Re-Visioning Borders:
Europe and Beyond

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Editorial

Re-Visioning Borders: Mobility, Connectivity, and Spaces of Exception

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Abstract
Already, the 21st century has seen an unprecedented increase in cross-border movements of people, goods, information, and financial capital. Numerous incentives and facilitators have expanded international interconnectedness and mobility, so altering the conventional nature and functions of state borders, as captured by the "new mobilities" paradigm. Yet the weaponization of global economic interdependencies and other trends towards deglobalization mean there is now a growing pressure on governments to re-establish the conventional attributes of borders. Against the current mobility and security backdrop, this collection of articles takes stock of the meaning, roles, and practices of border activities. Now is the moment to consider the special role that borders perform as an institution of state security in a contemporary world exposed to massive international flows of people and goods, as well as technologically-driven control and management systems.

The articles constituting this thematic issue show that borders have lost none of their prominence as sites of security governance when it comes to transnational mobility. Geographic borders are regaining their classical properties of territorial protection, security checks, and everyday management of migrating people. But this is a "back to the future" moment, and the disinterment of old practices has actually led to generation of new border types and experiences reflecting the emergent complexity and diverse temporal and spatial trajectories of migrants. Physical entries into geographical territory have classically been subject to peculiar regulatory practices; today those practices are spurring a proliferation of the social networks and informal methods which are used to circumvent them. Moreover, proven old methods of controlling cross-border movements have been given a new lease of life precisely because of the novel ways that geographic borders have shifted into society, the economy, and non-geographic spaces. The authors of this issue make an attempt to explain the meaning of borders in several interrelated contexts, re-visioning borders as part of a serious reflection on contemporary meanings of freedom, security, connectivity, and exception.

Mobility and transboundary exchange have been the most prevalent features of 21st century globalization and transnationalism. There has been a significant increase in the volume, diversity, scope, technique, practice, and territorial reach of the cross-border movement of people, goods, information, and financial capital (Rumford, 2014). Economic incentives (from relatively open labor markets to low-cost travel), heavy investments in communication infrastructure (airports and seaports, communication hubs, transport corridors, highway networks, etc.), cultural diffusion, and of course social networking have produced an immense potential for global interconnectedness and international mobility. The "new mobilities" paradigm which emerged in the present century captured the mobile nature of the contemporary

world, with an analytical focus that encompassed diasporic communities, global (neo-)nomads, and transnational advocacy networks (Mau, 2020; Mazlish, 2017; Ribas-Mateos, 2015).

However, this new paradigm is already being challenged by some familiar risks and threats, and state institutions are now scrambling to put in place appropriate, familiar, and reassuring border policies with the aim of addressing effectively sources of insecurity and instability. But this is not a simple return to the status quo ante. In the interconnected world system that emerged over the past 30 years, borders were massively adapted and continued to perform a special role as an institution of state security, a site of control of international flows of people and goods, as well as a technologically-driven management system. Even advanced liberalization arrangements worked out by regional groupings, including the Schengen area as probably the most advanced shared border regime. These fundamentally reconfigured border techniques did not alter the principal functions of borders: protection, deterrence, and regulation. Rather, mobility itself (that is, the circulation of goods, ideas, and orders) became a prime target for political intervention (Beauchamps et al., 2017, p. 3).

As acknowledged by Anderson and O'Dowd, borders have come to perform a growing range of sometimes rather contradictory functions, as:

> [A]reas of opportunity and/or insecurity, zones of contact and/or conflict, of co-operation and/or competition, of ambivalent identities and/or the aggressive assertion of difference. These apparent dichotomies alternate with time and place, and—more interestingly—they can co-exist simultaneously in the same people, if they have to regularly deal not with one state but two. (Anderson & O'Dowd, 1999, pp. 595–596)

Despite the supposedly homogenizing pressures of globalization, moreover, different societies and polities continue to combine borders (and identities and orders) in very different ways (Heisler, 2001, pp. 226–227).

The articles collected in this thematic issue deal with this growing variety across time and space and recognize that, even if there is now a trend towards deglobalization and an attempt to return to earlier forms of border control, the variety of borders, borderlands, and bordering processes is only going to increase. The contributing authors thus present something of the variety of concepts, frameworks, and accounts of bordering (as well as de- and re-bordering) processes which have been developed in the present century—and they examine whether these concepts are capable of explaining current trends. They focus particularly on "border-free" travel areas, which have been the sites of heaviest experimentation and change. The Schengen area, following its launch in 1995, facilitated the free movement of persons at internal borders, but at the price of strengthened and

detailed control at external border crossing points as well as eventual stoppings within the Schengen area, away from the border, by mobile patrols. This process saw the deferral of the actual borders beyond the borderline, and not just outside the EU (the familiar concept of "externalization") but also *inside* (Balibar, 2009, p. 206).

Artur Gruszczak attempts to capture the current turn in bordering processes (Gruszczak, 2022). He looks at the current dynamics of bordering processes in Europe, identifying an inflexion in the historical development of the principle of freedom of movement of persons epitomized by the Schengen area. Gruszczak identifies an increasing tension between the integration forces of transnational processes, and a politicization of domestically-embedded issues of security governance. He discusses the lingering discrepancy between longstanding derogations from the Schengen regime and efforts towards a full restoration of the free-travel area after the Schengen crisis.

Caterina Molinari likewise focuses on the Schengen area and its recent politicization, and argues that EU institutions have lately exploited this trend and used migration crises to mobilize actors, allocate funds, and determine procedures and remedies (Molinari, 2022). The migration crisis in Europe in 2015–2016 saw the EU formalize and regulate whole new mobility policies and practices. These changes have been widespread and bewildering, but Molinari narrows such moves to three instances: (a) physical borders subject to a peculiar regulatory regime operational in specific peripheral spaces; (b) legal borders increasingly independent from their physical and geographical dimensions; and (c) legal borderlines applicable to certain groups of travelling migrants. Molinari interprets the EU's stance as an attempt to disconnect the full protection of fundamental rights from the real status of migrants residing on national territories of EU member states.

Molinari's research thus adds to the growing body of analysis on borders that focuses on the experience of those crossing them—something curiously absent from early analysis of the Schengen area. If Molinari conceptualizes the tendency toward the decoupling of legal and regulatory standards from migration and mobility practices, this is further illustrated in this collection by two articles dedicated to the migratory experiences of a specific category—unaccompanied minors and adolescent migrants. In the first of these articles, Orsini et al. (2022) examine the negative and disquieting practices performed on unaccompanied minors by European and non-European state authorities particularly since the recent migration crises. Based on ethnographic research carried out among over 300 minors in Libya, Italy, Greece, and Belgium, the authors make insights into "loops of violence" (that is, violent events perpetrated on migrants by a variety of institutional and non-institutional actors). These—as they maintain—are now ubiquitous within the EU's management of migration and asylum.

The situation of unaccompanied minors is also discussed by Uzureau et al. (2022) in an article focusing on exception from normal rules and abandonment experienced by migrants as part of securitization practices at the internal borders in the EU. They take the case of the northwestern Italian city of Ventimiglia as a "space of exception" at the French-Italian border and take it as evidence of deterrent practices carried out by local authorities and their effects on minors' psychological well-being and self-identity. The findings of the ethnographic field study made by the authors underline the conflicting needs and feelings of institutional abandonment of the unaccompanied migrants in Ventimiglia augmented by insufficient institutional protection in the border space.

These two articles show that unaccompanied young migrants are, due to their vulnerability and relative lack of agency, heavily affected by restrictive and deterrent measures commonly used by national and local authorities in receiving countries. By contrast, other groups of migrants enjoy altogether greater agency. Labor migration regimes offer daily evidence that excessive regulatory practices imposed by states may be avoided or bypassed (sometimes even simply disregarded) by informal networks. Polese et al. (2022) show convincingly how the reliance on informal structures substitutes the expectations of an active welfare state policy. Based on two case studies—Romanian migrants in Spain, and ethnic entrepreneurs in Croatia—the authors explore informality as a way contributing to the shaping of everyday governance curbed by discontent with state policies and values and by the praise of non-compliance.

The final article deals with new sites of border transformation. De-bordering processes and tendencies have been associated over the past three decades with experiments in the territorial/geographical dimension as epitomized by the Schengen area. But today they increasingly unfold in the *de-territorialized* virtual space created by information and communication technologies (ICT) and infrastructure. Dominika Dziwisz explores the changing nature of borders in cyberspace and examines the impact of non-war activities on the functions of state borders (Dziwisz, 2022). Modern technologies seem to accelerate the tendencies toward the blurring of physical borders; yet they also increase the use of those boundaries as security policy tools.

Conflict of Interests

The authors declare no conflict of interests.

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Article

The Borders of the Law: Legal Fictions, Elusive Borders, Migrants' Rights

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Abstract
Bordering processes take place through different means and are carried out by different actors. Laws and regulatory activities have a prominent place among border-drawing instruments: Their capacity to mobilise actors, allocate funds, and determine procedures and remedies make them a formidable and multifaceted bordering tool. It is therefore not surprising to notice that EU institutions have heavily relied on regulatory tools when the need to resort to new bordering processes emerged in the aftermath of the so-called migration crisis. This article delves into a particular (re-)bordering process emerging from the legislative proposals attached to the Commission's 2020 New Pact on Migration and Asylum: the attempt to uncouple the duty to fully respect and protect fundamental rights from the reality of migrants' presence on national territory. This objective is pursued by the proposed legislative package through non-entry fictions, capable of untangling the legal notion of "border" from its physical reality for the purpose of immigration law (only). The analysis of the relevant provisions provides the reader with a number of insights into the transformation of EU borders. First, borders (as defined by the law) are subject to a peculiar legal regime. Secondly, the legal notion of borders is increasingly independent of its physical/geographical correspondence. Thirdly, legal border lines are not linked to any place on the ground, but rather follow irregular migrants as they move, confining them to areas of less law, no matter their location.

Issue
This article is part of the issue "Re-Visioning Borders: Europe and Beyond" edited by Artur Gruszczak (Jagiellonian University) and Roderick Parkes (German Council on Foreign Relations).

1. Introduction

State borders are physical places designated to delineate national territory. They have been traditionally understood as defining the boundaries of a state's sovereignty and jurisdiction (Ryngaert, 2017, p. 53). The anchoring of sovereignty/jurisdiction in the real-world element of space has been defined as "legal spatiality" (Raustiala, 2006, p. 219). It underpins not only theoretical approaches to borders but also state practice and case-law (*Al Skeini v. UK*, 2011, para. 131). Although contested as to its relevance in a world with fluid and flexible borders (see, among others, Appadurai, 1996), the possibility of geographically determining the boundaries of states remains foundational for national legal systems. These systems encompass a world of institutional actors, principles, rules of conduct, and enforceability mech-

anisms that have the national territory as their stage. Every person on a state's territory must respect its laws and is subject to its enforcement powers. In the large majority of cases, from the individual perspective, being subject to a legal system depends on the objective factor of physical presence in a certain place. The link between the physical reality of territory and the social construction of the legal system is expressed by the concept of territorial jurisdiction.

Territorial jurisdiction has long been the dominant lens to assess the reach of a state's powers and the extent of its responsibility to protect fundamental rights. "Classic" instances of extraterritorial jurisdiction, for example, that of the flag state over ships in the high seas (United Nations Convention on the Law of the Sea, 1982, Art. 92), have often been characterised as exceptional (*Bankovic and Others v. Belgium and Others*, 2001,

para. 61). More importantly, they have themselves been grounded on an objective "spatial" element (i.e., presence on board of a specific ship). Be that as it may, the territoriality of the legal order has evolved in connection with what is broadly referred to as globalisation. The quasi-coincidence between the geographical borders of the state and the reach of its laws and enforcement powers has been supplanted in certain cases by new models of jurisdiction (Raustiala, 2006, p. 220). The EU legal order makes no exception: In recent years, migration and border control laws and practices of the EU and its member states have weakened the physical hook on which the legal construction of jurisdiction relies. The so-called migration crisis and its aftermath have been particularly effective in pushing EU policy-makers to rethink territoriality and resort to new bordering processes.

A first example of (de-)bordering process relies on a narrow interpretation of extraterritorial jurisdiction. Instrumentalising the traditional link between territory and jurisdiction, EU member states such as Italy artificially and intentionally withdraw their ships from the Mediterranean and sanction rescuing efforts (Basaran, 2014, p. 374). In so doing, they avoid the on-boarding of migrants, which would trigger the responsibility to protect their rights. The avoidance of direct contact with migrants is coupled with the continued presence of equipment capable of detecting boats in distress in the Mediterranean and communicating their location to the authorities of third states (so-called "contactless control" or control "by-proxy"; see Moreno-Lax, 2020, p. 387). The legal literature has responded to this trend by affirming the need to resort to a "functional" model of jurisdiction, "predicated on the exercise of public powers, such as those ordinarily assumed by a territorial sovereign" (Moreno-Lax, 2020, pp. 386–387). According to this model, whenever public powers are exercised by a state, its jurisdiction (including its obligation to fully respect and protect fundamental rights) should be triggered. The concept of functional jurisdiction echoes that of functional borders, developed from the perspective of territoriality and its evolution and applied to similar cases (Riccardi & Natoli, 2019, p. 9).

A reflection from the perspective of territoriality is still largely missing concerning a second kind of (re-)bordering process: The mandatory application of non-entry fictions proposed by the New Pact on Migration and Asylum (European Commission, 2020a). Non-entry fictions untangle the legal notion of "border" from its physical reality for the purpose of immigration law (only). In essence, when migrants cannot be physically "exclud[ed] from territory," the Commission proposes to modify the legal implications of their presence on the territory, excluding them from "rights" (Moreno-Lax, 2018, p. 120). The result is a set of proposed norms whose effect is to keep certain categories of persons from ever being able to access the full protection granted by a certain legal system, regardless of their physical location. The non-entry fiction is a process of exclusion, but also a process of illegality and invisibility creation. By denying entry to migrants already present on their territory, EU member states make them illegal (see De Genova, 2002, p. 432). The non-entry fiction renders exclusion dynamics invisible by relying on the language of illegality (see Sati, 2020, p. 23). At the same time, as discussed below, it justifies quasi-systematic detention, rendering irregular migrants invisible to the rest of society (Van Houtum & Bueno Lacy, 2020, p. 721). As this is done through a fictional exercise, the borders of legality can be pushed indefinitely inward to prevent migrants from attaining them. This results in an uncomfortable uncoupling of reality from the legal system, which permanently fails to "see" and "be seen" by certain categories of persons. This uncoupling is not entirely new: A number of EU member states already apply non-entry fictions to international airports (ECRE, 2021, p. 25). Moreover, non-entry fictions resulting in the application of lesser procedural standards in certain parts of the borders in the context of so-called "border procedures" (a) have been accepted in principle by the ECtHR (e.g., *Saadi v. UK*, 2008, para. 65) and (b) are already allowed under EU law (Rasche & Walter-Franke, 2020, p. 4). However, the New Pact plans to turn this option into an obligation and to extend the reach of border procedures, so that they can take place to an unprecedented extent within member states' territories.

2. Let's Pretend They Are Not Here: The Elusive Nature of Shifting Borders

Non-entry fictions (entailing a distinction between the "physical" entry on the territory and a "legally recognised" entry on the territory) are not an invention of the European Commission. More than two decades ago, US law (Illegal Immigration Reform and Immigrant Responsibility Act, 1996) abandoned its earlier distinction between migrants who have (physically) entered the territory and those who have not to determine the level of procedural guarantees owed to them during removal procedures. The physical entry/non-entry divide was set aside in favour of a distinction based on admission. Migrants who have entered the territory, but who have not been admitted to it by competent authorities, have since been placed in the same position as those who have never physically entered the territory. As noticed by Bosniak (2002), this has created a hard-to-justify divide between those migrants who have overstayed their visa or visa-free period, and those who have never obtained a visa. Given the cost of a visa and the nationality-based criterion to determine who can enter the USA without one, this distinction has inevitably tended to run along lines of nationality and social class. As mentioned, the non-entry fiction is not extraneous to the EU legal regime itself. Currently, Article 29(2) of the Convention Implementing the Schengen Agreement (2000) specifies that member states, when complying with their obligation to process

asylum applications lodged within their territory, maintain the right to refuse entry to the asylum seekers concerned. Similarly, in certain cases and for a period of up to four weeks, Article 43 of the Asylum Procedures Directive (European Parliament and Council Directive of 26 June 2013, 2013) allows member states to examine asylum applications while refusing to access their territory. However, at the moment, EU law does not require member state to apply non-entry fictions.

In its new Pact on Migration and Asylum, the Commission proposes precisely to mandate the large scale application of the non-entry fiction throughout the EU. A discussion of the proposed reform cannot but start with a short overview of the relevant provisions.

According to Article 8 of the Proposed Asylum and Migration Management Regulation, "member states shall examine any application for international protection by a third-country national or a stateless person who applies *on the territory* of any of them, *including at the border or in transit zones*" (European Commission, 2020b, Art. 8, emphasis added). This provision is coherent with the "geography" of a state's territory, which includes its borders and transit zones. In line with this approach, Article 21, entitled "Entry," affirms that:

> Where it is established…that an applicant has irregularly crossed the border into a member state by land, sea or air having come from a third country, the first member state *thus entered* shall be responsible for examining the application for international protection….Th[is] rule…shall also apply where the applicant was disembarked on the territory following a search and rescue operation. (European Commission, 2020b, Art. 21, emphasis added)

In other words, for the purpose of identifying the member state responsible for an international protection application, entry means entry(!). Geographical presence on the territory of a member state triggers its jurisdiction, including its power to apprehend the migrant, subject it to administrative and judicial proceedings, restrict his or her freedom and even detain him or her.

We will see that, when it comes to the parallel triggering of migrants' rights, the legal definition of entry is much more restrictive than physical entry.

To start, Article 3 of the Proposed Screening Regulation (European Commission, 2020c) requires member states to apply screening "at the external border," among others, to "all third-country nationals who apply for international protection at external border crossing points or in transit zones and who do not fulfil the entry conditions." Articles 4 and 6(1) specify that those third-country nationals "shall *not* be *authorised to enter* the territory of a member state" (European Commission, 2020c, Art. 4, emphasis added). The non-entry fiction applies even if the screening is carried out in the territory and, more precisely, "at locations situated at or in proximity to the external borders" (European

Commission, 2020c, Art. 6(1)). To summarise, according to the Proposed Asylum and Migration Management Regulation, migrants at borders and transit zones are considered to have entered the territory of a member state. At the same time, according to the Proposed Screening Regulation, they are considered *not* to have entered it.

The fiction steps further away from reality in Articles 5 and 6 of the Screening Regulation. These provisions impose the application of the screening procedure at an appropriate location *within the territory* of a member state (for "third-country nationals found within the…territory [of a member state] where there is no indication that they have crossed an external border to enter the territory of the member states in an authorised manner" [European Commission, 2020c, Art. 5, emphasis added]). In itself, the idea of screening someone who has managed to enter the territory undetected is logical. The need to identify those who are on the territory of the member state does not depend on the location where they are first confronted with the authorities. What is problematic is the link between screening, non-entry fiction, and border procedures. Article 41(1) of the Proposed Amended Common Procedure (ACP) Regulation (European Commission, 2020d) establishes that "following the screening procedure…and provided that the applicant has not yet been authorised to enter member states' territory, a member state may examine an application in a border procedure." What matters for the border procedure is not whether the person has actually entered the territory, but rather whether he or she has done so in an authorised manner. If this is not the case, an asylum border procedure applies, entailing a limitation of the applicant's procedural rights so significant that it will almost inevitably affect the protection of his or her substantive rights (for example the right to non-refoulement; see Moreno-Lax, 2017, p. 459). The start of the border procedure is only the beginning of a non-entry fiction that can be protracted for several months. Member states are required to exercise their authority upon international protection applicants and even detain them for several months without authorising them to enter the territory and enjoy the full procedural protections that would apply there. The non-entry fiction remains intact even in case of relocation: Member states' authorities can transfer applicants to another member state without the need to previously acknowledge their presence on EU soil.

According to Article 41(5) of the Proposed ACP Regulation, applicants "shall not be authorised to enter the territory of the member state" throughout the asylum border procedure, which can last up to 12 weeks (European Commission, 2020d). "Following that period, the applicant shall be authorised to enter the member state's territory," safe when one of the numerous exceptions apply. The first one, provided by Article 41(11), read in combination with Article 41(a), provides that international protection applicants whose application has been rejected in the context of the asylum border procedure

"shall not be authorised to enter the territory of the member state" (European Commission, 2020d). Thus, at a closer look, only international protection applicants whose asylum procedure is taking longer than 12 weeks can, in principle, be authorised to enter the territory of the member state under Article 41(5). Even after the expiry of the 12 weeks deadline though, the authorisation to enter must be denied to (a) applicants whose first asylum application has already been rejected and (b) applicants who have not requested or obtained the right to remain pending an appeal. As a rule, the asylum border procedure is carried out "at or in proximity to the external border or transit zones" (European Commission, 2020d). Nonetheless, it can be extended to "other locations within the territory" of the member state on a temporary basis, when the capacity at the borders and transit zones is insufficient. In this case, and already during asylum processing, the disconnect between the lack of authorisation to enter the territory and the actual transfer of applicants within the territory is particularly evident. While this disconnect is framed as exceptional for asylum border procedures, it constitutes the norm for subsequent return border procedures. Article 41a of the Proposed ACP Regulation affirms that:

> Third-country nationals and stateless persons whose application is rejected in the context of the procedure referred to in Article 41 shall not be authorised to enter the territory of the member state....[They] should be kept for a period not exceeding 12 weeks in locations at or in proximity to the external border or transit zones; where a member state cannot accommodate them in those locations, it can resort to the use *of other locations within its territory*. (European Commission, 2020d, Art. 41a, emphasis added)

As a result of this provision, border return procedures are characterised by a fictional refusal of access to the territory, coupled with a physical and prolonged detention of the person concerned within such a territory.

3. Why Pretend? The Implications of the Non-Entry Fiction

The analysis conducted so far has laid bare the legislative uncoupling of law from reality, but it has not yet delved into its effects. Legislatively implying that migrants who are on the territory should not be considered to be there does not alter the reality of their presence, either for them or for national authorities interacting with them and bearing the costs of this presence (Rasche & Walter-Franke, 2020, p. 5). However, it allows for a legal construction whereby migrants not authorised to enter the territory do not have access to the full set of rights that their presence in the member state would otherwise entail. Migrants in border procedures are subject to the power of enforcement of the competent member state and have a duty to cooperate with national author-

ities, much like migrants in "regular" asylum (European Parliament and Council Directive of 26 June 2013, 2013) and return procedures (*K. A. and Others v. Belgische Staat*, 2018, para. 105). Nonetheless, the fundamental rights restrictions mandated for them by the legislative framework are much more significant.

To start, in the context of asylum border procedures on the merits, an international protection application must be examined in an "accelerated" manner. This acceleration constitutes a "b/ordering practice" of the kind that "tells [EU citizens] that the fundamental rights to which the EU adheres do not fully apply to undocumented migrants" (Van Houtum & Bueno Lacy, 2020, p. 722). It reduces the time granted to applicants to prepare their claims and to adjudicators to examine all relevant elements. According to Article 41(10) of the Proposed ACP Regulation, the applicant has five days from registration or relocation to apply for international protection and the whole procedure is in principle to last no longer than 12 weeks, including the appeal stage. It will be for EU courts to establish whether this period is "sufficient in practical terms to enable the applicant to prepare and bring an effective action" (*Samba Diouf v. Ministre du Travail*, 2011, para. 66), as required by Article 47 of the EU Charter of Fundamental Rights (EU Charter). The accelerated border procedure applies to the assessment of the merits of asylum applications not only when applicants have been uncooperative with the authorities or are considered to be a danger to national security and public order, but also when they come from a third country for which the average recognition rate in the Union is 20% or lower. Such a percentage raises to 75% in situations of crisis, as defined—quite broadly—by Article 1 of the Proposed Crisis Regulation (European Commission, 2020e). This nationality-based criterion to determine the extent of the applicants' procedural rights is problematic for several reasons. First, the very idea of a nationality-based criterion to determine the extent of one's procedural right appears to contradict the non-discrimination principle enshrined in both Article 3 of the Convention Relating to the Status of Refugees (1951; see Mouzourakis, 2020, p. 175) and Article 21 of the EU Charter (*Slovak Republic and Hungary v. Council*, 2017, para. 305; see also Carrera et al., 2019, p. 31). Secondly, this criterion does not sit easily with the "individual nature of any application for international protection" (Carrera, 2021, p. 8). Thirdly, recognition rates vary widely among member states (European Commission, 2016, point 5(2)). Relying on a Union average without having previously taken measures to ensure a certain homogeneity of recognition rates risks leading to arbitrary results. Fourthly, when the Proposed Crisis Regulation is triggered, the threshold set for a certain nationality to be admitted to the regular procedure border procedure becomes so high (75% average recognition rate) that the border procedure is transformed into the standard way of examining the merits of international protection applications (Mouzourakis, 2020, p. 175).

Besides the curtailing of the time granted to each applicant in the context of border procedures, the latter also entail systematic detention. Van Houtum and Bueno Lacy (2020, p. 721) define the border camp as one of the pillars of the Union's bordering practices, for its role in the singling out of irregular migrants as "different" from the rest of society, while at the same time hiding them from sight. International protection applicants in border procedures must "be kept" at borders, in transit zones, or at specific locations within the territory. In practice, this means that they will "be isolated from the rest of the population" and obliged to "remain permanently in a...zone the perimeter of which is restricted and closed, within which [their] movements are limited and monitored, and which [they] cannot legally leave voluntarily, in any direction whatsoever" (*FMS and Others v. Országos*, 2020, paras. 217 and 231). This condition amounts to detention according to the recent case-law of the Court of Justice of the EU (CJEU) or, at least, to a significant limitation of liberty according to the less protective case-law of the ECtHR. The latter's judgment in *Ilias and Ahmed v. Hungary* (2019) is puzzling in several respects, from the confusion between the definition of detention and the determination of its necessary character (paras. 232–233) to the consideration of an illegal departure towards Serbia as a relevant option for the applicants (paras. 237–238). Be that as it may, based on Article 53 of the EU Charter, the CJEU is entitled to go further than the ECtHR in protecting fundamental rights, and member states are bound to comply with such a higher level of protection when they are acting within the scope of EU law, as per Article 51(1) of the EU Charter. With this in mind, one can conclude that, at least under EU law, border procedures will result in de facto systematic deprivation (rather than limitation) of liberty (Cornelisse, 2021). This is problematic, as it deprives the principle according to which detention should be a measure of last resort (see, among others, *El Dridi*, 2011, para. 39; *K. v. Staatssecretaris*, 2017, paras. 46–48) of any practical meaning. The detention of asylum applicants for up to 12 weeks (20 in case of crisis) can be followed by another equivalent period of detention in the context of the return border procedures. Not only are the latter accelerated and accompanied by systematic detention. Border return procedures might also fall outside the scope of application of most minimum procedural guarantees enshrined in the Return Directive (European Parliament and Council Directive of 16 December 2008, 2008). According to Article 2(2)(a), member states are allowed not to apply the Return Directive to third country nationals "apprehended or intercepted by the competent authorities in connection with the irregular crossing...of the external border of a Member state and who have not subsequently obtained an authorisation or a right to stay in that member state."

The right of appeal of migrants in border procedures is limited not only in terms of the deadline to challenge a first instance decision but also in terms of the number of appeals: According to Article 53(9) of the Proposed ACP Regulation, "member states shall provide for only one level of appeal" in these cases (European Commission, 2020d). This limitation complies with the right to an effective remedy as interpreted by the CJEU (*Gnandi v. État belge*, 2018, para. 57; *Samba Diouf v. Ministre du Travail*, 2011, para. 69), but it might create problems of compatibility with certain national constitutional orders which do not admit curtailing of the number of degrees of appeals available for particular sets of proceedings (Muir & Molinari, 2019, p. 56).

Under Article 5(1)(c) of the Proposed Crisis Regulation, the rights of migrants in return border procedures are further curtailed by means of the introduction of a presumption of risk of absconding in most cases. Such a presumption does not only entail the automatic deprivation of liberty. If the recast Return Directive was adopted as proposed by the Commission (European Commission, 2018), it would also compromise the availability of voluntary departure options and lead to the imposition of re-entry bans.

Finally, the strong limitations applied in the context of border procedures to the suspensory effect of appeals run the risk of violating the principle of non-refoulement, as guaranteed by the EU Charter and interpreted by the CJEU. According to Article 54(2)(a) Proposed ACP Regulation, when border procedures are applied, the lodging of an appeal against a first instance decision cannot be automatically suspensive. This means that the person concerned might be returned to a third country before a final appellate judgment is rendered. Besides the problematic nature of this and other EU-level norms aiming at determining a maximum, rather than minimum, level of fundamental rights protection (Muir & Molinari, 2020), it is not difficult to see that this provision compromises the right to a judicial remedy and, as a consequence, places concerned migrants at risk of been returned to a place where they will be subject to inhuman or degrading treatment. The CJEU has itself recognised in *Centre public d'action sociale v. Abdida* (2014, para. 46) that EU secondary law, read in light of Articles 19 and 47 of the EU Charter, "must be interpreted as precluding national legislation which does not make provision for a remedy with suspensive effect in respect of a return decision whose enforcement may expose the third-country national concerned to a serious risk" of inhuman or degrading treatment.

The considerations developed above are all the more worrying if we consider that border procedures are meant to apply not only to adults, but also to minors (European Commission, 2020d, Arts. 41(5), 40(5)(b)). Quasi-systematic detention of minors and severe limitations of their procedural rights are especially problematic in view of their particular vulnerability, as recognised even by a court as sensitive to border-control arguments as the ECtHR (see, among others, *Kanagaratnam and Others v. Belgium*, 2011; *Mahmundi and Others v. Greece*, 2012)

4. Conclusion

This short analysis of the non-entry fiction envisaged in the New Pact on Migration and Asylum from the perspective of territoriality paves the way for a few conclusions. First, physical borders are increasingly subject to a peculiar regulatory regime, characterised by the full application of the member state's enforcement and regulatory powers, on the one hand, and by a limited application of standard procedural guarantees directed at protecting migrants' rights, on the other. The transformation of external borders into "anomalous zones" (Campesi, 2021), which has so far been operated only by some member states or in specific areas of the borders (so-called hotspots), is now becoming generalised. This results in the de facto transformation of borders into something more similar to "frontiers," namely "peripheral spaces that are managed, where citizens do not live" (Linden-Retek, 2020, p. 41). Secondly, through the EU-wide application of non-entry fictions, the legal notion of borders is destined to set itself almost completely free from its physical/geographical correspondence. The specific legal regime reserved to borders can be applied also within the territory, in any designated location, by virtue of the characteristics of the migrants concerned (e.g., their nationality and past behaviour). As discussed, the disconnect between geography and legal construction in no way affects the state authorities' enforcement and regulatory powers, but it does limit the array of rights and remedies available to migrants who are identified as falling within real or imagined border zones. In this context, the call for a "functional" model of jurisdiction equating the exercise of public powers with the need to fully respect and protect the fundamental rights of those subject to such powers resonates (perhaps unexpectedly) even within the bounds of national territory.

Conflict of Interests

When the manuscript was submitted, the author was not yet employed by the European Commission. The article presents the view of its author only and is published under her sole responsibility. The author declares no conflict of interests.

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Article

Internal Rebordering in the European Union: Postfunctionalism Revisited

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Abstract
The EU has been under severe strain as a free-travel area. The migration crisis of the mid-2010s and the current Covid-19 pandemic have exerted a negative impact on the freedom of movement in the EU and the undisturbed crossing of internal borders within the Schengen area. Direct effects and long-term consequences of the prolonged crisis have shown that the dynamics of integration, which are determined by spillover effects of transnational processes, are counterposed by a politicization of domestically-embedded issues of security governance. This assumption underpins the postfunctionalist approach to European integration proposed originally by Hooghe and Marks. The tendency toward longstanding derogations from the Schengen regime, termed "internal rebordering," should be juxtaposed with efforts of the European Commission toward a full restoration of the Schengen area without controls at internal borders. The argument developed in this article holds that internal rebordering has been embedded in the logic of the EU as an area of freedom, security, and justice comprising the Schengen area as its territorial manifestation. The rebordering processes in the EU and in the Schengen area have questioned the principle of "constraining dissensus" underlaying the postfunctionalist approach.

Issue
This article is part of the issue "Re-Visioning Borders: Europe and Beyond" edited by Artur Gruszczak (Jagiellonian University) and Roderick Parkes (German Council on Foreign Relations).

1. Introduction

The EU as an area in which the free movement of persons is ensured has been under severe strain over the past few years. The migration crisis of the mid-2010s and the current Covid-19 pandemic have exerted a negative impact on the freedom of movement in the EU and the undisturbed crossing of internal borders within the Schengen area. The ongoing migration crisis has shown that the dynamics of integration, which is determined by spillover effects of transnational processes, is counterposed by a politicization of domestically-embedded issues of security governance.

The challenges to and intricacies of Schengen governance have recently attracted the attention of scholars well-anchored in the study of the EU's area of freedom, security, and justice (Bellanova & Glouftsios, 2022; Ceccorulli, 2019; Colombeau, 2019; Coman, 2019; De Somer, 2020; Lamour, 2019; Votoupalová, 2020). However, these only partially satisfy the desire to arrive

at a more nuanced and varied account of the trajectory of this particularly sensitive area of European integration.

In this article, the tendency toward longstanding derogations from the Schengen regime, termed "internal rebordering," is examined against the postfunctionalist framework of theoretical reflection on European integration. The migration crisis in the Schengen area has been seen as a relevant yet controversial test of the viability of the theory of postfunctionalism and the "postfunctionalist moment" (Schimmelfennig, 2014) in the history of European integration. The postfunctionalist perspective has recently been adopted in the study of migration and mobility in the EU (Schimmelfennig, 2018, 2021), yet its appropriateness is debatable. It has already been argued that postfunctionalism has its limits (Börzel & Risse, 2018; Schimmelfennig, 2014, 2018; Schmitter, 2009). However, from the perspective of European integration theories and security studies, a manifestation of the postfunctionalist perspective framing the dynamics of politicization of and "constraining dissensus" in the field of EU internal

security governance should be seen as a valuable framework for the explanation of exceptions from the rules governing mobility within the Schengen area.

The argument developed in this article holds that internal rebordering has been embedded in the logic of the EU as an area of freedom, security, and justice with the Schengen area as its territorial manifestation. Paraphrasing Popescu (2012, p. 7), borders in the EU are political phenomena made by states to help them manage their security. Borders are a key element of security governance in its multi-level configuration linking territory to jurisdiction and political power. As such, they are hardly contested by actors at the state level and tend to avoid crisis-driven politicization.

The methodology adopted in this article is based on a qualitative analysis of legal documents of the EU, a critical assessment and interpretation of theoretical foundations of postfunctionalism, and a critical review of the scholarship in border studies. The dynamics of rebordering is assessed with the use of the process-tracing technique. Data provided by the European Commission supported the analysis of the scope of rebordering within the Schengen area.

2. Postfunctionalism: Politicization and Euroscepticism

Andrew Moravcsik, an eminent US scholar studying European integration, classified postfunctionalism as one of the main (baseline) theoretical frames of European integration, along with liberal intergovernmentalism and historical institutionalism (Moravcsik, 2018, p. 1649). Regardless of the rationale behind Moravcsik's typology, it must be underlined that the postfunctionalist approach to European integration has garnered considerable interest and consolidated its status as one of the most common concepts in the study of European integration (Braun, 2020, p. 928). It has been appreciated as a new research agenda seeking to better understand the intricacies and deficiencies of EU politics. Postfunctionalism was proposed originally by Hooghe and Marks (2009), who questioned the positivist kernel of neofunctionalism residing in transnational mobilization, supranational activism, and policy spillover (Hooghe & Marks, 2006, pp. 208–209; Schmitter, 2009). Likewise, they were critical of liberal intergovernmentalism because of its reductionist understanding of European integration as a bargain over the distribution of economic gains among states or business groups. As the proponents of the multi-level governance model (Hooghe & Marks, 2001; Marks et al., 1996) they argued that decision-making competences are shared by actors at different levels; therefore, state executives must accept a significant loss of control over European (i.e., supranational) policymaking. Member states maintain their strong position in the architecture of European integration as they are an "integral and powerful part of the EU, but they no longer provide the sole interface between supranational and subnational arenas" (Marks et al., 1996, p. 347).

Hooghe and Marks advocated an actor-centered approach to European integration due to the complex agenda-setting determined by the reallocation of decisions to the supranational level, diffusion of control over the agenda, and informational asymmetries. They observed that the emergence of a Euro-polity, a process accompanying the shift from state politics toward multi-level governance, was determined by party competition and interest group politics. Patterns of political contestation cultivated the dispute in the realm of European integration over the meaning and implications of national identity (Hooghe & Marks, 2004, p. 1). Hooghe and Marks emphasized that jurisdictions that people create express their national, regional, and local identities. They highlighted the disruptive potential of clashes between functional pressures at the supranational level and exclusive identity at the national level. That clash results in a politicization of European integration (Hooghe & Marks, 2018, p. 5).

Politicization leads to a constraining dissensus which limits governance by producing a mismatch between functionally efficient and politically feasible solutions. Given that governance "is determined not just by its functionality but by its emotional resonance" (Hooghe et al., 2016, p. 3), the mobilization of mass public opinion against supranational solutions imposes constraints on the performance of European institutions and policies. This augments politicization dynamics which advances in three steps: (a) a discrepancy between the institutional status quo and the functional pressures for multilevel governance, (b) the opening of a decision-making arena for mass politics, and (c) the shaping of the structure of political conflict by polarizing societies along cultural and socio-political cleavages (Hooghe & Marks, 2019, pp. 1116–1117).

Postfunctionalism addresses the phenomenon of Euroscepticism by analyzing the distribution of political preferences among citizens expressed in public opinion polls. It prefers to fold the issue of European integration into the left-right dimension, highlighting an increase in the consolidation of attitudes along the liberal/nationalist opposite (GAL/TAN). The polarization of opinion distribution, boosted by national elites and political parties, has a decisive impact on identity formation (Down & Wilson, 2008). It legitimizes a constraining dissensus on the European arena, yet it does not reduce domestic political contestation. Postfunctionalism "counterposes the mobilization of exclusive national identity to functional pressures for co-operation'' (Hooghe et al., 2018, p. 2). The difference in integration outcomes is explained by variation in domestic politicization (Schimmelfennig, 2018, p. 975).

3. Conceptualizing Rebordering

The concept of rebordering is intimately linked to borders, mobility, and security. Broadly speaking, it addresses the functions and practices of bordering

conceived as the imposition of border surveillance and control and their organization within a tailor-made management system. Hence, it reflects policy-driven security concerns provoked by human mobility, movements of goods and services, cultural diffusion, and advances in transportation and communication technologies. The "territorial exclusivity of the 'nation'-state" (Anderson, 1996, p. 5) and, thereby, the administration of its territory through control over intramural and cross-border mobilities, is augmented by borders conceived as "the physical manifestation of the sovereignty of the nation and the power of the national state to secure that nation from harm" (Hastings, 2010, p. 2; see also Paasi, 1999, pp. 19–21). Since borders are part of the territorial domain of the state, they come under the sovereign jurisdiction of the relevant judicial institutions, as well as being sites of security governance and law enforcement. As a result, they "are in fact arbitrary institutions, composed of other constituent and smaller institutions, which are designed to break-up and manage the flow of items and personnel into and out of the state" (Hastings, 2010, p. 5). Bordering practices have become increasingly reliant on technologies of surveillance, biometric identification and automatic recognition systems, and proactive intrusion-detection (Amoore, 2006; Hayes & Vermeulen, 2012; Popescu, 2012, p. 4; Scheel, 2013, 2019).

Excessive bordering, typical for times of inter-state rivalry and hostility (like during the Cold War), rampant nationalism, and cultural cleavages, constrains international cooperation and deprives nations of the substantial economic gains derived from cross-border commerce and labor mobility. This liberal argument underlaid globalization and networking, which in their turn were given a big boost by the revolutions in modern transport and communication technologies triggered by digitalization and computerization (Eriksen, 2014; Ernst & Haar, 2019, pp. 3–9; McGrew, 2020, p. 23). Globalization created a growing pressure on state borders as obstacles to modernization and barriers to global development. The neoliberal turn in the 1980s and 1990s resulted in strong trends toward debordering. An outcome of globalization as a presumably unstoppable process (Andreas, 2003; Melin, 2016), debordering has been commonly associated with the liberalization of cross-border flows of goods, persons, and capital (Newman, 2001; Popescu, 2012, p. 2). It was conceived as a constantly progressing "permeability" of borders due to the elimination and abolition of all legal, institutional, technical, and infrastructural measures which hampered or limited free movement across them (Albert & Brock, 1996, pp. 74–77). In practice, it encompassed diverse measures and activities which opened up borders, reduced or softened border controls, and even questioned boundary congruence (Jańczak, 2011). Regional free-trade areas in North America, Europe, and South-East Asia may serve as typical examples. In the most advanced regional integration conglomerates, or shared economic spaces, such as the Benelux Economic Union or the EU, the intensity of cross-border commercial flows resulted in a far-reaching facilitation of the movement of persons, culminating in the abolition of checks at internal borders. In that case, one can denominate the final outcome of the debordering processes as disbordering.

Unwanted consequences of globalization-driven debordering (such as transnational crime, terror networks, uncontrolled migration) created a need for the hardening of states' external boundaries, a heightened demand for more defensive borders (Scott & van Houtum, 2009, p. 271). Rebordering emerged as a straight and logical reversal of debordering. It put security ahead of liberty and freedom of movement and placed the emphasis on protective measures and safeguards. As Andreas (2000, p. 2) observed tartly:

> The celebrated debordering of the state…is far more selective than the inflated rhetoric of globalization would suggest. Debordering is being accompanied in many places by a partial rebordering in the form of enhanced policing. Even as many borders have been demilitarized in the traditional realm of national security, as well as economically liberalized to facilitate commercial exchange, they are also now more criminalized to deter those who are perceived as trespassers. Thus it may be more accurate to say that the importance of territoriality is shifting rather than simply diminishing.

From the postcolonial perspective, rebordering is a disposition enforced by the nation-states of the rich North in order to keep the Global South out (Melin, 2016, p. 71); or—as Horvat (2014, pp. 94–95) notes with regard to European integration—by the diligent North confronted with the relaxed and lazy South. From the constructivist perspective, rebordering reflects the contested meaning of territoriality in an evolving state system (Kratochwil, 1986, pp. 51–52; Ruggie, 1993, pp. 148–152). Borders and boundaries, being discursive social constructs whose nature changes over time, are marked by porousness and permeability (Newman, 2011, pp. 39–41). Rebordering entails the construction of new boundaries through discursive practices which aim at producing "the social effects of the new symbolic spaces of belonging and exclusion in the innerland" (Suárez-Navaz, 2004, pp. 1–2; see also Walters, 2006). From the neorealist perspective, rebordering means bringing the state back in as a protective shield for its sovereign authority, territory, and jurisdiction. Security, control, and resilience at the borders are bounded with policies for tackling external threats, such as armed aggression, terrorist actions, or uncontrolled migration (Coaffee & Rogers, 2008, p. 113).

Rebordering has a physical component. Although it is anchored in human geography, in socio-spatial topologies, it definitely involves power relationships and political regimes established by sovereign polities and (safe)guarded by states and their relevant institutions. Hence, bordering is seen here as sites of power

intimately linked to physical separators which form part of a technical infrastructure of management, surveillance, and ordering. Consequently, rebordering results in coercive control, policing, and criminalization targeting, essentially, migrants (Nevins, 2014). It also creates sites of exclusion, discrimination, and humanitarian tragedy (Furedi, 2021, p. 1).

Rebordering can be categorized into exclusionary (external, outward-looking) and inclusionary (internal, inward-looking) forms. The difference lies in the instrumental use of borders by state authorities for risk management and security governance. External rebordering entails the establishment or reinforcement of protective and regulatory means of principally addressing and affecting actors residing outside a state territory. It encompasses physical (walls or fences at the border), normative (immigration law, trade agreements), and administrative (visa instruments, border checks, return decisions) measures. Internal rebordering consists of activating state mechanisms and resources within the state territory. It is partly a reaction to the failures or deficiencies of external rebordering, partly a method of managing risks emerging within the state under the influence of external factors. Internal rebordering embraces exceptional measures affecting certain categories of the population (both indigenous and immigrant), such as restricted access to and limited movement in some parts of the territory, or the establishment of sites of exclusion for migrants, especially those seeking international protection. It also includes heightened security measures over the entire territory, such as an increased activity of law enforcement institutions, more frequent checks of people and goods, or rapid interventions in the case of threats to public order and internal security.

4. Rebordering Practices: Eroding Schengen as a Free-Travel Area

Rebordering has been an inherent element of the Schengen area. It has also been part of the EU's area of freedom, security, and justice. The rationale behind the Schengen area was based on a functional connection between debordering and rebordering (Zaiotti, 2011). The Schengen agreement stipulated that "with regard to the movement of persons, the Parties shall endeavor to abolish checks at common borders and transfer them to their external borders" (Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, 2000, art. 17). The Convention implementing the Schengen Agreement (CISA) proclaimed in article 2.1 that "internal borders may be crossed at any point without any checks on persons being carried out." In an outright juxtaposition, according to article 3.1, "external borders may in principle only be crossed at border crossing points and during the fixed opening hours." In addition, member states were obliged to "introduce penalties for the unauthorised crossing of external borders at

places other than crossing points or at times other than the fixed opening hours" (Convention implementing the Schengen Agreement of 14 June 1985, 2000).

The principle of the abolition of control at common borders is therefore subject to flanking measures and internal safeguards. The former, outlined in the CISA, underpinned the concept of integrated border management at the EU's external borders. It brought about the establishment of Frontex (now the European Border and Coast Guard Agency) and the tendency toward the closer cooperation of national border guards in surveillance and control of the external borders. The latter is key to following the logic of internal rebordering. It emphasizes national security interests, threat prevention, and risk management across Schengen as the free-travel area. At the time of negotiating CISA, states-parties to the Schengen agreement were well aware of the sort of "collateral damage" which might be produced by inefficient means and capacities at their external borders. They decided to build safety valves in mechanisms regulating the functioning of Schengen as a security area. Article 2.2 of CISA stipulated the following: "Where public policy or national security so require a Contracting Party may, after consulting the other Contracting Parties, decide that for a limited period national border checks appropriate to the situation shall be carried out at internal borders" (Convention implementing the Schengen Agreement of 14 June 1985, 2000).

It is important to underline the point that the decisions concerning rebordering remained with member states. They were entitled to make unilateral decisions on the reintroduction of checks at their internal borders. They were only required to notify the other states about the planned reinstatement of checks or about the urgent circumstances of the adopted measure. However, the provisions of Article 2.2 of CISA were conceived as the derogation clause and thereby their activation had to be considered as a measure of exception (Decision of the Executive Committee of 20 December 1995, 2000). Indeed, in the early period of the Schengen integration, reinstatements of checks at common borders were occasional and principally related to political activities in the territory of member states. The incorporation of the Schengen acquis into the EU by virtue of the 1997 Amsterdam Treaty and the progressing partial communitarization of the Schengen cooperation did not exert a strong impact on the principles and mechanisms of rebordering. Despite the adoption of a regulation establishing the Schengen Borders Code (SBC), which repealed CISA provisions on internal and external borders, the rules stayed unchanged with one significant exception: The European Commission also had to be notified of intentions or decisions to reintroduce border checks (Regulation of the European Parliament and of the Council of 15 March 2006, 2006).

The frequency of decisions on the reinstatement of checks was relatively low in the first two decades after the emergence of the Schengen area. As Groenendijk

(2004, pp. 158–160) proves, in the years 2000–2003 member states sent 31 notifications of their intention to reinstate checks at internal borders. Two emergency situations occurred due to migration pressure at internal borders which resulted in a short-term closure of some sections of the border. Of 33 cases of the reinstatement of border checks, 25 were necessitated by planned top-level political meetings.

Between 2006 and 2014, despite the Eastern enlargement and the extension of the Schengen area on the territory of 26 countries, internal border checks were reintroduced 36 times (European Commission, 2021b; van der Woude & van Berlo, 2015, pp. 69–74). However, a brief episode at the Franco-Italian border in April 2011 sparked a political debate on internal rebordering as a security measure for preventing uncontrolled flows of immigrants (Carrera, 2012). The incident at Vintimille/Ventimiglia, when France closed the border for several hours and reintroduced controls in order to prevent the entry of large numbers of Tunisian nationals travelling by train to Marseille, catalyzed the discussion on the effectiveness of the Schengen mechanisms (Zaiotti, 2013). The French and Italian governments insisted on a revision of rules for the reintroduction of checks at internal borders and on the improvement of the monitoring mechanism (Schengen evaluation). The Commission agreed to revisit the key elements of the Schengen legal regime and, in September 2011, brought forward the so-called Schengen governance package. The Commission's proposals took the form of amendments to the SBC and to the evaluation mechanism. Adopted in October 2013, they contained important changes in the rebordering scheme (Coman, 2019). The two existing modes of reintroduction of checks, the foreseeable and the urgent ones, were modified in terms of time scales (extension of temporality) and were supplemented by a third mode concerning exceptional circumstances in which the overall functioning of the Schengen area is put at risk. In that case, border control may be reintroduced for a period of up to six months with an option of prolonging that period up to three times if the exceptional circumstances persist.

The loosening of restrictions imposed on member states with regard to their rebordering powers should be considered as a safeguard in case of inevitable migration pressures or a rapid proliferation of grave security threats, such as terrorism or serious and organized crime. It anticipated the migration imbroglio arising in the early 2010s as a consequence of upheavals in some Middle East and North African countries (the so-called Arab Spring) and the continuing instability in war-torn regions of Asia and Africa (Guild et al., 2015). Since the outbreak of the migration crisis in the autumn of 2015 up to the beginning of the Covid-19 pandemic in early 2020, internal border checks were reintroduced 82 times. More importantly, several member states turned their decisions on the temporary reinstatement of border controls into standard practice. The case of France was excep-

tional because the decision was provoked by the terrorist attack of 13 November 2015, the state of emergency proclaimed, and the continuous terrorist threat. Other countries, such as Germany, Austria, Denmark, Sweden, and Norway, used interchangeably relevant provisions of the SBC as a legal basis for the continuous maintenance of border controls (Wolff et al., 2020, pp. 1130–1131).

Internal rebordering practices within the Schengen area during the 2015–2016 crisis were prompted by the refugee issue. The number of asylum applications lodged in EU member states doubled in 2015 in comparison to 2014 and tripled in comparison to 2013 (Eurostat, 2021). Contrary to Schengen governance, the Dublin system anchored the international protection of refugees in the territory of a given state considered responsible for refugee protection in accordance with EU law. The latter embraced several EU legal measures which constituted the core of the Common European Asylum System (CEAS), completed in 2013. The Dublin III regulation determining the member state responsible for examining an application for international protection was the key component of CEAS. It allocated responsibility for providing temporary assistance to asylum seekers and eventually granting them refugee status to respective national authorities. Therefore, bordering was an inherent feature of the EU's common asylum policy, epitomized by CEAS and extended over the Schengen area.

The huge inflow of asylum seekers in the autumn of 2015 engendered an enforced debordering on the external frontiers of the Schengen areas. Irrespective of the causes of that phenomenon (which varied from country to country), it had serious consequences for CEAS. Watching the refugee issue through the postfunctionalist lens, it is important to zoom in on the specific interplay between the two critical attitudes: permissive consensus and constraining dissensus. The turbulent circumstances accompanying the massive and largely uncontrolled influx of asylum seekers from the territories of Turkey and Libya facilitated the widespread acquiescence of the governments of EU member states to mass arrivals. The humanitarian imperative, enhanced by dramatic media coverage of the tragedy of displaced people forced from their homes by wars and protracted violent conflicts, was largely undisputed. The rapidly growing death toll at sea and the heart-breaking story of the lifeless body of a three-year-old boy named Alan Kurdi coincided with the decision of the German federal government in mid-September to adopt a "refugees welcome" policy (Adler-Nissen et al., 2020, pp. 75–76; Maricut-Akbik, 2021). In Brussels, the Council of the EU adopted on 22 September 2015 a controversial plan of internal relocation of 120,000 asylum applicants from Greece and Italy to other EU member states over two years (in addition to 40,000 "persons in clear need of international protection" who were subject to a relocation mechanism approved in June 2015).

The dynamics of this enforced debordering curbed the strong tendency toward permissive consensus with

regard to migrants. Fear of successive waves of asylum seekers spilling chaotically across Europe was augmented by reports on the booming human smuggling industry in the Mediterranean region and warnings of terrorist and criminal threats from individuals and crime networks (Europol, 2016; Europol & INTERPOL, 2016). Many EU citizens were concerned with the negative repercussions of the surge of refugees for security, economic well-being, and public order (Gorodzeisky & Semyonov, 2021; Servent, 2019; Wike et al., 2016). The permissive consensus on the reception of asylum seekers was rapidly waned, giving way to constraining dissensus over the application of CEAS, refugee relocation, and, most importantly, the keeping of internal borders in the Schengen area wide open. Politicization of the refugee problem, bolstered by anti-immigrant, right-wing parties, and the concomitant securitization of the migration issue, owing to law-enforcement authorities and xenophobic social circles highly active on social media, led to a new permissive consensus having a specific defensive and deterring nature. Internal rebordering became the key element of the politicized agenda of the EU in the years following the migration crisis. With the twilight of Germany's hospitality agenda, the temporary reintroduction of checks at internal borders by several member states, the collapse of the relocation scheme, and the shift of the center of gravity to the management of external borders, the EU's common asylum policy fell victim to the permissive consensus regarding the rebordering of the Schengen area.

The Covid-19 crisis has provided additional arguments for the postfunctionalist "reverse" with regard to border management in the EU. The first weeks of the slow-burning crisis were marked by chaotic attempts on the EU level at controlling the rapidly proliferating pandemic (Bossong, 2020; Schmidt, 2020; Stępka, 2022; Svendsen, 2021; Tesche, 2022; Vila Maior & Camisão, 2022). Constraining dissensus was preponderant in key areas of supranational decision-making, such as health (distribution of medical supplies, vaccination programs), economy (emergency measures, recovery funds), and political coordination. However, restrictions on mobility as safeguards against the rapid transmission of Covid-19 were widely accepted and immediately applied. Permissive consensus was built around internal borders as first-line security arrangements in the Schengen area (Vila Maior & Camisão, 2022, pp. 85–90).

Therefore, the Covid-19 crisis has produced a dramatic increase in the number of reintroduction notifications. From the very first decision on the reestablishment of border controls because of Covid-19 taken in mid-March 2020 to the present day (as of 7 April 2022), the number of such decisions amounted to 183. From a legal and a political point of view, these decisions are hardly questionable (Montaldo, 2020, p. 527). Moreover, the dynamics of the Covid-19 pandemic project a more prolonged period of exceptional measures, including mobility restrictions and internal border checks. Proposals formulated by the European Commission (2021a) for a full

restoration of the Schengen area as a free-travel zone do not principally question the right of member states to reintroduce internal border controls. The Commission calls for more coordination at the European level, proportionality of border checks, and their introduction as the last resort. This constitutes an additional argument for the durability and systemic purposefulness of internal rebordering in the Schengen area.

5. Conclusions: Postfunctionalist Flaws Revisited

The 2015 migration crisis marked a turning point in the perception of the free movement of persons in the EU and within the Schengen area. In late 2015 and early 2016, nine Schengen countries temporarily restored controls at their internal borders. Later, six of those countries maintained checks at all or selected sections of their internal border, making it a permanent practice. The Commission's failure to take appropriate action to fully restore unrestricted mobility in the EU, coinciding with the unsuccessful revamping of the CEAS and the controversial handling of tensions at the EU's external borders, supported the arguments for the rebordering of Schengen and de-Europeanization of the EU's area of freedom, security, and justice. It was also argued that the migration issue caused a high degree of polarization across Europe, enhancing thereby the politicization of the Schengen regime. As Hooghe and Marks (2018, pp. 10–11) ascertained, "Postfunctionalism places the migration crisis in the context of domestic politicization in order to explain why transnational pressure was weak and why so many governments were unwilling to cooperate." In accordance with the postfunctionalist argument, the migration crisis triggers polarization within the European polity, which tends to politicize the crisis by referencing national identity, aligned with state jurisdiction. A resort to emergency measures, such as the reinstatement of checks at the common borders, is considered a weakness of transnational actors.

Although the European Commission has not been assertively executing its monitoring tasks and tools provided by the Schengen evaluation system (Montaldo, 2020, p. 529), it has regularly addressed the issue of rebordering and put forward several propositions, including those contained in a strategy toward a fully functioning Schengen area. Rebordering has also been discussed in the European Parliament (Bélanger & Schimmelfennig, 2021). The politicization accompanying the rebordering discourses in these supranational institutions has challenged national identities and put the issue of the integrity of Schengen high on the European agenda. However, it did not question measures of internal rebordering; rather, it pointed to cross-border and supranational mechanisms of cooperation across the EU.

The limited scope of the politicization of external and internal rebordering in EU institutions and national authorities shows a permissive consensus rather than a constraining dissensus. This is due to

the fact that rebordering has been functionally embedded in Schengen as a free-travel area and as part of the EU's area of freedom, security, and justice from its very beginning. Although it might be perceived in terms of contested sovereignty within Schengen governance (Votoupalová, 2019, p. 84), a complete debordering has never taken place in the Schengen area.

Schengen rebordering demonstrates that crisis-driven politicization may be part of a long-term adaptation process aiming to mitigate the constant friction between supranational imperatives and national dissent without eradicating it from multi-level mechanisms of security governance in the EU. Bordering has been part of the EU's security policy and as such is more prone to securitization than politicization. The internal rebordering rules defined in the SBC respond to the national security interests of member states, yet they also emphasize the need to adopt this mechanism in exceptional circumstances which put the overall functioning of the Schengen area at risk. Such a precautionary measure transfers responsibility for safeguarding cross-border movement to member states who become "guardians" of the Schengen principles. My argument strengthens Eilstrup-Sangiovanni's (2021, p. 464) point that, due to the particular nature of European integration, "external re-bordering presents a doubtful alternative to internal re-bordering in the present EU context." It also disputes the assumption made by Genschel and Jachtenfuchs (2021, p. 350) that "postfunctionalism posits a basic tradeoff between the functional scale of governance and the territorial scope of community." Regarding internal rebordering in the EU, one can argue that postfunctionalism undervalues the territorial level of European governance in which networks and connectivities between national actors and supranational entities tend to avoid politicization. This concurs with Börzel and Risse (2018), who noted that postfunctionalism tends to underestimate the resilience of the EU. Rebordering may be interpreted as a mechanism designed to ensure resilience during crises or emergencies which are fundamentally depoliticized and are coped with for the sake of restoring full-fledged cooperation and integration across the EU.

Acknowledgments

Conflict of Interests

The author declares no conflict of interests.

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Article

Loops of Violence(s) Within Europe's Governance of Migration in Libya, Italy, Greece, and Belgium

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Abstract

Studies have reported alarmingly high rates of traumatic experiences for refugee populations. While nearly all refugees experienced trauma in their country of origin, a vast majority of those seeking protection abroad also face (extreme) violence during their journeys and once in the country of destination. By concentrating on the migratory experiences of about 300 unaccompanied minors that we approached in Libya, Italy, Greece, and Belgium, this article analyses how different forms of violence are inflicted on these young migrants while moving to Europe. By concentrating on personal accounts of (recurrent) interactions with the EU migration and border management tools, we reveal the structural violence within the day-to-day governance of migration. Often framed as unintended or accidental, the article discusses how violence is instead ubiquitous, as it is systematically inflicted on migrants—including unaccompanied minors—in the form of repeated series of violent events or "loops of violence." Importantly, such manifestations of violence are perpetrated by key institutional and non-institutional actors in the "migration industry" who are (in)directly involved in managing migration both inside and outside of the EU. Conceptually, we rely on K. E. Dempsey's political geography of the different typologies of violence within Europe's governance of migration and asylum and use it to concentrate on key transitional phases/fractures in migratory trajectories—i.e., as unaccompanied young migrants (try to) cross international borders and legal boundaries.

1. Introduction

Since migration became a top security issue, EU authorities have introduced countless policies to curb and control the arrival of unwanted migrant populations. Today, a variety of policy tools target migrants and asylum-seekers inside and outside of Europe, as well as along the external frontiers of the EU (Burridge et al., 2017). Since the late 1990s, European policymakers and the governments of individual member states have signed a variety of international agreements with countries such as Turkey, Libya, Tunisia, and Morocco to externalize migration and border management (Spijkerboer, 2018). Concurrently, other tactics have also been deployed to increase authorities' ability to detect, detain, and deport those who have already reached Europe (Orsini, 2018). In key spots of the external frontiers of the EU—e.g., the Italian border island of Lampedusa (Orsini, 2016)—surveillance capabilities were enhanced, but several detention and reception facilities were also built to confine migrants and asylum-seekers while processing their identification and/or applications for international protection (Mountz et al., 2012).

The use of these control and management tools has been combined with several other practices, including pushbacks at the external and internal frontiers of the EU (Bourbeau, 2017) and the introduction of increasingly complex administrative procedures required to settle down in a European country. Importantly, such a complex array of formal and informal migration management and control strategies operates alongside the entire spatial and temporal trajectories of unwanted migrants and asylum-seekers, from the moment they decide to leave their country of residence until they eventually become EU citizens (Alpes & Spire, 2014).

In this article, we focus on the lived experiences of a specific mobile population to provide a bottom-up view of the functioning of this composite governance apparatus. The article builds on interviews and questionnaires we collected with about 300 unaccompanied minors (UMs) that we approached in Libya, Italy, Greece, and Belgium. As we were collecting these main data sets, we also gathered further information through observations that we conducted in key loci of Europe's governance of migration and asylum—e.g., in Greek and Belgian reception facilities, in shelters for victims of human trafficking in Italy, and in the informal camps of Ventimiglia and Calais.

By developing our analysis from this ground-level perspective, our overarching goal is to expose how the use of violence on UMs attempting to enter and settle in Europe is structural to Europe's migration and asylum governance. As they moved along their migratory trajectories, all of the research participants went through what we define as "loops of violence": repeated series of violent events that are perpetuated by a variety of institutional and non-institutional actors who are in/directly involved in the everyday management of migration and asylum.

The article starts with a brief discussion of the research project from which data were generated and how we dealt with the key ethical challenges to developing our study. We then provide an overview of the literature of the core academic debates concerned with the nexus of violence-migration. Next, by building on Dempsey's (2020) typologies of violence within Europe's governance of migration and asylum, in the main body of the text, we present two specific loops of violence frequently described by the research participants: the crossing of international borders both outside and inside of Europe, and the multiple forms of violence UMs suffer in order to (try to) regularize their legal status within the EU. Finally, the article ends with a reflection on the structural nature of violence within Europe's governance of migration and asylum.

2. A Multi-Sited and Longitudinal Study of UMs' Psychological Wellbeing on the Move

The data discussed in this article was generated from the European-Research-Council-funded project CHILDMOVE, a longitudinal study of UMs' migratory trajectories and the evolutions of their psychosocial wellbeing in relation to their pre-, peri-, and post-migration experiences. A research team conducted interviews and provided questionnaires at multiple points in time with about 300 UMs—83% boys and 17% girls—who were approached in four different European and non-European countries: Belgium, Italy, Greece, and Libya. Importantly, given the longitudinal design of the study, most research participants were followed over time and also as they moved, possibly to other countries.

The Libyan study was cross-sectional in design, as the participating UMs in Libya were interviewed only once. Between April and July 2018, three researchers collected data in four detention centers, located in and around Tripoli, which were managed by the Government of National Accord on behalf of the EU. In these facilities, we spoke with 99 UMs, 93 of which were boys. Access to the centers was possible after obtaining official permission from the Government of National Accord and thanks to the support of the EU delegation in Libya.

In Europe, the data was generated from three longitudinal studies conducted between 2017 and 2021. In Italy, data were gathered in multiple locations, including formal and informal reception facilities in Palermo, Rome, and Ventimiglia, as well as shelters for victims of human trafficking and sexual violence in Sicily, Campania, and Piedmont. In Belgium and Greece, researchers gathered data mainly in formal and informal reception (and detention) facilities, including hotspots. Notably, data have been collected over three different measurement moments during a two-year period, in order to follow the trajectories of UMs and developments in their psychological wellbeing.

All measurement moments included semi-structured interviews and self-reported questionnaires about participants' demographic background, their journey, current living situation, stressful life events, and overall wellbeing. Although questionnaires were translated into multiple languages, researchers often relied on the support of interpreters during the interviews. Additionally, we conducted several observations in and around those places where we collected interviews and questionnaires.

Due to the minor age of the migrant population involved in this study and the settings where we approached them, we faced a variety of ethical challenges throughout the research. This was especially the case in Libya, where UMs were interviewed in detention, but also during the European field studies. In order to mitigate risks, we selected those research participants who self-declared to be older than 14, as we considered them old enough to give their informed consent. However, regardless of this selection, working with these young migrants raised ethical challenges, as most of them were in extremely precarious situations and without a guardian or a legal representative.

This explains why, in between the different measurement moments, we conducted distance follow-up using communication tools such as emails, Facebook,

and phone cards given to participants. This allowed us to better understand the living conditions UMs were experiencing and help them with their most immediate needs where and when necessary while keeping the attrition of participants as low as possible. It was also due to ethical concerns that we chose to conduct only a cross-sectional study in Libya, in order to avoid incentivizing UMs to attempt the journey to Europe across the extremely dangerous and deadly Sicilian Channel.

Before starting the project, we received ethical clearance from the Ethics Committee of the Faculty of Psychology and Educational Sciences at Ghent University, Belgium; the Committee of Ethics in Research at the University of West Attica, Greece; the Hellenic Data Protection Authority; and the Commission for Ethics in Research and Bioethics in Italy. In addition, we obtained relevant permission for the study from governmental bodies, such as the First Reception Service and Hellenic Police in Greece, and the federal agency for the reception of asylum applicants in Belgium.

3. Structural Violence in (the Governance of) Migration: An Understudied Field of Enquiry

Academic works focusing on the migration-violence nexus remain relatively scarce. This becomes even more apparent if we consider the enormity of scholarship in the broader field of migration studies (Bank et al., 2017). Most of the existing work in this area concentrates on violence as the main trigger of forced migration. From this perspective, migration is seen as a strategy to escape multiple forms of violence.

Studies concerned with the North American context highlight how migrating to the US or Canada allows migrants and asylum-seekers to flee the extreme violence of criminal gangs (e.g., Dudley, 2012; Paley, 2014). As for Europe, academic work focuses on the role of several forms of (extreme) state violence in explaining unauthorized migration to the EU (e.g., Crawley et al., 2017; McMahon & Sigona, 2018).

Other scholars move their focus somehow "forward" along migrants' trajectories, concentrating on the experience and occurrence of violence after departure, that is, during peri- and post-migration. Most of the Anglophone literature is centered on the US, the UK, and the EU, with a smaller stream of other works that deal instead with Canada and Australia. This scholarship exposes mainly the violence that traffickers and smugglers, gangs, or militias, and also state officials charged with migration control inflict on migrants and asylum-seekers (e.g., Bensman, 2016; Shelley, 2014).

Of note here is that most of these works present violence as somehow unrelated or exceptional to the everyday governance of migration (e.g., Gordon & Larsen, 2021; Heyman, 2018). This is no surprise, however; for Isakjee et al. (2020), this lack of analytical interest in the structural nature of violence within Europe's governance of migration is consequent to the identification

with liberal democratic values. A core assumption relative to (the absence of) state-sponsored violence within liberal democracies requires that structural forms of violence are removed from public and academic debates—They must remain almost invisible to the public eye.

However, a relatively recent body of work has taken up the debate surrounding the systemic use of violence as inherent to the everyday functioning of securitized migration governance systems. Davies et al. (2017) present inaction as a core strategy that authorities use to deprive migrants and asylum-seekers of access to their most basic needs. This lack of support impacts the individual's ability to survive and produces a form "of subjugation of life to the power of death"—i.e., necropolitics (Mbembe, 2003, p. 39). Others have concentrated instead on the extreme violence exercised upon migrants and asylum-seekers when they try to cross the external frontiers of the EU (e.g., Jones, 2016; Schindel, 2019), or as they interact with externalized migration management tools operating in so-called "transit countries" (e.g., McConnell et al., 2017). Similarly, an increasing number of works now focus on the violence that migrants and asylum-seekers encounter after they have entered Europe. While some scholars have concentrated on the functioning of detention and reception regimes (e.g., Keygnaert et al., 2012; Vervliet et al., 2014), others have focused on heavily policed internal frontiers of the EU (e.g., de Vries & Guild, 2019; Tazzioli, 2021).

This article engages mainly with this last stream of literature, as we intend to expose how Europe's governance of migration and asylum is inherently violent. By relying on Galtung's (1969, p. 171) notion of structural violence as a form of "violence [which] is built into the structure," we show how multiple forms of violence are used systematically on UMs moving into Europe. As a discriminated population (Gupta, 2013), the "harm or damage [suffered by UMs generates from an] unequal distribution of power" (Weigert, 2010, p. 126) which is (re)produced by "social structures or institutions" (Grauer & Buikstra, 2019, p. 26)—i.e., EU governance of migration and asylum.

As noted by Dempsey (2020, p. 1), "bordering processes, exclusionary securitization of migration, and asylum policies create spaces in which violence against migrants is provoked, committed, condoned, or protracted." Consequent to the introduction of increasingly restrictive policy frameworks, so-called "irregular migrants" today experience increased precariousness and vulnerability. This population's (in)ability to reach the EU and move freely within it depends upon the interactions with a constellation of (non-)institutional actors (in)directly involved in governing migration (De Giorgi, 2010). While Europe's securitized migration policies primarily concern adult migrants, these policies also impact (unaccompanied) minors. This is regardless of the protection systems they are subjected to in EU or member states' legislations and to an even greater degree when unaccompanied (Iusmen, 2020).

Today the migration of minors in Europe is governed through the (re)production of precariousness (Heidbrink, 2021): "A politically induced precariousness…which results in…real or symbolic violence…and a failure to afford adequate protections" (Barn et al., 2021, p. 3). Dempsey (2020, pp. 1–3) built a spatial model for untangling the typologies of violence which are systematically experienced by migrants and asylum-seekers arriving in Europe:

> [Violence can be] (1) physical, (2) verbal, (3) psychological, (4) sexual, (5) and non-linear (disrupted potential for a life with some stability and growth/life integrity), [and operate] across three geopolitical spaces: (A) source/origin state, (B) transit/transitional state(s), and (C) EU host state.

While Dempsey highlights the actual and multiple interconnections and overlaps that exist among these five typologies of violence—e.g., sexual violence as a form of physical but also psychological and often verbal violence (Campbell, 2013)—for analytical purposes she describes them as distinct from one another. Dempsey also concentrates on the occurrence of such forms of violence somehow in compartments, across three distinct geopolitical spaces.

To discuss the loops of violence operating on UMs moving into Europe, we operationalize Dempsey's (2020) analytical model but with some modifications. In fact, it is our intention to show how the five typologies of violence de facto cumulate in key transitory physical, but also intangible in-between, spaces; that is, (a) at the crossing of international borders (both within and outside of the EU), and (b) when UMs try to access international protection and/or obtain legal status in Europe.

UMs must navigate through these liminal spaces if they want to achieve their migratory aspirations—e.g., moving from a temporary and precarious residence permit to one more permanent and secure. For our scholarship, it is in these fractures (de Vries & Guild, 2019, p. 2157) that the intrinsically violent nature of the everyday functioning of Europe's governance of migration and asylum becomes more visible and relevant.

4. The Loops of Violence in Europe's Governance of Migration

According to the World Health Organization, violence is "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that…results in…injury, death, psychological harm, maldevelopment, or deprivation" (Krug et al., 2002, p. 172). Moving from this definition, Dempsey (2020) constructed five typologies of violence in the context of migration.

If physical violence refers to any act which can result in pain or physical injury, verbal violence in the context of migration may involve, for instance, the everyday experiences of racism and other derogatory ways in which individuals might be addressed. Clearly, both forms of violence also often produce psychological harm, such as symptoms of anxiety, depression, or post-traumatic stress disorders—i.e., psychological violence. Sexual violence often implies physical, psychological, and also verbal violence, as it consists of "any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic…directed against a person's sexuality using coercion" (Krug et al., 2002, p. 149). Finally, non-linear violence concerns "disrupted potential for a life with some stability and growth/life integrity" (Dempsey, 2020, p. 3) and it takes place when personal aspirations are frustrated or made simply impossible to achieve.

In the next pages, we highlight manifestations of these overlapping forms of violence to untangle the multiple ways in which structural violence operates within Europe's governance of migration and asylum. In particular, we concentrate on key transitory spaces of migration and asylum governance and a series of "archetypal" actors of the "migration industry" operating there (Andersson, 2014; Schapendonk, 2018). Practically speaking, we account for the frequent interactions between UMs and border or coast guards, as well as other law enforcement officials and reception and detention facility personnel, but also their encounters with smugglers and traffickers. Aside from other migration industry agents—e.g., members of civil society and international organizations, guardians, or volunteers, which we do not have space to consider here—these were the actors that our UM participants indicated as meeting most frequently and as being the most violent.

4.1. Loops of Violence Across International Borders

Approaching the countries that are most heavily involved in managing migration and asylum on behalf of the EU—e.g., Libya, Morocco, or Turkey—young migrants have often already been exposed to several forms of violence. According to most of the UMs who talked to us, such violence is normally perpetuated by smugglers and traffickers, as well as border guards and other local law enforcement officials. This is the account of a 16-year-old boy we met in Ventimiglia, an Italian border town where migrants wait in makeshift camps before they try to cross the border with France:

> We spent 10 days in the Sahara with the traffickers when we were in Sudan: We didn't have food, just boiled pasta and water, but it wasn't enough. [We] were around 106 persons in one lorry in the Sahara. The lorry was crowded, small children and babies were there. The heat and the lack of food were very difficult [to deal with]. On the way to Libya, we did not have food anymore, we had to drink water mixed with diesel, oil. I saw the human traffickers take some girls and ladies to sleep with them…but if you try to stop them, they beat you with a plastic stick.

As UMs move closer to the external frontiers of the EU, they are often forced into prolonged stops, hiding in isolated buildings (Tazzioli & De Genova, 2020). Many told us that they felt scared as if they had been kidnapped, and that they also experienced and witnessed (extreme) physical violence during these periods of waiting:

> From [the Libyan city of] Sabratha we kept changing cars. From one small car to…another….When we arrived in Sabratha [the smugglers] put us in a small room. [After they took us to the sea the] boat started sinking….They took us back to the same room and started beating us.

A girl we interviewed in Italy told us that, while forced to stay in one of these so-called "safe-houses," smugglers tried to rape her; as she fought back, she was stabbed.

When caught by law enforcement during attempts to cross the external frontiers of the EU, many of our interviewees were systematically pushed back—clearly, a form of non-linear violence. Similar to the arbitrary detentions experienced at the hands of smugglers/traffickers, these pushbacks also entailed (extreme) physical and verbal violence which, in turn, increased minors' psychological suffering. This is the experience of the so-called Balkan Route that a 15-year-old boy we interviewed in Belgium shared with us:

> We tried a lot to cross the border of Bulgaria. [Then] we tried a lot to cross the border [with Croatia], but always when we were trying, they were catching us. [The police] beat you…and they leave the dog to you [so] that the dog will bite you…and then they will send you back, they will just [make you] cross the border back….If they catch you in Bulgaria, then they will send you to Turkey; if they catch you in Hungary, then they will send you to Serbia.

At the time of the interview, more than half of the UMs that we approached in the Libyan detention centers had already tried to cross the Sicilian Channel at least once; after being caught by authorities, they often ended up in detention. This, at least, is the case in Libya, a country where smugglers often work in coordination with law enforcement officials:

> We were caught three hours after we went to sea. [It wasn't the police because] they were the traffickers themselves. [Then] they sent us back, [and] they started to beat us in the room [where they hid us]. Then the police heard the sounds and they [went to free us] from the traffickers. [And then] they brought us to [another center where I was detained for] a month and a year.

According to young migrants' experiences, these imprisonments, which can last for an indefinite amount of time, constitute forms of extreme non-linear violence. While in detention, UMs told us that they had also suffered numerous types of physical, psychological, and verbal abuses. A girl we interviewed in Italy recalled her experience of discrimination in Libyan detention centers:

> Yeah, in Libya [I felt I was treated differently because I am Nigerian]!…It's normal, they said, we are black, we are Africans. There is what they say in Arab: [that] Nigerians are bad….So, that is how they treated us….They treat us different…they beat us in Libya.

Being forced to wait in dangerous environments is not only frustrating but threatening and frightening. Asked about whether he felt in danger when he was in Libya, one research participant we approached near Tripoli told us that he did not fear being killed, what really scared him was being tortured. Once detained or kidnapped, the only option for UMs is to rely on smugglers to start moving again.

If this is the case for those trying to cross into the EU through the Mediterranean, the situation is equally difficult across many of the EU internal borders. We interviewed a young boy in Germany, who had finally left Italy after crossing Switzerland, a trajectory he had attempted a number of times before finally succeeding:

> [I was] on the bus at the border with Switzerland, they stopped the bus for checks…for control, you know?…And then…they caught [me] and they sent [me] back to Italy [where I had to stay] in an informal camp in Como.

As forms of non-linear violence, these pushbacks and the prolonged waits in informal camps produce psychological strain. As reported by Uzureau et al. (2022), while waiting for the next attempt to cross the border, UMs felt increasing anxiety, fear, and the inability to get any clear view of their future. In these informal camps, UMs often experience other forms of violence, which may be inflicted on them by law enforcement officials. We visited the so-called "Jungle" of Calais to assess the living conditions in the area; many of the research participants—especially but not exclusively those we met in Belgium—were planning to go there or had already been as they waited to try crossing into the UK via the English Channel (Tyerman, 2021):

> [I] was injured in [my] eyes and nose…because the French police caused an accident. [At] that time [I] was in a place where all the migrants were sleeping, [we] were all together, [and] the police came to take [our] clothes…tents, all [our] stuff. [I] left with [my] friends but a policeman shot [me] in the eye and in the nose with…flash balls.

When crossing the external or the internal borders of the EU, the UMs we interviewed were exposed to—and often experienced—most if not all the typologies

of violence outlined by Dempsey (2020). These manifestations of structural violence accumulate to form sequences that UMs must experience repeatedly in order to move further on along their planned journeys. Similar loops of violence operate as UMs (try to) deal with the countless administrative procedures necessary for them to settle in Europe.

4.2. Loops of Violence Across Legal Statuses

Among the vast array of strategies developed to control and hinder the arrival and stay of unwanted migrants and asylum-seekers in Europe, authorities today also depend on interlinked legal and administrative procedures whose function is to slow down, divert, or even revert migration. As highlighted by several scholars, one key purpose of Europe's governance of migration and asylum is to control the temporalities of migrants and asylum-seekers' (im)mobility into the EU (e.g., Griffiths, 2021; Stel, 2021).

Thus, migration today is disciplined also through never-ending bureaucratic processes (Haas, 2017; Mountz, 2011). By stripping foreigners of control over the temporality of their lives, legal and administrative procedures are part of the so-called "politics of exhaustion," a form of violence impeding migrants' achievement of their migratory plans and aspirations (Vandevoordt, 2021; Welander, 2021). As they wait for the resolution of lengthy, complex, and uncertain procedures, migrants and asylum-seekers often enter/exist within several formal and informal detention and reception systems.

Many of the UMs we interviewed after they had successfully crossed the EU external frontiers in Italy or Greece had to spend time jailed in a hotspot. These closed centers were established by the EU in 2015 in "so-called frontline…member states [such as Greece and Italy, to process the] registration, identification, and removal of apprehended migrants [or] asylum claims" (Papoutsi et al., 2019, pp. 2201–2202) under the supervision of EU officials. While this imposed immobility constitutes in itself a quintessential form of non-linear violence, it often produces severe psychological strain on detainees. We interviewed this 17-year-old boy in the Lesvos' Reception and Identification Centre, better known as the "Moria hotspot":

> All of…[the] guys [here have] like psychological problems. All of them. Like they stand, they sit, they cut themselves, one took too much pills to kill himself, one is jumping…the fence, one put in the window to cut his head.

In these hotspots, UMs often find themselves sharing overcrowded living spaces with adults and are further exposed to violence. Living conditions, in general, are very poor, as confirmed by this 16-year-old boy:

> One day in Samos, people came and told us that [they were] from UNHCR….We told them that where we are staying the situation is really bad, in the container…there was no light, there was no bathroom. When it was raining the roof was dripping, the wind was going through the tent, no window, no light.

Another 17-year-old boy we interviewed in the same camp stated that the container he had to live in had "no door, no windows. In the night, drunk men are coming to the minors' section, and they hit the containers with sticks to scare us. I'm always afraid to sleep."

When violence does not come from the other inmates, it is often perpetuated by the police. In the words of this 17-year-old boy interviewed in Moria:

> The police hit me here [in the camp.] The same thing happened in Syria, they hit me. I haven't seen any difference….I was hit many times by the police when I was in the container or in the line for food.

To access protection and leave the hotspots, UMs must first have their minor status recognized. Yet, due to the general climate of suspicion concerning fraudulent age declarations (Netz, 2020), these procedures are often extremely long and unsuccessful.

If and once UMs are officially recognized as minors, they are generally moved to other centers as they enter dedicated protection programs. However, due to the generalized lack of proper guardianship schemes and the complexity of the related bureaucratic procedures, in reality, entering protection takes months if not years. This is the case, for example, in asylum or family reunification procedures as shown in the case of a 16-year-old boy who talked to us in Moria:

> We were told back in Mitilini that, in order to apply for family reunification, you need to spend at least six months at the camp. That camp was in such bad condition that I did not want to stay there. When I went to the asylum services, I spoke to the translator, and he told me that the process [for family reunification] would take six to seven months. That is why I did not [apply for] it.

Facing these frustrating and painful waits, a significant number of the UMs who talked to us decided to renounce to their rights, give up on any legal procedures, and avoid protection schemes and reception centers. Since they found themselves traveling alone or with other UMs or adult migrants and asylum-seekers, they often ended up spending more time in informal camps. There, they were exposed again to a variety of abuses, including physical, verbal, psychological, and sexual violence.

A Nigerian girl trafficked to Italy told us that until she could obtain her residence permit, she had to work as a prostitute. After she got pregnant and moved

into a shelter, she suffered sexual, but also physical and verbal, abuse—i.e., racism—from the staff working there. Status-less and racialized migrants, especially minors, find themselves at the intersection of several and extreme vulnerabilities (Cleton, 2021; De Graeve & Bex, 2017): Their multiple precarities expose them to all forms of violence and abuse (Maioli et al., 2021; Phillimore et al., 2021).

It is important to stress that demands for accessing family reunification or international protection frequently fail, as we saw for many of our research participants, which produces further psychological strain on young migrants. The excerpt comes from an interview with a young migrant girl we approached in a Belgian reception facility:

> Our case has been dismissed for a third time by the asylum committee, and we are about to go to court. I don't know why it keeps happening. I've been living here for more than two years now and I'm still invisible. I'm tired of waiting, we only wait.

When they appeal negative decisions, UMs are forced into other prolonged and uncertain waits, during which they find themselves navigating several formal and informal reception facilities. Before UMs can eventually access a safe (and permanent) legal status, they often find themselves exposed to repeated loops of violence. As they move along these loops, UMs experience non-linear but also physical, psychological, verbal, and sexual violence.

5. Conclusions

The EU's securitized governance of migration and asylum aims to reduce and control so-called "irregular migration" into Europe. As such, it intrinsically functions as a form of non-linear violence. When migrants and asylum-seekers decide to emigrate to Europe they are confronted with a variety of both physical and intangible barriers, such as barbed wire border fences, complex visa applications, or extremely tough police controls. These barriers form a series of obstacles whose aim is to halt or slow down and complicate this population's migratory plans and aspirations (Triandafyllidou & Dimitriadi, 2014).

Yet, as we have demonstrated in this article, non-linear violence rarely exists on its own. It often implicates psychological suffering and is likely to generate conditions that increase migrants' and asylum-seekers' precarious situations, which in turn exposes them to other forms of violence (Likić-Brborić, 2018). Many of the UMs we interviewed did have a family but had decided to emigrate to the EU alone, facing a long and dangerous journey otherwise impossible—e.g., with a valid travel permit and using a much cheaper and safer flight to reach relatives or friends residing in Europe.

The UMs we spoke with had no other choice but to rely on smugglers and traffickers if they wanted to access safety and the protection they are entitled to in Europe. As such, these young migrants became commodities (Vogt, 2013) used by a variety of actors of the "migration industry" (Andersson, 2018), including law enforcement, in order to extract capital (Achtnich, 2022) in the form of ransom, indentured labor, or sex work.

Importantly, if in order to move "forward" along their migratory trajectories UMs had to endure several forms of (extreme) violence, the same requirement applied when they tried to access rights and obtain legal status inside of Europe. Using the concept of "slow violence," Schindel (2019) and others (e.g., Grace et al., 2018; Mayblin et al., 2020) have pointed out the everyday frustrations, fears, and overall uncertainty that complex and often unsuccessful administrative and bureaucratic procedures—and the threat of deportation—generate for migrants and asylum-seekers.

As we have shown, while waiting to access safety and permanent legal status in Europe, UMs are exposed to violence and abuse. In general, securitized migration policies induce a form of hyper-precariousness (Lewis et al., 2015) on UMs, hindering their protection by making them more vulnerable to violence, particularly the case when they have to interact with actors of the so-called "migration industry" in key "borderzones" (Topak, 2020).

By incorporating Dempsey's (2020) typologies of violence into our loops of violence model, we have shown how physical, psychological, sexual, verbal, and non-linear forms of violence combine and accumulate in the main transitory spaces of (the governance of) migration. Additionally, we have also outlined the sequential and repeated nature of the abuses inflicted on UMs, as young migrants suffer specific typologies of violence again and again as well as in sequence—that is, one after the other.

Such violence, we have noted, is structural because it emerges "from inequality built into structures" (Phillimore et al., 2021, p. 6). Yet, unlike other theorizations of structural violence, here we have named a series of actors, including law enforcement officials, reception and detention facility personnel, and smugglers and traffickers, who are responsible for these abuses. The day-to-day (arbitrary) decisions of these actors often translate into the systematic use of violence on UMs (Gupta, 2013).

As we discuss in another article (Derluyn et al., in press), UMs in Libya experience almost three times as many traumatic events compared to what they have experienced in their country of origin or during their journeys to Libya. Such figures are even more concerning if we consider that most of the UMs we interviewed arrived in Libya after fleeing war and deprivation at home. In general, about 80% of our research participants had experienced or witnessed physical violence since they emigrated and a very similar portion spent time in detention both in peri- and post-migration—i.e., during their journey to the EU as well as after arrival.

Notably, about 30% of our interviewees also stated that they had suffered some form of sexual abuse while

on the move. Such figures are already significant, but they were likely under-recorded in our sample, especially due to the gender distribution (Wekerle & Kerig, 2017). In general, our data show that the loops of violence did not apply equally to all UMs, and several factors could impact their ability to avoid violence. For instance, in Libya the availability of (more) financial resources allowed some UMs to free themselves from kidnapping and detention faster than others, thus reducing the probability of suffering other forms of violence, such as rape, while they were jailed.

Experiencing extreme psychological, physical, sexual, or verbal abuse was so frequent that it was almost normalized by many of the UMs who talked to us, as pointed out by this 16-year-old boy we interviewed in Belgium:

> [In Libya] there was no food, there was punishment….I didn't have money. They didn't believe me…so they…kick me a lot…and [there was no] food….But it's normal…it's normal life in Libya.

Those UMs who crossed into the EU via the so-called Balkan Route referred to "the game" when talking about their repeated attempts to travel undetected. The functioning of legal and international borders produces "a state of continuous disruption or dislocation [which] can further compound migrants' stress and anxiety, generating feelings of precariousness, fear, loneliness, and hopelessness" (Dempsey, 2020, p. 7).

Studies on the mental health of minor and adult refugees demonstrate the extremely high rate of traumatic experiences these populations must endure as they try to reach international protection abroad (e.g., Blackmore et al., 2019; El Baba & Colucci, 2018). While our sample remains limited, according to our data the experience of such violence becomes particularly intense when UMs (try to) move beyond key barriers imposed on them by authorities. As these barriers are very difficult to cross, most individuals will have to make multiple attempts before succeeding; this means that violence will be repeated in very similar sequences to form what we have referred to as loops of violence.

In addition to the two loops of violence that we have outlined in this article, there are several other sequences of violence that UMs and other migrants and asylum-seekers must face during key ruptures in their migratory trajectories, such as deportation or when minors reach the legal age of majority (de Vries & Guild, 2019).

For these reasons, we suggest using the model proposed by Dempsey (2020) not only to explore the occurrence of violence in the three distinct geopolitical spaces of the country of origin, the countries of transit, and the host European state but also to focus on transitions between one country and another, one's legal status (or the lack of it) and another. It is within these junctures too that migrants and asylum-seekers are made (even) more vulnerable and exposed to violence.

Conflict of Interests

The author declares no conflict of interests.

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Article

Unaccompanied Adolescent Minors' Experiences of Exception and Abandonment in the Ventimiglia Border Space

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Abstract
This article explores unaccompanied adolescent minors' (UAMs) experiences of deterrent practices at internal EU borders while being on the move. Previous studies have acknowledged the securitisation of external borders through gatekeeping and fencing practices; however, there is a recent and continued renationalisation of internal EU borders by the member states. Like other migrants who are travelling irregularly, UAMs also often face harsh living conditions and repeated rights violations in border areas, regardless of their specific rights to protection and psychological needs. Research has called for a renewed focus on migrant children's experiences as active agents at the borders, but until now studies exploring UAMs' experiences at internal EU borders remain scarce. Drawing on Agamben's notion of "legal exception," we seek to explore how deterrent practices are confusingly intertwined and affect UAMs' psychological wellbeing and subjectivities in the Ventimiglia border space. Participant observations and in-depth interviews conducted with UAMs at the French-Italian border provide unique insights into how these bordering practices affect migrant children's legal and psychological safety and reshape their subjectivities. This contribution highlights UAMs' conflicting needs and feelings of institutional "abandonment" when left without institutional welfare protection in the border space, on the one hand, and feeling pressured to act responsibly towards their relatives, on the other.

1. Introduction

This article explores unaccompanied adolescent minors' (UAMs) experiences of securitarian practices at internal EU borders while being on the move. Internalisation of border policies towards undocumented migrants in destination and transit settings typically refers to control policies practiced within the borders of the state, such as police deterrence, exclusion from labour markets, detention, incarceration, and deportation (Broeders & Engbersen, 2007), including bordering through social welfare destitution (Davies et al., 2017; Loughnan, 2019; Persdotter et al., 2021). Within the European space, the interdependence of external and internal borders is a prerequisite for the establishment of the free movement area (Donadio, 2021). Consequently, internal border spaces are characterised by intense economic activities and human mobilities regulated by overlapping (if not conflicting) European and national policies (Donadio, 2021; McClure, 2012). Additionally, since 2015,

EU member states have regularly reintroduced controls at their national borders (Donadio, 2021). These measures are often justified by a generalised suspicion over certain mobilities, framed as potential security threats, such as terrorist threats and secondary migration movements (Bojadžijev & Mezzadra, 2015; Léonard, 2015). More recently, the management of the Covid-19 pandemic introduced additional mobility restrictions which shifted the aim of border controls from one (migration) crisis to another (pandemic) and consequently broadened and normalised security approaches at the EU level (Montaldo, 2020).

Similarly, post-2015 political discourses framing migration as a crisis were deeply rooted in a security rhetoric. Identification measures applied through the hotspot approach and the Dublin Regulation became central cogs in the EU bordering mechanism and offered additional warranty in controlling undocumented migrants' secondary movements within the EU. However, the re-nationalisation of border governance reflects the symptomatic tensions related to the free movement of goods and persons within the Schengen space (Bojadžijev & Mezzadra, 2015).

Despite the inevitable interconnection between external and internal EU borders, bordering practices at internal borders remain relatively unexplored in migration literature (Amigoni et al., 2021). We consider the border as a specific place of governance that offers conceptual tools to grasp shifting social realities of power struggles over rights and (non)belonging (Grundy-Warr & Rajaram, 2007). In this sense, the Ventimiglia border space, analysed here, is another stage in which the establishment of "'a permanent state of exception' or 'of emergency' justif[ies] the introduction of tough measures in many realms beyond the management of political violence and especially with relation to asylum-seekers and migrants" (Bigo, 2008, p. 33). Among undocumented migrants traveling in search of safety, UAMs are also confronted with harsh living conditions and rights violations, regardless of their specific entitlement to protection and well-documented extensive psychological needs (Arsenijević et al., 2017; European Union Agency for Fundamental Rights, 2020). Migrant children's active and/or forced involvement in irregular migration trajectories (Derluyn & Broekaert, 2005; Strasser & Tibet, 2020) call for a renewed focus on their multidimensional experiences of boundaries and borders (Lems et al., 2020).

Since 2015, the "migration crisis" rhetoric has contributed to a binary depiction of adolescent migrants as either innocent refugee victims (Malkki, 2010) or deceitful adult migrants (Lems et al., 2020). In border areas, childhood serves as a mechanism for control and social order (Pérez, 2014). Confronted with securitarian border policies, UAMs on the move are strongly dependent on migration and welfare officials (Menjívar & Perreira, 2019; Strasser & Tibet, 2020) and often silence their complex needs to maintain the façade of innocence and humanitarian deservingness (McLaughlin,

2018). Alternatively, they adopt strategies of invisibility and irregularity to avoid controlled forms of care and pursue their migration goals (Hameršak & Pleše, 2021; Lønning, 2020). Simultaneously, humanitarian actors and migration authorities struggle to implement adequate protective interventions for UAMs on the move (Bhabha, 2019), leaving them exposed to punitive practices when strategically engaging in unauthorised border crossings (Refugee Rights Europe, 2021). Kohli (2011, p. 314) rightfully noted that until arrival "children and young people stand at the borders of legal, practical and psychological safety." Therefore, we postulate that in the border space, UAMs' practical and legal safety (having a safe place and knowing one's rights) and related emotional safety are shattered by the practices of the "state of exception" (Agamben, 1998). Given UAMs' exposure to violence during migration, in this article, we address a significant gap in the literature related to migrant children's confrontations with border regimes at EU internal borders. Building on McLaughlin's claim that borders conceal migrant children's political subjectivity (2018), we aim to explore the profound impact of internal border practices on UAMs' experiences and wellbeing.

In the subsequent section, we explain the relevance of the concept of "legal exception" (Agamben, 1998) to analyse the impact of deterrent and humanitarian measures on UAMs' emotional wellbeing in the Ventimiglia border space. After explaining the study methodology and data analysis, we analyse adolescents' reported experiences of border control devices (e.g., fingerprinting and identification requirements, "*refus d'entrée*" at the physical border, police sweeps, and internal deportation). Next, we further analyse how these "practices of exception" were associated with feelings of fear, unsafety, and confusion about their rights as minors in the border space and produced physical and emotional distress. Finally, we examine UAMs' conflicting feelings of institutional "abandonment" on the one hand and the pressure to act responsibly on the other, by exploring their contradictory needs and priorities in the border space.

2. The Ventimiglia Border Space as a Space of Exception

Located at the northwest Italian border before a historic path across the Alps, the Ventimiglia border space is a strategic point along European migratory routes (Bonnin, 2021). It is estimated that 29,422 adults and 10,462 unaccompanied minors were refused entry by the French border police between January and August 2017 (Contrôleur Général des Lieux de Privation de Liberté, 2018). Yet, these figures need to be interpreted with caution given that many migrants succeed in crossing undetected and others are repeatedly intercepted under different identities. Ventimiglia is part of a constellation of humanitarian borders connected through migrants' journeys in which these groups face an entanglement of complex deterrent

policies of care and control (Williams, 2015). To understand the impact of specific border control devices at the Italian-French border, we rely on Agamben's conceptualisation of "legal exception" (1998, p. 17) by which the state "suspends the validity of the law," to create an alternative and confusing legal order in which "right" and "fact" have no clear boundaries. At the border, the legal exception is implemented through biopolitical technologies of government (Nguyen, 2015, as cited in Davies et al., 2017), such as biometric identification, humanitarian management, and politics of removal (Tazzioli, 2020). In the Ventimiglia border space, it is produced at different levels. After the 2011 migration arrivals and the 2015 terrorist attacks, the French government rehabilitated border control measures at its territorial borders and declared a "state of emergency" (Barbero & Donadio, 2019). First, on the French side, the violations of the Schengen Code with the reinstatement of border controls and the violations of procedural rights by French border guards (UN Human Rights Council, 2021) suspended the applicable law. Second, on the Italian side, the local police in Ventimiglia practiced daily identification controls targeting racialised migrants and resulting in arbitrary removal towards the Sicilian hotspot of Taranto. Finally, the former Roya governmental transit camp (established between July 2016 and August 2020), rooted in an extra-legal status, offered controlled care and produced a deterrent humanitarian environment (Menghi, 2021).

Within the "state of exception," migrants' political and social existence is ignored by the power of law and its sovereign protection, therefore the effects of "bare life" deeply affect their daily circumstances. Abandoned without formal assistance, migrants face a suspension of social and related welfare rights and are exposed to harm and destitution (Darling, 2009). Moreover, Davies et al. (2017) correctly note how the territorial limitations for lodging a request for international protection established under the Dublin Regulation (e.g., the obligation to apply in the country of first entry) also produced bare life for the migrant "Dublinees" of the Calais Jungle. Similarly, in the Ventimiglia border space, migrants who do not formally register for international protection or temporary refuge in governmental transit facilities in Italy are left exposed to natural risks (harsh weather, dangerous crossings) and manufactured risks produced by the deterrent practices in the space of exception (Agamben, 1998). The multiplication of risks strategically produces suffering, which steers desperate migrants toward controlled forms of assistance, such as the Roya Camp in Ventimiglia (Davitti, 2019; Minca, 2015). Acknowledging the limitations of Agamben's political philosophy when applied to contemporary migrants' spatialities inside and outside the camp (Sigona, 2015), it remains effective in bringing to light the contemporary mechanisms of sovereign exclusion (Martin et al., 2020) and reveals precarious migrants' social and political reactions to such mechanisms (Darling, 2009).

Within the border space, UAMs are also subjected to biopolitics. Given that childhood governance promotes lifesaving, wellbeing, and development, and has been implemented under a legal framework of children's rights (Holzscheiter et al., 2019; Wells, 2011), delimiting these rights consequently meant excluding children who differed from dominant images of childhood (Reynaert et al., 2012). Often, biological markers (including age, gender, and race), cultural and behavioural assumptions regarding their innocence/ignorance (McLaughlin, 2018; Ticktin, 2016), immaturity and dependency draw the lines of (non)belonging in accordance with Western standards of childhood (Wells, 2011). UAMs are legally categorized under both welfare and migration/asylum legislative frameworks (Bhabha, 2019). As underage, non-EU citizens traveling alone and outside their country of origin, UAMs are considered in particular need of institutional protection (Derluyn, 2018). Such protection is granted upon the recognition of their protection needs by welfare or migration institutions under socio-legal categories of welfare recipients. However, through tactics of non-recognition of the child's political and biological identity, duty bearers can avoid their mandate to protect. Arguments such as biological and behavioural standards (Bailleul & Senovilla Hernández, 2016; Musso, 2020), problematic resilience (Derluyn, 2018), discriminatory classifications (Paté, 2021), or involvement in risky behaviours such as criminalised migration (Doering-White, 2018; Heidbrink, 2021), frame this population's non-belonging and ultimately their (dis)ability to integrate into host societies (Migliarini, 2018). As noted by Bhabha (2019, p. 371), because they are "caught between adult-centered migration laws and citizen-centered child welfare structures, adolescent migrants under 18 years are routinely left outside the reach of effective child rights structures, even when their claims to protection have substantial merit." Hameršak and Pleše (2021) pointed out how UAMs transiting through the Balkan corridor escaped visibility or were made legally invisible by aid and youth workers and exposed to border violence. Additionally, UAMs' protection needs in transit spaces are often coupled with repressive or deterrent measures, such as detention (Doering-White, 2018; Lønning, 2018). We argue that the institutional abandonment produced through the denial of social rights legally attributed to migrant children (Senovilla Hernández et al., 2013) also occurs in transient contexts, such as border spaces (McLaughlin, 2018). We, therefore, aim to analyse how adolescent migrants' subjectivities and access to welfare support are reshaped by bordering practices in the Ventimiglia border space.

3. Methods

The article draws on data collected within the CHILDMOVE project, which applied a mixed-methods and a longitudinal design to investigate unaccompanied

minors' wellbeing upon arrival in Europe. The research received ethical clearance from the Italian Research Ethics and Bioethics Committee CNR and the Ethical Commission of the Faculty of Psychology and Educational Sciences of Ghent University (Belgium). Data collection took place between November and December 2017 and February and March 2018, combining participant observation and in-depth interviews conducted with UAMs encountered in urban areas, migrants' settlements, and official transit camps. Participants progressively agreed to engage with the research after oral explanations of the project and daily talks and walks with the field researcher. Information on the research and confidentiality were provided and minors' consent was sought for participation. Minors were selected based on their self-declared age and those older than 14 years old were considered old enough to give consent. This raised ethical challenges, as most minors encountered were traveling in precarious situations and without the presence of a guardian or a legal representative. Twenty males and four females between 14 and 17.5 years old participated in the study. They originated from West and East African countries (i.e., Ivory Coast, Guinea, Sudan,

Somalia, Ethiopia, and Eritrea). The majority had entered Italy less than six months ago (19 out of 24), some arrived in early 2017 (4 out of 24), and one experienced deportation to Italy after travelling further north. Participants' accommodations were spatially dispersed and diverse, ranging from homelessness and transit camps to more permanent housing arrangements (reception centres for minors seeking protection). Power imbalance intruded in every aspect of the researcher–participant relationship due to legal and economic inequalities (Chase et al., 2020) as well as minors' needs for a safe and sympathetic adult presence. The field researcher worked closely with a referral network of professional NGOs to adequately support both adolescent and adult migrants encountered in the border area. The interviews were conducted in French and English by the first author and with the support of interpreters for Amharic, Tigrinya, and Arabic speaking participants (21 out of 24 interviews). Upon UAMs' consent, the conversations were audio-recorded or otherwise handwritten. Respondents were asked about their migratory trajectory, past trauma, current living conditions, perceived wellbeing, reactions to stress, and ways of coping in the Ventimiglia border

Table 1. Resources for UAMs in Ventimiglia.

Name	Location and Resources Provided	Management
Roya Camp	• Remote location • Accommodation, food, shower, toilets, and healthcare • Family tracing, psychological support, and legal support from NGOs • Language classes and sports activities	Prefettura of Imperia and the Italian Red Cross Daily presence of NGOs
Local Italian Red Cross Unit Centre for adult asylum applicants	• In the city centre, near mobility resources (e.g., ATM, train station) • Small unit for 8–10 UAMs asylum applicants within the centre for adult asylum applicants • Accommodation, food, shower, toilets, social and legal support from the Red Cross staff and social services	Local Italian Red Cross
Infopoint Eufemia	• In the city centre, near the Bridge settlement and mobility resources (e.g., ATM, train station) • Shoes, tents, hiking materials, internet access, phone charging, and a safe space for women and children on Wednesdays • Legal support from NGOs	Local solidarity organisations and Progetto 20K, NGOs
Caritas Intermelia	• In the city centre, near the Bridge settlement • Mobility resources • Food distribution (morning) and shower service for women and babies • Legal support and emergency healthcare	Caritas Imperia, NGOs, and local solidarity organisations
The Bridge settlement	• In the city centre, near the Bridge settlement • Mobility resources	Migrants and local solidarity organisations
Parking near the bridge	• Food distribution (evening), games, and sports activities	Kesha Neya and local solidarity organisations

Sources: Table information based on field observations, interviews, and a report by Intersos (2017).

space. The interview questions and minors' repeated references to border practices revealed its significance for them, calling on us to analyse the following questions on a deeper level: What were the bordering experiences that UAMs experienced/witnessed? How did it affect their sense of safety? How did UAMs respond to the abandonment they experienced in the border space? We applied thematic analysis (Braun & Clarke, 2006) to search ethnographic field notes and interviews for (a) bordering and deterrent practices, (b) minors' emotional reactions to these liminal practices, and (c) feelings of abandonment and pressure to act responsibly.

4. Results

At the time of the interviews, the participants had been in Ventimiglia for a few days to up to two months and they had had various experiences of bordering practices. In their narratives, UAMs referred to mandatory identification and fingerprinting in governmental transit camps, police sweeps and internal deportations to Sicily, "*refus d'entrée*" in trains or at the border, and the ubiquitous presence of police patrols in the city.

4.1. Minors' Encounters With the State of Exception: Reported Deterrent Practices

Some participants refused to seek refuge in the governmental Roya Camp and preferred to "sleep under the bridge in a tent" and "didn't want to go to the Roya Camp because of the fingerprints taken at the entrance by the police there" (Amanuel, Eritrean boy). The data collected from migrants was then processed and compared with the automatic fingerprint identification system to search for criminal records (Menghi, 2021). However, most migrants feared the use of their fingerprints later on in destination countries, because comparing those fingerprints with those registered in the EURODAC database upon arrival could lead to their deportation to Italy through the Dublin Regulation mechanism. Therefore, staying in the makeshift camps was for both children and adult migrants a way to resist state control and unwanted legal visibility (Minca, 2015). In terms of everyday life, the fingerprinting requirement had serious consequences in restricting minors' access to child welfare and health services in the border area:

> When I meet with Ibrahim…he's feverish, his cheeks are coloured red, and his breathing is short. He has a paper that states that he must go to the Roya Camp to visit the doctor there, but he doesn't want to go…because he will be fingerprinted to get in. (First author's fieldwork notes, November 2017)

Based on such perceptions, fingerprinting requirement was a bordering practice that reshaped the geography of the border space for minors on the move. It effectively restricted access to institutional protection

and governmental relief services in the city (such as healthcare, accommodation, and food). Additionally, our participants explained how the official camp's remote location and dangerous access point near the highway worked as soft containment by isolating migrants from border crossing resources (e.g., local smugglers, ATMs, internet access, and proximity to the train station). Conditioning humanitarian assistance on mandatory identification had limited protective effects and strengthened migrants' distrust. During an unprecedented snowfall in February 2018, local migration authorities announced the suspension of fingerprint registration requirements to access the Roya Camp, so NGOs and volunteers tried to convince migrants staying in the informal camp under the bridge to instead seek shelter there. However, migrant participants explained to the researcher that even women with babies considered this news to be a deceitful rumour intended to lure them to the Roya Camp and feared being forcibly registered or deported to the Taranto hotspot as a result. This episode demonstrates how tactics of humanitarian care and control ultimately undermined transit migrants' trust in relief organisations (IMREF, 2021) and, as a result, increased their precarity.

Second, the physical confrontation with police officers and border guards during border crossing attempts by UAMs constituted another encounter with securitarian practices in the Ventimiglia border:

> I tried to cross the border with France three times since I arrived in Ventimiglia, but each time the police stopped me on the train and sent me back to Italy. Once when I said my age, "17," the policeman wrote "19" and told me to return on foot. It took me one hour to get back to Ventimiglia. (Ibrahim, Ethiopian boy)

> When the French police stopped me, there was no cultural mediator, and I didn't receive information. I gave a fake name and a fake country because Ethiopia is a safe country [not at war]. Because I was a minor, I came back [to Italy] by train. (Noham, Ethiopian boy)

Several participants recounted how they were denied entrance and were returned to the Italian side of the border by French border guards. For the participants, returning by train or foot was interpreted as yet another discriminatory filter between those minors who were "real" (train) and "fake" (foot). This situation was extremely confusing and frustrating to the UAMs and lead to uncertainty about their status and rights as minors. Our younger respondents complained about being bullied or called "*bambino*" and talked to like a "baby" (Sudanese boy) by other adult migrants, whereas the French border guards refused to address their protection needs as minors. Others asked if "it [was] legal what the police [was] doing at the border" (Amanuel, Eritrean boy). Questions regarding UAMs' rights as minors in France or in Italy were common during interviews, despite

information provided to them by child protection officers. In the interviewees' narratives, the police ultimately embodied the border, one noting that "the police is the first problem here" (Birhane, Eritrean boy).

Finally, our respondents described identification checks performed during local police interventions targeting undocumented migrants:

> Yesterday [I] escaped from the police. [It was] after eating [at Caritas and while trying] to go back to the bridge with three persons [on] Tenda Street. Three [police] cars arrived, but [we] managed to escape. (Birhane, Eritrean boy)

These customary practices have been defined by Ventimiglia's chief of police, Franco Gabrielli, as "decompression of the border," consisting in taking people (understood to be migrants) and transferring them elsewhere (Mazzuco, 2016). Police patrols maintained the fear of deportability by targeting safe and migrant-welcoming places; in one instance, an undercover police operation occurred during one of the first author's interviews at a migrant-friendly location. Those migrants with identification cards from the Roya Camp or with asylum applicant status were protected during these ID checks, while migrants without identification documents faced deportation to Sicily. This happened to Yonas, an underage Eritrean participant who, upon his arrival in Italy, declared that he was 19 years old in order to escape the control experienced in minors' reception centres. Despite his declared minority at the time of the police operation, Yonas' release from the police station was refused, based on the argument that despite previous police apprehensions, he had not administratively corrected his age (authors' fieldnotes, March 2018). Less than a week later, Yonas contacted one of his friends, asking for a bus connection in Taranto, and ultimately returned to Ventimiglia. Yonas' story highlights minors' hidden experiences of forced removal when confronted with adult-centred practices. Interestingly, some participants also avoided the "*campo* for minors here" because "they [the social workers] will transfer [them] somewhere" (Moudou, Ivorian male). In the border space, minors confused coercive practices of forced removal targeting undocumented adult migrants with child protective mechanisms discouraging onward mobility (Hameršak & Pleše, 2021; Tibet, 2017). The dissolution of UAMs' legal and practical safety (receiving adequate care as a minor) shaped their illegal status by un-categorizing them as minors, and their pervasive fear of deportation (Genova, 2002) affected their wellbeing and ways of being in the border space (Willen, 2007).

4.2. Emotional Responses to Institutional "Abandonment": Fear, Unsafety, and Confusion

The observations and interviews made clear that the bordering practices triggered negative feelings of fear, unsafety, and confusion in UAMs. Our interviewees significantly related their perceptions of (un)safety to specific places, experiences, and people in the border space, commenting in particular on the insecurity experienced in (un)official camps. One male participant explained how people were "ha[ving] a lot of arguments under the bridge [settlement]. People are drinking a lot and creating problems. They say bad things to argue with people" (Yoni, Eritrean boy). Another added that "he feel[s he should] go and separate them, but [he is] a bit afraid" (Aboudramane, Sudanese boy). Interestingly, the presence of the police in the Roya Camp triggered different perspectives on (un)safety; while Aboudramane explained that "sometimes, there are some fights in the camp, but because the police are also here, I feel safe." Others like Janet, a female Eritrean minor, felt visibly subjected to control, stating that she did not "feel safe in the Roya Camp, because of the fingerprints and the police."

Experiences of unsafety also varied due to gender, as migrant women and female UAMs are often exposed to abuse during migration (Save the Children Italy, 2017). Despite its protective mission, our young female respondents reported that they were exposed to adult migrants' presence in the Roya Camp and did not feel safe there:

> I am not protected here; I don't feel safe here. In the Roya Camp, I am afraid that someone comes into my house and does something to me, even if nothing happened until now....Caritas, the Bridge area, and walking along the road [connecting the Roya Camp to the city centre] is not safe. The Roya Camp is better secured than the Bridge but still, I don't feel 100% safe there. (Semhar, Eritrean female)

The identification requirements at the Roya Camp created a border space fragmented into different levels of (un)safety. The participants compared grass-root support places and the camp under the bridge by stating that "there is no security at the bridge. In Caritas and InfoPoint, I feel good, it is safe" (Mubarak, Sudanese boy). However, drawing on young Yonas' deportation to Taranto, safe and welcoming places became increasingly targeted by border police to locate irregular migrants.

Our respondents often expressed feelings of fear, anxiety, and confusion to describe their situation and the future outcome of their journey. While repeatedly repelled by border guards, Idriss, a boy from Guinea, experienced the border space as confusing and unreal: "I can't think about my future, because I don't feel this is the real world for me. I feel like I am not in this world, but in another world." Expression of fear related to the openness of the border was omnipresent in the narratives highlighting the UAMs' determination to continue their journey. Additionally, physical injuries would cast further doubts on one's ability to cross the border:

> I am concerned about my health. It is important for me. I can't breathe properly, and I have pain in

my legs. If I am healthy, I can do everything….I feel trapped between two options, two ideas: to go to France as soon as possible or to stay here until my sickness is fixed. (Ibrahim, Ethiopian male)

In particular, the field researcher's position as a young female of mixed heritage allowed young female migrants to safely share their fears over absent menses and unwanted pregnancies resulting from past abuse. Uncertainty and risk were embodied experiences for them. A female Eritrean minor confided during the interview: "[I] don't know if [I] am pregnant, [I] don't know [who] the father [is] and [I] don't want to keep the baby" (Janet, Eritrean female). As pregnant women feared being unable to undertake the difficult crossing from Italy with a newborn baby, they also felt compelled to engage in further risk-taking. Governing through deterrent and illegal practices heightened risks for migrants with physical and psychological vulnerabilities and left them without protection. It produced further risk-taking and traumatising border crossings, leading to injuries (e.g., one participant who, after being chased by the police in the mountains at night, ended up in a French hospital) and regular deaths of migrants.

4.3. Conflicting Feelings of Abandonment and Self-Reliance

Many participants—especially those living outside protective facilities—felt neglected due to the inadequate reception conditions and the lack of institutional concern for their state of destitution. These UAMs lived without welfare provisions and instead relied on volunteers to meet their most fundamental needs (food, clothing, and emergency healthcare). This situation was not accidental but produced by the restriction of welfare provisions to minors requesting international protection and by refusing minors without status the protection they are entitled to under the Italian legislation (i.e., safe accommodation, healthcare, information, and legal representation; Cornice & Rizzo, 2019). Despite existing protection mechanisms, such as child welfare and international protection systems, UAMs' absence of legal status drew an invisible border with respect to their ability to access institutional assistance. The European asylum acquis establishes reception and care entitlements for this population but with a restrictive scope for those migrant children applying for international protection (Directive of the European Parliament and of the Council of 26 June 2013, 2013). Similarly, those minors who do not apply for asylum should be entitled to child protection in Italy as children "at risk" (Autorità Garante per l'Infanzia et l'Adolescenza, 2019); however, local and youth care authorities did not offer any protective intervention to those over the age of 14 or to those refusing to stay in Italy (Intersos, 2017). The political and citizen obstruction of possible protective interventions, such as transit centres without compulsory registration (Trucco,

2018), left child protection officers with limited options, despite their heartfelt will to respond to these beneficiaries' needs and priorities (Rongé, 2012). Left without status, it became unclear whose national or local authority was responsible for them (Iusmen, 2020). Despite the obvious consequences for UAMs, it is questionable whether this institutional abandonment was intentional or a general consequence of the punitive treatment applied to all migrant groups in the border space. Instead of moving toward UAMs, local authorities moved away from this group of marginalised youth and from their protective mandate by indifferently exposing to harm and abuse in the border space (Agamben, 1998). The physical and emotional suffering produced by the absence of care (Loughnan, 2019; Welander, 2020) supposedly deterred UAMs from crossing the border and instead led them to enter the reception system in Italy. Some entered the local child protection system temporarily to rest. Others, like Idriss, recovered from severe mental health issues, but ultimately left to cross the border:

> There, I received the advice not to leave Italy: If I leave Italy, there is no security, the social worker can't help you then…but can help to find a camp…if I stay. If you leave, you are not a serious person. (Idriss, Guinean boy)

According to Idriss' understanding, those UAMs resisting humanitarian and child protection interventions were dismissed as "not serious" or "irresponsible." The denial of reason and maturity is usually advanced in a paternalistic paradigm to acknowledge children's lack of autonomy and enforce protection needs (Nakata, 2015); here, though, the paternalistic perspective on autonomy and maturity further denies care and protection to children expressing problematic agency. However, most participants actively responded to this abandonment (Aru, 2021) and relied on alternative support strategies offered by local volunteers, crossed the border with local smugglers or, helped by lawyers, they challenged the *refus d'entrée* given at the French border. Interestingly, UAMs did not perceive themselves as reckless or oblivious of their situation; on the contrary, during their interviews, many shared their pressing need for adult support while they actively struggled with extreme responsibilisation.

In addition to deeply missing their parents, UAMs abandoned in the border space felt constrained to perform adult roles and suffered from the lack of guidance while on the move:

> I don't have [a] father, I don't have [a] mother….I am thinking like a mother and like a father….I have nobody who's responsible for me. I can't avoid mistakes because I am a minor. [When you are a minor] you need someone to give you moral [support], to guide you to become a good adult. (Noham, Ethiopian boy)

Absence of parental guidance was frustrating, as minors reported feeling deprived of emotional support, which they believed necessary for their individual development. Additionally, their situation outside of institutional care did not entitle them to a guardian, despite their precarious situation. Nevertheless, these young people felt compelled to be brave in order to overcome the challenging border crossings and meet their families' expectations. As explained by Mubarak, from Sudan: "There is the family behind and the goal to [reach] France and then you are in the middle." Some relentlessly pursued their crossing attempts, driven by the need to secure a legal route to their relatives left behind at home and in transit countries:

> My friend is dead, I don't want my family to take the same route. When I arrive in the Netherlands, I will try everything to bring them by plane…first the parents and then the sisters and brothers. (Yonas, Eritrean boy)

This boy refers to a practice negatively portrayed as "anchor child" in which a young migrant traveling alone reaches the country of destination in order to claim international protection and allow, through family reunification procedures, relatives left behind to travel safely through legal routes (Lalander & Herz, 2018). Responsibility also meant UAMs concealing their current precarious situation from their relatives. In other words, withholding information about their situation in order to prevent their families' worries revealed the young people's circumstantial maturity:

> My family worries about me so, I feel responsible for the worries of my family. (Noham, Ethiopian male)

> I think that I create worry for my family. I don't want to open Facebook now. So many people are worried about me and my situation. I don't want to tell them and make them worry. (Semhar, Eritrean female)

> I didn't tell my mom where I am right now [sleeping in the settlement under the bridge]. If she knew, she wouldn't even sleep, I am sure. I say nothing about Ventimiglia. (Bacar, Ivorian male)

In sum, our respondents expressed different perspectives on their self-reliance in the border space. Many did not receive the material assistance and emotional support entitled to them as minors and instead relied on their own networks and individual resources to escape from the destitution they experienced. Despite UAMs' own protection needs, the risks of the journey and their duties towards their relatives worked as powerful impulses to repeatedly challenge the bordering practices. As Hamid from Eritrea explained during the interview: "My only fear is that the border will be closed. I don't say that the border is open, but if you try, it can work." Despite their own exposure to border violence, repeat-

edly "trying chance" allowed them to pursue their individual and collective migration goals.

5. Conclusions

This contribution revealed how bordering practices deeply affect UAMs who are exposed to and driven towards taking further risks. While law reduces risks for some mobile subjects (i.e., EU citizens and residents), in the "state of exception" they are exacerbated for others (Agamben, 1998). These bordering practices produce unsafety and harm by targeting individuals through selective exclusion. In the case of UAMs, the overlapping bordering practices affect the recognition and the primacy of their status and rights as minors (Committee on the Rights of the Child, 2005; Convention on the Rights of the Child, 1989). Instead, securitarian concerns over migration and border controls frame mobile UAMs as unruly subjects undeserving of assistance. This legal uncertainty threatened our participants' safety with respect to deportability and produced welfare destitution.

Alongside humanitarian and securitarian bordering practices (Williams, 2015), welfare destitution is another policing technique used in various spaces and levels of governance. Here, the figure of the mobile child migrant is framed as deviant due to his/her active involvement in border crossings (if not smuggling) and non-compliance with protective interventions. UAMs depend on welfare institutions to fully meet their rights as children; consequently, they are specifically subjected to migration control when seeking assistance in the border area. They are governed through exceptionality and denied more protective child rights-based statuses and interventions (Aumond, 2017). Moreover, the deterrence approach to child autonomous migration proved inefficient, as all but two of our participants ultimately crossed the border; the remaining two waited to transit on through a Dublin reunification procedure towards Norway and Spain. Even more so, this approach heightens minors' dependence on smugglers and normalises their exposure to risks during repeated crossings attempts (e.g., through the mountains or hidden in trains). The re-nationalisation of border control measures and generalised suspicion over certain mobilities to and within the EU may entail risks such that existing protection gaps for migrant children at the EU borders remain unanswered (Campesi, 2021; PICUM, 2021). Consequently, ensuring the prevalence of children's rights frameworks in times of tightened mobility and border policies implicates further analysis of the mechanisms and practices implemented in zones of extraterritorial or liminal legality (e.g., border areas, detention centres for minors) that affect UAMs' ability to claim their social-legal rights and cultivate their vulnerabilities (Orsini et al., 2022). Based on our findings, it is clear that specific identification and protective interventions tailored to the needs and priorities of UAMs on the move at EU internal and external borders are needed (Marcus et al., 2020).

Acknowledgments

Conflict of Interests

The authors declare no conflict of interests.

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Article

Labour Mobility and Informality: Romanian Migrants in Spain and Ethnic Entrepreneurs in Croatia

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Abstract
Post-Weberian definitions see the state–individual relationship as a "do ut des" one. The state grants protection, education, medical care, and its citizens contribute labour, compliance, and taxes. When this does not occur, it is generally accepted that the citizens are deviating from state goals. However, there are cases where lack of compliance stems from the fact that society members do not feel protected by formal structures, and they rely on informal ones to replace, supplement, or even compete with state institutions. The starting point of this article is that this lack of support may result from enhanced labour mobility (and migration) across Europe, and may enhance the creation and persistence of informal practices. Taking advantage of two case studies, Romanian migrants to Spain and ethnic entrepreneurs in Croatia, we observe how governance is constructed and provide two novel interpretative frameworks. First, we explore the use of informality (informal practices) to suggest that apparently insignificant actions that are repeated routinely and without much thought, are a way to contribute to the construction of the political and that everyday governance should receive more attention. Second, we use this claim to argue that a better understanding of informality can help identify governance areas where interventions are more urgent. These are the spheres of public life where it is possible to identify a larger gap between the wishes of a state and the ways citizens actually act as they informally avoid or bypass its rules.

1. Introduction: Diverging Moralities and Alternative Forms of Governance

A large body of scholarship on the welfare state, framed in post-Weberian approaches, looks at the state–individual relationship as a "do ut des" relationship, suggesting a possible universality of such a claim (Deacon & Stubbs, 2007; Lendvai, 2008). The state grants protection, education, medical care, and its citizens contribute labour, compliance, and taxes (Esping-Andersen, 1996;

Fenger, 2007). When this does not occur, the most immediate conclusion is to assume that citizens are deviating from state goals. Indeed, the state and its institutions are selected by the citizens to look after their welfare. As a result, it is people, as individuals or communities, that seem to fail to pay back and need to be encouraged, or coerced, to do so when needed. Yet, a growing body of scholarship has been questioning this top-down power relationship (Jones, 2007; Kasza, 2002). It has also been suggested that certain regions of the world might have a sui generis mode of constituting welfare that is embedded in a path-dependent historical evolution (Draxler & van Vliet, 2010; Hacker, 2009; Kevlihan, 2013). A mismatch of expectations between a state and its people can take many forms (Scott, 1998). This phenomenon has been analysed from a holistic historical perspective, arguing that the whole state system can be against all, or at least most, of its citizens (Courtois et al., 1997) as well as by looking at how this affects particular categories of people who are bound by ethnic ties, who belong to a specific economic class (Granovetter, 1983; Scott, 1985), live in a particular area (Davies & Polese, 2015), or share a common ideology.

This article is a further effort in this direction. We explore a range of elements that may worsen the state–citizen relationship and put some people, those already in a vulnerable position regarding the state, in an even weaker one. We refer here to individuals and communities that sometimes receive little or no attention from the state because they are newcomers to the system or have never truly managed to navigate their environment. These newcomers are either not supported or only partly supported by the state that should look after their welfare. In our specific case, we expect this lack of support likely to become widespread, or simply deeper, in the case of enhanced labour mobility (and migration) across Europe. We subsequently set out to study ethnic entrepreneurship, multicultural relations between migrants, and their novel socio-cultural settings to examine how governance is constructed and provide two novel interpretative frameworks. First, we explore the use of informality (informal practices) to suggest that apparently insignificant actions that are repeated routinely and without much thought, are a way to contribute to the construction of the political and that everyday governance should receive more attention. Second, we use this claim to argue that a better understanding and measurement of informality can help identify the areas of governance where intervention is more urgent. These are the spheres of public life where it is possible to identify a larger gap between the wishes of a state and the ways citizens actually act as they informally avoid or bypass its rules.

Thanks to two case studies, we examine and discuss the different understandings of informality emerging from the divergence between state and individual morality. The cases we focus our attention on are not those where individuals violate state principles while endangering the integrity of those around them. The two cases feature quite different situations and methodological approaches. However, these two cases are also used to give continuity to the dichotomy "beyond" vs. "in spite of" the state (Morris & Polese, 2014). The starting point are edge situations, where individuals do not act the way their state expects them to. In such cases, one can look for contradictions and conflicts between moral boundaries by juxtaposing the way moral values are constructed within a group and are used to renegotiate state's values. However, these contradictions refer to two distinct contexts. In the first (beyond the state), informal structures stretch to reach areas of state governance that remain largely unregulated. This may include situations where the state claims to regulate but does not provide a sufficient amount of instructions (or not sufficiently clear instructions) for people to find their way through the maze of rules and obligations. This is shown through the case of ethnic entrepreneurs in Croatia that are supposed to rely, at least theoretically, on a series of structures and institutions that are largely absent or weak. In particular, the Croatian case looks at the networking activities among ethnic entrepreneurs in Croatia and examines in depth the ways ethnic entrepreneurs use different network types to access different resources. Data was gathered through in-depth interviews with 27 non-native entrepreneurs carried out in periods: January–November 2019 and April 2020–June 2021. The case stresses the importance of informal networks in regular circumstances and its increased importance (yet diminished opportunities) in more demanding circumstances such as the Covid-19 pandemic, natural disasters, and major regulatory change.

In the second case (in spite of the state), structures are in place and rules exist; however, they are largely designed for insiders, leaving newcomers in a state of limbo which they can out only get out of through informal connections, practices, and actions. Romanians in Spain can rely on some solid institutions, but their capacity to understand and interact with them is limited. The case relies on mixed-methods research performed between 2017 and 2020, combining multi-sited ethnography (qualitative interviews, focal groups, and observant participation) and a binational link-tracing survey (Mouw et al., 2014) to connect the transnational personal networks of research participants in Spain and Romania ($N = 495$). It ultimately explores the relationship between informality and intra-EU mobilities (Romanian migrants in Spain), analysing how the informal practices evolve when people migrate from one social and cultural context to another. This is not necessarily due to a single reason but is rather a synergy of cultural, social, economic, and policy factors that do not always match those present in their host country. As a result, a bit of "negotiation" is required to survive the local environment.

Founded on the above reflections, this article is thus intended to point at ways governance results not only from formal regulation by the state and its institutions

but also is the result of synergies between formal and informal actors, top-down instructions and bottom-up attitudes developed by adapting to an overarching context that does not always take into account the needs of some segments of society. To do this, the next section provides an overview of the main state–citizen debates, and it is followed by two empirical sections which document, first, the synergies between Romanian migrants across two areas of Spain and, second, the dynamics behind ethnic entrepreneurship in Croatia. By looking at the way labour mobility affects, and is affected by, state–citizen relations, our ultimate goal is to unveil a number of hidden mechanisms and unconventional mechanisms of governance that are only visible through an everyday, micro, and hands-on approach that was possible thanks to engagement in the field with the target groups.

2. State–Citizen Relations

Scholarly discussions about welfare state divergence have relied on the "old vs new" paradigm (Adascalitei, 2012, p. 60), eventually acknowledging the possibility that different political systems may generate "unique hybrids" (Draxler & van Vliet, 2010; Hacker, 2009), mapping possible variations (Ó Beacháin et al., 2012) or conceptualising possible patterns (Hacker, 2009). The waves of crises which question the success of the state-centred welfare model and the partly failed transition to private welfare have led some to suggest bringing back what can be called the privatisation of social protection, where private here also refers to the family (Hrzenjak, 2012; Williams & Martínez, 2014). It is this privatisation that, when markets and appropriate governance mechanisms are lacking, pushes people to diversify their risk avoidance mechanisms (Deacon, 2000; Wood & Gough, 2006). In particular, welfare regimes outside advanced welfare states are characterised by: (a) weak state legitimacy and the marginality of well-functioning capital and labour markets; (b) the limitations these pose on welfare states' capacity to compensate for social inequalities; (c) social policy needs to account for non-state actors; (d) social rights/entitlements may arise from domains other than formal state provision, i.e., familial and other informal relationships; and (e) these phenomena and relationships are path-dependent and reproduce social stratification, inequalities, and power asymmetries (Wood & Gough, 2006, pp. 1697–1698).

The above discourses have suggested looking more deeply into agency (Cook, 2007) as replacing or supplementing state-led policies (Polese, Rekhviashvili et al., 2016) to consider the possibility that informality and formality are complementary or that informality may "replace" formal processes and structures. In other words, where the welfare state does not penetrate, welfare might also be spread through informal channels and redefine the very dynamics underpinning a society (Morris, 2019; Polese et al., 2014). Welfare policies result from negotiation and compromise between very diverse forces that might define a result very distant from the original plan. Some theorists of the state (Migdal, 2001) suggest that state and society mutually constitute, and contribute to, the transformation of each other. The main point here is that in a complex system, where initiators do not always see or even directly influence the result of their choices, the final effects of an input may be very distant from initial intentions.

This opens to the possibility that a given policy could be renegotiated by street-level bureaucrats or other interest groups, even ingrained cultural norms (Cook, 2007; Morris, 2014) to lead to different ways of welfare provision that are embedded in social structures or simply a compromise between how things should work and how they work in reality. In this direction, informal welfare has been defined as the area between what a state is doing (or claiming to do) and the needs of a society (Polese et al., 2014; see Figure 1).

The area of informal welfare, however, may become substantially large with a variety of economic and non-economic strategies employed by people to make a living (De Haan, 2012). These include informal practices such as "regular strategies to manipulate or exploit formal rules by enforcing informal norms and personal obligations in formal contexts" (Ledeneva, 2008, p. 119), which penetrate all aspects of public life globally, including economic, social, and political practices (Polese, Morris et al., 2016). They are embedded in market exchanges but also in non-economic dimensions such as non-profit activities and in exchanges within personal relationships (Ledeneva, 1998). Their pervasiveness suggests that they are adopted irrespective of the economic circumstances of citizens or countries (Morris & Polese, 2014). Ledeneva (2011, p. 722) stresses the importance of unwritten rules, or "the know-how needed to 'navigate' between formal and informal sets of constraints." Informal practices vary across time and space, responding to cultural, political, and economic transformations (Ledeneva, 2018; Yalcin-Heckmann, 2014). Informality can take many forms (Polese, 2021); for instance, in the case of Romanians performing Spanish informal practices, in this article, we talk of *chapuzas* (minor repairs) which makes them known as *manitas* (handymen) who perform good work cheaply. However, beyond localised practices, some tendencies emerged during turbulent transitional times, and the capacity to generate strategic responses (Manolova & Yan, 2002) and create informal networks (Aidis et al., 2008) are here defined as alternative forms of regulation that often operate outside the state norms. They serve as an alternative social mechanism to support economic interaction where formal institutions are either non-existent or ineffective (Šimić Banović et al., 2020). They often rely on long-term cultivated exchange of favours or services (Škokić et al., 2019, p. 26) that has become widespread in the region (Puffer et al., 2010). These kinds of mechanisms have encouraged studies on similar widespread practices such as *blat* in Russia, *guanxi* in China, and *veza* in Croatia, as summarised in Table 1.
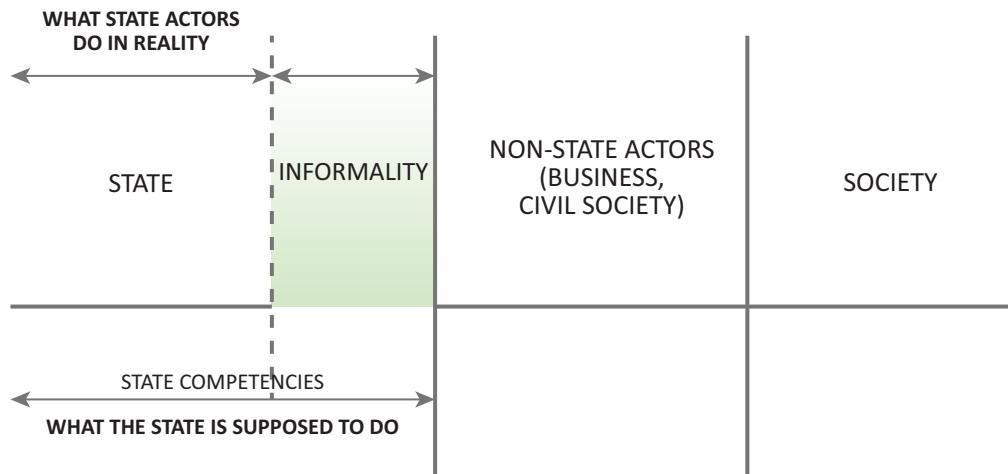
Figure 1. Visualising informal welfare in a state.

Table 1. Characteristics of *veza*, *blat*, and *guanxi*.

Attributes	Characteristics		
	Veza	*Blat*	*Guanxi*
Driver for activation	Access to entrepreneurship	Maximisation of individual values (economy of shortages); access to necessities (food, jobs)	Maximisation of the value for a family; moral obligation
Origin	Transition period (1990s)	Emergence of socialism; after Russian revolution (1917)	Confucianism and ancient Chinese philosophies
Operating mechanism	Exchange of favours; one-off reciprocal transaction; transaction to be completed without significant time delays	Exchange of favours; gifts and resources; unlimited exchange of favours; time lag often preferred	Exchange of favours, gifts and resources; unlimited exchange of favours; time lag often preferred
Relations	Short-term; utilitarian	Continuous and long-term; utilitarian; emotional; social	Continuous and long-term; utilitarian; emotional; social
Structure	Dyadic relationships	Dyadic relationships with extended vertical and horizontal structures, affiliated with a circle of trusted people	Dyadic relationships often embedded in or influenced by actors outside the dyad
Dynamics	Very dynamic, exchange fairly equal	Very dynamic, exchange fairly unequal	Very dynamic, exchange fairly unequal
Diversity	Diverse, but individual relations not linked in a particular network	Diverse; vertical and horizontal circles relatively closed	Diverse; circles open to expansion and can grow easily
Meaning	Positive	Negative, closely linked with corruption	Neutral to positive

Source: Škokić et al. (2019, p. 34).

Despite their cosmetic differences, the main common point here is the widespread use of connections to get things done, overcome institutional barriers (Kets de Vries & Florent-Treacy, 2003), or establish informal networks, increasing the chances of success (Kuznetsov et al., 2000). In some cases, informal practices (Morris, 2015) can make up for the inadequacy of formal financial institutions (Peng, 2004) or allow people to engage with authorities. *Veza* has a similar function, helping overcome hostile business environments (Aidis et al., 2008; Ireland et al., 2008). In addition, networks have been defined as horizontal (people supporting other people with similar status) or vertical (belonging to different social strata and linked by kin or personal contacts [see Ledeneva, 2008] to endlessly expand their "friends of friends" circle). This leads to the core of this article, where migration networks, mobility, and informality are intertwined (Fradejas-García, Polese et al., 2021), which generates awareness of some informal legal pluralism (von Benda-Beckmann & von Benda-Beckmann, 2016) embedded in formal vs. informal rules and the relationship with these rules, as documented in the case studies below.

3. Informal (Im)mobilities of Romanian Migrants in Spain

The vast majority of the first wave of Romanian migrants, who arrived in Spain before 2002, used mafia-like networks to facilitate cross-border travel and paperwork, paying around $1,000 for a tourist visa and then either staying hidden or developing ways to cross the border with minimal risk (Elrick & Ciobanu, 2009). After 2002 and 2007, immigration requirements changed, and the cost of migrating lowered (INE, 2020), leading to a sharp increase in Romanian migration to Spain; from a few thousand in 1998 to almost 900,000 in 2012 (INE, 2020), they became the largest foreign population in Spain. This slightly changed after the 2008–2014 crisis, but with 671,985 Romanians living in Spain in 2019, they are still the country's second-largest foreign population (INE, 2020).

The appearance of numerous formal and informal Romanian road transport companies in Spain favoured the arrival of more Romanians, as well as an informal influx of products from Romania to Spain and vice versa, some of which are handmade, as well as unlabelled food and alcohol (Petrescu & Rodriquez, 2006). This flow of products for trading, gifts, or self-consumption continues, and it was as cheap as €1 a kilo in 2020, facilitating social remittances that reinforce transnational relations (Levitt & Lamba-Nieves, 2011) and transnational networks of trust (Tilly, 2007). In many cases, items, documents, and money (normally small amounts of cash) are sent via international passenger bus routes that ply in both directions between Spain and Romania. This service is widely used due to it being faster, safer, and cheaper than the regular post, even offering hand-to-

hand delivery. These practices are combined with travel from Spain to Romania by air, bus, or private cars back and forth for holidays, social events, and arranging bureaucratic necessities (Fradejas-García, 2021). The formal and the informal are rarely separated; it has been suggested that the informal is used to "manipulate or exploit the formal rules" (Ledeneva, 2008, p. 119). Examples include those who receive Spanish unemployment benefits while in Romania or access regional social and economic benefits by acquiring a Spanish document or keeping residency in Spain by paying someone to register them at their residence (Fradejas-García, Molina et al., 2021).

During socialism in Romania, instrumental social relations were necessary to overcome scarcities, obtain access to good quality services, or resolve legal issues. Despite the fall of socialism, informal networks and practices are still fundamental to obtaining access to education, health, business, and the labour market (Stoica, 2012). In this context, neo-liberal reforms amplified the competition for scarce resources, increasing power inequalities in patron–client relations in basic sectors such as the healthcare system (Stan, 2012). In Romania, the "widespread networks of personal exchange and favours [similar to Russian *blat*] have been '*relatii*' (relations), '*cunostinte*' (acquaintances), and '*pile*'" (Stoica, 2012, p. 173), where *pile* (or "*A avea o pilă*") refers to connections that can smooth things out. As Ledeneva (2018) shows, the instrumentality of sociability exists with similar patterns under different names worldwide.

In Spain, the informal practice of using social networks to get things done is called *enchufismo*, translated directly as "to plug in" (*enchufar*), a figurative way of denoting the practice of "pulling strings." The verb *enchufar* means "to give a position or appointment to someone who does not merit it, through friendship or political influence" (Real Academia Española, 2020), while *enchufismo* has been defined as "political and social corruption" (Real Academia Española, 2020). Nonetheless, it is common practice within the endogenous Spanish labour market and in Spanish politics, which provide opportunities for corrupt practices (Fradejas-García, 2022). No fewer than 40% of the Spanish population finds work through informal channels of relatives, friends, and acquaintances, a much higher percentage than in northern European countries such as the Netherlands, Denmark, or Finland (e.g., Pellizari, 2010, as cited in Vacchiano et al., 2018). Thus, as our participants noted, the Romanian term "*avea o pilă*" translates directly, both in theory and everyday practice, to "*enchufe*."

Respondents of the study had, on average, been living in Spain for over 10 years and had left employment in Romania, considering Spain to have better opportunities. However, the move was just the beginning of a saga through the formalisation of their status while still learning the informal rules of the game. Their arrival was the starting point of a long parallel process of formalisation,

with access to formal jobs and administrative regularisation occurring alongside informalisation. This process involves adapting to new informal practices and learning the new rules of "informality" through contact with other migrants, the creation of local networks, or by simply gathering together at bars and public spaces with the local host population, who have generally welcomed East Europeans due to cultural similarities, religion, or their similar racialisation (whiteness). The journey toward formality could take several years and involve passing through several undeclared trust-building tasks. Once the person becomes known as a hardworking and essential addition to a local business, efforts are made to regularise their position and grant them more responsibilities. However, trust between parts also contributes to a different kind of informality. In many cases, the employer and employees developed a friendship, or at least closer relations, thus allowing part of the salary to be paid in cash in some sort of family-style arrangement.

Not all connections were informal and with close people. Non-state actors also sometimes played a role by providing informal support, such as paying bills, providing food, clothes, books, and language courses, backing up registration processes, and even helping Romanian migrants find jobs. Support came from charities as well as formal institutions in Romania that could see opportunities in liaising with Romanians living in Spain. The result was a net of inter- and intragroup solidarity, which was used for various purposes. For example, typically, when a migrant passes away and has no repatriation insurance, nor the money to send the body back to Romania, money boxes are placed in Romanian restaurants, associations, and churches to help the family with the costs.

All these informal activities constituted a gradual formalisation of the workers, some of whom ended up with permanent employment and fully regularised status, especially in areas where formal labour was scarce and Romanians had to work harder, for longer hours, on minimum wages, such as in the ceramics factories of Castello (Molina et al., 2018) or agribusinesses in Roquetas de Mar (Fradejas-García et al., in press). Eventually, this resulted in Romanians accounting for almost 10% (15,748 out of 169,498 inhabitants) of the population in Castello (INE, 2020) in 2017. Roquetas de Mar in 2017 hosted 8,939 Romanians, 9.5% of the total population (INE, 2020).

Informal and solidarity networks were crucial in helping people find these formal opportunities. Such help could come as a favour or through paying a fee to an informal broker, such as one might pay an employment agency. In some cases, household income is created through undeclared jobs and informal economic activities such as house cleaning or temporary or one-off jobs in agriculture, construction, and services, as well as childcare, baking sweets for parties, renting out rooms in their homes, working as a DJ at social events, and even collaborating in transnational enterprises that import and export cars (Fradejas-García, 2021). It was already suggested by Hart (1973) that these activities function as a buffer against unemployment.

Eventually, the transnational social fields created by Romanian migrants and their formal and informal activities resulted in a whole new generation of Spanish-Romanians who enjoy much higher stability than their parents. In 2016 more than 100,000 Romanians under 16 years old had formal residence in Spain (Ministerio de Trabajo y Economía Social de España, 2016). Some were born in Spain, but many others lived in Romania until their parents brought them to Spain in a large-scale family reunification when Romania entered the EU in 2007 (Marcu, 2015). Family reunification is part of a long settlement and institutionalisation process, which is key to the institutional completeness of demographic enclaves and transnational communities (Molina et al., 2018). It entails the emergence of specific institutions, a more favourable Romanian legislation for citizens abroad, bilateral agreements, the opening of consulates and cultural centres, and the creation of Romanian associations and church buildings. Also, local institutions in Spain, such as city councils, played a role in migrant settlement by supporting basic social services, accommodation, and intercultural activities.

In the hardest times of the economic crisis and its aftermath, some migrants returned to Romania or moved to other EU countries (Viruela & Marcu, 2015), leading to a number of new tendencies: (a) highly mobile people who had experienced circular migration or moved to third countries; (b) people who had migrated unsuccessfully and went back; and (c) people who had returned for work, care for the family or retirement. Some had been living for nearly 20 years in Spain before reaching retirement age. Others had saved money and returned as entrepreneurs, opening small businesses such as bakeries, restaurants, or guest houses, sometimes supported by formal programs from the EU and the Romanian government to promote the return of migrants, granting them 40,000€ to fund a start-up. However, returning to Romania is not necessarily easy. Many migrants have children, mortgages, and properties in Spain, and many others have lost the connections that would help set up new activities and should thus start all over again. Romania is regarded as a backup option compared to remaining in Spain, where the material needs of their life seem easier to meet.

4. Ethnic Entrepreneurs in Croatia

Croatia is below the EU-28 average for incoming migration, with a ratio of 3.8 migrants for every 1,000 people and 0.9% of the population living in the country on a non-EU passport (Eurostat, 2019). Those migrants that do come are likely to come from neighbouring regions (Bosnia and Herzegovina, Serbia, Kosovo, North Macedonia) or enter the country on a Croatian passport received due to family ties or descent. However, the past years have seen a sharp increase in work permits for

non-EU citizens, with 65,100 issued in 2019, contrasting with just 231 in 2014 (Centre for Peace Studies & Impact Hub Zagreb, 2019).

Small- and medium-sized enterprises account for 99.7% of the total number of enterprises in Croatia, and have an employment share of almost 70% (Alpeza et al., 2018, p. 10). What is also important is that, despite the poor survival rate and lack of growth of established entrepreneurial ventures, well below the EU average, entrepreneurial activity shows good technological readiness, with 30% of newly started entrepreneurial ventures in Croatia in 2018 and 28.3% of "established" businesses using the latest technology (compared to averages of 7.9% and 13.6% across the EU).

In principle, obstacles faced by all entrepreneurs are similar and include administrative burdens, unpredictable tax regulations, high tax rates, overly restrictive labour regulations, parafiscal charges, corruption, an inadequate health and education system, as well as a limited understanding of entrepreneurship-related concepts (Brzozowski et al., 2021; Šimić Banović et al., 2022). However, non-native entrepreneurs face additional obstacles, including language barriers and relatively high costs (and unclear procedures). In addition, the Covid-19 pandemic and other shocks since the beginning of 2020 have raised additional formal and informal barriers to ethnic entrepreneurs in Croatia. As shown in Figure 2, that situation is mostly coupled with ambiguous and lengthy procedures when establishing and scaling up a business, facing natural disasters and applying for pandemic support aid. In addition, (new) contacts as one of the main assets for running a business became even scarcer once almost all the networking opportunities were moved online. Thus, using informal networks in order to compensate for formal deficits and remove or diminish formal obstacles became more difficult. Nevertheless, as discussed later, migrant entrepreneurs have shown a very resilient mindset.

Informal practices usually indicate the deficits in the official structure of society (Ledeneva, 2008) and may serve as either substitutes or complements to the official economy (Aligica & Tarko, 2014; Dreher & Schneider, 2010). Furthermore, in Croatian society, instrumentalising personal connections for "getting things done" is quite usual and expected (Šimić Banović, 2019). However, foreign entrepreneurs are still on their integration path and may not be fully aware of the extent and influence of informality in Croatian professional and private life.

In spite of training initiatives, actions aimed at advocacy or lobbying remain scarce, and the lack of supporting business networks seems to prevail. Formal structures in place to support entrepreneurs seem unreliable and immigrant entrepreneurs are largely unsatisfied with them, raising doubts about the legitimacy of a membership fee given that—as many report—they do not get anything in return (Šimić Banović et al., 2022). These deficiencies have been addressed through in-group (ethnic entrepreneurs) solidarity and socialisation (Čapo & Kelemen, 2018, pp. 8–9) which, with time, results in stronger solidarity between foreign entrepreneurs and

	Key formal barriers	Key informal barriers
Non-EU, less developed countries	• lengthy asylum-seeking procedure (if applicable)	• considered to be **even bigger security (and health) threat than before COVID incertainty** • perceived to expect social contributions only • ignorance
Non-EU, developed countries	• a work/business permit procedure • a mandatory financial capital (10x or 200 x higher than for the EU / native entrepreneurs) • obligation to employ 3 Croatian citizens • ambiguous/double procedures • **new Law on Foreigners—even more unfavourable** • **the effects of Brexit (if applicable)**	• **emphasised lack of social and cultural capital, i.e. lack of 'safety net'**
EU entrepreneurs	• absence of any written instructions in English • front office employees not speaking English	• discrimination (ethnic and racial origin, LGBT, gender, age) • limited openness towards other nationalities, races and religions
Native entrepreneurs	• administrative burden, inneficient public administration • unpredictable regulations, **incl. shops possibly closed on Sundays and ambiguous travel restrictions** • high tax rates and parafiscal charges • corruption prevalence • weaknesses of the education and health system • **arbitrary criteria for COVID support aid** • **earthquake (and floods) reconstruction activities** • **damaged offices, retail spaces and homes in Zagreb / Central Croatia**	• lack of enrepreneurial spirit • lack of understanding for entrepreneurship • **sense of uncertainty due to current health, safety (Zagreb/Central Croatia) and diminished purchasing power conditions** • **pre-election period (until mid-2020) resulting in pre-election populist (mostly anti-business) decisions and implications of new rules** • **predominant online networking (that is considered inferior to live networking)**

Figure 2. Formal and informal barriers faced by ethnic and native entrepreneurs in Croatia, updated for the Covid-19 pandemic period. Source: Šimić Banović (2022).

a higher degree of reliance on family members who are often involved in the same business and whose informal networks are, in many cases, considered vital to business development. The immigrant entrepreneurs argue that the (difficult) experience of being an entrepreneur in a rather non-entrepreneurial climate and the intention of staying there made them push their self-reliance, adaptability, and proactivity. The continuous self-driven approach of the immigrant entrepreneurs and the support of their in-groups appear to be essential in their survival during both regular circumstances and multiple external shocks. Their perception of Croatia as a preferred destination country is largely associated with their formal and informal networks, with the latter being more important. Meaningful support from their family, friends, and acquaintances in Croatia and abroad was already recognised as key pillars of foreign entrepreneurs' private and professional lives. In this respect, a high degree of awareness about the role of connections is visible. As one informant reported, "doing business is possible in Croatia; you just need good and trustworthy local partners, and they exist, in spite of it being hard to find them." Those reliable local partners, recognised as essential for managing businesses in Croatia, include lawyers, accountants, key business partners, and possibly co-owners of their own businesses. In a nutshell, the ethic entrepreneurs' map of their key contacts consists of their foreign peers, family members, and several local partners.

Accountants and lawyers are particularly important in that they might have to explain local cultural nuances or more hostile aspects of national laws and perhaps invest a higher amount of time and effort in the beginning when ethnic entrepreneurs have little awareness of the local context. Eventually, language barriers might lead entrepreneurs to rely on only those they can communicate with, limiting the amount of information they receive. This may also be reflected in the creative ways they develop their businesses, particularly in cases of arbitrary decisions made by public administration bodies.

When this is impossible, it leaves entrepreneurs unable to access local business network opportunities in other sectors unless they share common ethnic origins. This highlights what has been described as a two-speed, or a two-tier, situation. Foreign entrepreneurs sit on the external layer and have little or at least fewer contacts with Croatian entrepreneurs while giving preference to creating networks with other non-Croatians. There are exceptions, and business people do mediate and thus connect foreigners with locals, but there is still widespread use of informal networks to make up for deficient formal ones. Furthermore, the integration with the locals is usually quite slow, especially in cases of different racial backgrounds. That also adds to the importance of the expat networks. Paradoxically, even in the regions like Dalmatia, which have the greatest exposure to foreigners due to tourism and employment

in the marine industry, openness towards immigrants is below expectations.

Ethnic communities also sometimes compensate for the lack of official support. Since 2013, the African Society of Croatia has been supporting African-born people operating in the country. Given the low number of people of African descent living in Croatia, the lack of state-funded initiatives in this direction is clear. Yet, this marginal initiative has attempted to increase awareness about non-EU realities for locals that seem still far from accepting foreigners (especially those of other races) as their peers, resulting in another "invisible" barrier for the incoming person.

An additional resource used by ethnic entrepreneurs are the channels "back home." In some cases, they mentioned that they become weaker, but in other cases, they can take advantage of connections in their country of origin to find more affordable suppliers or source the goods that are not easily available in Croatia. However, the informal networks and channels used by foreign entrepreneurs seem conceptually different to the local ones. For example, none of the informants had reported using *veza* (Šimić Banović et al., 2022), and many were not even familiar with the concept, although they could indicate an equivalent concept from their home country.

Interestingly enough, there seems to be a different attitude depending on the cultural background of the entrepreneurs, with people coming from countries with more efficient bureaucracies seeming less able to cope with the Croatian one. This gap between their importance and their presence in the studies is particularly evident in the Southeast European countries that have joined or are intending to join the EU; they are expected to be more vulnerable to the free movement of people, labour, and goods. Research (Šimić Banović, 2022; Šimić Banović et al., 2020) confirms that reliance on informal networks is essential for private and professional purposes, i. e., as a continuous way to circumvent various obstacles and as a key resilience factor during the recent multiple shocks that have occurred. As shown in Figure 2, since the beginning of 2020 in Croatia, the list of unfavourable circumstances grew ever longer: the Covid-19 pandemic at the global level, Brexit effects at the EU level, natural disasters (two major earthquakes and floods), and the new Law on Foreigners at the national level (Šimić Banović et al., in press). Non-EU citizens from developing countries are particularly vulnerable, especially those affected by the most recent migrant crisis.

Hence, for these people, informal networks are particularly important substitutes for missing or weak formal institutions. Many immigrant entrepreneurs initiate their networking from expat groups and regularly use them to socialise and obtain essential information. In small countries with a rather small share of foreigners (such as Croatia), the reason may also lie in the relatively low number of entrepreneurs from one single country so that "foreign" solidarity trumps solidarity with people

from the same country or village. In addition, for pragmatic reasons, people choose to stick together depending on their speciality.

Experienced English-speaking Croatian entrepreneurs are often connected to those expat communities. By taking advantage of their language asset and their work experience with foreigners, they provide services to a niche not accessible to other Croatian entrepreneurs, resulting in win-win situations. Ethnic entrepreneurs are used to in-group cooperation and support as an efficient way of compensating for formal deficiencies in the business environment. Thus, there is a possibility for these networks to be used formally and to promote integration into the formal business. An association representing ethnic entrepreneurs could further advocate for entrepreneurs' interests and foster their integration into the Croatian business scene.

5. Discussion and Conclusion

In both cases above, a number of unlawful or immoral (from the state perspective) practices emerge. They persist and are at times encouraged by group dynamics where in-group acceptance depends on the capacity of individuals to ascribe to alternative moral orders (Wanner, 2005) or switch between moral principles depending on the situation and the context. In the Romanian case, this becomes more visible. Clear instructions and a modus operandi are regularly ignored, although not always and not everywhere, but only when circumstances require it: when individuals find it more convenient than respecting the rules. Migrants fit a given context but bend some particular categories of rules when necessary and seem to fit the "in spite of the state" situation where rules are there and function but remain partly ignored. In the Croatian case, we can instead witness some association with the "beyond the state" situation (Polese et al., 2018; Polese & Morris, 2015), where formal rules are claimed to be in place but are in fact non-existent. Many entrepreneurs encounter nothing but barriers when surveying business associations; moreover, the rules that regulate the business environment are, in spite of a facade of normality, by and large absent.

In this respect, we suggest that a great deal of interest should be devoted to further exploring the state–citizen relationship and what happens when individual and state moralities do not overlap or even diverge. A growing amount of attention in this direction has already expanded the literature devoted to informality and individual or society-centred accounts contrasting with a state-led view on individual morality (see Morris, 2011; van Schendel & Abraham, 2005). Indeed, in contrast with the general assumption that the state and citizens are bound by a social contract whose terms are *in primis* defined by the state lies an important question: What happens in cases where the state fails to deliver what it has promised or the citizens are not willing or able to accept the state's morality as their own? This, it has been

shown, may occur when an externally imposed view on what is "moral," "fair," or "due" is enforced by the state but not understood by its citizens (Gill, 1998). Ultimately, non-compliance with state-mandated instructions does not necessarily imply that citizens plot against the state or undermine its symbolic power. Non-compliance may also result from citizens' discontent with the state's values and impositions or lack of social protection. In such cases, formal structures are replaced, supplemented by, or have to compete with informal ones.

Our intention here was to explore situations where reliance on informal practices becomes sufficiently widespread to talk of a societal tendency, which the state may choose to tolerate or tackle. Whilst institutions can potentially eradicate the habit, a similar habit is likely to emerge if the very societal needs underlying that habit are not addressed properly. This practice represents a way for these social actors to look after themselves and indicate that something concrete should be done to address societal needs.

Eventually, a large gap between how things are done and how they should be done can be observed, and citizens, as individuals or associations, move away from state morality to engage in practices that are likely to be punished (if discovered). Minor non-compliance is somehow the norm in a modern state. We have criminal activities, people falling out of the system temporarily, we have deviant social behaviour, and executive forces deal with that. However, when individual welfare becomes the norm for a significant amount of people, one needs to reflect on how the human condition could possibly be improved in that context. The persistence of informal practices in the Eurasian context has encouraged scholars to a specific and panoptic view on the role of informality in everyday state–citizen relationships. When a socio-economic definition of informality is employed, results showed that in areas where societal trust towards state institutions is lower, engagement in relations with fellow citizens (including a form of payments or exchange of favours) is regarded as a necessity, a moral obligation, and something useful (Polese, 2016; Polese & Stepurko, 2016). When trust towards state and formal institutions is low, citizens prioritise the consolidation of relations with one another while bypassing state institutions (Polese, 2021). In such cases, high informality levels can be used as a proxy for mistrust towards state institutions, low quality of governance, and to argue that citizens perceive their institutions as weak, incapable, or ineffective.

When this happens, we have a situation in which the state works to liquidate informality at the declarative level while actually pushing people into informality or reliance on connections. In such a case, using coercive measures to compel people to employ formal channels and avoid informal practices is not necessarily the best strategy. By contrast, rebuilding trust in institutions and state authority might be a better way to encourage people to rely less on informal transactions and connections.

Table 2. Direct (affecting fellow citizens) and indirect (affecting a society) harmfulness and legality.

	Direct harm (mostly illicit)	Indirect harm (might be licit)
Illegal	Murder, trafficking, dealing hard drugs, ethnic violence (might be licit in some cases)	Fiscal fraud, nepotism, ethnic or religious discrimination
Legal	Use legal action against unaware people to extort money or property; clauses written in a smaller font at the end of a contract	Laws that favour one (ethnic, religious) group over others (are licit for the favoured ones)

Source: Polese (2021).

This article has been an attempt to survey elements that may worsen (or improve) the state–citizen relationship and put the newcomers in a weak position, where they are not supported or are only partially supported by the state that should look after their welfare. People engaging with mobility put themselves, in many cases, in a vulnerable position, as the cases of Romanian migrants and ethnic entrepreneurs in Croatia have shown. By investigating the solidarity networks in which these individuals are embedded, we have tried to show the political (and policy) relevance of apparently insignificant micro and individual actions. This reinforces the claim that everyday governance should be given more attention (Polese et al., 2020). In addition, transcending from a moral judgement on these practices, our interest is to identify areas of governance that need to be addressed most urgently. Where we can identify a gap between state instructions and people's behaviour, this is where intervention is needed.

We are aware that the divergence between individual and state morality may take many forms, including criminal activities. This is why we should help draw the line between what should be partly tolerated and addressed and activities that are clearly in conflict with human dignity. In a previous article, we have suggested that a boundary can be drawn through the direct–indirect harm principle. That is, activities that harm the state and fellow citizens directly should be addressed immediately and prevented. However, activities that harm the state to create space for community benefits without directly harming fellow citizens should be considered as a possible starting point for a reflection on how to improve policy-making, as illustrated in Table 2.

By clearly distinguishing practices, it becomes possible to de-normalise the discourse on informal practice. Policies that target everything that is informal are too dispersive and waste precious resources by allocating "a bit to everything." A deeper understanding of informality, by contrast, enables greater focus and concentration of resources on priorities. Further studies on informality should be based on a matrix distinguishing at least what practices are urgent, those where action can be delayed to concentrate on the most urgent issues, and the practices that (sometimes against all odds) improve governance by informally addressing gaps in policy that eventually benefit society.

Conflict of Interests

The author declares no conflict of interest.

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Article

Non-War Activities in Cyberspace as a Factor Driving the Process of De-Bordering

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Abstract
Whereas war is the continuation of politics by other means, a new space between diplomacy and open conflict is now becoming available for state and non-state actors, tempting them with the promise of achieving a strategic advantage over an opponent without risking the escalation of the conflict to the level of kinetic aggression. From that perspective, the ongoing shift of states and societies into cyberspace is becoming extremely interesting. As it blurs national borders, it offers an excellent dimension in which to exercise non-war activities, enabling reduction of kinetic aggression in the three basic dimensions of warfare (land, air, and sea) and providing new means of reaching one's political objectives. The aim of this article is twofold. Firstly, it discusses the changing nature of borders and examines the impact of non-war doctrine on the functions played by national borders. Secondly, it analyzes how states utilize these activities to achieve political goals and gain strategic advantage over opponents, as well as to what extent they foster de-bordering.

Issue
This article is part of the issue "Re-Visioning Borders: Europe and Beyond" edited by Artur Gruszczak (Jagiellonian University) and Roderick Parkes (German Council on Foreign Relations).

1. Introduction

The last 50 years have been marked by rapid technological progress in the fields of automation, computerization, and digitalization. Nevertheless, during the last several months that already high pace of change has accelerated by at least an order of magnitude. The Covid-19 pandemic has not only driven development of many innovative technologies but has also turned out to be a catalyst for the adoption of new solutions in society. It will undoubtedly also have a profound impact on the future of international conflicts. Society's shift online means that cyberspace has become an even more significant dimension of how foreign states and non-state organizations exert influence.

The basic research assumption of this article is that due to the specific features of cyberspace, like its borderlessness, a-territoriality, and attack attribution difficulty, its importance for state competition is constantly

growing. Especially attractive are activities in a non-war area that lie between peaceful cooperation and open conflict. They enable reducing kinetic aggression in the three basic dimensions of warfare: on land, in the air, and at sea. As a result, these activities are a factor in diminishing the importance of the traditional, geographical boundaries that were designed to protect against traditional threats. This means that states may deliberately keep their activities below the threshold, which, if exceeded, would force the use of an armed response. In this scenario, the escalation of conflict means the escalation of activities in cyberspace, where traditionally understood boundaries do not exist. The kinetic forces remain at bay. This path gives time for the necessary negotiations before states move to pursuing their policies by other means.

As the jurist and political theorist Carl Schmitt argues, international law arises directly from changing perceptions about how political legitimacy is tied to geography

(Schmitt, 2003). However, the advent of cyberspace has caused shifts in the traditional understanding of geography and traditional borders defined as lines separating physical spaces. Therefore, the methodology of this article will be similar to Michael Reisman's hermeneutic approach to international incidents in which "the formal sources of law have genuine significance or are merely a facade concealing raw and ephemeral political calculations [that] can only be assessed when you have seen how they fared in a particular incident" (Reisman, 2014, p. 5). Thus, in this article the selected case studies will discuss transnational incidents and examine how activities in cyberspace change the meaning of the national borders.

This article proposes using neoclassical realism theory, the most recent strand of realism. This theoretical approach aims at examining both structural factors of state behavior and domestic level variables (so-called intervening variables), e.g., the perceptions and misperceptions of decision makers or strategic culture, which shape all aspects of state responses (Ripsman et al., 2016). Neoclassical realism theorists seek to analyze individual state behaviors, e.g., military doctrine force posture, alliance preferences, or foreign economic policy, by studying the model's variables (Taliaferro, 2000–2001, p. 135).

Neoclassical realists agree with structural realists that states construct their foreign security policies balancing the threats and opportunities that arise in the international system. Also, since the primary purpose of a state is to ensure its own survival, it wants to minimize the risk of endangering its own existence. Consequently, any opportunity to limit the risks to state survival in the case of an unforeseen development of events is desirable. This contributes to the attractiveness of non-war activities in that they enable pursuing states' goals while avoiding openly aggressive actions and clear attack attribution, which implies lower risks for states' security.

In the adopted analysis model, the dependent variable is the degree of implementation of a state's goals, e.g., destabilizing a rival country or slowing down/delaying an opponent's military research program. The means used to achieve these goals were considered an independent variable in the study. Whereas the intervening variable is the level of risk to state security while achieving the assumed goals.

This article will proceed as follows: The second section discusses the changing nature of borders and their diminishing importance in the era of cyberspace's ubiquity. The third section defines the term "non-war activities in cyberspace" to provide the theoretical framework for the case studies analyzed in the subsequent part. Consequently, the fourth part draws an overall picture of the impact of non-war doctrine on the functions played by national borders. The examples of non-war activities in cyberspace will be discussed to analyze how states apply these activities to achieve a strategic advantage over an opponent and to what extent they foster de-bordering.

2. Cyberspace as a New Frontier for National Security

Since the Peace of Westphalia, state borders—lines separating physical spaces—have been an important security element delimiting the scope of territorial jurisdiction of the authorities, creating a barrier against external threats, and regulating the international movement of people and goods. As Spruyt states: "Borders enabled sovereigns to specify limits to their authority and also precisely specify who their subjects were" (Spruyt, 1996, p. 21). In this Westphalian style, territorial borders are constructed and reconstructed in the search for control and power (Newman & Passi, 2001). Therefore, border control has become a core activity for states (Anderson, 1996, as cited in Andreas, 2003, p. 1).

At the beginning of the 1990s, a change in the meaning of territorial borders was distinctly indicated by former Israeli prime minister Shimon Peres, who said that in a world where missiles can precisely hit a target thousands of miles away, the existence of clearly located land borders does not matter much (Rose, 1994). It was a message that the state-centric approach of traditional realists, in which sovereignty, territoriality, and state boundaries were accepted as obvious and existing features, was in question (Luke, 1993, as cited in Newman & Passi, 1998; Shapiro & Alker, 1996). Agnew called this traditional way of reasoning a territorial trap (Agnew, 1994). He intended to draw attention to the fact that by concentrating on this kind of thinking, which emphasizes the importance of territorial states, we avoid analyzing the influence of power in alternative spatial configurations. In other words, the "territorial trap" amounts to the "freezing of geography" in which power and action belong only to the territorial state, at the expense of engaging many geographic areas, scales, and complexities of policies and political actions around the world (Agnew, 2010, as cited in Ashraf, 2015, p. 55). From that moment on, international security, freed from its former close ties to geographical territory, was extended to new areas and forms. As David Newman argues, classical bordering based on the Westphalian assumption of the necessity to delineate and control borders, accepting exclusive state sovereignty, had to change—adapting to the new meaning of borders as contact zones (Newman, 2003).

Globalization processes and increasing interdependence, catalyzed by the development of modern information technologies, and above all Western European and North American experiences, i.e., opening markets and lifting trade barriers, have unsealed national borders. The third industrial revolution, powered by furtherance in fields like computer science and biotechnology, entails a transition for advanced industrial nations from an economy based on natural resources and physical inputs to one based on intellectual assets. Therefore, the advent of the knowledge economy implies the lessened significance of deposits of natural resources and industrial regions, which, in consequence, implies the dwindling

relevance of national borders. Capturing a piece of land in the 21st century brings incomparably lower benefits than a century or two ago. Thus, here is another powerful force diminishing the importance of physical borders.

Such a process of losing territorial anchorage is framed within the concept of de-bordering. First coined by Albert and Broch (Senhardt, 2013), de-bordering can be explained as an increasing permeability of state territorial borders, together with the decreased ability of states to close themselves off from all kinds of cross-border activities (Senhardt, 2013). In other words, de-bordering means "the functional change of borders, the loss of importance of their territorial anchoring and—as a consequence—the decoupling of (functional) system borders and territorial borders" (Bonacker, 2007, as cited in Senhardt, 2013).

Even though some idealistic globalization literature assumes a "borderless" world or the "eclipse of the state," it can be noted that states are currently dealing with the simultaneously existing processes of closing and opening. On the one hand, borders have been opened to the passage of capital and commodities under the banner of neoliberalism (Gregory, 2011, p. 242), and on the other, there have been attempts by states to seal their borders (caused by, e.g., the migration crisis or the threat of terrorist attack), walling practices along state borders (e.g., at the borders of the US and Mexico or Israel and Palestine), and other barriers to mobility (e.g., stopping the movement of migrants over the border Poland shares with Belarus in 2021). The most recent manifestation of re-bordering is an effect of the Covid-19 pandemic. Many governments have decided to seal their borders by intensification of border controls, or even outright closure to protect against the spread of the virus. Megoran is of the opinion that it is naïve to think that Covid-19 "borders on steroids" and migration regimes will simply dematerialize when the pandemic is defeated (Megoran, 2021).

Therefore, the creation of border control mechanisms is an outcome of these two tendencies—both the desire for border opening and to control migration (Van der Wusten, 2002, as cited in Newman, 2003). Especially after the devastating terrorist attacks on September 11, the need to seal borders, "re-bordering," returned with doubled strength and the voices for open borders were muted (Andreas, 2002; Newman, 2006; Rumford, 2006). Also, the securitization of state borders has shifted academic interest to the issues of strengthening border control, surveillance, crime prevention, or even the militarization of borders (Gruszczak, 2018, p. 25). Therefore, one may assume that territoriality and state borders have not yet lost their meaning and that the process of reinforcing national lines is still in progress.

Taking into consideration all that has been mentioned above, one can draw two simple conclusions. Firstly, de-bordering and re-bordering processes are largely intertwined (Senhardt, 2013, p. 29). Herzog and

Sohn articulate that bordering cannot be analyzed as an "either/or" binary condition. Particularly, bordering is "an inherently co-mingled process, whereby institutional, economic and socio-cultural behaviors simultaneously embrace both elements of rebordering and debordering" (Herzog & Sohn, 2019, p. 195). In fact, these two dynamics collide, confront their contrasting goals, influence each other, and co-mingle. Secondly, despite theories regarding the diminished importance of territorial borders and against the state-centric understanding of borders (Newman & Passi, 2001), state governments are pushing back against the consequences of such ideas. Attempts are being made to conduct cyberspace territorialization, which consists firstly in "the application of territorial notions of international law to persons, activities, and objects existing or operating in or through cyberspace and, secondly, in states asserting their sovereignty in cyberspace by creating national cyberspace zones" (Tsagourias, 2018). Creating cyberspace zones, that is, cutting a state off from the global Internet and building a national one, is probably the most radical way of asserting sovereignty in cyberspace (Tsagourias, 2018). In the case of the national internet, the borders of the national network overlap with state territorial borders. This concept was implemented, e.g., in Iran (Halal internet) and in North Korea (Kwangmyong internet), but such ideas are also being aggressively developed in Russia (RuNet).

Another example of trying to establish digital boundaries coinciding with state territorial borders is enforcing state laws in cyberspace in order to exercise their normative jurisdictions (Desforges & Géry, 2022). Specifically, when governments try to connect a cyber event to their territory by referring to the physical location of information technology (IT) infrastructure (Internet cables, servers, etc.), individuals, or entities within their territory, the problem of determining the appropriate jurisdiction arise. A good example of a situation of jurisdictional conflict is that of the Clarifying Lawful Overseas Use of Data (CLOUD) Act (U.S. Department of Justice, 2018), a new digital data acquisition model for investigating the most serious crimes (e.g., acts of terrorism or child pornography). The CLOUD outlines the terms on which law enforcement authorities may access digital data collected by Internet service providers and located in foreign jurisdictions other than the seat of the issuing authority. The CLOUD mandates every US firm to disclose data hosted on their servers, wherever in the world these servers may be located. Since its signature in 2018, the document has been criticized mostly due to concerns regarding its threat to the sovereignty of other states.

However, except for radical solutions like the national internet of authoritarian regimes, state borders, both geographic and normative, may only partially help national security in cyberspace. In fact, the Internet is a "battleground of control" by national governments to only a small extent. The process of de-bordering is especially evident in cyberspace.

Whereas historically, every crime or threat to state security was physically linked to traditional state borders, currently, any form of hostile activity can at least be facilitated by the cyber component. Some crimes, like large-scale theft of personal data, wouldn't be even possible before the advent of cyberweapons. Without a doubt, cyber threats have radically changed the border security landscape, blurring traditional ideas about borders. This detachment from traditional concepts of borders encourages states to shift to cyberspace which gives them a wide range of tools for achieving political goals, especially in the information field (e.g., social media and digital propaganda), without the necessity of engaging military capabilities in direct confrontation (Morris et al., 2019). For adversaries who want to make strategic gains without reaching the conflict threshold laid down in Article 5 of the Washington Treaty (NATO), the anonymity of cyberspace and attribution dilemmas drive activities in the non-war area.

Although state governments try to articulate their territory in cyberspace, e.g., by introducing censorship and control over the Internet, filtering, and surveillance, they should avoid the simplified analogy between cyberspace and traditional national territory. Despite the fact that cyberspace is not limited by borders in the same way as territorial spaces, from a realistic perspective, state governments often mistakenly perceive the Internet as an extension of existing state territory (Manjikian, 2010). Cyberwar and other malicious activities in cyberspace ignore traditional territorial boundaries, since states solve conflicts using technology, bypassing territory. Therefore, all boundaries in cyberspace are artificial and can be likened to fortifications painted with easily washable chalk on the ground.

3. War and Non-War Activities in Cyberspace

During the NATO summit in Warsaw in 2016, it was stated that defense of cyberspace was one of the basic tasks of NATO's collective defense. Consequently, cyberspace was recognized as an area of military operations. However, while war is a legally, morally, and strategically exceptional condition, most cyberattacks are non-military activities that fall under the general category of "grand strategy" (Lonsdale, 2019). Thus, "cyberwar" does not fit within the traditional and legally defined concept of "war" (or the more commonly used term "armed conflict"), which refers to situations where "there is use of armed forces or prolonged armed violence between states and organized armed groups or between such groups within the territory of a single country" (*Prosecutor v. Dusko Tadic*, 1995, § 70).

Cyberwar is full of ambiguities and therefore there are doubts as to whether cyberattacks can be classified as war at all. It is difficult to assess the effectiveness of the weapon used before or even after its use, to determine the time needed to recover from the attack, and whether the selected line of attack can be continued.

In case of cyberwar, one cannot be sure whether a failure of a given part of the system caused by an attack will not lead to damage to other parts of the system (cascading failure). It is almost impossible to predict the actions of the other side and third parties. However, the overriding challenge in cyberconflicts is establishing attribution for cyber operations.

As shown in a recent analysis of more than 200 cybersecurity incidents related to the activities of nation states since 2009 (McGuire, 2021), half of them concerned low-budget, simple tools that can be easily purchased on the darknet, while an additional 20 percent involved more sophisticated custom-made weapons. However, a further 30 percent were of uncertain, or unattributable origin. If the latter are used correctly, in most cases the attackers won't provide investigators with enough evidence to prove the source of the attack.

There are many factors that may enable attack attribution (Davis II et al., 2017), including: (a) technical indicators, such as network analysis and inspection of the log files of software programs and processes executed on the victim's computer systems, and of the networks used by the victim through third-party service providers; (b) political indicators, consisting of the political context in which an incident takes place and the relevant motives of capable parties (*cui bono*); and (c) all-source intelligence indicators, including sophisticated capabilities available to very few countries. For example, the theory that the Stuxnet worm that caused physical damage to Iranian centrifuges was built in American–Israeli cooperation, is based on a complex set of indicators. The technical ones include, e.g., a text string that suggests that the attackers named their project Myrtus, which was an allusion to the Hebrew word for Esther (Markoff & Sanger, 2010), circumstantial evidence of Israeli involvement in Stuxnet's code construction. Moreover, Israel has its own *style points*, and in the case of Stuxnet, they used not one, but two stolen certificates, four zero-day vulnerabilities, and included hints in the code (Singer, 2015). There were also political indicators, including, e.g., the fact that degrading the Iranian nuclear program would be beneficial to US and Israeli interests, and Israel felt threatened by Iran's growing nuclear program (De Falco, 2012). Stuxnet's attribution was declared thanks to independent research and off-the-record conversations conducted by David Sanger. Later, independent researchers also presented attribution findings and evidence in a variety of other informal ways, e.g., through blogs and social media posts (Davis II et al., 2017, p. 18).

However, despite the increasing advancement in tracking cyberattacks, source determination is still a slow, multi-step process that rarely provides certainty as to the source of an attack. As Rid and Buchanan articulate, "the process of attribution is not binary, but measured in uneven degrees, it is not black-and-white, yes-or-no, but appears in shades" (Rid & Buchanan, 2015). In other words, uncertainty regarding the origin of an attack can be minimized, but the desired high levels of certainty can

rarely be achieved. Despite the common practices and tradecraft that are used by a variety of experts in cyber forensics that shed light on attribution, due to the diversified nature of the attacks there is no single standardized attribution methodology (Davis II et al., 2017). Therefore, the investigative process might be described as "as much an art as a science" (Rid & Buchanan, 2015). Moreover, cyberattribution is not first and foremost a technical problem but a political problem (Rid & Buchanan, 2015).

At the same time, it is worth remembering that not only the attribution problem, but also and most significantly the conditions of conventional military power stopped, e.g., Iran's retaliation against Israel and the US. Assuming that cyberspace is a new, but not entirely separate component of a multi-faceted conflict environment that also includes land, sea, air, and space, from this point of view, cyberwar is more of a description of operational activities than a decisive strategic confrontation (Cornish, 2018). In other words, hostile activities in cyberspace are increasingly likely to be a form of low-level interstate conflict, in which the normative understanding of what constitutes unacceptable, aggressive behavior is much less clear. These activities can be non-invasive, such as gathering information or disseminating propaganda, or invasive, such as disrupting government websites or crippling a civilian data-mining system (SCADA). This has the potential to escalate cyberattacks into conventional interstate conflicts if they are not properly managed. If, on the other hand, they are well-managed, they may be limited to subliminal activities, i.e., maintained by the attacking party at a level below the relatively clearly identifiable threshold of regular open war (Watts et al., 2017). Additionally, it should be taken into account that the links between perceived effects and threats in cyberspace are loose and may be different for each country (Libicki, 2012). In line with the basic assumption of realism, it is expected that there is logic in the behavior of states; therefore, the development of an escalation ladder in the context of cyber activities is possible and necessary, as it will allow for better planning of activities, so as to maintain the desired level.

All things considered, the above-mentioned problems and challenges of cyberwar may be perceived by the states more as an opportunity than a risk by seeking to coerce, acquiring influence within, influencing large numbers of individuals' perceptions and political decisions, or destabilizing key countries and regions. Numerous statements from state officials, e.g., the US defense representatives, make clear that the competition played out primarily below the threshold of major war is mostly expected (Morris et al., 2019).

The term "non-war" is embedded only in the political sense, but there are no binding definitions on the basis of international practice and law. For this reason, it should be examined through the lens of and confronted with the concepts of "use of force" and "aggression," which are well-defined under international law and mean "the use of armed force by a state or a group of states against the territorial sovereignty or political independence of another state" (United Nations, 1974). In other words, non-war is a type of phenomenon that is defined by negating war, while fulfilling neither the definition of "war" nor "peace."

Literature on the subject offers many terms for actions below the threshold of armed aggression and usually refers to the entire spectrum of possible actions, not only those in cyberspace: "grey zone" between war and peace (Morris et al., 2019; Popp & Canna, 2016), "non-war military activities" (Office of the Secretary of Defense, 2020), "unpeace" (Kello, 2017), "warfare during peacetime" (Takashi, 2020; van de Velde, 2018), "subliminal aggression" (National Security Bureau, 2015, as cited in Liedel, 2018, p. 96), or "persistent cyberspace confrontation" (Casey, 2007).

For the purposes of this article, two definitions of actions below the threshold of triggering armed aggression prove to be the most useful. Due to the specificity of the analyzed problem, they will be limited only to activities undertaken in cyberspace.

Lucas Kello defines "unpeace" actions as "midspectrum rivalry lying below the physically destructive threshold of interstate violence, but whose harmful effects far surpass the tolerable level of peacetime competition and possibly, even, of war" (Kello, 2017).

A more detailed and exhaustive definition has been proposed by the RAND Corporation, defining the "grey area" as:

> An operational space between peace and war, involving coercive actions to change the status quo below a threshold that, in most cases, would prompt a conventional military response, often by blurring the line between military and nonmilitary actions and the attribution for events. (Morris et al., 2019, p. 8)

The above definitions indicate three features of non-war activities: (a) the goal of all activities is to avoid open conflict and serious clashes; (b) the incremental nature of the actions taken, which prevents the determination of the conflict threshold; and (c) the problem with assigning responsibility for an attack due to its greater anonymity, which makes it possible to hide the source of the attack, or at least raise doubts about it. Such tactics delay or block the attacked country's response. In order to avoid strong reactions from the attacked state, greyzone campaigns may be limited to activities that do not threaten vital or existential interests. This harasses the enemy but does not risk attacks on areas that are critical to state security. Thus, the risk of a possible military response from the attacked state is reduced. Campaigns in the grey zone may target specific threats in the target countries, which may lead to dangerous social divisions, prompt economic stagnation, or threaten military capabilities. Also, when analyzing non-war activities, they should always be placed in an international context, i.e., bearing in mind that they are part of the ever-growing

global competition. This is reflected in, e.g., US, Russian, and Chinese strategic documents. Therefore, one should always consider the purpose and effects of a response. Actions taken in the context of the grey zone of one country may set expectations about other problems and fuel international competition.

At the very end it must be noted that grey zone conflict can be seen as distinct from hybrid warfare (Belo & Carment, 2019). The concept of hybrid warfare, understood as the space-time coexistence of several different generations of wars that intersect, interpenetrate, and confront each other on the battlefield or in operations other than war, relies on a combination of both kinetic and non-military tools (Hoffman, 2007). However, grey zone conflicts may involve only unconventional techniques, e.g., cyber operations, facilitating a situational ambiguity which states use to their advantage (Belo & Carment, 2019).

4. Testing Non-War in Cyberspace

The development of information technologies and the reduction of their costs has resulted in the saturation of critical systems with modern IT solutions. The possibilities of the modern technologies that have been developed over the last several decades are currently being tested by the most digitally advanced countries. In the military dimension, cyberspace and modern IT solutions are being used by states and non-state actors in new ways. This follows the logic of the RMA (revolution in military affairs) concept (Kamieński, 2009), as technological changes have always shaped the evolution of international security and threatened to upset the balance of power. The key difference is that, today, the pace of these changes is growing exponentially, while the political processes of building resources, drafting legislation, and setting standards in cyberspace all take time (Schjølberg, 2018). The growing dependence on IT services has made cyberspace an entirely new domain for hostile actions. Just as the use of aviation in military operations created the need to defend against attacks from the air, today, IT technologies force states to seek new ways of responding to the threats caused by those technologies. At the same time, we need to remember that traditionally understood, physical boundaries evolved in a world where exerting influence required geographical proximity and all the subjects existed on the same, physical plain. In cyberspace, distance is not measured in kilometers but milliseconds. All publicly available nodes of a network are reachable regardless of physical location, and the people accessing them need no passports.

Activities in cyberspace may facilitate achieving intended effects that had previously been possible only by using kinetic force. As demonstrated above, cyberoperations can seldom be considered armed attacks that warrant an immediate military response by the target. They make it possible to avoid outright military clashes and unambiguous or attributable violations of international law or norms. In neoclassical realist realms, rivals seek ways to achieve relative gains without triggering unnecessary escalation, and without risking liability for the use of force. Moreover, as Fischerkeller and Harknett accurately note, "states are seeking to advance their national interests without recourse to war, thus their interactions in this cyber strategic competitive space are best approached as a form of *tacit agreed competition*" (Fischerkeller & Harknett, 2019, emphasis in original). This doesn't mean that states are explicitly agreeing on illegal behaviors in cyberspace, but rather that they are at the early stages of an agreed to competition, where "mutual understandings of acceptable and unacceptable behaviors are still being developed through competitive interaction" (Fischerkeller & Harknett, 2019).

At the same time, it can be said that in cyberspace the attacking side will usually be a highly developed country. Today's operations in cyberspace result from carefully planned and expertly conducted reconnaissance of targeted objects in order to find the weakest and most appropriate access points. Despite the asymmetric character of cyberweapons, which offers no advantage to highly developed countries, conducting cyberoperations capable of making a strategic impact is complex, expensive, and time consuming. Their complexity is driven by a need to coordinate multiple dependencies, including those outside of cyberspace and often among multiple involved countries. Technical aspects constitute just a small part of such a challenge. This is also why such operations are expensive—the cost goes way beyond personnel payroll, as it involves line items like acquisition of necessary hardware and infiltration of foreign facilities. Given the complexity and cost, it should come as no surprise that strategic-level cyberoperations are not conducted over a weekend. In other words, conducting a successful Distributed Denial of Service (DDoS) attack, stealing an email, or even interfering with critical infrastructure (i.e., carrying out a tactical operation in cyberspace) can be achieved by virtually anyone; successful, large-scale operations that make a strategic-level impact require exponentially more resources. And for these reasons, although aspiring-cyberpowers like North Korea or Iran do possess the capabilities for conducting tactical operations, the ability to carry out cyberoperations that can influence the policy of foreign countries remains in the domain of only the true-cyberpowers, like the US or China.

Following Michael Riesman's approach, let's study two very well documented cases to see how they were resolved and whether the attacks were classified as either border violation or use of force.

A good example of an attack allegedly orchestrated by one of the cyberpowers is an extensive operation carried out by Russian hackers targeting three Ukrainian regional power distribution companies at the end of 2015 that left more than 200,000 inhabitants without power for several hours (Zetter, 2016). The blackout didn't last long as the operators were able to manually

restore power within approximately six hours. However, it caused further difficulties in operating the power plants. The attackers overwrote firmware on critical devices, leaving operators without automated control of power distribution for about a year (Dragos, 2017, as cited in Narayanan et al., 2020). Even after the power supply was restored, workers had to control the breakers manually.

The investigation into the 2015 hacks proved that this operation was carefully planned following months of reconnaissance, studying the networks to launch a perfectly planned and synchronized assault (Zetter, 2016). Even though the Ukrainian intelligence community was certain that the Russian secret services were behind the attack, and security firm experts confirmed that the attacks were carried out by a Russian hacker team known as "Sandworm" (Greenberg, 2017b), there was no evidence to support the claim. However, the fact that the attacks were inspired or organized by Russians might be indicated by the results of an analysis of the scale, goals, and complexity of the entire campaign of attacks against Ukraine. The 2015 cyberspace operation was the result of careful planning and identification of the networks under attack. The complexity and scale of attacks indicate that they were prepared by professionals who could properly gather information, prioritize actions, and distribute tasks among different groups of operators, intelligence analysts, and malware writers. Such large-scale attacks were carried out again in December 2016 and in June 2017 (Dragos, 2017). More importantly, the blackouts in Ukraine were just one part of a series of events destabilizing practically every sector of Ukraine: the media, finance, transportation, military, politics, and energy (Greenberg, 2017a).

The Russian–Ukrainian conflict clearly shows that by using grey zone aggression, it is possible for a state to pursue its national interests. Additionally, by creating a new status quo, Russia is successfully lowering the international expectations of its behavior. By making the conflict politically ambiguous and by conducting small-scale hostilities, foreign observers are kept uncertain about upcoming developments. Most importantly, through its activities in cyberspace Russia is creating a "sort of 'digital front line' that reflects the military front line" (Desforges & Géry, 2022). Therefore, one may assume that the main goal of Russians is both to control the network and to bring these territories under Russian influence. All these activities are tied together by Russia's idea of creating a national "sovereign" Internet (RuNet). That being the case, international conflicts can shape the boundaries of cyberspace by modifying existing borders and creating new ones. This leads to the conclusion that setting borders, even as fluid and dynamic as those in cyberspace, is decided by countries that need these borders for certain reasons. And vice versa, in situations where states do not need borders, e.g., for greater freedom of action and anonymity in cyberspace, there will be no such borders.

The most recognized example of effective actions that are below the threshold of armed aggression is the 2010 cyberattack with the computer worm known as Stuxnet on Iranian nuclear installations. It has been called "the world's first digital weapon" (Zetter, 2015), and one of "the most complex threats ever analyzed" (Falliere et al., 2011, p. 2). The attack was a significant event because, for the first time in history, a computer program was used to attack the critical infrastructure elements of a hostile state, causing physical harm. The failure was only discovered after a few days. The Natanz nuclear facility was temporarily shut down, and Iran's attempt to obtain enough highly enriched uranium to build a nuclear weapon was delayed.

There is no definitive evidence of the source of the worm. Although the White House has never issued an official statement, it is suspected, and there is sizable, though inconclusive, evidence that this advanced cyber weapon was created in American–Israeli cooperation. In any event, both countries have never denied the claims that they were involved with Stuxnet's development (De Falco, 2012). Regardless of which country was involved in the construction of Stuxnet, the fact that it required the resources of a nation (Langner, 2010) suggests a new approach to using cyberattacks to achieve national goals. The cost of this operation was comparable to the estimated cost of destroying Iranian facilities using conventional means. However, a conventional operation would have forced Tehran to respond in kind, while the use of malicious software made it possible to avoid an armed conflict (Ashraf, 2015). By analyzing the scale, goals, and complexity of the entire cyberattack campaign, it can be concluded that Stuxnet is a model example of state-sponsored attempts to conduct hostile activities in cyberspace against an enemy state.

Gaining the ability to conduct offensive cyber operations below that conflict level may bring exceptional benefits from cyberspace as an operational domain. Gregory Rattray and Jason Healey argue that: "It may be that the future of cyberconflict is not equivalent to larger, theatre-level warfare but only to select covert attacks which could range across a wide set of goals and targets" (Rattray & Healey, 2010, p. 86). This argument is based, in part, on case studies showing that offensive operations using conventional forces are relatively rare and usually condemned by other states because they are clearly visible, have easy to recognize actors, and inherently carry the risk of escalation. The situation is different with cyber operations in the "grey area of non-war," wherein the principles and rules of international law are difficult to enforce and are subject to competing interpretations (Schmitt, 2017a).

5. Conclusions

Even if certain operations may amount to the use of force, no state or international organization has ever publicly, unequivocally, and explicitly qualified a

cyber operation as the use of force (Delerue, 2020, pp. 273–342). While there is no doubt that the existing norms of international law defining the behavior of states in times of conflict and peace also apply to cyberspace, the borderless nature of cyberspace, its a-territoriality, and the attribution problem mean there is still a question of how the rules of international law should be interpreted (Schmitt, 2013). Unlike physical cyber infrastructure, comprised of tangible elements, from fiber optic cables to cell towers, computers, and servers, "electromagnetic frequencies do not easily fit with a notion of sovereignty that is confined to state borders" (Schmitt, 2017b, p. 14).

The examples of Stuxnet and hacking the Ukrainian power providers have proved the potential of the ambiguity and the effectiveness of cyber operations employed by grey zone adversaries; this potential stands to persist in the future as it has in the recent past. The biggest challenge is that of accountability in cyberspace due to the low confidence in attributing the origin of a given attack (Davis II et al., 2017).

For the attacked state, the lack of attribution is a problem; for the attacking state, it creates new opportunities for action without much fear of the conflict reaching the kinetic phase. Therefore, gaining the ability to conduct strategic offensive cyber operations below the conflict level may bring exceptional benefits from cyberspace as an operational domain. In both examples, (allegedly) Russia and the US/Israel managed to exert a strategic influence over a foreign state without escalating the conflict. Looking through the lens of neoclassical realism theory, avoiding openly aggressive actions and decreasing the probability of attack attribution increase state security. However, to use the full potential of non-war competition to limit confrontation, states need to consider what levels and forms can be tolerated by the attacked state and international opinion. If not assessed properly, the attacking state ends up risking a hybrid "forever war" or a kinetic response.

If Russians were behind the attacks on the Ukrainian power grids, the grey zone technique was a way of expressing dissatisfaction with aspects of the regional power without the risk of being alienated in the international arena and undermining Russia's status as a superpower (Morris et al., 2019). Cyberspace gave the attackers the chance to acquire influence within, and/or destabilize a neighboring country without physical aggression.

If Americans and Israelis were behind the Stuxnet attack, they managed to slow down and delay the Iranian nuclear program. It was also a way to demonstrate the power of the countries in the new competitive domain of cyberspace. Furthermore, it is highly possible that from the very beginning the attackers had assumed that the psychological effects of Stuxnet may be greater and more important than the physical ones. The intent might have been to undermine the Iranian government's trust in its own ability to develop a nuclear weapon. While it can be assumed that the first goals were achieved by the

US–Israeli coalition, the psychological effect of the operation likely changed when Iranians realized that they were faced with aggressive foreign adversaries and that burning the centrifuges had not been due to a technical error (Rid, 2013).

As demonstrated above, non-war activities in cyberspace diminish the importance of geographical borders for protecting countries from external influence, and thus can be considered a factor driving the process of de-bordering. The lack of traditionally understood borders in cyberspace favors highly developed countries with developed cyber offensive capabilities. Since cyberspace makes it possible to achieve political goals more cheaply, more efficiently, and without the risk of being exposed to international criticism, the importance of non-war activities will only grow. Given that more and more activities are moving into cyberspace, we can only expect this process to become increasingly visible.

Conflict of Interests

The author declares no conflict of interests.

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