atone for their war crimes will determine whether tyranny prevails in Russia and whether Ukrainians will finally be free to choose their political regime and path.

Unfortunately, this first 'hot war' in this New Cold War between democracy versus autocracy might only be the first of many more worldwide. This New War started a decade ago when China openly declared its challenge to the existing world order. In 2021, the Chinese government issued a White Paper on 'Democracy that works' illustrating that autocracies have their definition of democracy, essentially one without fair and free elections and massive restrictions on freedom rights. It is a matter of time before people in autocratic countries will protest this fake form of 'freedom and democracy' (Mihr, 2022a). Other hot and many more proxy wars will likely follow in the next decades, as they did in the previous Cold War period between 1945 and 1990.[3]

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[3] See, for example, The Korean war 1950–1953; Vietnam, Cambodia, and Laos between 1955–1975; and other proxy wars in Cuba 1962 and Angola 1961–1974 during the long Cold War period from 1945 to 1990. Other wars and emerging conflicts, such as in Syria, Iran, and between Taiwan and

The war in Ukraine is not only the most multi-level and transnationally orchestrated war in recent history but also the first global–local, hence the *glocal war* we have seen in the twenty-first century. Global, transnational, private, and governmental stakeholders have financed the war machinery and taken sides, which will also impact how TJ is conducted in the following years in this case (Mihr, 2022b).

In 2022 alone, approximately 10 billion people have felt and suffered from the consequences of Russia's invasion of Ukraine worldwide due to the resultant shortages of grain, corn, and sunflower oil. The interruption of economic vessels and supply chains along the Belt and Road initiative between China and Europe has affected millions of people and the millions of Ukrainian and Russian refugees that have fled their countries, escaping destruction and persecution.

Even if, over the past decades, Russian governmental officials and oligarchs have enjoyed great impunity following Russia's military interventions and war crimes, such as those in Chechnya and Moldova since the 1990s, in Georgia in 2008, and the annexation of Crimea in 2014, or Syria since 2015 and Mali since 2021, this war has changed the scenery, with half of the world's economy and people affected in one way or the other. TJ will also investigate the responsibility of Russia's government in withholding Ukrainian grain vessels at the ports of Odesa, for example, and the subsequent hunger and death of millions of people in Africa and the Middle East.

After the first unsuccessful sanctions by the EU and the US against Russia following the annexation of Crimea in 2014, the targeted and smart-sanctions passed in 2022 had a different impact, essentially isolating Russia from the global economy and as a political leader. They are part of this 'glocal war'. Sanctions, for example, are used as a bargaining tool in exchange for TJ measures, such as the extradition of war criminals from Russia to a war crime tribunal or even the ICC by stakeholders who are not even directly involved in the war.

With the longest-standing involvement in the Russian-Ukrainian conflict, the OSCE is the only remaining European organization in which Russia and Ukraine are still members and will play a pivotal role in future peace and reconciliation processes between the two countries. Since Russia's annexation of Crimea, the OSCE has been monitoring the situation and the low intensity war in Donbas. The OSCE observatory mission has been collecting data and testimonials that were in violation of the Minsk Agreement, which lasted from September 2014 and ended on 21 February 2022, three days before the war started (OSCE 2015). Back in 2021, another stakeholder, the Venice Commission, an advisory body of the Council of Europe (CoE), together with the OSCE and the Ukraine government, in the light of the massive breach of the Minsk Agreement, tried to establish a TJ framework between Russia and Ukraine for the reintegration and reconciliation of temporarily occupied territories in Donbas. This framework was called 'On the Principles of State Policy of the Transition Period' (European Commission for Democracy through Law (Venice Commission 2021) but never came into force due to the opposition of both parties to such an instrument (Mallinder, 2022).

China, as well as the fall of democracy in Tunisia, also resemble the worldwide battle of systems, authoritarian against democratic regimes.

Even before the war, the OSCE was deeply divided over the case of Ukraine, as the monitoring mission in Donbas was only holding back a war that was about to burst out, namely less the territorial claims and much more Ukraine's path since 2014 toward increased democracy and EU integration. This shift away from the former hegemon, Russia, provided sufficient reason for its invasion of Ukraine in 2022. Even before 2022, the EU had tried to accept Ukraine as a potential candidate for EU membership, signaling to Russia that EU expansion was coming closer to the Russian heartland. The Donbas was the battle line between NATO and EU members and hence between the autocratic regime in Moscow and Kyiv, leaning toward democracy. The Donbas soon became the frontier of the EU's human rights values and democratic norms, eventually turning the Eastern Ukrainian border in the Donbas into a non-official frontier between Western norms and standards and post-Soviet ones, which outraged the autocrats in the Kremlin. This will be even more important to remember when the TJ process is at full speed since the ultimate goal of this war is to defend and (re-)establish a democratic regime in Kyiv that can stand against autocracy.

Since Russia's President's constitutional reforms in 2020 manifested his auto-cratic leadership, he has systematically undermined any OSCE agreements—not only the Minsk Agreement and IHRL and IHL (Hutcheson & McAllister, 2021). The OSCE aims not to fall apart and keep the status quo alive as much as possible. Even diplomatic confrontations between its members are strictly avoided. Instead, the organization has continued its collaborative and consensus-building purposes and the cooperative and confidence-building character of its meetings, including during the OSCE Summits and the Ministerial and Permanent Council Meetings in Vienna, where the intention was to launch a warning mechanism between participating states.

After Russia annexed Crimea in 2014, the OSCE Minsk Group's success was contingent. It was neither complying with its standards nor leading by example. The 'Minsk experiment' was doomed to fail, as was the TJ framework created by the Venice Commission at that time, hindered by the lack of permanent and independent Human Rights observers and rapporteurs who could monitor IHRL compliance on both sides and report back to the OSCE and the public. Instead, independent observers were rejected by all sides of the conflict, which led to conspiracies, allegations, and accusations cumulating in war (Mackiewicz 2018). It is, therefore, essential to consider who is this time defining the criteria for success for this TJ process.

The only way out of this dead-end TJ corridor is to put actions into private and semi-public hands and get different governmental and non-governmental and private stakeholders involved to report, testify, and record the conflict. The involvement of many different stakeholders with different intentions has turned Ukraine into a territory-wide glocal armed conflict area already. In the TJ process that follows this glocal phenomena has to be mirrored.

When the 123 state parties to the ICC collectively mandated the ICC prosecutor to launch an investigation into the situation in 2022, they were aware of the plethora of stakeholders on the ground, many of them unprofessionally trained, and they also needed reliable, professional investigators on war crimes. Such verifiable and reliable data is pivotal for the TJ process. Whether the findings will lead to trials against war criminals (on all sides) at the ICC remains open. An international Special Tribunal

for Ukraine on war crimes, crimes against humanity, and crimes of aggression seems more likely (Marchuk & Wanigasuriya, 2022).

25.5 Ukrainian Caveats

Although the Ukrainian chief prosecutor already went ahead and filed court papers against dozens of suspected Russian war criminals and has planned hundreds more, ten of whom had already been convicted by October 2022, the trials were seen as precarious and lacking in proper legal representation by Russian lawyers for alleged Russian war criminals. The taste of 'winners justice' is already in the air and can jeopardize a fair TJ process in the following years. Despite Kyiv's Ministre of Justice assurances that all these trials are under the Rome Statute and in close cooperation with European partners and ICC, such actions could backfire if they do not respect the defendants' fairness and proper legal representation.

Yet, ever since 2014, the Ukrainian government has been anticipating 'legal battles between Russia and Ukraine' over its sovereignty. In 2015 the parliament in Kyiv passed a law to punish the offense of disseminating Communist and Nazi symbols, which were used by Nationalist and pro-Russian propagandists to undermine the pro-EU and democratization processes in Ukraine. Still, the law is predominantly devoted to symbols of the communist and Stalin regimes, and the use of Nazi symbols remains unpunished primarily in Ukraine. This gave ground for President Putin to call the Kyiv government a Nazi regime. In response, the Ukrainian government legally weaponized itself against Russian propaganda and passed discriminatory laws against its Russian population. In 2006, the Ukrainian parliament passed a restrictive law forbidding the denial of the Holodomor, Stalin's genocide, and the famine catastrophe of 1932/33. Although morally justifiable, this law also hampered an open discourse about the role of individual perpetrators during that genocide. The Ukrainian parliament also restricted the use of the Russian language for native Russian speakers. In April 2019, the parliament issued a law disenfranchising the country's native Russian speakers to strengthen national identity. Critics perceived it as 'anti-Russian', fuelled the conspiracy not only in Moscow that the government in Kyiv was persecuting and systematically discriminating against the Russian minority in Ukraine and made the success of any proper TJ process, even before 2022, most unlikely.

Russian historian Kasianov, now in exile, highlighted in an interview how manipulation of the past and its symbols, even linguistic ones, were used to enforce political interests on both sides. As per Kasianov, Ukraine reassures itself of its history to ensure its future; Putin's Russia glorifies the Soviet past and the fight against Nazism to justify the aggression of the current regime (Kasianov, 2022).

Against this backdrop, a precondition of a non-partisan TJ process in Ukraine ought to be kept in mind, cleansing the penal code of anti-Russian laws. Furthermore, its level of inclusivity, and hence success, will be based on external stakeholders, such as the ICC, EU, OSCE, UN, and NGOs, and how much they provide information

and resources to set up an international and nonbiased TJ process. Much of their data and actions must be fact-checked and classified before being used in trials and commissions of inquiry. That alone will challenge stakeholders such as lawyers, politicians, historians, and local administrators to conduct a successful TJ process.

25.6 Transitional Justice Beyond the Ukrainian War

Transitional Justice is both a concept and a process at the same time. It encompasses several legal, political, and cultural instruments and mechanisms to strengthen, weaken, enhance, or accelerate regime change and consolidation processes. The process can take years, often decades, and even generations, to complete, and it is both backward (retributive) and forward (restorative) looking (Mihr, 2019).

TJ measures, such as commissions of inquiry, trials, memorials, compensations, and amnesties, can foster or hamper the successful transition from one regime type to another (Minow, 1988). In this case, the transition from a semi-authoritarian regime to democracy in Ukraine. There is little doubt that if Russia and Ukraine attain to coexist in a peaceful and friendly neighborhood in the future, some, if not all, TJ measures ought to be applied. There will be no peace without justice between the two countries. This will also be a chance for Ukraine to reconcile not only with its ethnic and linguistic Russian minorities but also with others, such as the Tatar and Roma minorities, which were part of the inter-state and internal controversies that led to the war in the first place. Bias and anti-Russian sentiments in Ukraine have led to severe charges and political imprisonment of pro-Russian activists. These charges were internationally condemned in the past but without much response from governmental authorities (US State Department, 2020).

There is no guarantee of a given political or societal outcome following TJ. It can be politically instrumentalized, used, and/or abused and is often at odds with *Realpolitik* or the *Zeitgeist*, and the desire for vengeance rather than justice. This will likely happen if Ukrainian prosecutors and heads of local commissions of inquiry turn a blind eye to 'good Ukrainians' and hunt only for 'bad Russians'. If the exclusive process only targets Russians, TJ will not reach its anticipated outcome.

Based on Amnesty International's Crisis Evidence Lab investigations, the Ukrainian prosecutor warned the NGO that justice and truth were at odds in this war. In August 2022, Amnesty published its first fact-finding mission report about the war, accusing Russian and Ukrainian military forces of war crimes. In the 2022 report, Amnesty criticizes Ukrainian forces for putting civilians in harm's way by establishing bases and operating weapons systems in populated residential areas, including schools and hospitals, as they repelled the Russian strikes. This violates IHL and the Geneva Conventions. It turns civilian objects into military targets. This might become a controversial issue during the TJ process, namely that being in a defensive position does not exempt the Ukrainian military from respecting IHL (Amnesty International, 2022). In the same vein, the UN's Independent International Commission of Inquiry on Ukraine, established by the UN HRC in March 2022, has repetitively alerted all

war parties that 'enhanced coordination of international and national accountability efforts to improve effectiveness and prevent harm to victims and witnesses', needs to be upheld (UN OHCHR, 2022). Identifying those responsible for war crimes and human rights violations must be a priority, but it cannot only be against Russian combatants. Since March 2022, the UN HRC has launched several calls and passed several resolutions on Ukraine (i.e. UN HRC Resolution 49/1), and launched joint actions with the OSCE and the ICC calling upon civil actors, individual reporters, and NGOs to help to collect data in line with IHL. The UN and the ICC have set deadlines for submissions. The UN aims to write a timely report as soon as possible 'to recommend accountability measures, all to end impunity and ensure accountability, including, as appropriate, individual criminal responsibility and access to justice for victims,' expecting a far-reaching report and recommendation for TJ by March 2023 (UN Human Rights Council, 2022). They fear that, otherwise, arbitrary trials will lead to winners' justice against Russians, jeopardizing the trustworthiness and effectiveness of any trial or reparation fund and, ultimately, Ukraine's future role in Europe.

TJ must, nevertheless, include a mix of judicial and non-judicial instruments and mechanisms such as trials, truth commissions, vetting, and lustration procedures, memorials, reparations, restitutions, or compensations, and even amnesty and rehabilitation laws that allow different actors, governmental and non-governmental alike, to redress the human rights violations of the war and the past (UN Human Rights Council, 2022). TJ measures should establish a democratic society that is resilient toward the recurrence of a similar conflict in the future (United Nations, 2010).

The ICC has confirmed its support wherever possible, and the EU and the US have already agreed to support financially and with manpower to set up a Special Tribunal on Crimes of Aggression in Ukraine and to support the democratization process. Hence, what is left for negotiation once the TJ process starts is, first, fair and transparent cooperation by and with the Russian authorities. Second, a clear strategy for turning court decisions into benchmarks for restorative lustration and vetting policies, compensations, and reparations (Teitel, 2014).

However, it is this collaboration that will determine whether Ukraine will consolidate democratically and be able to remain peaceful neighbors with Russia. This can take generations to be successfully implemented. Excluding people because of their political views, language, or nationality and glorifying 'war heroes' even if they have committed war crimes would be the wrong avenue.

A thorough vetting and lustration of all Ukraine actors and stakeholders is necessary. This will be a very individual process, and the scanning and screening of individuals should determine who will be allowed to take public office or become a ministry or police officer (Winter, 2014). Countries that have failed to undertake such processes over the past decades, such as post-war Serbia or Bosnia and Herzegovina, as well as most post-Soviet countries such as Azerbaijan, including Russia and Ukraine, have all faced severe difficulties in democratizing successfully (Stan 2008). The line cannot be drawn at who is the aggressor or victim, but rather on the extent to which the person was responsible for or involved in war crimes—no matter the nationality or language (Mihr, 2020b).

Suppose the TJ process needs to be more inclusive and happen according to international law—in such a case, the Russian aggressor will not be demystified and delegitimized, nor will the authoritarian and corrupt past that the Ukrainian government is haunted by being left behind. Proceeding in the most transparent, accountable, and inclusive way possible will build trust in a rule and law-abiding new regime and reconcile divided societies (McAdams, 1997). If that is not the case, former combatants will turn against each other again, and lines will be drawn according to ethnic, linguistic, religious, or political ideas—and, in the case of Ukraine and Russia: along historical lines. For example, in June 2023, the Dutch Supreme Court resolved the Ukrainian 'Scythian Gold 'case in the 'Russian-Ukrainian Identity War'. The Dutch authorities withheld the 2.300-year-old treasure in an Amsterdam Museums exhibit since 2014 because the place of origin, namely Crimea, was annexed by Russia that year. The Dutch Museum wanted to return it to Kyiv, but Russia objected. The museums in Crimea, now under Russian authority that lent the works, argued that their loan terms had been violated and that archaeological artifacts recovered from Crimean soil belonged there, regardless of politics and annexation. Eventually, ten years later, the Supreme Court ruled that the Gold would be returned to Ukraine, not Crimea. The same day, the Ukrainian President called this decision a victory of International Law and an act of TJ (Reuters, 2023). Even historical artifact cases such as this, if not dealt with under international law in a TJ context, can be a cause or reason for violent conflict in the decades to come.

Working slowly toward an inclusive TJ process in Kyiv and Moscow could illustrate that both sides aim to make politics different and more democratic than the previous regime. Such an approach also delegitimizes their previous regimes—which have been far from democratic and the rule of law-abiding.

In contrast, an exclusionary TJ process usually selects victims and perpetrators whom the current government and not an independent court or commission portrays as enemies and victimizers in the previous regime. This leads to the winner's justice.

Although it is hardly ever possible to be fully inclusive and non-partisan because victims and perpetrators also overlap, it is vital to keep the door open for future generations who might want to talk to one another despite their parents and grandparents having been opposing parties. There is no fully—fledged inclusive or exclusive TJ process in this world; however, some lean more toward inclusivity, and others toward exclusion. This tendency has made, in the end, all the difference in the democratic outcome of the (new) regime (Mihr, 2019).

The TJ process in Ukraine will be challenged by the demands for truth and justice on the one side and the claims for revenge and condemnation on the other. The Venice Commission well acknowledges this threat even before the war. In 2021, the commission launched a draft TJ framework for Ukraine, stating in Art. 12 that safeguarding the right to the truth is the primary role of the Ukrainian government and all stakeholders involved. It mandates that they 'promptly inform the public, providing reliable, accurate, and complete information about the causes, evolvement, and consequences of the armed aggression of the Russian Federation against Ukraine (…)' (European Commission for Democracy through Law (Venice Commission) 2021).

TJ never took off before the war, and *Realpolitik* has always been at odds with it. Claims by victims, combatants, and survivors that seek vengeance rather than justice often prevail, preventing the TJ process from attaining justice in a philosophical or ethical sense. Whereas TJ is a process with medium to long-term impact, *Realpolitik* is the politics and policymaking of everyday life. The most TJ can do is to provide a pathway for more rule of law and democratic consolidation. For that to happen, it is pivotal that actors such as the UN, the OSCE, the EU, and even NATO see their role as incentivizing supporters but not as replacing governmental responsibilities in Kyiv or Moscow. They ought to abide by IHRL and ICL and be ultimately responsible for implementing decisions taken at tribunals and courts concerning the war.

A normative legal and political framework in Ukraine and Europe supports these efforts: the EU, the CoE, and the OSCE. Over the past three decades, they have succeeded in changing laws and political habits in post-communist Eastern and Central European countries. The post-soviet Baltic States are the most prominent examples of these transition processes. The EU has been the most significant donor and contributor to all rule of law-related measures and democratic institution building and continues to be so.

In 2022 alone, the EU spent almost 500 million euros on humanitarian aid for Ukraine, some of it going into TJ measures, and it decided to collaborate with the ICC. It adopted a conclusion to fight any sign of impunity in Russia's war of aggression, calling upon other EU bodies, such as Eurojust, Europol, the Genocide Network, and EUAM Ukraine, to continue providing their support and guidance on investigations and TJ (Council of the European Union, 2022).

Yet, the challenge for this TJ process will remain coordinating and disentangling the different actors, actions, mandates, sources, and data. As early in the process as this may be, it needs a more centralised, non-partisan coordination, ideally under UN leadership. There is no indication that any of the stakeholders, thus far, can or is willing to take the lead in this process—even though Ukraine's pathway to democracy will depend on it.

25.7   Conclusion

Shortly after the beginning of the war of aggression against the Ukraine in February 2022, the UN, EU, OSCE, ICC, NGOs, and numerous individual rescuers and observers started fact-finding and recording missions from outside and inside Ukraine. These aimed to provide open-source platforms for anybody who collects data on war crimes and shares stories for potentially upcoming trials on war criminals. Over a year later, that process still needs to be coordinated, unorganized, and on the brink of missing its intended effect.

Based on the impact that TJ measures can have, in the case of Ukraine, it could be recommended that leadership be given to an international UN body to monitor TJ interventions and make these as inclusive and responsive as possible.

But even after the ICC arrest warrants against Russia's President Vladimir Putin and his Presidential Commissioner for Children's Rights, Maria Alekseyevna Lvova-Belova, in March 2023, with the vast array of stakeholders, this body needs to establish ways and mechanisms for assessment to provide information about the preferences, needs, experiences, and perspectives of the beneficiaries and allow for adjustments along the way (Porciuncula, 2021). Setting clear standards and sequences for the TJ process is pivotal. Hybrid tribunals with international and national participation must be established to decide upon and define the scope of damage and violations before a vetting process or compensating victims' scheme can begin.

At the beginning of the war, data transparency was only seen to put pressure on the aggressor in Russia, but not used as an instrument for long-term peace, justice, and reconciliation between the two countries. Evidence of war crimes and the threat of persecution of war criminals have been weaponized against predominantly Russian aggressors and hence do not serve the purpose of TJ but that of intimidation and threatening the enemy. Therefore, even the data and forensics investigators soon became part of the 'cell phone war' to make war crimes transparent, but without coordinated actions.

Alongside the reports and fact-finding missions of the OSCE, EU, UN, ICC, and NGOs, platform initiators argued for the 'power of story-telling and legal accountability to fight for justice, safeguard rights, and restore truth in the face of Russia's invasion of Ukraine' (The Reckoning Project 2022), which yet remains to be seen.

The challenge for this TJ process will be to disentangle and fact-check the hundreds of thousands of pieces of evidence and data. It should only aim to preclude their outcome if they are dealt with in a rule of a law-abiding way following IHRL and IHL.

Overall, the TJ process in Ukraine is one of the best funded and legally prepared as soon as the war ends. There is no lack of judges to sit on the bench, nor is there a lack of data, evidence, or witnesses. The challenge lies in ensuring a non-partisan and transparent conduct of the proceedings. It is crucial that judges are willing and capable of impartially 'blaming all sides,' conducting the process inclusively, and maintaining independence from any side during the war (Gibson, 2006). This, in turn, will determine the quality of democracy in Ukraine and possibly Russia in the future (Mihr, 2013).

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