THE RHETORIC OF THE DISSOLUTION OF STATE BORDERS AND THE QUESTION OF GLOBAL GOVERNANCE WITHIN THE SECURITY REGIME

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SUMMARY: 1. Introduction. 2. The joint consideration of borders, politics and wars. 2.1. New actors and the de-determination of security poles. 2.2. Current issues and national security strategies. 3. Political security rhetoric and deliberation in global decision-making centers. 4. On issues regarding transformation in significance of territoriality and global governance

RESUMEN: El artículo propuesto se basa en la teoría de sistemas para identificar un proceso legal y político coevolutivo que sirve como evidencia de un cambio en el significado de la territorialidad dentro de los regímenes de seguridad. Sostenemos que estos regímenes documentan la incongruencia de la política y el derecho, y de la estructura con su semántica. En este marco de referencia, los actores no estatales como las redes terroristas y las ONGs ganan relevancia y plantean desafíos a las organizaciones de seguridad. El presente artículo afirma que el Consejo de Seguridad de las Naciones Unidas gobierna sin mecanismos democráticos de derecho, ignorando aún las reivindicaciones sociales que exigen formas de gobernanza receptivas. Al traer a las organizaciones de movimientos sociales a la vanguardia, se concluye que el derecho democrático global basado en actores del movimiento social puede mejorar la capacidad de respuesta de la gobernanza de seguridad a través de nuevas normas democráticas.

PALABRAS CLAVE: Fronteras estatales, seguridad internacional, Teoría de Sistemas, regímenes jurídicos, movimientos sociales.

RESUMO: O artigo, alicerçado na teoria sistêmica, identifica um processo coevolucionário entre direito e política que denota transformações da territorialidade no âmbito de regimes de segurança, os quais assinalam a incongruência entre política e direito e entre estrutura e semântica. Nesse diapasão, atores não estatais como redes terroristas e ONGs ganham importância e desafiam os regimes de segurança. O artigo sustenta que o Conselho de Segurança da ONU ignora os reclames sociais que requisitam responsividade, tendo um modo de governança sem mecanismos jurídicos democráticos. Ao se trazer organizações de movimentos sociais para o primeiro plano, conclui-se que um direito democrático global ancorado em atores de movimentos sociais poderia impulsionar a responsividade da governança de segurança através de normas assemelhadas a democráticas.

PALAVRAS-CHAVE: Fronteiras estatais, segurança internacional, Teoria dos Sistemas, regimes jurídicos, movimentos sociais.

ABSTRACT: The article builds on systems theory to identify a co-evolutionary legal and political process that serves as evidence of a shift in the significance of territoriality within security regimes. It holds that these regimes are documenting the incongruence of politics and law, and of structure and semantics. In this frame of reference, non-state actors such as terrorist networks and NGOs gain importance and pose challenges to security organizations. The paper affirms that the United Nations Security Council rules without democratic mechanisms of law, still ignoring social claims urging responsive forms of governance. By bringing social movement organizations to the forefront, it concludes that global democratic law based on social movement actors could improve the responsiveness of security governance through new democratic-like norms.

KEYWORDS: State borders, international security, Systems Theory, legal regimes, social movements.

1. INTRODUCTION

In view of the new global formations that have arisen in the last decades, numerous authors have identified a shift in the role of state borders (as well as state "sovereignty").[1] The rhetoric of dissolution/debordering or of the new role of state borders has certainly become a mainstream issue for political research; it is, however, at times carried out without the reflection it deserves, as researchers often place too great an emphasis on the territorial dimension of states. An immediate and straightforward connection between states and territorial boundaries cannot not simply be drawn. *Ingeborg Maus* (2002) has shown that a certain relation has emerged between a populace and the modern state in the course of modernity, one that is connected to historical events and philosophical developments; this means that states have never merely been equated to a linkage between territory and authority.

Nevertheless, some of these arguments about new state and non-state formations do appear to be accurate, though evidence of such "new developments" must be subject to adequate investigation. In light of the historical connection between security, populace and territory, contemporary security challenges and current security strategies assumed by states and by organizations may or may not attest to changes in the significance of territoriality. This assertion is based on the observation that, when the role of territory has shifted, security strategies are meant to follow suit or adapt to this transformation. Of course, this does not entail a unidirectional or causal relation: war, for example, may itself also play a role in this shift in relation to borders.

The transformation of security strategies among the International Community —the evidence of which this article sets out to investigate as its primary objective— lead to new understandings of territoriality and new mechanisms of governance on the world stage. This will us allow to illustrate the global arrangements in response to traditional questions connected to the territorial sovereignty of a state. The second part of this paper comprises an analysis of this position.

Yet, what can we actually consider to constitute a "new development" or movement? This paper asserts that novel constellations can be identified in the context of security issues. Two

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[1] See, for example: Koskenniemi (2002), Hardt and Negri (2000), Fischer-Lescano and Teubner (2006), Mittelman (2002, 2010), Habermas (1998), Neves (2009), Slaughter (2004), Khan (1992); Grimm (2004); Schneider und Kusche (2011). In relation to security issues: Zangl und Zürn (2003: 172), Albert (1996); Bonacker (2007), Kaldor (2007), Kessler and Albert (2013), Chojnacki (2008), Ripsman and Paul (2010), Weller and Bösch (2015).

events are crucial in this regard. The first relates to the participation of new actors as one striking development. States are engaging non-state networks such as Al-Qaeda through the use of weapons that have not been developed for wars among states, such as drones. The second includes the role of non-state organizations such as the United Nations Security Council and NATO, which have adapted wholly new sorts of security strategies, as well as social movement actors such as NGOs, which, in NIKLAS LUHMANN'S terms, irritate political security centers. While security organizations also existed prior to 1989, for many, the end of the Cold War represented a new phase of security matters, one in which the purely Westphalian paradigm ceased to be valid: state borders could no longer be the central issue around which movement revolved in terms of war and peace (Kessler and Albert, 2013, p. 343). In the context of war, it is without a doubt that territoriality continues to play a central role in the present day. It is, however, important to note that many states and global organizations may find themselves engaged in a war without any claims to conquest. The "never-ending" War on Terror is one such example, which will be addressed later.

Yet this assertion can also lead us to the academic and political rhetoric surrounding "globalization", a term that, for many authors, often describes conditions after 1989 and one that is connected to contemporary security policies (Kaldor, 2007; Mittelman, 2010; Münkler, 2007).[2] In this regard, many academic disciplines are at odds as to how an understanding of a multipolar or unipolar "distribution of power" is to be developed —one that has essential been determined by power and norms since 1989 (Münkler, 2007; Zürn, 2008).

Even though such diagnoses may be misleading —as globalization is a development that commenced with the Iberian expansions in the fifteen century and considering that power is not a good that may simply be divided (Luhmann, 2000)— the recognition that the world has witnessed unprecedented events in regards to security issues since 1989 does, however, appear reasonable. On the one hand, political organizations are responding to security challenges and asserting their resolutions through the use of unprecedented measures. At the

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[2] MITTELMAN, J.H. (2010) identifies a new step in the development of security through the global financial crisis of 2008: he connects an essential economic "globalization" with issues (not) related to security. According to LAQUEUR, W. (2003, pp. 216 ff.), for example, globalization also has its opponents (be they right or left wing, religious or secular), who relate "globalization" to "capitalism, corporate power, Americanization and neoliberalism" in various ways, and who have already carried out terrorist attacks based on anti-globalist motives. Groupings such as IRA, ETA, the EZLN, the Italian Ya Basta! or the Unabomber are representative of the anti-Globalization movement. According to LAQUEUR, W., left-wing organizations established a global network at a conference in the Mexican town of La Realidad in 1996; this network has held demonstrations in cities such as Seatle, Göteborg, Davos and Quebec. For *Luhmann's* concept of "globalization" (Luhmann N. 1998, pp. 806 ff.).

same time, local and global law has been forced to develop new mechanisms, which may be sometimes mere instruments of politics, to legitimate political decisions.

The following section illustrates reactions by states to the challenges of non-state actors. It shows that concerns over territory continue, even though states should be addressing other issues. The subsequent section then investigates how the issues are being handled in the context of political rhetoric and centers of policy-making for security. These steps are meant to illustrate a co-evolutionary legal and political process that serves as evidence of a shift in the significance of territoriality within the global security regime.[3] From a systems viewpoint, we are able to identify a complex co-evolutionary political and legal process related to the formation of a legal order in the context of state and global security governance (see Fischer-Lescano & Meisterhans, 2013, p. 364), which is laid out in the following.

2. THE JOINT CONSIDERATION OF BORDERS, POLITICS AND WARS

Prior to the thirteenth century, fixed state borders did not exist in the modern sense; rather, governed territories were divided by large transition zones (Wallerstein, 1974, p. 32; Ruggie, 1998, p. 179).[4] As a result of the definite demarcation of borders and the importance of these boundaries for states, phenomena such as modern colonialism, deportations, embargoes, and the like often take territorial matters as a reference point when focus is placed on political arrangements. For instance, the treaties of Tordesillas (1494) and Saragossa (1529), both prior

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[3] What does "regime" signify? This has long been subject to profound debate (Zürn, 1987, pp. 7 ff.). According to KRASNER, S.D. (1982, p. 185), from a realist point of view, the term "regime" signifies "implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations". KEOHANE, R.O. (1997, p. 488) stresses that "regime" entails "rules guiding cooperative practices in International Relations", meaning that they denote complex interdependency. TEUBNER G (2012, p. 96) is in line with *Krasner's* definition, whereas FISCHER-LESCANO A. and TEUBNER G. (2006) criticize the term on account of its inadequacy in describing "private" legal regimes. For more on security regimes, see JERVIS R. (1982). This paper assumes that "regime" is a permanent formation in which globally differentiated systems combine with one another in a global dimension in order to resolve problems and paradoxes of world society. With this strategy, a different constellation was formed that had to address many other inferences —even though a regime is neither a network, a system nor an organization, it does work with these three structures. As such, the primacy of functional differentiation is represented as the guiding principle of the global regime. Internal power struggles among the regimes must be analyzed from case to case; it does, however, seem that global governance claims to essentially govern the world politically by way of regimes through the (instrumentalized) support of science (Holmes 2013, p. 242) and law (Neves, 2009). According to the view forward here, "global governance" is not only a combination of law, policies (*Krasner's* term is too centered on policies and traditional actors) and science, as it may also incorporate other systems such as education, the economics or art. The cases of *Khan* and *Snowden* demonstrate the weight of scientific experts within the security regime (see Corera, 2006).

[4] LUHMANN N. offers an overview of the formation of national borders (Luhmann, 2000, p. 199).

to the Peace of Westphalia, divided the world in two with the aim of preventing conflict between Portugal and Spain by way of a "distribution of power".

As such, it is little wonder that the lines which divide states from one another represent one of the most-discussed issues within academic research[5] and global political movements, from the modernity of NICCOLÒ MACHIAVELLI (the matter of Italy's political unification) until today. The significance of these borders for the establishment of states also accounts for why politics and borders have traditionally been considered jointly when demarcating a territory (Luhmann 2000, p. 189).

Although Systems Theory may grant "borders" an extended meaning, state boundaries only constitute symbols of internal, segmental (i.e. territorial) differentiation of the global political system, allowing the functions of this system – the determination of collectively binding decisions – to be fulfilled with a greater degree of probability (Luhmann, 2000, p. 244).

Certainly, however, modern states have never merely been defined in terms of a territory —as such a view would assume that nation states can only be described in terms of the violent domination of a place or, in other words, territorial sovereignty— but also in reference to population. In this sense, the depiction of a simple connection between sovereignty and territory proves inaccurate when considering modern states; this is merely a simplified description from the Middle Ages, as has already been argued (Maus, 2002, pp. 229 ff.).

Modern wars are, however, often associated with states and, in turn, with borders. According to NIKLAS LUHMANN (2000):

> "First starting around 1500, initially with the consolidation of the territorial state, will one be in a position to reduce law to warfare on states and, as such, to clearly differentiate between war and peace" (p. 195).

The modern concept of *jus ad bellum* and the war/peace distinction have traditionally only lent themselves to description using the state paradigm. Territorial wars are not only an essential element in the formation of modern states, but also in the demarcation process of a political system:

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[5] For example, according to ALBERT, M. AND BOCK, L. (1996), modern territories arrange social relations and constitute the primary formation that social systems represent in an abstract area. The territory would link itself to individual identity and *self*-education and would encounter the social structure were private property regulated through abstract property rights. Though this view may place too much value on the role of territoriality, the importance of the territory is undoubtedly key to the formation of many social and individual movements.

> "Conflicts are the typical variation mechanism here as well, which, during the transition to modern times and by way of selective survival, led to the establishment of the territorial state, which matured into the modern nation state. With this starting point, conditioned to territorial conflicts, and with a low degree of differentiation among other functional systems, it would have been inconceivable to comprehend of the stability of the political system as a special problem in view of a state's own borders in relation to other social areas (economy, family, religion, etc.)" (Luhmann, 2000, p. 418).

Both world wars, the constant state of war facing many African states that obtained independence in the twentieth century and subsequently reconstituted themselves, and the fall of Yugoslavia in the 1990s/2000s bear witness to the historical connection between "war" and "borders" of "sovereign" states (Luhmann, 2000, p. 77). However, modern civil wars are typically fought in a similarly territorial manner, as states establish themselves on account of combatants controlling the government of a bordering state or forming a new state.

Within security research, wars are often viewed to be an ancillary phenomenon of politics. The conception that war represents a rational means to assert political objectives,[6] and, as such, is not considered to be a genuine political act but rather an instrument of politics, is the core perspective forwarded by CLAUS VON CLAUSEWITZ: "War is simply the continuation of political intercourse with the addition of other means" (Clausewitz, 2008, Book VIII, 6b; Münkler, 1992, pp. 95 ff.) or "merely the continuation of politics by other means" (Clausewitz, 2008, Book I, 1). Here, the *purpose* of war is set by politics (Clausewitz, 2008, Book I, chap. I, 24).

For CLAUS VON CLAUSEWITZ (1780-1831), war is a combination of three elements, namely people, commanders along with their army, and government.[7] In this sense, war is an intertwined formation that state borders alone do not account for: CLAUS VON CLAUSEWITZ noted that wars can also be carried out in the absence of states or nations.[8] CLAUSEWITZ's "On War" does, however, essentially position war within a territorial, geopolitical and interstate

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[6] War is an "act of force to compel our enemy to do our will" (Clausewitz, 2008, Book I, chap. I, 2; Münkler, 1992, p. 60).

[7] War is a triad comprised of the following elements: 1.) Hate and friendship, 2) probability and chance, 3) political tools. "The first of these three phases concerns more the people; the second more the general and his army; the third more the government" (Clausewitz, 2008, Book I, chap. I, para. 28).

[8] CLAUSEWITZ's (1966) ideas about non-state wars can be found in the twenty-sixth chapter (Armed Populace) of the sixth book (Defense) in the work "On War, as well as in the "Profession Memoir" and in "Lectures on Small War".

paradigm on account of the work's focus on the Napoleonic Wars – the reference point for these conflicts were the conquest of borders. The Napoleonic Wars were, in fact, primarily territorial in nature and motivated by France's national interests (the "*grande nation*") as laid out by Napoleon (Platern 2007, p. 153). When CLAUS VON CLAUSEWITZ writes about "politics", the term refers primarily to statal, territorial politics, but the people constituted an incongruent element, a homogeneous figure linked to the two other elements.

2.1. New actors and the de-determination of security poles

While states remain the central actors, they are not isolated in the global context. Within international security, the role of non-state networks such as Jemaah Islamiyah from Indonesia, Los Zetas from Mexico, Al-Qaeda or women trafficking networks must also be considered. They usually operate within various zones, often with close ties to state forces and other segments of society. La Cosa Nostra and the Cartel de Medellin, for example, required support from parts of the government and the mass media in order to survive. The network led by Abdul Qadeer Khan, which can be described as an arrangement of various governments and non-state actors and which was vital to the development of the nuclear programs in Libya, Iran and North Korea (Corera 2006),[9] is likewise an important symbol of the interlinkages between diverse actors in various spheres of society.

This contributes to the obscureness of classical distinctions between state and non-state security actors. It does, however, prove difficult to identify just how great the influence and penetration of non-state organizations or networks such as "terrorist" movements are among governments and global organizations. A terrorist group, which may be characterized as a network[10], communicates with governments (Afghanistan, Pakistan, Somalia and Libya are classic examples), political parties, the mass media, companies, universities, etc. with the aim of carrying out spectacular attacks. Networks and organizations, such as companies that play a role in the security arena, do not only act within the political system but also require the structures provided by various systems in order to effectively operate. National security policies also utilize elements of non-state security actors when producing decisions. Territoriality is not absolute: In contrast to traditional political organizations, "terrorist"

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[9] The nuclear material that states, organizations and networks are able to acquire on the black market —which mainly exist in Kazakhstan, Ukraine and Belarus— are of great concern for American politicians and researchers, such as POTTER, W.C. (2007).

[10] For a description of terrorism as a political "ectoparasite", see SCHNEIDER W.L. and KUSCHE I. (2011, pp. 201 ff.).

networks and companies do not pursue traditional political interests: Al-Qaeda does not intend to impact the government of the United States with its attacks and the military companies, which have an influence on war governance, seek to earn profits rather than acquire territory. In this sense, the concept of the global security regime cannot be found in one central body, in a community of states or in an exclusive territorial objective; it exists through a plurality of demands and conditions made by various actors across numerous segments of society.[11] From the systems perspective, the participation of non-state actors encompasses a transformation in the social dimension in which territorial formations are unable to act (Kessler and Albert 2013, p. 354).

Cases exist in which we may not even speak of two distinct war polarities in the first place. When, for example, we consider the war between Palestine and Israel, at first glance, this conflict would appear to be a territorial war since its objective is domination of a territory. At the same time, however, it does not constitute a classic territorial war: 1.) Israel was founded in 1948 through a United Nations process against the background of the atrocities committed against Jews leading up to and during the Second World War. 2.) Israel does not recognize Palestine as a state, despite the fact that the latter obtained observer status in the United Nations on December 29, 2012.[12] This has led to a situation *sui generis*, in which Israel does not consider itself to be at war against Palestine, but rather in a "conflict". 3.) In order to carry on the war, both states require support from other states and from non-state actors, both of which do not have any immediate territorial interest in the area. 4.) Numerous non-state actors in Palestine (such as Hamas) and Israel (such as Kach and Kahane Chai) are combatants in this war, though they do not constitute a single entity on account of their different methods and objectives. Consequently, it seems impossible to regard this case as consisting of only two war polarities.

The intertwined relationship between classic and non-classic actors illustrates the lack of clarity in differentiating between intrastate and interstate wars, also shedding light on the new significance of national borders. The transformation in the social dimension does not only signify the presence of "new actors" but likewise a change in the constitution of the classic actors: Many states in on-going wars are not cohesive entities but rather a mixture arising

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[11] See FISCHER-LESCANO, A. and MEISTERHANS, N. (2013, pp. 372 ff.).

[12] The cases of Taiwan and Somalia also appear bewildering when explained on the basis of the Westphalian conception of sovereignty.

from diverse sources in society.[13] As such, in addition to lending evidence to the privatization of war, the role assumed by companies and other non-state actors also illustrates the character of polarities in current wars, which may be both state and non-state at the same time. It is questionable whether the presence of non-state actors can be viewed as the mere corruption of state politics: war clearly represents an exceptional state in which the reproduction of systemic codes for politics and law are often suspended. As a result, the fulfillment of political functions cannot be observed in many cases; rather, there exist chaotic and transversal connections among diverse sources which take decisions or strive to take decisions. In order for a state to remain an operational closed decision-making system (Luhmann, 2000), it must make a point to identify communicative strains: states require a great deal of non-political irritations from sources that demand the right to make and deliberate on collectively binding decisions. The current situations in Syria and Iraq are representative of this. It is therefore doubtful whether a state currently engaged in war may be characterized as a "typical" state on account of the radical break in the fulfillment of its basic social functions.

The on-going war in Syria also demonstrates the ambiguity and interconnectedness of modern conflicts: Syria does not officially find itself in a state of war with Israel, USA or Turkey, though these states have carried out attacks within Syria's borders. Likewise, Syria has executed attacks against Israel and Turkey[14]; while Russia and the Lebanese political party Hezbollah are supporting the government of Bashar al-Assad, Turkey supports the Syrian opposition. At the same time, NATO is protecting Turkey from attacks by Syria through Operation Active Fence. The sides engaged in contemporary wars are nothing other than an assembly of political and non-political organizations and networks at either pole, who wage war by using every instrument available – clear distinctions between state and non-state actors do not exist in wars, leading to a change in the conception of borders. One open question is whether networks can be described as mere parasites of the global political system (Schneider and Kusche, 2012; Holmes, 2013, p. 229) or as a part and parcel of organizations and states.

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[13] DEITELHOFF, N. and FISCHER-LESCANO, A. (2013, pp. 65 ff.) illustrate the case of combating piracy at sea, in which the connection between state and private actions becomes evident.

[14] Turkey placed the blame for the twin attacks in Reyhanli in March 2013 on a Marxist grouping with links to the Syrian government (see Türkei macht Linksextremisten für Anschläge verantwortlich. (2013, May 13). Süddeutsche Zeitung. Retrieved from http://www.sueddeutsche.de/politik/doppelanschlag-in-reyhanli-tuerkei-macht-linksextremisten-fuer-anschlaege-verantwortlich-1.1670958).

The diversity of the fundamental elements of war and their tendency to change are evidence to the permanence of its chameleon-like character.[15]

2.2. Current issues and national security strategies

States, as segments of the global political system, today find themselves in a constant state of checkmate. As above argued, in the context of current security challenges, the joint consideration of borders and politics cannot *per se* elucidate the global security dynamics. Prior to 1989, the semantic of "state power"[16], "state sovereignty"[17] and "anarchy in international relations"[18] often organized the relations between law and policies in the global dimension;[19] however, these concepts prove insufficient for explaining today's constellation in which war and security dynamics operate.

Pressure arising from various areas of society – from transnational companies, protest movements, supranational, state or private court decisions, environmental catastrophes, fundamentalist religious groups, political non-state organizations, refugee movements, drones, etc. constitute irritations that states must respond to. In many cases, however, states poorly replicate the influences of various segments of society in the political system; this has the consequence of rendering state measures ineffective within global dynamics of the present

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[15] CLAUSEWITZ, C. presents war as a chameleon for its ability to alter itself and its diversity (a reference of the three elements quoted). While the entire argument cannot be presented here, the term "new war" by KALDOR, M. (2007) or by MÜNKLER, H. (2006) appears to be indispensable: Why should a historically phenomenon be described as something "new"?

[16] "International politics can be defined, as we have seen, as a continuing effort to maintain and to increase the power of one's own nation and to keep in check or reduce the power of other nations" (Morgenthau 1993, p. 225). For an argument against the conception of power as a possessible commodity (e.g. as supported by Machiavelli, Huntington or Morgenthau), see LUHMANN, N. (2012, pp. 28 ff.). An example of an analysis by the UN Security Council in the context of the Principle Agent Theory paradigm, which is critical of the Systems Theory, can be found in VOETEN, E. (2008, pp. 51 ff.).

[17] For HEGEL's sovereignty doctrine and the problem of a non-state constitution, see FISCHER-LESCANO, A. (2005, pp. 199 ff.).

[18] Realist theories would emphasize that states must fight against one another to survive on account of anarchist constellations. And it is for this reason that long-term norms cannot exist. In this context, this theory (Waltz, 1979) makes use of the conception of "balance of power" to describe the international constellation (Zürn, 2008, p. 20).

[19] KESLER O. and ALBERT, M. (2013, p. 344). Though one may understand these conceptions as a self-description of states in the international constellation, they have never been sufficient terms for law or political sciences. Here, there is one study that identifies elements of contemporary conflicts in the Cold War era which appears interesting. In this sense, it is doubtful whether conflicts such as those between the United States and Vietnam or the Soviet Union and Afghanistan and the role of partisans, guerrilla fighters or urban guerrillas (Marighella, 1969) only entail state elements of territorial conflicts (as did the wars in the nineteenth century). Authors such as DALBY, S. (2016), however, depict the Cold War to be a traditional territorial conflict. According to MÜNKLER, H. (1992, pp. 116 ff.), the partisans, for example, do not only fight for territorial demands but likewise with anti-colonial or anti-imperial motives as well as in irredentist wars.

day [20] and leading to the emergence of new forms of rule under the banner of global governance (Holmes, 2013, pp. 222 ff.). Flows of communication stemming from disparate sectors of society provide evidence as to the concurrent state of fragmentation within society and to the contrary ambitions espoused by these social segments that lack an *a priori* hierarchization or an independent decision-making center.

Questions as to a shift in the role of terrorism after the era ending in 1989 can be answered by empirical research on the experiences of various states. On account of this new constellation, the security policies of states are forced to confront non-territorial threats, such as the dangers posed by terrorists, waves of migration, other states, drug trafficking or ecological risks. The following section sets out to illustrate this phenomenon by investigating the concerns harbored by a number of states —which are not permanent members of the UN Security Council— in order to uncover new security issues that are emerging through transformations in the security arena. Along with new actors, intertwined relations between non-classic and classic actors also exist, which are obscuring differences between intrastate and interstate conflicts, as the following section will highlight.

When observing movements in the security arena of states such as Iraq, Israel or Egypt, we are able to recognize a shift in external threats and a transformation in traditional security policies after 1989. The issue of territoriality, however, remains trapped within the framework of security matters. Israel, for example, identifies the following targets in its security strategy:

> "To defend the existence, territorial integrity and sovereignty of the state of Israel. To protect the inhabitants of Israel and to combat all forms of terrorism which threaten the daily life"[21].

This makes no mention of environmental catastrophes, drug trafficking or "human security". It is only when phenomena such as migration and religious, economic or social transformations prove to be decisive for preventing interstate wars are they elevated to matters of national security. At the same time, Israel is developing a considerable non-traditional military arsenal (e.g., cyberwarfare) to be able to combat new threats (Cordesman, 2006, pp. 65 ff., 132 ff.). However, as traditional forms of terrorism have existed in this

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[20] According to ZÜRN, M. (1987, p. 1): "In short, neither security nor welfare, peace nor quality of life, may be guaranteed through national policies alone".

[21] ISRAEL DEFENSE FORCES DOCTRINE. Available at http://www.idf.il/1497-en/Dover.aspx Accessed on 6 June 2013.

region for a long time, the cause behind the possible development of new strategies adopted by Israel or Egypt to counter terrorism cannot automatically be explained through events such as the "process of globalization after 1989" (Ripsman and Paul, 2010, pp. 118 ff.).[22]

A transformation can also be identified in Iran's security strategy, as the country supports non-state actors such as Hamas and the Lebanese Hezbollah with weapons, combat training and funding and is also developing its own system of cybersecurity.[23] These are strategies aimed at countering external threats and do not merely pursue territorial aims.

India finds itself in a position between traditional geopolitical threats and new security risks. On the one hand, Pakistan has long remained India's greatest territorial threat on account of its nuclear weapons arsenal, approaching India with the official policy of "renouncing the first strike" (with the exception of the new "Cold Start" policies). At the same time, India's security agenda is confronted with new, non-territorial threats such as disease (mainly AIDS, malaria and tuberculosis), migration, environmental catastrophes and organized crime. Nevertheless, Pakistan and other traditional geopolitical challenges remain the focus of India's security strategy (Ripsman and Paul, 2010, pp. 127 ff.).[24] The role of non-state actors is, however, of utmost importance in this context, considering, for example, the presence of diverse networks that pose security challenges to states —at times in cooperation with sectors belonging to the state (see Corera, 2006; Schneider & Kusche, 2011; Münkler, 2006). One may bear in mind that Osama Bin Laden was killed in Pakistan without the consent of the local government.

Brazil and Argentina face a similar situation: Besides traditional security matters, the existence of new issues such as social and ecological risks, international organized crime and drug trafficking can be identified in both states. Argentina is also confronting religious and

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[22] However, RIPSMAN, N.M. and PAUL, T.V. (2010) understand "globalization" to essentially constitute an economic and mass-media phenomenon. For the Egyptian situation, see CORDESMAN A.H. (2006, p. 187).

[23] As opposed to RIPSMAN, N.M and PAUL, T.V (2010, p. 123).

[24] The Cold Start doctrine justifies a possible nuclear strike if other states attack India with biological or chemical weapons. The cases of Israel, Egypt, Pakistan and Iran prove the necessity of differentiating between new means of war and new wars substantiated through various risks and spaces. For example: How is one to understand the Stuxnet worm (Kerschischnig, 2012; Hansel, 2011) that damaged Iran's uranium centrifuges in Natanz in 2009 and 2010? Can this merely be considered a war strategy used to protect Israel from terrorism —if the hypothesis of an Israeli or American "attack" is assumed— or does it represent a new model of war that is also being carried out in virtual space? In any case, this development represents a new challenge with which states and other actors must compete.

ethnic conflicts, illegal migration and global terrorism (Ripsman and Paul, 2010, pp. 92 ff.).[25] Due to their sheer size, the Olympic Games and the FIFA World Cup represent two mega-events that have presented new challenges for Brazil's security agenda, including cybernetic attacks as well as global and domestic terrorism (Boyle, Philip & Haggerty, 2009).[26]

The actions taken by global military powers such as the United States, the United Kingdom, China or Russia —which do not only pursue territorial interests— must also be taken into account in the regions named. On the basis of strategic global calculations made by these states, other states are forced to fight with new, borderless means of defense; yet they often lack the adequate tools to do so. For instance, Brazil has merely reacted to cyberattacks by the United States by way of diplomacy, as it does not possess adequate infrastructure for waging cyberwarfare.[27] Somalia, Yemen and Pakistan do not have any military means to respond to the many drone attacks committed by the US, which do not have any territorial claims, do not target the respective governments, and are not approved by the UN Security Council.[28]

The present political security arrangement and changes in the significance of state borders could be considered as examples of forms of decision-making and reproduction with a global dimension, as forwarded here; they are characterized by the legal and political absence of lawfully legitimate criteria and the uncontrolled participation of non-political actors.

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[25] These South American states have not been involved in any large-scale interstate wars for decades. Two exceptions are the Malvinas War (Falklands War - 1982) and the Ecuadorian-Peruvian Border War (1981).

[26] BOYLE, P. and HAGGERTY, K.D. (2009) emphasize that such mega-events are also components of the security constellation which emerged after the Cold War (2009, p. 258).

[27] It is interesting to note that the Brazilian government only became aware of this years-long cyber-espionage through documents leaked by E. Snowden and not through the work of its own intelligence agencies. These documents suggest that the US secret service, the NSA, spied on the state-controlled Brazilian energy company Petrobras and even on the president herself, collecting massive quantities of data. In reaction, a planned state visit by President Rousseff to the US was postponed because of this finding and due to an unsatisfactory explanation provided by the US government, the UN was notified and Brazil is likely to use other satellites for communication.

[28] According to a report by the UN Special Rapporteur Ben Emmerson, the US drone campaign, which could be considered as a breach of International Law, is being conducted without the consent of the lawful government of Pakistan (http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13146&LangID=E Accessed on September 23, 2013). According to Ahmed (2013), the US government is carrying out the drone attacks with "unofficial" approval from the governments of Pakistan and Yemen.

3. POLITICAL SECURITY RHETORIC AND DELIBERATION IN GLOBAL DECISION-MAKING CENTERS

States at the center and global legal-political decisions must also take new events and challenges that lack borders into account. The UN Security Council operates at a level where states, which accept the function of collectively binding decisions within a territory (Luhmann, 2000), are unable to act. In the face of the constellation of non-state actors, the directives of the UN Security Council have also assigned obligations to non-state actors since 1989, such as the Bosnian Serb Party[29] and the União Nacional para a Independência Total de Angola (UNITA)[30].

The political rhetoric is illustrative of such changes. There appear to be differences between the political Cold War rhetoric and the rhetoric of the era thereafter in relation to the conceptualization of the security problem: The political discourse after 1989 has primarily been based on "risks"[31], (e.g., terrorism, organized crime and environmental degradation) while the discourse during the Cold War concentrated on concrete "threats" —e.g., "the clear and present danger" of a Soviet attack, according to the US-American expression— (Daase 2013, p. 32).[32] According to *Oliver Kessler* and *Mathias Albert* (2013), the problem does not spin around what a risk is or how a given risk is regulated:

> "but rather which social preconditions must be fulfilled so that one can observe by means of the notion of risk (and its differentiations) (…) The definition of risks establishes power relations. Differing powers and groups attempt to influence the definition of risks: their magnitude, their potential for damage, from where they arise, what they actually entail and which evidence appears legitimate. This struggle surrounding the power of definition determines which sorts of knowledge and ignorance are relevant" (Kessler and Albert, 2013, p. 349).

"Risk" signifies a temporal change (which Systems Theory would describe as a change in the temporal dimension) in the orientation of security policies, i.e. an orientation directed towards the future: There no longer exists a certain and present danger but rather a possible danger.

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[29] UN Security Council Resolutions No. 1004/1995 and 1010/1995.

[30] UN Security Council Resolution No. 1127/1997.

[31] On the social selection of risks from a systems perspective, see LUHMANN N. (1991). According to this author "risk" may not merely be viewed as a technical calculation as calculation arises from a broad clause complex (Luhmann, 1991, p. 98).

[32] McCarthyism was the radicalization of this process.

As a result, security policies must provoke the actions of the sources of risk (Kessler & Albert 2013, pp. 348; 352 ff.).[33] In any case, the rhetoric of fear, related to present dangers, is just as often maintained in the present as it was during the Cold War, as the near invisibility and transience of the sources of risk can serve to support the political control mechanism.[34]

Two core factors can be identified within the present-day strategy of political rhetoric. First, the distinction between global, international, transnational and national security is being fading. Some existing risks are no longer bound to state borders but rather to the preservation of human life: this is based on the idea that Al-Qaeda, "American terrorists" such as the Tsarnaev brothers, environmental catastrophes or drug cartels, for example, do not entail actual threats to existent national borders. In the same sense, political actors may place dissimilar phenomena at the same category of risk regardless its national origin.

Second, the new temporal and —non— territorial challenges of contemporary wars entail a high degree of pressure for change on law and politics in a global dimension. However, this global configuration does not possess sufficient legal-political tools to confront the new demands. The United Nations Charter of 1949 essentially sets out relations among states but not, however, relations between states and non-state organizations (Oeter, 2008, p. 35) or networks. References to "peace" and "threats to peace" in chapter VII of the Charter are notions clearly connected to states (Zangl & Zürn, 2003, p. 219). These characteristics can also be identified on the margins of human rights, which fall to the responsibility of states (Article 1, § 3, 55, 76 UN Charter). This likewise applies when considering intrastate wars, such as in connection to Rhodesia's racist government of 1966, which the Council designated a "threat to world peace" through the Resolution No. 232/1966; this resolution specifically addressed the interstate context.

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[33] On the future orientation of risks, see BECK, U. (2016) and, to understand the Systems Theory approach, LUHMANN, N. (1991).

[34] Even though the president of the United States, Barack Obama, emphasized the transformation of security risks in a speech on May 23, 2013, citing the near equivalence of internal and external risks, and even though he attempted to identify a specific, concrete war objective rather than a "global" one, the rhetoric of fear and the possibility of a preventive strike remain present in the case that a "weaker" state is unable to annihilate the "terrorists". Moreover, the permanence and the ambiguity of terrorist actions likewise remain on the political agenda. While preparatory actions typically cannot be penalized within criminal law, in this quote, Obama establishes a new type of self-defense through a connection between "imminent" and "continuous", allowing him to legitimize preventative attacks by the United States – the leaders of terrorist groups that propagate attacks can and must be killed. In this regard, US politicians at the center of the security regime today not only evoke a permanent, imminent state of war against latent internal and external enemies and a constant war, they also attest to a constant "just war" (*bellum justum*).

In this regard, the threat to human life stemming from various sources of risk (environmental catastrophes, migration, terrorism, state terrorism, etc.) is not a phenomenon found within political-state discourse alone; it also represents a new challenge facing global legal-political decisions falling to organizations such as the UN Security Council, which aim to change the interpretation of the United Nations Charter so that it may adequately address this new rhetoric espoused by states as well as the new cases that are arising. A reinterpretation of the "threat to peace" can, for example, be identified in the Resolution No. 808 of 22 February 1993 in relation to the situation in former Yugoslavia:

> "Expressing once again its grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia, including reports of mass killings and the continuance of the practice of 'ethnic cleansing', (…) Determining that this situation constitutes a threat to international peace and security" (see also Oeter, 2008, pp. 36 ff.).

With this, the resolution takes a non-territorial tone to emphasize the connection between humanitarian abuses and the threat to international peace and security.[35] The semantics of the "responsibility to protect"[36] taken up by the International Commission on Intervention and State Sovereignty (ICISS) in 2001 on the request of Kofi Annan pertain to challenges in relation to human security (ICISS, 2001; Evans, 2011). In a similar vein, the option for wars such as the non-state and unending "War on Terror" does not appear in the Charter, though the Resolutions No. 1368 and 1373 of 2001 would eventually allow for it.

While terrorism is not strictly a contemporary phenomenon[37] – as strong global non-state networks, primarily Al-Qaeda, have carried out attacks in the past – the reality of this phenomenon has become a focus of attention. Al-Qaeda comprises a complex network characterized by the transnationalization of terror and by cooperation with states as well as

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[35] The Resolution No. 418/1977, concerning South Africa's apartheid, is considered to have only set a partial precedence that deemed massive human rights abuses by a government to be a threat to world peace. This was because one important prerequisite for the resolution was an interstate situation (Hullman, 2005, pp. 45 ff.). Another case of partial precedence is the Resolution No. 688/1991, which relates to the massive persecution of Kurds and Shiites in Iraq. The Resolution No. 808/1993, however, was not the first time that the UN Security Council determined a connection between "human rights abuse in a state" and a "threat to peace" – this connection was first made in the Resolution No. 794/1992 in relation to Somalia.

[36] The background for this concept lies in the situation in Rwanda in the 1990s. The UN Security Council recognized interventions for humanitarian purposes through the Resolution No. 1674/2006.

[37] On the history of terrorism, see LAQUEUR, W. (1977).

companies in developing its strategies (Zangl & Zürn, 2003, pp. 200 ff.).[38] The relevance and the originality of this case are, however, primarily the result of an unprecedented reaction on the part of the UN Security Council. The Resolution No. 1368 of 12 September 2001 designated global, non-state terror as a threat to world peace for the first time.[39] For its part, the Resolution No. 1373 of 28 September 2001 (along with the subsequent Resolution No. 1540 of 28 April 2004) created a new category of resolutions by reconstituting the UN Security Council as a legislative authority (Johnstone, 2008, pp. 80 ff.). Under Chapter VII of the UN Charter, the Security Council determined that UN member states are under obligation to carry out actions against global terrorism by all means available. However, the Security Council did not make reference to any concrete cases, states or specific periods of time. This was not an ordinary interpretation of the Charter through which the Security Council laid out a concrete approach to a past case. It was rather the first time that the UN Security Council created new and generally abstract obligations for *all* UN member states. One criticism that could be raised relates to the timelessness and the borderlessness of the "War on Terror"**[40]**: the resolutions referencing the terrorist threat allow vague justifications for actions taken by military states –measures which may be implemented without clearly defined criteria.

Under Chapter VII of the Charter, the UN Security Council has the right to undertake preventative actions to defend peace against potential dangers – as Article 39 defines these as a "threat or a breach of peace" – while states may only resort to reactive actions and engage in conventional wars of self-defense.[41] Despite this, the fight against terrorism does not focus on states: the "War on Terror" targets a concrete enemy. It does not constitute a traditional war of self-defense, as the resolutions might imply. This is based on two points: 1.) The attacks

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[38] As terrorism does not work by traditional political means and as it seeks to destroy politics as a system, it is doubtful whether it can be characterized as a part of the political system.

[39] Cases of partial precedence include resolutions 747 and 758/1988 on the terrorist-state attack of Lockerbie (related to Libya's government) and the resolutions pertaining to the situation in Afghanistan (e.g. Resolution No. 1267/1999), in which the UN Security Council condemned support for terrorism by states as a "threat to peace" under Article 39 of the UN Charter (Hullman, 2005, pp. 56 ff.; Zangl & Zürn, 2003, pp. 229 ff.).

[40] For this reason, the resolutions passed in 2001 are an indication of a transformation in the temporal dimension of security policies in systemic conceptualizations, as will be investigated later.

[41] Israel has executed many preventative attacks, such as those against Syria in 2003 and 2007 as well as against Iraq in 1981. In contrast to the reactive paradigm, RIPSMAN, N.M. and PAUL, T.V. (2001) argue that Iran and Egypt have, for example, developed offensive security strategies. The question remains as to whether the preventive attacks carried out by Israel may be taken as a sign of the impotence of the UN Security Council with the actions of the allies of the United States or as a sign of the incapacity of the Charter and the institutions to manage this kind of contemporary conflicts. This case —and Guantanamo— raise the issue of the observance of human rights when security themes are present.

from 11 September 2001 cannot be considered a case of traditional "first strike" since they were non-state and non-territorial attacks. 2.) The objective of the war is to combat every terrorist organization or every network, regardless of whether they were connected to the attacks from 11 September 2001. This point provides evidence as to the "endless" character of the War on Terror.

The Second Gulf War (1990-1991) represents an important case in that it paved the way for the resolutions regarding "terrorism". Through the Resolution No. 678/1990, the UN Security Council empowered the anti-Iraq coalition to attack.[42] In so doing, the Council anchored a decision that would have been unimaginable in the context of the Cold War,[43] as, starting from that point in time, the possibility of achieving consensus within the Security Council against a specific target became a reality. Iraq's invasion of Kuwait called for an unprecedented reaction, even when considering the events leading up to the Second World War in the League of Nations' era.[44] Prior to this invasion, the Security Council had only ever achieved consensus in the context of the policy of extreme discrimination in Rhodesia (1966) and in South Africa (in the 1970s and 1980s), though with numerous vetoes voiced on specific issues.

The Second Gulf War, an interstate conflict concerning the issue of territory, is illustrative of the territorial perspective in a global constellation: state and private actors, which did not strive to acquire political territory, took part in a war that was in accordance with international norms. This new political accord allowed a transformation in the understanding of applying global law and policies; it represented the extension of security objectives (Daase, 2013, p. 13) through the UN Security Council in exceptional situations. This will also occur in resolutions regarding Haiti –a decision to oppose a coup–, East Timor (Resolution No. 940/1994), Rwanda (Resolution No. 955/1994), Libya (Resolution No. 1973/2011), Congo (Resolution No. 298/2013), in decisions with humanitarian purposes and in those regarding women's aspirations (Resolutions No. 1820/2008 and 2106/2013).

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[42] The resolution garnered twelve yes-votes, two votes of opposition (by Cuba and Yemen) and one abstention from China. Some states protested the magnitude of the war: Malaysia emphasized, for example, that the Resolution No. 678/1990 was not meant to grant the US carte blanche in the use of force in consideration of the Resolution No. 660/1990 (Weller, 2010, pp. 40 ff.).

[43] The Resolution No. 84/1950, which condemned the "breech of peace" on the part of North Korea and authorized a military intervention by UN troops, arose from an exceptional situation as the Soviet Union was not on the Security Council at the time.

[44] According to ZANGL, B. and ZÜRN, M. (2003), only four vetoes were put forth in the Security Council between 1990 and 1994 (Zangl & Zürn, 2003, pp. 218 ff.).

The cases that have been presented here illustrate a global, non-territorial constellation with new security issues in which one can identify various security stakeholders, such as Al-Qaeda, a reformed NATO and a threatened populace. These cases prove that not only the amount of resolutions, Security Council meetings and consultations witnessed an exceptional increase after 1989[45], but that the decisions also gained in significance.

"To draw a distinction" represents the emergence of a new form (Luhmann, 1998, p. 60). When new significance is ascribed to a territorial border, a new border is concurrently established, thus constituting a new form. As JOHN GERARD RUGGIE states: "Unbundled territoriality is not located someplace else; but it is becoming another place" (Ruggie, 1998, p. 197). As such, the dissolution of state borders constitutes the transition to a new non-state border configuration and new spaces within the global constellation.

4. ON ISSUES REGARDING TRANSFORMATION IN SIGNIFICANCE OF TERRITORIALITY AND GLOBAL GOVERNANCE

This article proposes that territory is actually undergoing a transformation in the face of current security constellations. A systems hypothesis may be posed as to the cause of this process: Being that functional differentiation is the guiding principle of modern society, disagreement exists as to the relationship between functional and territorial differentiation in the political system[46] and in the legal system (Kessler and Albert, 2013; Schirmer, 2007)[47]. This indicates that world society – although it is undergoing a process of territorial differentiation in two of its globally functioning systems, namely law and politics[48] – is essentially operating through non-territorial processes in fulfilling the function of its

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[45] From 1946 to December 1989, a total of 646 resolutions were passed (an average of 15 per year), whereas 1,439 resolutions were passed in the period from 1990 to 20 December 2012 (an average of 65 per year).

[46] According to HAHN, A. (2000), BÖS, M. (2000), these tensions could be resolved by embedding functional differentiation within the borders of states. This embedding would be arranged through the congruence of integration, inclusion and territoriality within states (Bonacker, 2007, p. 26).

[47] For an analysis in response to the possibility of legal fragmentation see LUHMANN, N. (1971); FISCHER-LESCANO, A. and TEUBNER G. (2006).

[48] According to LUHMANN, N. (2000, p. 223; 1974, pp. 26 ff.; 2002, pp. 189 ff.), states are described as the political organization of society. As organizations of the political system, states operate in accordance with a distinction between members and non-members (Luhmann 2000, p. 13) and, in the same way, interactions and society entail differentiated, operative, closed systems (they produce decisions from decisions), which implement the system of functions through their own development (Luhmann, 1998, pp. 166, 830). As opposed to other systems, organizations are able to externalize their communication. For more in this regard, see SCHIRMER, W. (2007, p. 127): "From this perspective, international relations are inter-organization-systems (IOS)."

subsystems, meaning that it is primarily formed on the basis of cognitive expectations. [49] As a consequence, this dynamic essentially relates to the want to resolve problems within global society.

State borders do not only exist as physical entities but also as spaces that other parts of the political system or other systems understand to be components of their own structure. Beyond entailing areas that only states must consider, they are also arenas in which global actors act in order to develop their own dynamic and their own constitution[50]. This leads to a non-state dimension: Borders are not merely the political "property" of states, but likewise components of movements pursued by various non-state formations such as "terrorist" networks, companies, NGOs, etc. – borders are also non-state forms.

The security movements presented here illustrate that the framework of the global security regime is host to a condition with multifarious actors in the periphery (states, organizations and networks) and various centers (transnational organizations such as the UN Security Council and NATO, etc.). The global constellation not only encompasses interstate relations, but also a configuration with intertwined decision-making dimensions and irritations from various sources, including international agreements and courts, networks, programs by various global non-state actors, and global organizations. They are transforming the domestic and foreign policies of states[51] through non-state forms of pressure and are also able to create new programs. These measures are not limited to observations, critiques or "corrections" of the domestic activities of states that could otherwise be executed by other states.[52] In this regard, the non-territorial conflicts and wars lend evidence to changes in territoriality and to the current inability of states to overcome challenges that lack borders. Territoriality is

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[49] "Der Primat funktionaler Differenzierung ist die *Form* der modernen Gesellschaft. Und Form heißt nichts anderes als die Differenz, mit der sie ihre Einheit intern reproduziert, und die Unterscheidung, mit der sie ihre eigene Einheit als Einheit des Unterschiedenen beobachten kann" —The primacy of functional differentiation is the form of modern society. And form is nothing other than the difference with which their unity reproduces itself internally and the distinction with which it may observe its own unity as a unit of distinction— (Luhmann, 1998, p. 776, own translation).

[50] By making a reference to SACK's work os "Human Territoriality", TEUBNER, G. highlights the importance of statal borders to the formation of social systems. He states that: "In the nation state these two processes —self foundation of autonomous global social systems and their political-legal constitutionalization— occurred simultaneously. Territoriality was the basis not only for the state constitution, but also for the constitutions of other social subsystems. Territoriality should be understood as a symbolic space for power relationships, not merely as a geographical concept." (Teubner 2012, pp. 73, 43, own translation)

[51] The distinction between domestic and foreign policies is not clear (Luhmann 2000, pp. 244 ff.).

[52] LUHMANN, N. (2000, pp. 244 ff.) underestimates the impacts of globalization of matters of the state, though he does emphasize that many "domestic issues" of states may be matters concerning other states.

transforming itself and "globality of policies" increasingly signifies the expansion of new forms of global governance.

Politics anticipate the law. States are confronting new global political organizations at the periphery as well as the non-political formations that delineate global/local political programs or constitute challenges[53]. In order for states to satisfy their functions, they must process the new relations between functional differentiation (the political system of a society) and territorial differentiation; they are not, however, able to resolve a range of problems that are global in nature. In addition to states, political global organizations also confront other actors.

This transition period poses unprecedented challenges for the legal system, which has found itself in a permanently unstable order since 1989, as we have seen in the UN Security Council Resolutions No. 1368 and 1373 of 2001. As a result, we are constantly able to observe incomplete configurations in the context of global law, such as the settlement of decisions by the UN Security Council and unlawful actions taken by isolated states. As such, the security regime is documenting the incongruence of politics and law, and of structure and semantics, while the decisions of the UN Security Council demonstrate the sheer face of global governance with the relation between law and policies that lack power that constitutes a new global form of challenges. In this regard, this constellation shows just how freely a political organ can operate in the absence of the democratic mechanisms of law. Yet, at the same time, the law persists: On account of the unprecedented prominence of international legal norms (Fischer-Lescano, 2005, p. 216), the arbitrary nature of global governance can be controlled legally – due to social pressures, forms of global governance in the present-day constellation are forced to assert that their actions are lawful. The framework of the UN Security Council provides a complex legal process for legitimating political decisions. Yet this is no simple relation. The law also finds itself in a checkmate situation in which the borders of functional differentiation between politics and law can be illustrated on a global level.

In this regard, an on-going co-evolutionary process of politics and law (Fischer-Lescano and Meisterhans, 2013) after 1989 is illustrated through the changes in rhetoric as a semantic self-description of the political system and actions in a global dimension. Here, the transformation in the significance of territoriality constitutes one of its most important signs. The current

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[53] On the topic of cybernetic observation circle, center/periphery, in the context of the political system, see LUHMANN, N. (1998, p. 845; 2000, p. 245).

constellation has hardly created stable institutions and structures[54] or norms that are capable of overcoming the current challenges. As a consequence, the political-legal security dynamic continues to create new configurations and rhetoric in order to address problems – as is demonstrated by the R2P (responsibility to protect) motto and the fluid interpretation of the Charter by the Security Council.

This intertwined condition illustrates the transience and uncontrollability of security challenges, not only on account of the risks that exist but also due to the chaotic combination of actors who exert influence on organizations of power that stand opposed to the prevailing rules and norms.[55] Accordingly, questions remain open as to global democratic control, legitimacy, responsibility according to the rule of law, and social responsiveness in the context of global security movements. It is evident that the abundantly armed states assume a central role in this security dynamic. The international policy-making remains with the UN Security Council, but can these undemocratic political forms, which recognize new political and non-political actors, manage to govern the world? It would appear that global policies should also recognize new actors in order to promote responsiveness. While law is not something devoid of power, in the present context a secondary phenomenon supports political decisions in many situations.[56] However, global democratic law could prove one of the most important mechanisms for developing the responsiveness of governance through new democratic-like norms. Perhaps a form of global law that accompanies post-segmental policy-making through the inclusion of non-state organizations for the sake of addressing global demands would be better able to confront the challenges that exist.

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[54] On the relation between structure and semantics, see LUHMANN, N. (1998, pp. 539 ff; 1980).

[55] The global security regime has a center with various organizations that must adapt to the cases in order to control the regime. The center comprises formal organizations with professional core competencies (Teubner, 2012, p. 97). In any case, this article deems the UN Security Council to be the most important organization, which is why it has been the primary object of investigation. The existing central organizations sometimes form within states that not only find themselves in an alliance; here also we can identify an intertwined configuration of possibly conflicting interests. One example was the Malvinas War in which the USA, as a member of NATO and TIAR, supported the actions of the UK, meaning that the USA supported the interests of NATO. In this sense, we are unable to identify a uniform security regime. This analysis concerned "risks" from the perspective of the institutional centers (e.g., NATO, the UN Security Council, CDS-UNASUR, the Shanghai Cooperation Organization or SOZ, Collective Security Treaty Organization or CSTO) which enjoy policy-making capabilities and actualization capabilities with regard to the political programs.

[56] Might the security regime acquire a constitution able to control the unbridled caprice of global governance? Where might a structural connection between global governance and global law along with "secondary rules" be found? For more on these questions, see FISCHER-LESCANO, A. (2005), p. 210.

REFERENCES

AHMED, D. I., "Rethinking Anti-Drone Legal Strategies: Questioning Pakistani and Yemeni Consent", *Yale Journal of International Affairs*, vol. 8, n. 2, 2013, pp. 1–13.

ALBERT, M., & BROCK, L., "Debordering the World of States. New Spaces in International Relations", *New Political Science*, vol. 18, n. 1, 1996, pp. 69–106.

BECK, U., *Risikogesellschaft: Auf dem Weg in eine andere Moderne*, Frankfurt am Main, Suhrkamp, 2016.

BIANCHI, A., "Assessing the Effectiveness of the UN Security Council's Anti-Terrorism Measures: The Quest for Legitimacy and Cohesion", *European Journal of International Law*, vol. 17, n. 5, 2006, pp. 881–919.

BONACKER, T., "Debordering by human rights: the challenge of postterritorial conflicts in world society", in STETTER, S. (Ed.), *Territorial Conflicts in World Society*, New York, Routledge, 2007, pp. 21–36.

BOYLE, P.; & HAGGERTY, K. D., "Spectacular Security: Mega-Events and the Security Complex", *International Political Sociology*, vol. 3, 2009, pp. 257–274.

BÖS, M., "Die rechtliche Konstruktion von Zugehörigkeit. Staatsangehörigkeit in Deutschland und den USA", in HOLZ (Org.), *Staatsbürgerschaft. Soziale Differenzierung und politische Inklusion in der modernen Gesellschaft*, Wiesbaden, Westdeutscher Verlag, 2000, pp. 97-122.

CHOJNACKI, S., "Zum Formwandel bewaffneter Konflikte", in MÜNKLER, H. and MALOWIZT, K. (Eds.). *Humanitäre Intervention: ein Instrument außenpolitischer Konfliktbearbeitung. Grundlagen und Diskussion*, Wiesbaden, VS Verlag für Sozialwissenschaften, 2008, pp. 117–202.

CLAUSEWITZ, C., "Meine Vorlesungen über den kleinen Krieg, gehalten auf der Kriegs-Schule 1810 und 1811", in HAHLWEG, W. (Ed.), *Schriften, Aufsätze, Studien, Briefe*, vol. 1, Göttingen, Vandenhoeck & Ruprecht, 1966, pp. 208–599.

_____ *Vom Kriege*, Hamburg, Nikol, 2008.

CORDESMAN, A. H., Arab-Israeli Military. Forces in an Era of Asymmetric Wars, Westport, Praeger Security International, 2006.

CORERA, G., Shopping for Bombs: Nuclear proliferation, global insecurity and the rise and fall of the AQ Khan Network, New York, Oxford University Press, 2006.

CRONIN, B. "International consensus as legal authority", in CRONIN, B. and HURD, I. (Eds.), The UN Security Council and the politics of international authority, New York, Routledge, 2008.

DAASE, C., "Von der nationalen zur menschlichen Sicherheit: Politische und rechtliche Konsequenzen des erweiterten Sicherheitsbegriffs", in FISCHER-LESCANO, A., & MAYER, P. (Eds.), *Recht und Politik globaler Sicherheit: Bestandsaufnahme und Erklärungsansätze*, Frankfurt am Main, Campus, 2013.

DEITELHOFF, N. & FISCHER-LESCANO, A. "Recht und Politik der Privatisierung internationaler Sicherheit", in: FISCHER-LESCANO, A., & MAYER, P. (Eds.), *Recht und Politik globaler Sicherheit: Bestandsaufnahme und Erklärungsansätze*, Campus Verlag, 2013.

DALBY, S., *Creating the second cold war: The discourse of politics*, London, Bloomsbury Publishing, 2016.

EVANS, G., *Implementing the Responsibility to Protect: Lessons and Challenges* (May 5, 2011). Accessed on December 3, 2012. Available at: http://www.gevans.org/speeches/speech437.html.

FISCHER-LESCANO, A., *Globalverfassung: Die Geltungsbegründung der Menschenrechte*. Weilerwist: Velbrück Wissenschaft, 2005.

FISCHER-LESCANO, A. & TEUBNER, G., *Regime-Kollisionen: Zur Fragmentierung des globalen Rechts*, Frankfurt am Main, Suhrkamp, 2006.

FISCHER-LESCANO, A. & MEISTERHANS, N., "Ordnungsmuster der globalen Sicherheit", in: FISCHER-LESCANO, A., & MAYER, P. (Eds.), *Recht und Politik globaler Sicherheit: Bestandsaufnahme und Erklärungsansätze*, Campus Verlag, 2013.

GERDAU, A., *Obama's Speech on Drone Policy* (May 23, 2013). Accessed on June 4, 2013. Available at: http://www.nytimes.com/2013/05/24/us/politics/transcript-of-obamas-speech-on-drone-policy.html?pagewanted=all

GRIMM, D., "Can the 'Post-national Constellation' be Re-constitutionalized?", *TranState Working Papers*, n. 2, 2004.

HABERMAS, J., "Die postnationale Konstellation und die Zukunft der Demokratie". in: *Die postnationale Konstellation: politische Essays*, Frankfurt am Main, Suhrkamp, 1998.

_____ *Bestialität und Humanität: Ein Krieg an der Grenze zwischen Recht und Moral* (April 29, 1999). Accessed on June 12, 2013. Available at: http://www.zeit.de/1999/18/199918.krieg_.xml.

_____ "Eine politische Verfassung für die pluralistische Weltgesellschaft?", in *Zwischen Naturalismus und Religion: Philosophische Aufsätze*, Frankfurt am Main, Suhrkamp, 2005, pp. 324–65.

HAHN, A, "Staatsbürgerschaft, Identität und Nation in Europa", in HOLZ (Org.), *Staatsbürgerschaft. Soziale Differenzierung und politische Inklusion in der modernen Gesellschaft*, Wiesbaden, Westdeutscher Verlag, 2000, pp. 53-74.

HANSEL, M., "Stuxnet und die Sabotage des iranischen Atomprogramms: Ein neuer Kriegsschauplatz im Cyberspace?", in JÄGER, T. & BECKMAN, R. (Eds.), *Handbuch Kriegstheorien*, Wiesbaden, VS Verlag, 2011.

HARDT, M. & NEGRI, A., *Empire*, Cambridge, Harvard University Press, 2000.

HOLMES, P., *Verfassungsevolution in der Weltgesellschaft: Differenzierungsprobleme des Rechts und der Politik im Zeitalter der Global Governance*, Baden-Baden, Nomos, 2013.

HULLMAN, C., Konsens oder Zwang: Völkerrechtliche Friedensregelungen der internationalen Gemeinschaft für Bosnien-Herzegowina und Irak. Berlin, Berliner Wissenschafts-Verlag, 2005.

ICISS, *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty, 2001.

ISRAEL DEFENSE FORCES DOCTRINE. Available at http://www.idf.il/1497-en/Dover.aspx Accessed on 6 June 2013.

JAPP, K. P., "Regionen und Differenzierung", *Soziale Systeme*, vol. 13, n. 1-2, 2007, pp. 185–195.

JERVIS, R., "Security Regimes", *International Organization*, Vol. 36, n. 2, 1982, pp. 357–378.

JOHNSTONE, I., "The Security Council as legislature", in CRONIN, B. & HURD, I. (Eds.), *The UN Security Council and the Politics of International Authority*, New York, Routledge, 2008.

KALDOR, M., *New & Old Wars*, Stanford, Stanford University Press, 2007.

_____ "In Defence of New Wars", *Stability: International Journal of Security and Development*, vol. 2, n. 1, 2013, p. 4.

KEOHANE, R. O., "International Relations and International Law: two topics", *Harvard International Law Journal*, vol. 38, 1997, p. 487.

KERSCHISCHNIG, G., *Cyberthreats and international law*, The Hague, Eleven, 2012.

KESSLER, O. & ALBERT, M., "Die Transformation von Recht und Politik globaler Sicherheit aus der Perspektive der Systemtheorie", in FISCHER-LESCANO, A. & MAYER P. (Eds.). *Recht und Politik globaler Sicherheit: Bestandsaufnahme und Erklärungsansätze*, Frankfurt am Main, Campus, 2013.

KHAN, A., "The Extinction of Nation-States", *American University International Law Review*, vol. 7, n. 2, 1992, pp. 197–234.

KOSKENNIEMI, M., "Kosovo etc. Beyond the limits of international law?", *Finnish Yearbook of International Law*, vol. 10, 1999, pp. 177–189.

KRASNER, S. D., "Structural Causes and Regime Consequences: Regime as Intervening Variables", *International Organization*, vol. 36, n. 2, 1982, pp. 185–205.

LAQUEUR, W., *Terrorismus*, Kronberg, Athenäum Verlag, 1977.

_____ *Krieg dem Westen: Terrorismus im 21. Jahrhundert*, München, Propyläen, 2003.

LUHMANN, N., "Die Weltgesellschaft", *ARSP: Archiv für Rechts- und Sozialphilosophie*, 1971.

_____ "Gesellschaftliche Struktur und semantische Tradition", in *Gesellschaftsstruktur und Semantik: Studien zur Wissenssoziologie der modernen Gesellschaft*, Frankfurt am Main, Suhrkamp, 1980, pp. 9–71.

_____ *Soziologie des Risikos*. Berlin-New York, De Gruyter, 1991.

_____ *Die Gesellschaft der Gesellschaft*, Frankfurt am Main, Suhrkamp, 1998.

_____ "Ethik in internationalen Beziehungen", *Soziale Welt*, vol. 50, 1999, pp. 247–254.

_____ *Macht im System*, Berlin, Suhrkamp, 2012.

MARIGHELLA, C., *Mini-manual do Guerrilheiro Urbano*, New York, Mimeo, 1969.

MAUS, I., "Menschenrechte als Ermächtigungsnormen internationaler Politik oder: Der zerstörte Zusammenhang von Menschenrechten und Demokratie", in BRUNKHORST, H.; KÖHLER, W. R. & LUTZ-BACHMANN, M. (Eds.), *Recht auf Menschenrechte*, Frankfurt am Main, Suhrkamp, 1999, pp. 276–292.

_____ "Vom Nationalstaat zum Globalstaat oder: der Niedergang der Demokratie", in LUTZ-BACHMANN, M. & BOHMAN, J., *Weltstaat oder Staatenwelt? Für und wider die Idee einer Weltrepublik*, Frankfurt am Main, Suhrkamp, 2002.

MITTELMAN, J. H., "Globalization: an ascendant paradigm?", *International Studies Perspectives*, vol. 3, n. 1, 2002, pp. 1–14.

_____ *Hyperconflict. Globalization and Insecurity*, Stanford, Stanford University Press, 2010.

MORGENTHAU, H. J., *Politics among nations: the struggle for power and peace*, revised by THOMPSON, K. W., New York, McGraw-Hill, 1993.

MÜNKLER, H., *Gewalt und Ordnung: das Bild des Krieges im politischen Denken*, Frankfurt am Main, Fischer Wissenschaft, 1992.

_____ "Was ist neu an den neuen Kriegen? – Eine Erwiderung auf die Kritiker", in GEIS, A. (Ed.), *Den Krieg überdenken: Kriegsbegriffe und Kriegstheorie in der Kontroverse,* Baden-Baden, Nomos, 2006.

_____ "Old and new wars", in CALVELTY, M.D., & MAUER, V. (Eds.), *The Routledge Handbook of Security Studies*, New York, Routledge, 2010.

NEVES, M., *Entre Têmis e Leviatã: uma relação difícil*, São Paulo, Martins Fontes, 2006.

_____ *Transconstitucionalismo*, São Paulo, Martins Fontes, 2009.

OETER, S., "Humanitäre Intervention und die Grenzen des völkerrechtlichen Gewaltverbots – Wen oder was schützt das Völkerrecht: Staatliche Souveränität, kollektive Selbstbestimmung oder individuelle Autonomie?", in MÜNKLER, H. & MALOWITZ, K. (Eds.), *Humanitäre Intervention: ein Instrument außenpolitischer Konfliktbearbeitung, Grundlagen und Diskussion*, Wiesbaden, VS Verlag, 2008.

PLANERT, U., "Die Kriege der Französischen Revolution und Napoleons: Beginn einer neuen Ära der europäischen Kriegsgeschichte oder Weiterwirken der Vergangenheit?", in BEYRAU, D.; HOCHGESCHWENDER, M. & LANGEWIESCHE, D. (Eds.), *Formen des Krieges: Von der Antike zur Gegenwart*, München, Ferdinand Schöningh, 2007.

POTTER, W. C., "Non-state actors and nuclear proliferation", in MÆRLI, M. B. & LODGAARD (Eds.), *Nuclear proliferation and international security*, New York, Routledge, 2007.

RIPSMAN, N. M. & PAUL, T. V, Globalization and the National Security State, New York, Oxford University Press, 2010.

RUGGIE, J. G., *Constructing the World Polity Essays on international institutionalization*, New York, Routledge, 1998.

SCHIRMER, W., "Addresses in world societal conflicts: A systems theoretical contribution to the theory of the state in International Relations", in STETTER, S. (Ed), *Territorial Conflicts in World Society*, New York, Routledge, 2007.

SCHNEIDER, W. L. & KUSCHE, I., "Parasitäre Netzwerk in Wissenschaft und Politik", in BOMMES, M. & TACKE, V. (Eds.), *Netzwerke in der funktional differenzierten Gesellschaft*, Wiesbaden, VS Verlag für Sozialwissenschaften, 2011.

SKORDAS, A., "'Just Peace' revisited: international law in the era of asymmetry", in STETTER, S. (Ed.), *Territorial Conflicts in World Society*, New York, Routledge, 2007.

SLAUGHTER, A. M., *A New World Order*, Princeton, Princeton University Press, 2004.

SMITH, R., *The utility of force: the art of war in the modern world*, London, Allen Lane, 2005.

SÜDDEUTSCHE ZEITUNG, *Türkei macht Linksextremisten für Anschläge verantwortlich*. (2013, May 13). Retrieved from http://www.sueddeutsche.de/politik/doppelanschlag-in-reyhanli-tuerkei-macht-linksextremisten-fuer-anschlaege-verantwortlich-1.1670958

TEUBNER, G., *Verfassungsfragmente: Gesellschaftlicher Konstitutionalismus in der Globalisierung*, Frankfurt, Suhrkamp, 2012 (English version: Constitutional fragments: Societal Constitutionalism and Globalization, Oxford, Oxford University Press, 2012).

US PRESIDENCY, *International Strategy for Cyberspace: Prosperity, Security, and Openness in a Networked World* (May, 2011). Retrieved from http://www.whitehouse.gov/sites/default/files/rss_viewer/International_Strategy_Cyberspace_Factsheet.pdf

VIOTTI, A. R. A., *Ações Humanitárias pelo Conselho de Segurança: entre a Cruz Vermelha e Clausewitz*, Brasília, FUNAG, 2005.

VOETEN, E., "Delegation and the nature of Security Council authority", in CRONIN, B. & HURD, I. (Eds.), *The UN Security Council and the Politics of International Authority*, New York, Routledge, 2008.

VOIGT, R., *Alternativlose Politik? Zukunft des Staates – Zukunft der Demokratie*, Stuttgart, Franz Steiner, 2013.

WALLERSTEIN, I., *The Modern World-System: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century*, New York, Academic Press, 1974.

WELLER, M., *Iraq and the use of force in international law*, New York, Oxford University Press, 2010.

WELLER, C. & BÖSCH, R., *Globalisierung und transnationale Konflikte: Frieden aus einer Global-Governance-Perspektive*, in: Online Akademie der Friedrich-Ebert-Stiftung. Globalisierung. http://library.fes.de/pdf-files/akademie/online/08825.pdf, 2015.

WHITE, N. D, *Keeping the peace: the United Nations and the maintenance of international peace and security*, Manchester, Manchester University Press, 1997.

ZANGL, B., & ZÜRN, M., *Frieden und Krieg: Sicherheit in der nationalen und postnationalen Konstellation*, Frankfurt am Main, Suhrkamp, 2003.

ZÜRN, M., *Gerechte internationale Regime. Bedingungen und Restriktionen der Entstehung nicht-hegemonialer internationaler Regime untersucht am Beispiel der Weltkommunikationsordnung*, Frankfurt am Main, Haag & Herchen, 1987.

_____ "Wer regiert die Welt und mit welchem Recht?", in RITTBERGER, V. (Ed), *Wer regiert die Welt und mit welchem Recht? Beiträge zur Global Governance-Forschung*, Baden-Baden, Nomos Verlag, 2008.