

# CIRR

Croatian  
International  
Relations  
Review

# 87

ISSN 1331-1182 (Print)

—

ISSN 1848-5782 (Online)

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UDC 327(497.5)

IRMO

**Croatian  
International  
Relations  
Review**

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**CIRR**  
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XXVI (87) - 2020

—  
ISSN 1331-1182  
(Print)

—  
ISSN 1848-5782  
(Online)

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Ljudevita Farkaša Vukotinovića 2, HR-10000  
Zagreb, Croatia  
Phone: +385 1 48 77 460  
Fax: +385 1 48 28 361  
E-mail: [cirr@irmo.hr](mailto:cirr@irmo.hr)  
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ISSN 1848-5782  
(Online)

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6-31

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DOI 10.37173/  
cirr.26.87.1

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UDC 005.7:327:061.1EU

# On the Norms and Habits of the European Union as a Meta-organisation\*

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**Marina V. Strezhneva**

*Primakov National Research Institute of World Economy and International  
Relations (IMEMO), Russia*

*m.strezhneva@imemo.ru*

*ORCID: 0000-0002-6561-4367*

**Key words:**  
*European Union;  
International  
Relations;  
Organisation  
Theory; Tektology;  
Resilience*

## Abstract

*With the aim of methodological reflection, this article analyses the three approaches (realist, constructivist and relational) in international relations theory most commonly employed to study foreign policy and the global influence of the European Union. Pivotal notions such as 'agency', 'identity', 'norms', 'system' and 'practice' provide us with navigation points between these approaches, enabling us to achieve a clearer impression of the many different meanings these terms can contain. These meanings, in their turn, fix the direction, limitations and scope of any concrete theoretic analysis. This article is meant to draw particular attention to Bourdieuvian practice theory and Alexander Bogdanov's tektology as two differing variants of relationism, with a view to overcoming certain deficiencies in application to the studies of the EU of methodological individualism, as employed in more 'traditional' theories. To illustrate the relationalist way of theorising when dealing with the paradoxes of the EU external policies and global role, a follow-up interpretation, based on tektology, is given in conclusion to the resilience turn in the EU global strategy.*

## \* Acknowledgements

The article was prepared within the project "Post-crisis world order: challenges and technologies, competition and cooperation" supported by the grant from the Ministry of Science and Higher Education of the Russian Federation program for research projects in priority areas of scientific and technological development (Agreement No 075-15-2020-783).

## Introduction

The external relations of the European Union (EU) extend to almost every, and even the most remote, place on Earth. The EU also possesses a profuse arsenal of foreign policy instruments — diplomatic, economic and (to a lesser extent), military. Yet the Union has not acquired the complete array of foreign policy responsibilities as those enjoyed by sovereign states. One of the most important specialisms carried out by the EU in the international arena, and to some extent fitting the Normative Power Europe (NPE) description of the EU (Manners 2002), consists of ‘exporting’ abroad original techniques to foster intergovernmental cooperation, global governance and regional integration. It thus seems problematic to our full comprehension of the global role and international status of the EU if we rely exclusively on the more traditional theories of International Relations (IR), either realist or constructivist, which are often state-centric. Yet to depend instead on theories of regional integration could equally be ill-judged. These theories, including an alternative, a critical integration theory, embracing some recent developments in IR theory, notably the structure-agency debate (Bulmer and Joseph 2016), are namely more focused on what goes on within the EU, not beyond its borders or with the EU in the global context.

The wider sphere of IR never stays unchanged: promising theories and methodologies are continually developing and progressing. *Inter alia*, recent years have seen a growing influence exerted by the theoretical heritage of the French sociologist, Pierre Bourdieu (Adler-Nissen 2013). As the purpose of this study is not to assess whether or not the EU ‘really’ is an international actor of some particular kind or definition, but to focus instead on the issue of perceived (in)adequacy of its activities in respect to the evolving international ‘environment’ (Hill 1993; Börzel, Risse 2009; Veebal, Markus 2018), Bourdieuvian practice theory seems particularly relevant (Adler and Pouliot 2011). In the meantime, much less noted organisation theory (tektology) by Russian revolutionary and analyst Alexander Bogdanov could also turn out to be of use when discussing today the pertinence of practice turn in international relations for the study of the EU role (Bogdanov 1984). With such considerations in mind, this article attempts to take stock of the current IR theories being employed to study the EU’s international influence, so as to deliver some additional methodological reflection with the

intention of stressing the importance of designedly describing the world with and around the EU in terms of relations, primarily or exclusively (Schneider 2015).

The article consists of five key parts: the immediate section following is devoted to detecting a problematic aspect in the existing conceptualisations of the EU as an international actor/agent in organisational terms. The two subsequent sections discuss the specifics of prevalent realist and constructivist IR approaches. The fourth part illustrates the ways some putative ‘breaches’ can be rectified with the assistance of Bourdieu’s epistemological relationalism. The fifth and concluding section discusses Bogdanov’s empiriomonist (phenomenological) methodology (Gorelik 1983) as potentially helpful in adjusting our understanding of the European Union’s relations to the outer world.

### **Conceptualising the EU**

As is well known, due to the EU’s unclear form as a political entity, it is rather challenging to find an adequate analytical framework to deal with it. As far as it concerns its political form, the EU is unique (*sui generis*) – something between a state and an international organisation. On the one hand, when regarded as a (quasi)state, the EU, more often than not, is interpreted as a prime example of the post-modern state: “more pluralist, more complex, less centralised than the bureaucratic modern state” (Cooper 2000: 31). Yet some authors prefer to stress the resemblance of the Union to ‘normal’ states (Kreppel 2012). Equally, the EU can be cast as an international organisation, albeit a distinctive one – closely conforming to the type of meta-organisation (MO) featured by Goran Ahrne and Nils Brunsson (Ahrne and Brunsson 2008). MOs started to perform as the agents of global governance (Ahrne, Brunsson and Kerwer 2016: 5) and could thus no longer be adequately treated as simple arenas for states’ representatives to interact in. Meta-organisations bear some resemblance to biological communities (such as swarms’ or ants’ colonies) (Tautz and Heilmann 2008). At the same time, we can speak of them as a unique technology for organising inter-linkages and interactions among a group of states. One way or another, it might be useful, as Bogdanov’s tektology invites us to do, to correlate our search for new knowledge about the EU as a MO

with our understanding of the (system) attributes of the EU as a complex object under study.

In classical organisation theory (OT) organisations are defined as units of people (not of states), enjoying exclusive rights as its members, and acting on the basis of established principles and rules in pursuance of collective goals. Traditional OT is more focused on exposing the structural characteristics of decision-making within organisations, meaning not only their formal structures but also their informal and network-type inter-linkages, along with socio-cultural and cognitive aspects of organisational design. In this respect, Zuzana Murdoch (2015) has signalled the added value of OT to the sphere of EU studies. This theory also seeks to expose the relations between organisations in particular environments, as well as the influence of the institutional environment over the behaviour and development of organisations.

As a distinctive political system with similarities to both states and international organisations, the European Union has given birth to the concept of multi-level governance — MLG (Hooghe and Marks 2001). The applicability of this concept to the study of the Common Foreign and Security Policy of the EU, despite the state-centric features of the CFSP, has been demonstrated by Michael Smith (Smith 2004). Yet the EU, as a multi-level governance system, is a political 'subject' of an unusual kind. It is transnational, has no central government of its own, and takes shape behind the backs of national governments.

The introduction of MLG in the EU caused the diffusion of regulating authority in the system. Trends of opaque bargaining are in play, involving different levels of governance. Due to that, the key values of democratic governance can be sacrificed by the governing elite, time and again, to achieve trade-offs in a closer circle, to find intergovernmental consensus or to improve efficiency in supranational decision-making (Peters and Pierre 2004: 85). The subsidiarity principle is of particular importance for the MLG macroregional arrangement, as it provides a stress on limiting the role of states (they should interfere as little as possible in the performance of communes and societies). At first sight, this principle might seem univocal. It was introduced in the EU to avert excessive supranational centralisation. In one respect, it allows member states to retroact the unwelcome interference of supranational institutions in

their domestic affairs. On another level, European decision-making practice becomes involute. Supranational institutions can hypothetically take advantage of subsidiarity for purposes other than it was intended for – by «hiding» behind it in order to refrain from urgent action in a complicated situation. At the same time, subsidiarity has a democratic dimension. It reflects considerations related to the extent of the proximity of citizens to the decision-making centres and the right to self-rule (Strezhneva 2018: 21–7).

The external policy and involvement of the EU in global policy formulations are being realised not only via the intergovernmental CFSP but, more importantly, as part of supranational and transnational governance, elaborated within the EU system and spilling over *ad extra*. The impulse of the multi-level EU 'system', whether out of expediency or as a reflexive reaction, to externalise itself can meet with resistance, both inside the Union and in third countries, once more accustomed forms of another actor's political existence become challenged by the changes it envisions.

To analyse the foundations of subjecthood, or agency (the term he himself preferred), Bourdieu introduced the concept of habitus (dispositions, habits and inclinations) as a semiconscious, but lasting, orientation that people have, forming the basis of their perceptions and experience (Bourdieu 1977: 78). Habitus involves "trained capacities and structured propensities to think, feel, and act in determinate ways, which then guide (agents – *M.S.*) ...in their creative responses to the constraints and solicitations of their extant milieu" (Wacquant 2005: 317). If seen in this light, the behaviour of the EU in the international arena might be, more likely than not, driven by the urge of the European ruling elite to achieve better correspondence (isomorphism, to be discussed later) between the Union and its (mostly state-centric) international milieu, rendering the surrounding international space 'more habitable' to it. According to Bogdanov's more general view, each human collective, irrespective of its origin, would tend to organise the surrounding space in order to render it habitable.

When in need to clarify the international identity of the EU, experts have resorted to different, and sometimes rival, terms. These include civilian power (Duchene 1972; Börzel, Risse 2009: 5), structural power (Keukeleire and Delreux 2015) and

(neo)empire (Kassab 2018: 141–59). Among these — and most useful for the purposes of the present article — is the notion of Market Power Europe (MPE) (Damro 2012, 2015), and the already-mentioned NPE. These highlight the specific resources (or capital, in Bourdieuvian parlance) of the Union as a non-traditional international agent.

The concept of NPE endows the European Union with the ability to correct the widely adopted understanding of ‘normality’ in global affairs. Ian Manners finds the roots of this ability in the EU’s unique political form as a hybrid of national and international governance (Manners 2002: 240). The hybrid political form, according to Manners, predetermines the disposition of the Union (the collective habitus of the European elite) to change pre-existing (state-centric) norms in the international arena. In his view, it is impossible for the EU to behave differently, as to forgo its own transformative power in international relations would be equal to sacrificing the unique character of the Union (Manners 2002: 241–2).

Manners describes in detail how the external transmission of European norms can occur: either being spread through the influence of the example that the European Union gives to the rest of the world, or through institutionalisation (by forming a matrix of relations with other international actors), or through its immediate international presence (EU representations in third countries and international organisations). In this regard that “the EU’s attempt to invoke normative commitments from China and Russia has not been well-received” (Aggestam 2009: 30) is not directly relevant. It is more relevant, though, for those who are inclined to regard China and Russia as belonging to an international system, where the post-modern EU, with its ethical stance, serves as the organising centre. With China and/or Russia purportedly refuting such a perception, the European Union nevertheless can perfectly remain the embodiment of NPE in this understanding — as long as it is willingly accepted as such by a myriad of other international actors, not necessarily states, thus legitimising this (presumably alternative to the older one) post-modern international system.

Anyway, there are possible ways to interpret the normative powers of the EU, drifting away from Manners’ original template in different directions. One possible way is to view them as part of the Union’s specific identity. Thus, according to Andre Gerrits,

NPE “has become a grand narrative, an answer to the ever more pressing need to bestow an identity on Europe — legitimacy through foreign policy” (Gerrits 2009: 4). Paradoxically, this way prescribes external behaviour for the EU which third countries may find excessively Eurocentric (Bicchi 2006) — with the result being a decay in the EU’s self-imposed identity in the long run (Pavlova, Romanova 2017). Another way would be to stress the more or less stable ontological potential of the EU (its relatively high ability to change international norms), which is less questionable. Thus understood, the EU’s normative power can be exercised in competition with other international actors (such as the USA, China, Russia, Great Britain, and Germany), though it is not necessarily benign for these other actors.

In sociology, growing convergence between the processes and structures of one organisation with those in another as a result of imitation under pressure or in the course of autonomous development — and when experiencing the same limitations — is called isomorphism (Hannan, Freeman 1977). It is broadly defined as the propensity of organisations to resemble other organisations functioning in the same environment (Param and Bilimoria 1997). While the NPE concept takes for granted the transformative influence of the EU, there are in actuality two possible options to achieve closer isomorphism between the Union and its predominantly state-centric international milieu: in addition to attempting to change the milieu, the other possibility is for the EU to change itself (in accordance with the demands of state-centrism) and to become a traditionally ‘normal’ state. In this way, the survival (external legitimacy) of the EU would be secured at the expense of losing its unique post-modern features. However, this option is the less likely one, given the current limitations to further centralisation in the EU.

The MPE or Regulatory Power Europe (Goldthau and Sitter 2015) models are interpretations, alternative to NPE. These models see the EU as exercising its power by externalising market-related policies and regulations in particular. The MPE presents the EU as a global regulator, positioning itself as a key actor of ‘managed globalization’, which relies on multilateral rules and international organisations (Abdelal and Meunier 2010).

As it turns out, both Manners and Damro find the most important ‘capital’ in the EU’s external policy in its ability to

export norms. In the case of the NPE, the norms in question emerge as constitutive: creating or defining an (international) activity, they provide (or are expected to provide) for the establishment of new institutional facts (contracts) and may lead to modification of the wider international system. In the MPE, we are dealing with regulative norms, the performance of direct duties, and conditional prohibitions and authorisations (Boella and van der Torre 2004). The NPE and MPE dynamics can in practice alternate and intertwine, bringing to life a Normative Market Europe (Geeraert and Drieskens 2017).

## Realism

Statism (state-centrism), unlike wider notions such as interests and power, is not an integral reference point in the theory of political realism. Instead, its third major premise, along with these two, is not *state-centrism*, but *groupism*. The idea of groupism is that, in order to ensure their security and survival, people tend to adhere to group solidarity and to develop institutionalised practices that encourage them to depend on their own groups (Wohlforth 2008), or collective actors. The definition of a collective actor can reasonably include not just states, but also supranational integrated communities (such as the EU). The EU can thus be accepted in the realist framework as an international actor with its own interests and its own powers.

Neorealism inherently treats the EU as one of the subsystems of the international system (Hoffmann 1966). Yet, while sharing the broad systemic vision, many realist-minded authors are ready to accept the EU as an international actor in its own right, though deploying different explanations and interpretations for its specific nature.<sup>1</sup> One of these approaches focuses on the EU's use of soft power (Michalski 2005; Kugiel 2017).

Both analysts and EU officials agree that the consistent employment of soft power instruments is one of the EU's main strengths in the international sphere, given the rich repertoire of civilian tools it possesses. At the same time, the EU's soft power has its limitations, as demonstrated by present-day developments in Ukraine, meaning that it does not give the

1 A Bourdieuvian critique of the neorealist understandings of the international system was provided by Richard Ashly (1984).

EU much ability to resolve the conflict. It should be noted that the EU does have hard power as well, coming first via its crisis management capabilities and sanctions policies, which are being applied more widely and consistently as time passes.

In sum, soft power as a description does not fully define the EU's role and has become a less accurate description under the present circumstances in Europe. As former Commission President Jean-Claude Juncker admitted in 2016, "soft power is no longer enough in the EU's increasingly dangerous neighbourhood" (Juncker 2016: 18), and in this context, the boundaries between what is supposed to constitute its hard and soft power have become ever more fuzzy.<sup>2</sup>

Another way to account for the EU's specific character in realist fashion is in addressing the milieu goals, an approach proposed by Arnold Wolfers (1962). This means shaping the environmental conditions (goals in the fields of development, ecology, labour rights and public health) within which international actors operate, as contrasted with possession goals (access to energy, trade preferences and migration controls). In this way, power is understood as the capacity to influence someone or something. The 'milieu goals' concept is usefully pointing to the interdependence of (national, regional) interests and global goals. According to Nathalie Tocci:

*Furthering milieu goals may actually contribute to the advancement of possession goals. However, unlike possession goals, milieu goals are pursued consistently over time, and not only at the time when they also represent immediate possession goals (Tocci 2007: 4).*

Yet another conceptual route is offered by the position of neoclassical realism, or modified realism, made distinctive by its acceptance of state-level causal variables. According to Dmitry Vasfilov, who applied this schema, the post-Soviet competition between Russia and the EU is higher than required by the international system (perceived by him, as a realist, as consisting mostly of states) because, due to the influence of a number of internal factors, elites in both Russia and the EU are unable to adequately understand and process the signals sent

2 As formulated by Andreas Goldthau and Nick Sitter (2015: 109–16), in the politics of oil, gas, and climate change, the EU exercises two intermediary forms of power simultaneously – passive hard power and conditional soft power, or soft power with a hard edge.

by the 'objective' system (Vasfilov 2014).

The above variations notwithstanding, present-day realist approaches tend not to reflect on the underlying state-centrism of realism *per se*. This leads to the underestimation by realist-minded researchers of the unique character of the European Union's existence, as a decentralised polity, itself being an important factor, influencing the EU's relations with the outside world. The roots of the statist orientation can be found in the realist reification of geopolitics as a domain separable from 'the social' (Davenport 2013).

### **Constructivism**

The uniqueness of the EU as a global actor is often supposed to consist, at least to some extent, in its ability to create new meanings and perceptions in the international arena. Because of this, constructivism may be a more suitable model for studying the EU's international role. Constructivists interpret the world as being created by actors through internal models (constructs). As an analytical approach, constructivism is an umbrella for many different currents, yet constructivism does not always tear away from state-centrism.

Alexander Wendt, a leading constructivist in IR, pointed out that intersubjective meanings determined cause-and-effect relationships in the anarchic international system. In his interpretation, international actors (mostly states) can give new meanings to foreign policy practices. Thus, in the 1990s, he drew an overoptimistic picture of the linear progression of the development of the international system. He predicted that growing interdependence, homogenisation, the sense of common destiny and self-restraint would, in future, allow for a transfer to a more amicable international system (Wendt 1992; 1999).

At this stage Wendt (like realists) spoke of 'individual' states, being the elements of one and the same 'material' system, in which prevailing ideologies — forming that part of the environment that is changeable — guided the behaviour of all the states and other noticeable actors. These states and actors were endowed with an individual mentality and purpose, and had intentions of their own, but could acquire collective

identity through reproduction and transformation — through intersubjective dynamics at the systemic level (Wendt 1994). Later on, Wendt came to the idea of proposing methodologically holistic sociology as meta-theoretical grounds for IR, having found his new anchorage in quantum physics (Wendt 2015; Little 2018). Pointing out the »relational quality of meaning and practices«, Wendt (together with James Der Derian) opted for what they called the relational ontology of consciousness, suggesting that consciousness could be the manifestation of our entanglement with the world and with each other (Der Derian and Wendt 2020). Quanta are neither particles (individua) nor waves and mean superposition (overlapping, adding together of several quantum states). According to 'new' Wendt, neither states nor the EU as a whole should from now on be treated separately as independent agents, because they are 'entangled' as a result of the waves' interference effect (Alekseeva, Mineev, Loshkariov 2016).

Given that the post-modern external policy of the European Union is concentrated to a considerable extent on subjective structures, contexts and non-material aspects of power and influence (such as identity, beliefs and legitimacy), many constructivists — mostly following in Wendt's tracks — insisted on the exclusive ability of the EU (presumably being beyond 'ordinary' states in terms of its socio-cultural development), to transform the international system in a positive (non-confrontational) way. The NPE concept, mentioned above, was based on understandings that were notably similar to this one.

Manners views the norm-based behaviour of the EU (the promotion of broader norms of peace, democracy and fundamental rights, as well as of the rule of law, social progress, anti-discrimination, sustainable development, and good governance) as a means by which it constructs a benevolent identity for itself, and uses this benevolent identity in its efforts to build a better world. NPE thus presented cannot be regarded as an analytical device: it is not meant to portray the EU and its qualitatively different contra-Westphalian (Manners, Whitman 2003: 399) international role as it is (or used to be), but as it should be or is predetermined to become. It amounts to a statement of the EU's inherent goodness, a goodness that the Union is not supposed to step aside from. An elaboration of this similar strongly normative idea is that it is (or rather should be) the mission of the EU to pursue international relations on

a multilateral basis, founded on the progressive development of international law, exporting its values of the rule of law and sophisticated governance mechanisms to the international sphere.

The form of constructivist treatment of the EU as described above goes hand in hand with an identity conundrum (a mismatch between how the EU is perceived by its own elites and by others) (Santino Jr. 2013), because it can, in Europe itself, stimulate the ignorance of the widespread (under) appreciation and (mis)understanding of the EU as a global actor by many other inhabitants in the international environment. Additionally, the reality that might be brought into existence by the normative power of the EU is a good or a bad thing depending on the normative stance of the evaluator (Diez, Pace 2007), and not only of the EU itself.

While combining relational ontology with (post)positivist epistemology (as Wendt does), some constructivists may find difficulty in generalising practical mechanisms which are indispensable for bringing about 'social' change (Øhrgaard 2018: 35–6). At the same time, as an influential example of methodological pragmatism, Wendt's theory opened an analytically productive way to studies, combining constructivism and rationalism more freely in the research of the EU's external relations along broadly understood pragmatic lines – in accordance with the appeal "for a pragmatic turn in research and methodology" (Friedrichs, Kratochvil 2009: 702). For a pragmatist (as well as for Bogdanov with his phenomenological approach), differences between the contexts in which an object of study is examined cause demand to arise for all of the techniques and treatments available, inviting researchers to step over doctrinal and even interdisciplinary boundaries. In consonance with the pragmatic view just described, Petr Kratochvil and Elsa Tulmets have proposed a combination of social constructivism and rationalism to study the EU's external relations, immediately testing the applicability of this model to the relationships of Ukraine, Moldova and Georgia with the Union (Kratochvil and Tulmets 2010). In their publications, they treat both approaches as equipollent analytical lenses that can be put on or taken off in accordance with the requirements of the context.

## Epistemological relationalism

Unlike substantialist IR theories, such as neorealism or neoliberal institutionalism, ontological relationalism orients researchers to the study of objects as embedded in the context of their interlinkages. Within a relational ontology, we deal with the “modifications of being, elements that can be different from each other but that can’t truly be separated from each other” (de Ronde and Fernandez Moujan 2017: 7). But Bourdieu, while assuming intentionality-drivenness of human behaviour (Bourdieu, 1977: 9; Marcoulatos 2003), expects field theorists, when studying relational structures, to think epistemologically and to take a break from commonsensical understandings (Singh 2019) because he finds common sense to be inhibiting a clearer comprehension of the world (Bourdieu, Coleman 2019: 373–87). Bourdieu directs a rational-minded researcher towards field research to discover and lay bare structures, existing independently from agents’ purpose and awareness. As a case in point, the European External Action Service does not visibly challenge the existence of national diplomacy. Yet its development puts under question the perceived monopoly of the ‘normal’ states to determine what is to be accepted as ‘authentic’ diplomacy (Adler-Nissen 2014).

Respective fields can emerge at the transnational level, once there is structural interaction of certain groups of agents, related to transnational goals (problems). Defining states in general (and the EU as a post-modern state in particular) as relational structures is appropriate when considering the forms of the EU participation in international affairs. The EU external relations are being realised in combinations of specific governance modes, first taking shape within the Union, and then appearing in the international deflection. Yet, as pointed out by Didier Bigo with reference to states:

*...many sectors of life are not dependent or subordinate to state boundaries and the extent of their territory. They are multiple and transversal to the states (Bigo 2011: 249),*

with the construction of a transnational space of institutions and elite practices being presumably inseparable for the agents involved from the promotion of national models of the state.

The substantialist epistemological obstacle (Bachelard 2002: 24–32) could make a researcher opine that the EU promotes its norms abroad with the exact aim for these norms to be adopted by third countries. The Europeanisation of the world at large that the EU is striving for could then be presented as a modernist bureaucratic strategy of managing the globalisation risks of the EU itself through a projection of its own internal order abroad (Medvedev 2008). Bourdieuvian epistemological approach allows experts to regard the meaning of the actions of the EU from a different angle: the Union (or, rather, the people responsible for European institutions) may, not always fully self-consciously or with thoroughly thought-out plans, seek to disseminate *ad extra* the very model of regulation established within the EU they have become accustomed to – to the point of regarding it as ‘natural’ and unproblematic. In this way they are inducing an institutional isomorphism between the EU and its international environment, trying to make the latter ‘homelike’, more like integrated Europe in an organisational sense, and instinctively rendering the surrounding international space habitable for themselves, fashioning it in accordance with the EU’s frames of reference.

At the same time, as Bourdieu’s is a social critical approach to studying practices, oriented to the study of competition and conflict, his theory gives us no additional opportunity to regard the EU as a meta-organisation, prominent in constructive, cooperative, innovative modes of global governance. For Bourdieu, the adaptability of relational structures remains doubtful. Bogdanov is markedly more optimistic in that respect. The undeservingly half-remembered theory of organisation (tektology) Bogdanov created can be presented as a missing link in the foundation of the present-day relational IR and European studies.

### **Tektology**

According to the Russian scientist and revolutionary Alexander Bogdanov (1873–1928) (Bogdanov 1984; Gorelik 1983), organisational regularities are the same for objects of any kind (natural, social and psychic). The more the whole differs from the sum of its parts, the higher is its sophistication in organisational terms. At the same time, he regarded organisation not as the end state, but rather as a conversion

process, resulting from never-ending states of equilibrium transition, conforming to organisational regularities (Tarassov 1998). He also highlighted two basic organising mechanisms for such complexes: construction (implying uniting smaller complexes with all sorts of links) and (self)governance.

Complexes can conjugate, form chain connections, ingressions (a form of catenation through some intermedia) or disingressions (when joined together, activities mutually paralyse each other, leading to the emergence of a 'boundary', or separateness).<sup>3</sup> Relations between complexes can be integrative (organised), disintegrative (disorganised) or neutral, depending on the purposes realised by those who participate in their constructing. The master regulating mechanism Bogdanov denominates as 'collecting' (*podbor* in Russian). It can be either conservative or progressive selection (natural or artificial). Darwin's natural selection then becomes a specific instance of this *podbor*, which he applies to the processes of perdurance and disintegration of organisations of all possible types. Market competition can be singled out as an example of conservative (rule-based) regulative selection mechanism in Bogdanov's understanding. It's selective (discovery) function was indeed highly esteemed by both ordoliberal economists and Friedrich Hayek. Bogdanov expects the workings of *podbor* to assist in making integrative organisational forms prevail over disintegrative ones in the long run.

Bogdanov is to be recognised as an author of the general systems theory along with Ludwig von Bertalanffy (Gare 2000), an Austrian biologist, who described the organisational principles for open systems with non-equilibrium thermodynamics (metabolically attached to their environment). Earlier than Bertalanffy, Bogdanov already spoke of dynamic or floating counterpoise of organised systems and their 'uncontrolled' environment. In his description, one equiponderant, persistent (self-adjusting, *resilient*) configuration of a complex aggregate, achieved due to antidromous activities, inevitably gives way to another one. And, unlike Bertalanffy, Bogdanov regards the

3 An illustration for paralysing internal disingression Bogdanov found in the figure of Hamlet, the main character of the play by Shakespeare, whose divided self is forming a 'complex', the components of which are cancelling each other out. The processes of selection, set in motion by a hostile environment, result in the destruction of the Hamlet complex (in the "insanity", then death, of Hamlet himself), but 'system equilibrium' is then restored in the play (and supported by Hamlet's own deathbed will) in the character of Fortinbras, a man of integrity. For a tektological criticism of Hamlet see John Biggard (2016: 16–17).

uncoordinated environment as both the source of uncertainty and a challenge for an organisation, relatively autonomous from it.

The general impression at this point is that tektology resonates rather well with the idea of resilience (ability to absorb changes and still exist), capturing “the transformative approach to complex change advocated by the EU” (Tocci 2020: 191), with the EU 2016 Global Strategy (EUGS) elevated into one of the guiding principles for the EU’s role in the world (A Global Strategy 2016; Korosteleva, Flockhart 2020).

The similarity of approaches between Bourdieu and Bogdanov can be attributed to the profound influence of Marx on both of them and, in particular, to the Marxian idea that society consists not so much of individuals as of relations. But this similarity should not be overstressed. An important difference is due to the fact that the former is closer to the phenomenological view of the social world and, unlike Bourdieu (Schindler and Wille 2019), is less mistrustful of practitioners’ own ability of theory-making, based on everyday experience (Jurt 2017). Empiriomonism (phenomenological Marxism) he developed meant the introduction of a conception of socially organised (contrasted with individual psychic) experience, focused on interactive practices culturally united groups of people would be involved in.

In tektology, the organisational scientific viewpoint is theoretically reshaped to serve in the capacity of a structural grid for an enlightened observer-practitioner, placed inside organisations’ dynamic interacting processes. For their scientific study, Bogdanov introduced an assortment of dual concepts: ‘activity — antiperistasis’, ‘assimilation — disassimilation’, ‘conjugation — discontinuity’ and other pairs. These pairs are not logical antinomies for him. Somewhat similar to how Bourdieu treated his ‘habitus’, ‘field’ and ‘capital’, Bogdanov sees his dual concepts as researcher’s operating tools for logging onto a reference space, with liberally variable observation focuses, in order to study collective ‘living’ organisations and their interrelations.

For Bogdanov, systems constitute the horizon, determining the limits, within which the real world arises (*a fortiori* partially) for people to see and transform it constructively, once armed with

collectivist organisational culture (Bogdanov 1924). Collective deliberation thus becomes the basis for achieving a credible comprehension of reality. At the same time, he does not part with the idea of methodological individualism, as elaborated by Max Weber. This idea infers that social phenomena are to be treated through disclosure of how they eventuate out of individual activities. Those, in their turn, are to get their initial *exegesis* in the intentions, motivating actors. However, Weber notified that:

*it is a tremendous misunderstanding to think that an 'individualistic' method should involve what is in any conceivable sense an individualistic system of values (Weber 1978: 18).*

Bourdieu rejected the usefulness of the organic analogy, which, from Durkheim to Parsons, served as the basis for functionalist theories. For him, states are more likely to belong to relational structures. By default, they cannot be adaptive. *Ad maximum*, their resistance to (global, external) pressures can be analysed. Bogdanov, in his turn, would sooner agree with Wendt about states and quasi-states (like the EU) as social structures preferably being treated as "holographic organisms", invested with collective intentionality (Wendt 2015: 34). At the same time, in contrast with Wendt's position, Bogdanov recognises the limitations of 'social' exchanges between complexes: as part of its life-sustaining activity, in tektological interpretation, each specified 'organism' (re)creates not the overall world, but some particular systematised environment for itself, which is always secondary to the structure of the 'organism' itself. Summing up, the external communication of a complex for Bogdanov, as later formulated by Varela, Maturana and Uribe (1974), is not an information-translation or norms-transferring process, but a process of coordinating the behaviour of entangled complexes via their mutual structural coupling.

The immediate aim of the author of tektology was to come up with practical methods of optimal planning in support of the dynamic equilibrium and resilience of social complexes (organisations), taken within their own environments (which are not two-dimensional 'fields' for him, but multivariate adaptive complexes themselves). The said is closer to understanding resilience "as a set of practices and techniques" (Joseph 2016: 381), relying "on ideas of self-organisation,

adaptation, transformation and survival” (Humbert, Joseph 2019: 215), but has less in common with the advancement of neoliberal governance in particular.<sup>4</sup> Here we have a reading of resilience, which is adequate for addressing the issues of socio-political adaptation.<sup>5</sup> In tektology, an organism is actively invading the processes, leading to functional ‘media conversion’. The adaptation of the environment to this organism, *qua* responsive emergent process, results from their coevolutionary transaction (Rispoli 2014: 62).

## Conclusion

Applying IR theories to the study of the international role of the European Union is useful from at least two points of view. On the one hand, the highly complex nature of the EU, and the sophistication of the Union as an object of study, act as challenges to traditional IR, demanding that methods evolve. Pierre Bourdieu’s theory of practice and Alexander Bogdanov’s tektology, capable of advancing insights into organisational forms and behaviour, seem to be wholesome additions to the ever-widening array of our analytical and methodological tools. On the other hand, unlike the theories of regional integration (such as neofunctionalism, communication theory, and others) that researchers might resort to when analysing the European Union *per se*, IR theories, in general, prove more helpful in better understanding the EU as an international actor, a transnational agent/subject or a technology of interstate interactions.

With this article the case has been made in particular to employ Bogdanov’s tektology for conceptualising the European Union as a meta-organisation, observed in the form of post-state-centrist technology for achieving (presumably) more progressive socio-political regime of macroregional proportions without losing the functional integrity of states and societies. On the basis of

- 4 Those who critically assess recent works on resilience are concerned that resilience-thinking may promote neoliberal forms of governmentality and encourage a degree of political passivity (McKeown and Glenn 2017). Jonathan Joseph and Ana Juncos confirm the broadly neoliberal character of current approaches to resilience in the sphere of global governance (2019).
- 5 Mark Pelling’s classification of adaptation practice identifies three levels of adaptation: resilience, transition, and transformation, distinguished primarily by the extent to which they challenge the status quo. Adaptation as resilience focuses on improving existing practices without questioning underlying assumptions, allowing, among other things, unsustainable or socially unjust practices to continue (Pelling 2012; Hordijk et al. 2014).

'possessing' a more sophisticated technology (with its specific constitutive norms) and a set of original 'soft' governance methods, which might prove useful for regulating collective problems and achieving common goals beyond the borders of the EU, European elite is aspiring to cultural (normative) hegemony, to be achieved through institutionalising the EU as a legitimate coordinating centre of global governance, envisioning more regulation. But the neoliberal ideology, externally promoted by the European institutions, contradicts such aspirations: it advocates a minimal state and the replacement of state regulations by market mechanisms. Within the EU, this contradiction is being cross-dissolved with the help of multi-level governance and subsidiarity principle anticipated as its own relational structures. At the same time, the activities of the European governing elite do not present (as yet) cogent evidence of its ability to engage in transboundary deliberative resilience-thinking with other inhabitants of the international milieu. In Bogdanov's terminology, this qualifies as a case of internal cognitive disingression, resulting from the habit to dualistically divide intellectuals from practitioners and the organisers from the organised (Gare 2000: 345), which still allows for the denial of access to rational discourse to the latter.

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Croatian  
International  
Relations  
Review

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CIRR

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XXVI (87) 2020,  
32-63

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DOI 10.37173/  
cirr.26.87.2

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UDC 341.176.061.1EU  
(436:497.5)

# Measuring the Success of the Presidency of the Council of the EU - Austria and Croatia in Comparative Perspective

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## Igor Vidačak

*Faculty of Political Science, University of Zagreb, Croatia*

*igor.vidacak@fpzg.hr*

*ORCID: 0000-0003-2532-7504*

## Tomislav Milošić

*Department of Political Science, Lund University, Sweden*

*tomislav.milosic@gmail.com*

*ORCID: 0000-0001-6664-9003*

### Abstract

#### **Key words:**

*Council of the  
EU; Presidency;  
Assessment;  
Performance;  
Austria; Croatia*

*This paper aims to contribute to the ongoing debate on criteria for measuring the performance of the rotating Presidencies of the Council of the EU. The comparison between Austria and Croatia, two countries that concluded the two most recent Council Presidency Trios, can be illustrative in identifying the main factors that can influence the overall performance of rotating Presidencies. Based on the series of quantitative and qualitative indicators, the overall score of both countries' Presidencies turned to be positive, despite some failures of these Presidencies to demonstrate a firm commitment to fundamental EU values. In view of the lack of evaluations of the Council Presidencies based on verifiable, measurable indicators, this paper seeks to contribute to the development of a more objective methodological framework for the assessment of the future Presidencies of the Council as a still under-researched area within EU studies.*

## Introduction

Since the establishment of the six-month rotating Presidencies of the Council of the EU by Rome Treaties in 1957, the need for strengthening the leadership in the Council has been continuously growing. The ever-increasing complexity of the EU decision-making procedures, the substantial widening of the scope of EU competences, the progressive extension of co-legislative powers of the European Parliament and successive enlargements to new Member States had a significant impact on the EU inter-institutional dynamics. The search for compromise over new policy solutions has become very long and challenging, with the average time required for a first-reading agreement in the Council in the ordinary legislative procedure being about fifteen months (van Gruisen 2019). It is in this context that the role of the Presidency of the Council of the EU has been considered essential in leading and concluding negotiations on priority legislative and policy dossiers, shaping the EU agenda, as well as striking the right balance between often divergent Member State preferences, institutional interests and strategies. While the Lisbon Treaty has taken away some responsibilities of the Presidency of the Council of the EU by separating it from that of the European Council, chaired by the Permanent President, and introducing the permanent chair of the Foreign Affairs Council headed by the High Representative for Foreign Affairs and Security Policy, its role in managing the EU legislative process and promoting equal representation of all Member States in the Council remains crucial.

Despite the undeniable importance of the Council rotating Presidencies, the assessment of their performance has only rather recently attracted the interest of researchers. The attempts to introduce more clarity into the analysis of the success or influence of the Council Presidency in fulfilling its main tasks set by the treaties have generated a number of different approaches to this topic within the community of EU scholars. There is still no consensus on the main indicators for assessing or measuring the Presidency's performance. Besides, there is still a general lack of comparative studies of different Presidencies that would be based on a clear analytical framework. In addition, the search for an objective methodological framework for measuring the results of the Council Presidencies has been made rather difficult by a

number of internal and external factors such as different circumstances in the EU and Member States (e.g. national or European elections), the variety of state structures (unitary or federal) and national public administration traditions and capacities, pressures or the lack of support from key institutions or stakeholders, but also developments at the global, international level (e.g. economic or pandemic crisis).

In view of the lack of standardised criteria or indicators that can tell us if the Presidency was successful, but also taking into account the general lack of debate on factors that affect the overall performance of the Council six-month Presidencies, this paper aims to contribute to the development of a more precise conceptual framework for measuring the performance of the rotating Presidencies of the Council of the EU. The main research question is: which indicators can be used to determine whether the Presidency of the Council of the European Union was successful or not? In addition, the paper will explore what the factors that influence the overall performance of the rotating Presidencies of the Council are, but also under which conditions the policy consistency over consecutive Presidency terms can be ensured, particularly in case of complex policies such as the EU enlargement.

The methodological justification for selecting Austria and Croatia for comparison in this paper is based on several reasons. Both countries concluded the last two consecutive Trio Presidencies of the Council. They also had the EU enlargement policy as one of their political priorities. In addition, they do not represent an extreme in any significant parameter that could predetermine their performance as the Presidency. On the other hand, it could be significant that Austria held the Presidency in the second half of 2018 for the third time, while Croatia held the Presidency for the first time in the first half of 2020. The said may also contribute to the debate on the differences in the performance of old and new EU Member States.

The first part of the paper provides an overview of different approaches to studying the Council Presidency. Then, as a starting point of the research, the paper will elaborate on the relevant roles and duties of the Presidency. In the next step, the identified groups of roles will be translated into criteria for a successful Presidency. Furthermore, within each criterion, two key indicators will be detected, along with the

clarification of assessment benchmarks. In that context, the successful Presidency will be described as a positive assessment of fulfilling the roles of the Presidency in accordance with the proposed framework of performance indicators where a positive score for each indicator represents one step closer to the concept of a successful Presidency. The performance of selected countries will be assessed based on the proposed framework of indicators, with special emphasis on the enlargement policy as a common top priority of both Presidencies. Finally, some reflections on the limitations of the research will be presented, followed by concluding remarks with summary of key findings and ideas for future research in this area.

### **Evolving research and different approaches to studying the Council Presidency**

In the literature on the European Union, there has been an obvious research gap regarding the Council, which was partly justified by the traditional lack of transparency within that particular EU institution. Since the late 1990s, the Council started to open its doors to the public and researchers, and that might be one of the reasons why the Council and the Presidency of the Council came relatively late to the focus of interest of political scientists. A wide spectrum of approaches to analysing continuous negotiation, bargaining, coalition-building and compromise seeking behaviour of Member States in the Council has started to be developed, highlighting a number of dilemmas and contradictions related to the Council and the Presidency position. Following the initial academic contributions on the Council and the Presidency (Edwards and Wallace 1977; de Bassompierre 1988; Kirchner 1992), over the years a number of authors added new dimensions to the study of the Presidency in terms of the methods and empirical analysis used, bringing some valuable insights for future evaluations of the Presidency's performance (Schout 1998; Elgström 2003; Tallberg 2003; Thomson 2008).

In general, the predominant focus of these studies was on the extent of the Presidency's influence in intergovernmental negotiations within the Council, but with somewhat different conclusions. Firstly, scholars have different views on whether the presiding Member State has any additional power and influence that is given solely by the position of the Presidency.

If the Presidency has some instruments in possession, formal or rather informal ways of exerting influence, another point of divergence is the extent to what the presiding Member State, in reality, does it. Finally, scholars may have different conclusions when it comes to the evaluation of one Presidency's attempts at exerting additional influence. Unfortunately, research on measuring the success of the Presidency's performance, using standardised indicators applied to more than one or two Presidencies has been rather neglected.

Some studies approach the Presidency mostly through its administrative role of the chair of numerous meetings without any additional influence, apart from what that specific Member State has according to its voting weight or bargaining capacity. This perspective is supported in earlier academic works on the Council and in recent times by Schout (1998), who argues that "the conflicting demands imposed on Member States holding the Presidency (...) have limited the influence of the Presidency" (1998: 2). Schalk et al. (2007: 230) add a few more arguments in favour of the Presidency failing to influence the Council's work, namely the shortness of the rotating Presidency (six months), dealing with ongoing issues that were inherited from previous Presidencies and responding to external, unpredictable events.

Another perspective is somewhat more optimistic when it comes to the Presidency's ability to make a difference in the Council's work. The conventional depiction of the Presidency as *responsabilité sans pouvoir* (Dewost 1984) is increasingly challenged by authors who argue that the Presidency can have a crucial influence in the decision-making process in the Council (Tallberg 2003, 2004; Thomson 2008), especially in the context of agenda-shaping. In this context, threefold agenda-shaping in the Council is explored by authors who focus on the Presidency's power to put specific issues on the agenda, speed up or slow down some processes by adjusting the agenda or excluding some issues from the agenda (Tallberg 2003). Some authors have discussed the balance between the "European" and "national" elements of the Council, as well as dilemmas on utilising the presiding position in the Council to put on the EU agenda some domestically salient issues and for brokering deals between the Member States that are somewhat closer to particular national preferences (Svetličič and Cerjak 2015).

Besides the literature on the influence of the Presidency, several

single Presidency evaluations offer some criteria that were used to assess how successful those Presidencies were (Karolewski et al. 2015; Agh 2012; Heywood 2011), few studies comparing different presidencies (Quaglia and Moxon-Browne 2006; Bengtsson, Elgström and Tallberg 2004), but also evaluating Trio Presidencies (Batory and Puetter 2013).

All of the above-mentioned research seems to lack the universality of the used criteria. Moreover, it needs to address the common misconception of the Presidency's success and the Presidency's influence being used interchangeably (Vandacastele and Bossuyt 2014). The possibility of using the presiding place in the Council for exerting more influence cannot be regarded as a sole indicator of the Presidency's performance, nor can it be misinterpreted as a sole indicator of the Presidency's success. In this research, a possible increased influence of the Presidency is incorporated in one of the Presidency's roles, where it can use its position at the helm of the Council, as well as a more significant influence that comes with it, to impose discussion on domestically salient issues.

### **Analytical framework – translating Presidency roles into criteria and indicators for performance measurement**

Although the EU founding treaties do not explicitly mention the roles of the Presidency, scholars have examined the Council's work in the past decades and many of them list a certain number of roles that are connected to the post of the Presidency. One of the most detailed lists of the Presidency's role was proposed by Hayes-Renshaw and contained the following nine tasks: 1) acting in accordance with the Presidency Trio's programme, 2) chairing both formal and informal meetings of the Council, 3) chairing all the meetings of lower-ranking preparatory bodies (COREPER I and II, numerous working groups), 4) providing appropriate discussion environment in the Council meetings, 5) cooperating with the President of the European Council and the High Representative for Foreign Affairs and Security Policy, 6) acting as spokesperson for the Council, 7) contacting and negotiating with the Parliament and the Commission in trialogues, 8) meeting all of the Council's obligations, 9) reaching an agreement on certain issues, preferably with all Member States on board (Hayes-Renshaw 2012: 81).

This research combines the main components of the approaches to the Presidency's roles which sum up key roles mentioned in relevant literature, especially in an article by Quaglia and Moxon-Browne as well as in the one by Schout and Vanhoonacker, both published in 2006. Both of these articles use the Presidency's roles to create criteria for further evaluation of the Presidency's success. Also, they both extract four groups of roles that encompass, in their opinion, the scope of the Presidency's work. Additionally, these authors have highlighted remarkably similar groups of roles, but with slightly different tasks within each group. The main difference is that Schout and Vanhoonacker (2006), unlike Quaglia and Moxon-Browne (2006), have included the roles which go hand in hand with the mere fact that the presiding Member State is still *a* Member State of the Council and it cannot disregard its national preferences during that period.

Building upon the methodological approaches of the above-mentioned authors, for this research, five groups of roles will be established, combining the two approaches above, thus addressing the issue of competing roles and contradiction between the "European" and "national" elements of the Presidency and the Council. Observed groups will put a focus on the Presidency's role as: *administrative manager, consensus seeker, political leader, external and internal representative, and an agent of national interests*. These five groups sum up most of the tasks that a single Presidency needs to deal with while in office. Therefore, the evaluation of its performance can be based on five criteria, corresponding to five groups of roles, with a set of related qualitative and quantitative indicators.

Similar to the already mentioned methodological approaches, the first group of roles (*Presidency as the manager and organiser of the Council work*) includes a rather broad scope of tasks. These tasks can seem as simple as arranging the meeting rooms, but they can also be as complex as agenda structuring and devising a strategy for moving forward with a legislative file. What the earlier authors did not explicitly include in any of the groups is the role of securing continuity of the Council's work, which is crucial for the Council's credibility. Hosli et al. (2011) reckon that a "lion's share of the Presidency's time and resources are spent on administrative tasks - the ongoing Council business" (2011: 230). Another reason why securing continuity is a major part of the Presidency's work is due to the almost irreversible nature of

policies that were inherited from previous Presidencies (Schalk et al. 2007: 230). This is especially important in the context of the Trio Presidencies introduced by the Lisbon Treaty requiring a close collaboration of three Member States' Presidencies during an 18-month period, which opened a number of challenges in balancing between the implicit diversity and the need for policy consistency in consecutive Council presidencies (Batory and Puetter 2013). This group of criteria is related to the adoption of legislative acts as one of the primary tasks of the Council, with a measurable indicator of Presidency performance, i.e. the number of legislative files agreed in the first or second reading under the ordinary legislative procedure. Taking into account the average number of legislative files concluded by various presidencies in the last five years (since the start of counting of trilogues as important catalysts of the legislative process), high or above-average performance is proposed to be considered for more than 40 concluded legislative files, an average performance for above 20 and a low score would be for Presidencies closing less than 20 legislative files. In addition, the second measurable indicator deals with the number of adopted Council conclusions, indicating the Presidency's capacity to maintain internal dynamics of the Council activities and potential for securing the support of other Member States for topics of common interest. Similar to the previous indicator, the baseline will be established as the average number of Council conclusions adopted in the last five years (for the last ten Council presidencies), where the high (above average) performance will be marked by more than 50 adopted Council conclusions, average performance by above 25 and low performance by below 25 Council conclusions.

*Presidency as a consensus seeker* represents the second group of roles that will be regarded in this research. As mentioned before, the ongoing negotiations in the Council can be described as consensus-driven, which means that Member States are encouraged to behave constructively, striving with other Member States to reach an agreement and to overcome different policy preferences to strike a deal. In order to achieve success in this task, some scholars claim that the Presidency has to, at least temporarily, put aside its national preferences and persist in "trying to find solutions that the majority of Member States can accept" (Hosli et al. 2011: 230). The ability to reach a compromise entails a neutral and impartial position of the Presidency (Schalk et al. 2007: 230; Batory and Puetter 2013:

99), otherwise, the Presidency can be labelled as incapable. From the *agent-principal* perspective, brokerage and impartiality is a service that the presiding Member State is expected to deliver to its colleagues in the Council (Vandecasteele and Bossuyt 2014: 237). A measurable indicator for this group of Council roles would be the increase in the share of unanimous decisions in the Council.

The third set of roles, *Presidency as a political leader*, is substantially based on the Presidency's capacity to steer the EU's political direction in accordance with the proclaimed political guidelines. This role of the Presidency might seem undermined by the institutionalisation of the European Council and its Permanent President. However, the Presidency can still have enough political space to showcase political leadership. The Presidency as a political leader is expected to devote its full-time attention to common, European issues and seek sustainable solutions. Furthermore, an important part of acting as a political leader is the ability to give an immediate and adequate response to any external event that has a significant impact for the Council's work and for the Union in general (Schalk et al. 2007: 230; Vandecasteele and Bossuyt 2014: 239-240).

*Presidency as an internal and external representative* of the Council makes up the fourth group of the Presidency's roles. Despite previously mentioned institutional changes introduced by the Lisbon Treaty, the Presidency's role as an external representative retains its importance in certain policy areas. For instance, the Presidency represents the Council when negotiating trade deals with third countries or when negotiating with the EU candidate countries in the enlargement process. The Presidency's commitment to EU values contributes to the overall EU credibility in external relations – therefore, that will be the focus of a qualitative indicator in this group of roles. Regarding the internal representation, the most prominent role of the Presidency is to represent the Council in the procedure of inter-institutional negotiations (trilogues) during the ordinary legislative procedure. Also, it is extremely important for the Presidency to approach other EU institutions, especially the Commission (due to its exclusive right of initiative), and to foster cooperative relations with them (Tallberg 2003: 7). In that context, the number of trilogues held during the Presidency will be established as a specific, measurable indicator of performance.

Lastly, the fifth group of roles of the Presidency (*Presidency as an agent of national interests*) is comprised of different tasks that the presiding Member State is expected to complete based solely on the fact that it is still one of the Member States in the Council. Member States' objective is to represent their national interests, and the Presidency is no exception there. In this multi-faceted position, "Member States holding the Presidency are conceived of as strategic actors, seeking to satisfy national preferences within the confines of their formally delegated role" (Tallberg 2003: 5). In this context, the coalition-building potential of the Presidency on EU policies will be assessed by using the EU Coalition Explorer Survey regularly published by the European Council on Foreign Relations (ECFR). Besides, the performance of the Presidency in pursuing key Presidency priorities that are, for the purpose of this paper, considered as national priorities, will be assessed.

Each of the mentioned groups of roles is translated into a list of five criteria that need to be fulfilled by the Presidency in order to be assessed as successful. Accordingly, the Presidency needs to be (1) a successful administrative manager and organiser of the Council and (2) it needs to put effort into seeking consensus. Also, the Presidency will be deemed as successful if (3) it acts as a political leader of the Council. Furthermore, a successful Presidency needs to (4) properly represent the Council both internally and externally, and finally, (5) it needs to fulfil expectations of acting as an agent of its national interests.

As there are many factors that can contribute to the Presidency's performance, at least according to the existing literature, they sometimes seem rather simplistic, and, on the other hand, they sometimes collide with one another. In order to overcome these limitations, two points are detected within each criterium considered to be crucial for a successful Presidency, which leads to the total number of ten indicators (Table 1). Certain contradictions might still come up, especially regarding the complexity of the assessment of certain indicators, such as neutrality and impartiality on one hand, and prioritising national interests on the other. However, these examples of complexity and contradiction should be regarded as an inevitable consequence of the Presidency's two-headed position.

Each indicator comes with three assessment benchmarks (numeric value "1", "0" and "-1"). The median or neutral

benchmark (“0”) comes from a more minimalistic perspective on the Presidency’s success as it neither counts for a more successful Presidency nor does it mean complete failure in that matter. After assessing the fulfilment of each indicator with “1”, “0”, or “-1”, the scores are added up and divided by the number of indicators (10) to get the average score. On a scale from -1 to 1, the average scores from -1 to -0,6 are interpreted as a very unsuccessful Presidency, from -0,5 to -0,1 as an unsuccessful one, 0 – neither successful nor unsuccessful. In contrast, the average scores from 0,1 to 0,5 denote successful Presidency and from 0,6 to 1 a very successful Presidency. Presumably, the highest average score is reserved for an ideal type of the Presidency, as it is almost impossible to get absolutely positive assessments of every indicator.

The proposed methodology for scoring and measuring the Council Presidency performance is based on a combination of quantitative and qualitative indicators. Certain limitations of this research are particularly related to the qualitative dimension of the Presidency performance assessment, which was based on the data collected from available reports, studies and articles. At the same time, the more advanced empirical testing of this methodology would require the use of surveys among key target groups.

Clearly, the suggested methodological framework cannot fully grasp a wide variety of possible internal and external conditions which need to be taken into account when attempting to draw conclusions on the rotating Presidency success. For example, it is very complex to evaluate differences in managing the Council Presidency tasks between countries with a federal system of political organisation compared to unitary states, as well as to analyse the specific role and contribution of federal components in shaping the positions of the Presidency. Besides, in case of smaller Member States, officials from the General Secretariat of the Council or other EU countries can be seconded to assist the responsible government bodies of the country holding Presidency which can create an additional challenge in terms of determining what the “national” presidency is. In addition, the success of a Presidency is largely dependent on other institutional actors, such as the European Council, European Commission and European Parliament. In a year of European elections, it can be very demanding for a Presidency to achieve progress in concluding legislative files and

managing inter-institutional negotiations with the Parliament and the Commission. At the same time, national elections or other factors causing the possible instability of the government can also be relevant in the evaluation of the performance of a Presidency. Therefore, a proper contextualization of a variety of external and internal factors should be provided for the research findings and data collected based on the proposed set of indicators and assessment benchmarks.

		Assessment benchmarks			
		Criteria ( <i>Indicator</i> )	1	0	-1
Roles of the Presidency of the Council of the EU	1 <i>Managing and organising Council work</i>	1.1. Ongoing Council legislative affairs ( <i>Number of closed legislative files</i> )	Significant number of legislative files closed (above 40)	Average number of legislative files closed (20-40)	Low number of legislative files closed (below 20)
		1.2. Capacity to maintain internal dynamics of the Council work ( <i>Number of adopted conclusions of the Council</i> )	Significant number of Council conclusions adopted (above 50)	Average number of Council conclusions adopted (25-50)	Low number of Council conclusions adopted (below 25)
	2 <i>Consensus seeker</i>	2.1. Reaching compromise and consensus ( <i>Number of decisions made unanimously</i> )	Above-average number of decisions made unanimously	Average number of decisions made unanimously	Below-average number of decisions made unanimously
		2.2. Neutrality and impartiality ( <i>Perception of neutrality and impartiality</i> )	Neutral and impartial during almost all the time in office	Neutral and impartial most of the time, but with some objections of being biased	Frequent objections to the lack of neutrality and impartiality
	3 <i>Political leader</i>	3.1. Responsiveness to major political or other unforeseen events ( <i>Perception of adequacy of reaction to major unforeseen events</i> )	Well-timed and adequate response to unforeseen events	Delayed, but adequate response to unforeseen events	Delayed and inadequate response to unforeseen events
		3.2. Stability and devotion to common issues ( <i>Perception of commitment to common EU issues</i> )	Precedence of common issues over domestic issues	Balancing between common and domestic issues	Precedence of domestic issues

		<b>Criteria (Indicator)</b>	<b>Assessment benchmarks</b>		
			1	0	-1
<b>Roles of the Presidency of the Council of the EU</b>	<i>4 Internal and external representative</i>	4.1. Cooperation with other EU institutions <i>(Number of trilogues held)</i>	Above-average number of trilogues	Average number of trilogues	Below-average number of trilogues
		4.2. Maintaining or improving EU reputation in the international arena <i>(Perception of credibility in promoting the EU common values)</i>	Reliable actor in foreign affairs that fully represents the EU common values	Actor in foreign affairs that slightly deviates from the EU common values	Untrustworthy actor in foreign affairs that significantly retreats from the EU common values
	<i>5 Agent of national interests</i>	5.1. Visibility and preferability as a coalition partner on EU policies <i>(Ranking in the ECFR EU Coalition Explorer)</i>	Strong coalition-building potential on EU policies (ranked in Top 9 EU countries in ECFR EU Coalition Explorer)	Moderate coalition-building potential on EU policies (ranked among 10-18 EU countries in ECFR EU Coalition Explorer)	Weak coalition-building potential on EU policies (ranked 19-27 EU countries in ECFR EU Coalition Explorer)
		5.2. Elevating national priorities to the European level <i>(Level of achievement of key national priorities from the Presidency programme)</i>	National (Presidency) priority policy areas became European priority policy areas, and proposed policy approach was accepted.	Discussion on some national (Presidency) priority policy areas got started but remained without further action or success in promoting specific policy solutions	National (Presidency) priority policy areas were left entirely behind

**Table 1:** Council Presidency - success indicators and assessment benchmarks

## Council Presidencies compared: Austria and Croatia

Two Presidencies that concluded the most recent Trio Presidencies, Austria and Croatia, are going to be compared according to the assessment of their performance as Presidency, using the criteria and indicators presented in the previous section. Among a number of priorities of both Austrian (Eu2018.at, 2018a) and Croatian Presidencies of the Council (Vlada Republike Hrvatske 2020b), but also their respective Trio Presidencies, the EU enlargement stands out as the common priority and will be particularly addressed in the context of this assessment.

Starting with the indicator 1.1 (ongoing Council legislative affairs), reports have shown mixed results (Liechtenstein 2018). The Austrian Presidency wanted to use its time in office to come to an agreement on particular migration and security issues and to finish important files in this policy area. Still, it soon became evident that this objective was unrealistic. The migration quota system, new Dublin agreement and disembarkation platforms outside the EU are just a few of the issues that stayed unresolved during the Austrian Presidency (Liechtenstein 2018). On the other hand, the Austrian Presidency has put additional effort on the enlargement process, more specifically on the Western Balkans region, which resulted with Serbia and Montenegro opening new negotiation chapters (Eu2018.at, 2018b). Furthermore, Austria finalised the work on the Erasmus programme and Horizon Europe programme, parts of the new Multi-annual Financial Framework 2021-2027 (Neuper 2019). Altogether, Austria managed to conclude 52 legislative files in the first reading, out of which 29 at Coreper I, 19 at Coreper II and 4 at SCA (Special Committee on Agriculture), which is an indication of the high performance under this quantitative indicator.

The Croatian Presidency's limited progress in concluding legislative files can be explained by exceptional circumstances caused by COVID-19 crisis and a sudden shift in political and legislative priorities. It was also due to the postponing of the agreement on the multi-annual financial framework, which is connected to a large number of pending legislative initiatives. Out of 19 files concluded in the first reading during the Croatian Presidency, 17 files have been related to COVID-19 emergency acts which illustrates the dominance of pandemic crisis over

the Council work during the Croatian presidency (Council of the EU 2020a). On the other hand, out of eight inherited legislative files which were concluded in the second reading, it is important to stress the finalisation of work on the Directive on the quality of water intended for human consumption, as well as the Directive on markets in financial instruments, but also the Regulation on a framework for the recovery and resolution of central counterparties. Altogether, 14 legislative files were agreed at Coreper I, 12 at Coreper II and one at SCA level. The conclusion of 27 legislative files is considered as an average performance according to the proposed quantitative scoreboard for this indicator. As regards the priority files of the Croatian Presidency, in addition to the adoption of the Council position on the Conference on the Future of Europe, as well as the signing of Brexit agreement, the Decision on opening EU accession negotiations with Albania and North Macedonia has been considered as the greatest achievements of the Croatian Presidency, marking a substantial shift in the EU enlargement policy. On the other hand, no progress has been made on asylum and migration package. In contrast, the long-awaited deal on the multiannual financial framework has been reached only during the German Presidency. The assessment of Croatia's performance as regards the objectives and priorities stated in its Presidency Programme showed that 99 out of 174 (or 56.89%) legislative and policy activities planned in the Programme had been implemented (Vidačak 2020). In general, the assessment of the Presidency's performance in the legislative process based only on the quantitative indicator 1.1 has its limitations, mostly since it neglects the complexity of certain files, as well as the overall political, economic and institutional environment for decision-making. This may be illustrated by the impact of European elections on the Trio Presidency (Romania, Finland, Croatia) where Romania benefited from strong support and pressure from the European Commission and the European Parliament to reach agreement on eighty priority legislative files before the elections, which is almost six times more than Finland (Council of the EU 2020b) that was affected by the post-election period of transition and restructuring of the EU Institutions.

**Table 2:**  
Number of  
legislative files  
concluded in the  
first or second  
reading under the  
ordinary legislative  
procedure during  
the Austrian  
and Croatian  
Presidencies and  
respective Trios

Activities in the ordinary legislative procedure	Austrian Presidency	Presidency Trio ( <i>Estonia, Bulgaria, Austria</i> )	Croatian Presidency	Presidency Trio ( <i>Romania, Finland, Croatia</i> )
Number of legislative files agreed in the first reading	52	126	19	105
Number of legislative files agreed in the second reading	0	1	8	16
<b>Total</b>	<b>52</b>	<b>127</b>	<b>27</b>	<b>121</b>

Source: Authors, based on data from the Council of the EU (2020b)

Regarding the indicator 1.2 during the Austrian Presidency, 56 conclusions of the Council were adopted (Eu2018.at 2018b), while 54 conclusions were adopted at the Council sessions during the Croatian Presidency (Vlada Republike Hrvatske 2020b). This shows that both Presidencies have managed to maintain the advanced internal dynamics of the Council activities. Moreover, they could both successfully mobilise other Member States to support the proposed conclusions and recommendations on multiple topics of common interest and regarding the ongoing and future policy and legislative initiatives on the agenda of EU institutions. Since this was Austria's third Presidency in twenty years, it is reasonable to assume a sufficiently high level of expertise of its public administration and no major issues during the Presidency regarding its staff competence in the European affairs and the capacity to provide technical and administrative support to the Council. During the Austrian Presidency, 2062 meetings of the Council preparatory bodies have been held (Eu2018.at 2018b). The official report of the Croatian Presidency mentions 916 meetings of the Council working bodies organised during the first half of 2020 (Vlada Republike Hrvatske 2020b). This also indicates substantial

capacities of the Presidency to ensure adequate coordination of technical and administrative support to the Council activities, despite unprecedented crisis caused by COVID-19 outbreak and the need for rapid adaptation to the new online modes of the Council work.

According to voting records from December 2009 to June 2019, approximately two-thirds of all decisions (66%) were made with the unanimous support of all Member States (Consilium.europa.eu, 2019). The positive assessment of this indicator would mean that the Presidency has managed to increase the share of unanimous decisions. If this share decreased, that would count for the negative assessment of this indicator. From 1 July 2018 to 31 December 2018, out of 58 available voting records, only 18 voting procedures ended in a public contestation of the majority in the Council (Consilium.europa.eu 2019), which means that slightly more than two-thirds (68.9%) of all decisions were made with unanimous support of the whole Council. The Croatian Presidency's performance in this regard was somewhat better, reaching unanimity in 74.68% of voted decisions during the first six months of 2020. Hence, Austria and Croatia can be considered as successful Presidencies when it comes to reaching compromises and consensuses (indicator 2.1), while the performance of both presidencies was below average respective the Trios' performance in this area.

**Table 3:**

Compromise reaching capacity — the number of decisions made unanimously in the Council during the Austrian and Croatian Presidencies and respective Trios

<b>Voting in the Council</b>	<b>Austrian Presidency</b>	<b>Presidency Trio (Estonia, Bulgaria, Austria)</b>	<b>Croatian Presidency</b>	<b>Presidency Trio (Romania, Finland, Croatia)</b>
Number of voting records in the Council during the Presidency	58	150	35	171
Number of decisions made unanimously in the Council during the Presidency (compromise reaching percentage)	40 (68.96%)	88 (58.66%)	26 (74.28%)	90 (52.63%)

Source: Authors, based on data in Council public register of voting results, 2020.

As regards the indicator 2.2, there were not any significant objections that would imply any kind of breach of neutrality and impartiality by the Austrian Presidency. The only objection was raised regarding the Austrian Presidency policy approach on migration and asylum policy package where its national government's stricter approach caused lot of debates and disputes, especially with the European Parliament. Otherwise, as it is reported (Liechtenstein 2018), Austrian government officials were pretty much aware of the importance of being neutral and impartial during the negotiations. The same holds to a great extent for the Croatian Presidency. However, its neutrality was put into question due to the refusal to put on the Council agenda the deterioration of the rule of law, democracy and fundamental rights in Hungary, despite the initiative of thirteen Member States and the European Parliament's Resolution (Euronews 2020).

The assessment of the indicator 3.1 evaluating the Presidency's responsiveness to major events will mostly be conducted regarding Austrian efforts to keep the unity of EU27 in the Brexit negotiations. Even though the Brexit talks in the second half of 2018 cannot be seen as an unforeseen event, some of the obstacles that came up in the way of achieving a withdrawal deal with the United Kingdom can be seen as unexpected (for example, the internal political situation in the UK or Spanish demands on Gibraltar). The Austrian Presidency managed to gather all remaining Member States to speak with one voice and to send a clear message to London that "the present Withdrawal Agreement is not renegotiable" and that "it is now up to the United Kingdom to make a clear decision" (Eu2018.at 2018b). Therefore, when it comes to the Brexit negotiations, the Austrian Presidency responded adequately and with no delay. The Croatian Presidency was faced with an unprecedented major global COVID-19 pandemic crisis which has dramatically changed the environment for the work of the EU institutions and shifted political priorities. Given the extent of the global crisis, the reaction of the Croatian Presidency could be considered as adequate in terms of supporting the urgent adoption of a package of legislative acts as a response to COVID-19 outbreak. Another major event was the new EU border crisis at the beginning of March 2020 following Turkey's decision to open its borders to Greece and send Syrian refugees to Europe. The Croatian Presidency, along with leaders of all EU institutions, promptly visited Greece sending a strong signal

of unity and readiness to tackle the emerging crisis (Euractiv.com 2020).

The indicator 3.2 deals with the readiness of the Presidency to give precedence to common issues over domestic ones and checks for any major domestic interference with the Presidency's task as a political leader of the Council. During its presidency, Austria was ruled by a right-wing government, consisting of ÖVP (Austrian People's Party) and FPÖ (Freedom Party of Austria), which was not welcomed with much enthusiasm in the European Union. On the contrary, the leader of ÖVP, Sebastian Kurz, was accused of collaborating with a neo-fascist political party and conceding to their demands of stricter migration rules and more rigid borders (Shuster 2018). Due to coalition instability back home, "Austria has been preoccupied by itself" (Satanakis 2019) and was therefore not able to provide credible and stable leadership of the Council and the EU as a whole. The Croatian Presidency was also tarnished by giving explicit support to Hungary amid widely expressed pan-European concerns over democratic backsliding in that EU country during pandemic crisis (Vladisavljević 2020). Thereby, it was leaving the impression of worrying more about short term national interests — i.e. avoiding being blocked by Hungary in its w entry into the Schengen and the OECD.

Regarding the role of internal representative, both presidencies will be evaluated according to the number of trilogues held, in comparison with the average number of trilogues held since the beginning of counting of this form of informal inter-institutional negotiations in the ordinary legislative procedures, which amounts to 123 (the average number of the last ten presidencies). In this context, Austrian performance was above average with 150 trilogues held during its Presidency, while the Croatian Presidency managed to hold only 31 trilogues, largely due to COVID-19 outbreak as well as to the lack of progress in reaching a political deal on the multiannual financial framework which blocked talks on a large number of related legislative files. A more advanced approach to assessing the cooperation of the Council Presidency with other EU institutions might also take into account the number of open disputes of the Presidency with other institutions. For example, one of the most debated files proposed by the Commission was the one on scrapping daylight saving time in the EU. According to Politico.eu (Posaner 2018), the Commission expressed deep

dissatisfaction with the Council's postponement of that legislation, while the Austrian Presidency insisted on more time to be given to the Member States to decide on this issue. Regarding the relations of the Presidency with the Parliament, one other dispute arose, the one about migration and asylum legislative package. Namely, the "Austrian Presidency had sent some of the files (those on reception conditions, asylum qualification and resettlement) back to the technical level at Council for renegotiation" (Eder 2018), thus stopping further progress on this issue. Another conflict evolved around the UN Migration Compact, as Austria refused to sign it, triggering negative comments from the Commission President, Jean-Claude Juncker (Schaart 2018; Kostaki 2019). The only noticeable dispute between the Croatian Presidency and the European Parliament was about the Hungary and Poland rule of law procedure being ignored by the Presidency. In future research on the performance measurement of the Presidency, the "internal representation" indicator may be designed as a "composite" indicator covering both the number of trilogues and the number of open inter-institutional disputes involving the Council.

The indicator 4.2 tests the presiding Member State's compliance with the fundamental values and principles of the European Union. Even though Austria is regarded as a Member State that fully respects fundamental values and principles, Freedom House Report for 2018 noted that since the ÖVP-FPÖ coalition government took power, there has been a rise in threats to the freedom of the press, the politicisation of intelligence agency and legislative attempts to deteriorate migrants' and asylum seekers' rights. According to this report, the assessment is that Austria is still a country that complies with the fundamental values and principles, but with slight deviations (Freedom House 2019). The first European Commission 2020 Report on the Rule of Law highlighted challenges with the low perception of independence of the judiciary, as well as media freedoms and civic space in Croatia (European Commission 2020). As regards the prominence of the rule of law topics during the Austrian and Croatian Presidencies, both Presidencies did not manage to put on the agenda of the Council the cases of serious breaches of the rule of law in Hungary, following the procedure launched by the Parliament in 2018. As already mentioned, the Croatian Presidency came under heavy criticism for ignoring the initiatives of MEPs and thirteen EU Member States regarding the

deterioration of the rule of law, democracy and fundamental rights in Hungary under emergency regime due to pandemic crisis (Euobserver.com 2020). The step forward in promoting the EU values of transparency and openness was done by the Croatian Presidency's support to the renewal of negotiations on the Inter-institutional Agreement on mandatory Transparency Register, through a political kick-off meeting held in June 2020 (Ec.europa.eu 2020), while the message of solidarity and unity was sent to Western Balkans countries through Zagreb Declaration on EU enlargement (Consilium.europa.eu 2020). The Austrian Presidency managed to organise the annual rule of law dialogue in the Council (General Affairs) and adopted the Presidency Conclusions on "Trust in Public Institutions and the Rule of Law", based on expert inputs from EU Member States, EU institutions, the EU Fundamental Rights Agency, the Council of Europe, civil society and academia (Council of the EU 2018), thus proactively promoting debates on fundamental EU values.

The last group of indicators tests the performance of both Presidencies in advocating national interests during their Presidency terms and demonstrating the coalition potential in the Council. In order to increase the possibility of framing some domestic interests as common European interests, Member States regularly engage in informal coalition-building in the Council. These coalitions can be in the form of bilateral cooperation, triads (three Member States together) or hubs of one Member State that attracts other Member States as the most preferred partner in the Council (Huhe et al. 2018: 30-33) and they are often based on either cultural and geographical proximity or shared ideology of ruling political parties. According to the European Council on Foreign Relations EU Coalition Explorer 2018 Survey (Ecfr.eu 2018), Austria is part of the "Affluent Seven" group, together with Belgium, Denmark, Finland, Luxembourg, the Netherlands and Sweden. This group of Member States holds a combined share of 17% of the Union's GDP (Ecfr.eu 2018), and thanks to that, these countries are punching above their weight when it comes to their importance for forming majority or blocking minority in the Council. Therefore, Austria has successfully increased its visibility and reputation among other Member States. According to the overall results of the ECFR Coalition Explorer 2020 Survey conducted during the Croatian Presidency in March and April 2020, Croatia ranks 22nd in the overall results that combine four criteria (most contacted government on EU policy matters, most responsive and easiest

to work with for EU country's government, most influential on EU policy, sharing longer standing interests on EU policy), while Austria ranked 8th (Ecfr.eu 2020).

Finally, the indicator 5.2 is focused on the congruence of national and European priority policy areas and the acceptance of the Presidency's approach to the prioritised policy areas. For all three priorities of the Austrian Presidency (fight against illegal migration, digitalisation, enlargement) the progress was moderate. Migration and security have been priority policy areas on the European level for a long time now, and the Austrian Presidency succeeded in keeping those areas in the focus. However, the Presidency tried to make its rather hostile stance towards migration and asylum a common EU feature. Still, since no further progress was made regarding these issues (Eder 2018), it is clear that the Presidency was not successful in that matter. European institutions did not embrace different, more restrictive, approach to migration. Regarding the digitalisation legislative files (such as the cybersecurity act, public sector information direction, etc.), some progress was made during the Austrian presidency, but key acts were adopted only during Romanian Presidency. Besides the progress on the EU enlargement policy as one of the key priorities for the Austrian Presidency was limited, with two new negotiation chapters with Serbia and one with Montenegro opened, but no substantial progress on other candidate and potential candidate countries. When it comes to elevating the Croatian presidency priorities at the EU level (enlargement, the Conference on the Future of Europe, Brexit, multiannual financial framework), the biggest achievement was made on the EU enlargement policy by reaching the agreement of EU leaders on starting the negotiations with Albania and North Macedonia, getting the support of all EU governments for unblocking the EU enlargement policy dialogue and adopting Zagreb Declaration on EU-Western Balkans relations. Besides, the Council common position on the Conference on the Future of Europe was adopted in June 2020, while the Decision on concluding the Brexit agreement was adopted by the Council by the end of January. The Decision on starting the negotiations on new EU-UK partnership agreement was brought by the end of February, and four negotiation rounds were held during the Croatian Presidency. The Croatian Presidency also achieved the progress in negotiations on the multiannual financial framework, but the political deal was reached only in July

**Table 4:**  
Assessment  
of Austrian  
and Croatian  
Presidency

2020 during the German Presidency. Under this particular indicator, Croatia could be perceived as slightly more effective in achieving its Presidency Programme priorities.

Indicators	Assessment	
	Austria	Croatia
1.1 Ongoing Council legislative affairs	1	0
1.2 Technical and administrative capacity	1	1
2.1 Reaching compromise and consensus	1	1
2.2 Neutrality and impartiality	0	0
3.1 Responsiveness to major political or other events	1	1
3.2 Stability and devotion to common issues	-1	-1
4.1 Cooperation with other EU institutions	1	-1
4.2 Maintaining or improving EU reputation in the international arena	0	0
5.1 Visibility and preferability as coalition partner on EU policies	1	-1
5.2 Elevating national priorities to the European level	0	1
<b>Average score</b>	<b>0.5</b>	<b>0.1</b>

As shown in Table 4, scores for each indicator were added up and divided by 10, giving the average score 0.5 for the Austrian Presidency, and 0.1 for the Croatian presidency, meaning that both could be assessed as successful. However, Table 4 also shows that this success varied depending on the different roles of the Presidency. While both countries succeeded in fulfilling the role of a consensus seeker and responded effectively to major events, they also failed to demonstrate a firm commitment to the EU values and give precedence to common issues over national concerns.

As regards the EU enlargement to Western Balkans as a common top priority of both Austria and Croatia and as a declared priority of their respective Presidency Trios, it is clear that the two recent Trios did not manage to reach a consensus and policy consistency over this complex topic. In the case of the first Trio, while Bulgaria had invested substantial efforts in providing a clear European perspective for the Western Balkans countries as its first priority, and organised Sofia Western Balkans summit as the central event of its presidency, Estonia has instead focused on the Digital Single Market, while omitting enlargement from its top priorities. Finally, Austria

invested most of its efforts in the issues of security and fighting illegal migration, while simultaneously emphasising the EU perspective of the region, as key partners in the managing migration crisis.

The context for advocating the progress in this area changed dramatically between the Austrian and Croatian Presidencies, with a French ultimatum to change the enlargement methodology and decision to block the opening of accession negotiations with Albania and North Macedonia in October 2019. While the Romanian Presidency still managed to keep the focus on enlargement by negotiating the Council conclusions on this topic, Finland's priorities were directed to other areas, with limited opportunity to act during the time of re-structuring of the EU institutions following the last EP elections. Given the complexity of the challenge of unblocking the French "No" and gaining the support of several other EU Member States with serious concerns over enlargement, Croatia's achievement of negotiating the Decision on opening negotiations with Albania and North Macedonia can be regarded as the most positive aspect of its Presidency of the Council. On the other hand, despite ambitious declarations in 18-months Trio Presidency Programmes, the case of enlargement policy shows that it is very challenging to ensure policy consistency over consecutive Presidency terms, mostly due to the diversity of interests of Member States, the complexity of issues addressed, but also increasing difficulties in reaching unanimity on very sensitive issues in the Council.

### **Limitations: the lack of transparency**

This research had to undoubtedly take into consideration a serious lack of transparency of the Council's work, which presents a major obstacle for academics who want to examine specific issues in the Council more closely. Even though the Council has become significantly more transparent in recent years (Naurin and Wallace 2008: 2), there are still some important information that could be very helpful in pursuing academic research of the Council and the Presidency, if revealed. For instance, there is no official information on failed decisions or on negotiation processes in the lower levels of the Council. It could be further discussed what the limits of the Council's non-transparency are. Member States need to make a decision and

strike the right balance between secrecy and transparency, in order to keep the negotiations ongoing, without any external interference, but at the same time informing the public of every important step in the decision-making process, in order to maintain the trust and legitimacy in the eyes of the public.

This issue proved quite problematic for this research, too. In the lack of official documentation, the Presidency's performance had to be evaluated according to some other information sources, such as the Presidency's official publications on its work, media and other reports from non-governmental organisations. Every Presidency publishes a list of its accomplishments at the end of its term, but no Presidency, quite understandably, publishes a list of its failures. In order to counterbalance any bias, the assessment of the majority of indicators relied extensively on media reports on the Presidency and the reports of some other non-governmental organisations, like Freedom House or the European Council on Foreign Relations.

It is expected that the performance measurement framework proposed in this research may contribute to a better understanding of the multi-faceted tasks of the Council Presidency but also encourage further discussion on the criteria and indicators of assessing the success of rotating Presidencies. However, any further, in-depth analysis would need to be based on a more advanced disclosure of the official Council data, covering the Presidency's work on all decision-making levels in the Council.

### **Concluding remarks**

The aim of this paper was to detect and systematise the roles and tasks of the Presidency and to find out which indicators can be used in order to determine whether the Presidency's performance was successful or not. Five groups of roles were highlighted as crucial tasks of the Presidency, namely acting as an administrative manager of legislative files, a consensus seeker, a political leader, an external and internal representative, and as an agent of national interests. The successful fulfilment of these roles reflected, accordingly, the main criteria for a successful Presidency. In order to satisfy each specific criterion, ten indicators in total were recognised as decisive when it comes to the evaluation of the Presidency's

performance. Each indicator comes with three assessment benchmarks (positive, neutral and negative), in order to make an overall assessment of the Presidency, either as successful or unsuccessful. Furthermore, these indicators were then tested on specific cases of both the Austrian and Croatian Presidencies of the Council.

Some general conclusions can be drawn from the assessment of the Austrian and Croatian Presidencies, according to the established quantitative and qualitative indicators. The Presidency has a unique position of encompassing both European and national elements, and the analysed cases do reflect that very contradiction. When it comes to the Presidency's capacity to conclude legislative files, different circumstances such as emergency crisis or the complexity of political agreement for priority issues addressed can largely limit the scope of intervention of the Presidency. While both Austria and Croatia can be considered as successful Presidencies when it comes to reaching a compromise and consensus in the Council as measured by the percentage of unanimous decisions, they showed less commitment and consistency in promoting and protecting the fundamental EU values and prioritising common EU issues over specific domestic concerns. The research showed that it was very challenging to ensure policy consistency over consecutive Presidency terms and within respective Trio Presidencies concluded by Austria and Croatia, mostly due to the over-ambitious nature of established priorities and increasing difficulties in reaching unanimity on very sensitive issues in the Council.

The final scores for both countries obviously do neither reflect the multi-dimensional nature of certain roles of the Council, the complexity of addressed policy issues, a wide range of external and internal conditions affecting its work nor difficulties in balancing between the quantitative and qualitative aspects of the measurement of the Presidency's performance. Nevertheless, it is expected that the proposed scoreboard will provide an impetus to other researchers and practitioners in identifying and testing more advanced methodologies for evaluation in this area.

With a view to enabling a more detailed assessment of the performance of the Council Presidencies based on objective and verifiable data, some serious challenges will need to be

addressed in the forthcoming period, especially the lack of transparency of the Council work and still a predominant culture of secrecy in inter-institutional negotiations.

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Croatian  
International  
Relations  
Review

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CIRR

—  
XXVI (87) 2020,  
64-84

—  
DOI 10.37173/  
cirr.26.87.3

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UDC  
328:061.1EU:316(474.5)

# How do Lithuanian Citizens Perceive the European Parliament? EU Legitimacy Issue and Trust in the European Parliament\*

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Sima Rakutienė

*Department of Regional Studies, Vytautas Magnus University, Lithuania*

*sima.rakutiene@vdu.lt*

*ORCID: 0000-0001-6459-5224*

Ingrida Unikaitė-Jakuntavičienė

*Department of Political Science, Vytautas Magnus University, Lithuania*

*ingrida.unikaite-jakuntaviciene@vdu.lt*

*ORCID: 0000-0001-8756-7306*

**Key words:**  
European  
Parliament;  
Legitimacy;  
European  
Representation;  
Trust in EU  
Institutions;  
Lithuania

## Abstract

*This article examines the problem of legitimacy within the EU political system and focuses on the political power and recognition of the only one directly elected EU institution – the European Parliament. Historically, being the weaker house of the EU legislative system, throughout the last decades, the European Parliament has increased the political authority dramatically. These political changes should have risen the participation of the EU citizens in the elections and the legitimacy of this EU institution. Analysing the Lithuanian case, based on the qualitative interviewing of politicians and quantitative survey of citizens, the authors claim that while most of Lithuanians recognise the significance of the European Parliament and the turnout in the European elections has increased, the European Parliamentary elections remain, however, of secondary importance.*

\* Acknowledgments

This research was funded by a grant (No. S-LIP-19-65) from the Research Council of Lithuania.

## Introduction

The legitimacy issue of the EU political system has attracted much of academic attention (Kulahci 2003; Martensson 2007; Bolleyer and Reh 2012; Voermans; Hartmann and Kaeding 2014; Nedergaard 2019). The researchers mostly link it to the EU's 'democracy deficit' problem. The said problem comes from both the input and output stages: the input stage is related to the lack of electorate active participation in European politics and elections, and the output stage – to the EU political decisions, which dissatisfy the citizens, especially in relation with recent economic and migrant crisis (Lindgren and Persson 2010; Nedergaard 2019).

Research studies (Reiff and Schmitt 1980; Schmitt 2005; Marinescu et. al. 2017; Šimunjak and Milanovic 2017; Charvar 2017; Unikaite-Jakuntaviciene 2017; Koller 2017; Cichosz 2017) show that EU citizens used not to pay much attention to the European elections. In many Member States, those elections were considered secondary to national elections. On the other hand, in recent years, in 2019, voter turnout in the EP elections has finally exceeded 50% turnout. Does this correlate with the growing role and political authority of the European Parliament in the EU political system? Is the same tendency evident in the case of Lithuania as well? How much significant and legitimate does the European Parliament seem to the Members of the European Parliament elected in Lithuania and the Lithuanian people? Do the citizens appreciate the strengthened political and legal competence of the European Parliament?

The authors argue that the development of the European Parliament's political and legal competences, especially following the implementation of the Lisbon Treaty, has strengthened the political authority of this EU institution and its legitimacy on the legal basis. However, despite the trust in the European Parliament and support for the strengthening of this institution, the European Parliamentary elections remain secondary in Lithuania.

First, the article reviews the problem of the legitimacy of the EU political system from an academic perspective. Second, it analyses the role of the European Parliament from a historical perspective focusing on the growing legal and political competences of this institution. The article further analyses

the case of Lithuania based on methodological triangulation, by using the data of the public opinion poll, media analysis and semi-structured interviews (the public opinion poll of Lithuanian citizens was conducted in spring 2020 and qualitative materials were collected at the European Parliament in Brussels in December 2019). Thus, the article focuses on two dimensions of the legitimacy concept: a) legal legitimacy and b) democratic legitimacy.

### **The problem of legitimacy of the EU political system: a literature review**

While the definition of legitimacy used to be most adapted to national political system research, the European integration project put the legitimacy issues into the field of international relations field, predominately in terms of the impact of international political order and recognition on national level (Meine 2016). As Edward Stoddard argues (2015: 557): “When states decide to join the EU, they resolve potential legitimacy tensions (at least superficially and legally) by agreeing to adhere to, and thus recognise as pre-eminent, European norms embodied in EU law”. Not just the political elites but also the people have to search for the balance of the main acceptable values and norms, existing in their different structures (Bolleyer and Reh 2012). One of the key elements for ensuring the legitimacy is the involvement of the people. That has been the European problem as the EU system is lacking a direct involvement of the citizens (Voermans, Hartmann and Kaeding 2014).

The other element of the legitimacy specifically tied to European integration is the EU policy output process. It reflects if and how the Union is capable of delivering the expected results (Lindgren and Persson 2010). After several recent crises (economic, migrant crisis), EU decisions rather dissatisfied the people than made it more legitimate and even undermined the legitimacy of the EU decisions (Nedergaard 2019). As a possible solution to this legitimacy crisis, instead of always searching for the balance between the two systems – intergovernmental or federal – scientists suggest selecting one of these systems (Beetz 2015). The others believe that legitimacy might be increased by the establishment of various accountability mechanisms (Lindgren and Persson 2010).

Therefore, for quite some time, the researchers have tended to claim that “<...> the EU is suffering from a legitimacy deficit” (Kulahci 2003:118). One of the arguments is that the EU representatives are facing the lack of political power in comparison with national or subnational representatives (Mårtensson 2007). From the very beginning of the European integration process, the European Parliament used to be just a consultative body and the most significant decisions were made by the Commission or the Member States governments. Therefore, the system had been more linked to “undirect legitimacy”.

According to Nicole Bolleyer and Christine Reh (2012: 472), “Legitimacy is defined as one possible motivation for accepting political rule; it roots in citizens’ affiliation with a balanced set of core values and their structural realisation”. Therefore, the concept of legitimacy links the political authority with the people focusing on how they accept it. For the analysis of the legitimacy problem of the European Parliament, we can focus on at least two important elements:

- a) Legal legitimacy - the political authority and competences given to the European Parliament by law, EU treaties.
- b) Democratic legitimacy – the legitimacy of the European Parliament in the eyes of the citizens, the recognitions of this institution and turnout in the European elections.

Data from various studies show that parties and candidates as well as the media and voters, tend to treat the European elections as national secondary elections (Marsh 1998; Reif and Schmitt 1980; Norris 1997). Thus, researchers refer to them as both national and European elections (Strömbäck, Maier and Kaid 2011). The European Parliament campaigns are dominated by party debates on domestic rather than European issues that allow them to be classified as national (Jalali and Tiago 2011).

The secondary importance of the European elections lies in the fact that, compared to national elections, 1) their campaigns are weaker (fewer resources and less attention paid to their preparation) and political parties are reluctant to pay much attention to European issues during the campaign (Norris

1997; Maier and Tenschler 2006). Instead of being European, most European Parliament campaigns continue to focus on national domestic political issues (Charvat 2017); 2) there is a lack of media coverage of these election campaigns and European issues due to a greater focus on domestic politics; 3) voter turnout in the national elections is generally slightly higher than in the European elections; 4) small parties are more successful in the European elections than big ones; 5) the ruling parties in the European elections tend to lose their votes, especially if the elections take place in the middle of the national election term (Marsh 1998).

As Sarah B. Hobolt argues (2014: 1530), “This second-order nature of European elections has been attributed to the fact that citizens generally have little knowledge of policies implemented or promised at the European level by parties, and parties themselves often use these elections as opportunities to test their standing with the public in terms of their domestic political agendas”.

### **When did the European Parliament become important? Increasing powers of the EP from retrospective (legal legitimacy)**

This short analysis based on the EU treaties, documents and literature review reflects the main focal points for the changing role of the European Parliament from the European integration historical perspective. The authors claim that the most important step for the emerging role of this institution was linked to direct elections. Meanwhile, recent historical steps included the enlarged co-decision legislative procedure after the ratification of the Lisbon Treaty (2009) and the rejection of the EU-USA international agreement, made by the European Parliament in 2010. These legal and political changes strengthened the political authority and legitimacy of this EU institution.

After a detailed study of the political system of the European Union, Simon Hix (2006) pointed out that we can compare it with the federal political system since the legislative powers are shared by two chambers of legislators - the Council of Ministers (Council of the EU) and the European Parliament. The European

Parliament has always played a part in the weaker house, as in many policy areas, the Member States only took decisions in the Council of Ministers (Rakutiene 2016). The European integration research has also focused much more on coalition formation, chairmanship and other decision-making processes in the Intergovernmental Council of Ministers, which brings together the interests of all EU Member States (Tallberg 2006; Vitkus and Novagrockiene 2008). Nevertheless, over time, the competences of the European Parliament have continuously been expanded and strengthened (Raunio and Wiberg 2002). In this way, the European Union has sought to give an increasing voice to EU citizens and to address the 'democratic deficit' (Weiß 2018). The European Parliament is the only directly elected institution of the European Union, thus gaining the direct legitimacy of its citizens (Grau i Segu 2019). It is the democratic legitimacy in the speeches of many politicians that has become the main argument for strengthening and extending the legislative and political powers of the European Parliament (the Debates of the European Parliament Sitting in 1979). After the European Parliament acquired the status of a directly elected body, the Single European Act in 1987 gave this body, for the first time, *de jure* limited powers in the legislative process of the European Community (the EU's predecessor). Under the cooperation procedure with the Council of Ministers, the European Parliament took part in the first and second legislative readings. It was able to propose amendments to the legislation, but the Member States still took the final decision in the Council of Ministers.

The historic moment in expanding and strengthening the European Parliament's powers came with the introduction of the co-decision procedure, which gives the European Parliament symmetrical legislative powers in the same way as the Council of Ministers, albeit in limited areas. "This procedure has introduced the rule that, in the event of disagreement between the European Parliament and the Council on a given act, a Conciliation Committee, composed of an equal number of the Members of the European Parliament and of the Council, shall be convened" (Hix 2006: 107). However, the Maastricht Treaty has given the European Parliament such powers in only a few areas — internal market, consumer protection (European Parliament 2019). Meanwhile, the recent Treaty of Lisbon has extended these powers to as many as 85 areas of EU legislation.

This procedure is now considered the normal legislative framework in the European Union, under which most EU legislation is adopted. In their research, researchers Nathalie Brack and Olivier Costa (2018) highlighted that it was this institution that had become the biggest winner in the EU for the political changes introduced by the Lisbon Treaty in 2009.

It has therefore taken at least three decades to consolidate the European Parliament's political powers in the EU political system since the first direct European Parliament elections. Researchers point out that the role of the European Parliament has grown significantly over the last decade. This institution expanded the authority not just through the extension of the ordinary legislative (co-decision) procedure to more and more policy areas, but also in international affairs, whereas traditionally, the legal competences of the European Parliament have been considered limited. Especially so by the EP's position when the European Parliament makes consent to international agreements.

In 2010, one year after the entry into force of the Lisbon Treaty, the European Parliament rejected, for the first time in its history, the international agreement SWIFT between the European Union and the United States (europarl.europa.eu 2010). That came as a big surprise for the European partners. This showed the European Parliament's growing ambitions in international affairs and signalled a clear message to foreign countries that it is not enough to agree with the Member States alone (Rakutiene 2019). The agreement was approved only after both the US (hosting MEPs and the visit of US Vice-President Joe Biden to the European Parliament) and the EU Member States paid sufficient attention to the negotiations with the European Parliament and its proposed amendments on human rights and personal data protection (Servent 2014). According to Adriana Ripol Servent (2014), the European Parliament has thus given much greater prominence to its role, both in the consent procedure, as well as regarding its involvement in the negotiations with third countries and not only in the final stage of the agreement. In this way, the European Parliament has, in the long run, legitimised, strengthened, and consolidated its political and legal powers during European integration, often on its own initiative. But do the citizens appreciate this political authority of the European Parliament?

## Methodology

The triangulation methodology was used to find out the opinion of Lithuanians on the legitimacy of the European Parliament and it includes the mixture of qualitative methods and the public opinion poll.

The authors of this article prepared a questionnaire for the public opinion survey which included 13 closed type questions. A public opinion and market research company “Spinter tyrimai” conducted a public opinion survey commissioned by Vytautas Magnus University from 20-30 April 2020 in Lithuania. The survey involved residents aged from 18 to 75. A combined survey method was applied: 50% - were interviewed by a telephone survey, 50% by an online survey. The survey was conducted by a professional interviewer conducting interviews with respondent according to the prepared questions and recording their answers in the questionnaire. The survey involved 1011 respondents. The distribution of participants by gender, age and the place of residence was proportional to the distribution of the population in Lithuania. The error of the survey data was 3.1 percentages.

The qualitative methods included the analyses of documents and Lithuanian media texts’ as well as interviewing. From 2-7 December 2019, a research internship was conducted at the European Parliament Research Centre - Library and Archives (European Parliamentary Research Service) in Brussels by one of this article authors.<sup>1</sup> During this research visit, empirical data from the EP archives were collected. Semi-structured interviews with the Members of the European Parliament were conducted, too. Inquiries were sent to all Members of the European Parliament elected in Lithuania. Six out of 11 Lithuanian representatives currently working at the European Parliament (Auštrevičius, P., Blinkevičūtė, V., Juknevičienė, R., Mažylis, L, Ropė, B. and Olekas, J.) were interviewed. Additional interviews with the Members of the European Parliament were conducted via phone from June to July 2020 (with Maldeikienė, A., Gentvilas, E. and Paleckis, J.). The duration of the interviews ranged from 20 to 45 minutes. One part of the obtained survey results, those linked to the issue of legitimacy, is published within this article.

1 Sima Rakutienė made a research visit to the European Parliamentary Research Service in Brussels and collected the materials from the archives and also interviewed the Members of the European Parliament.

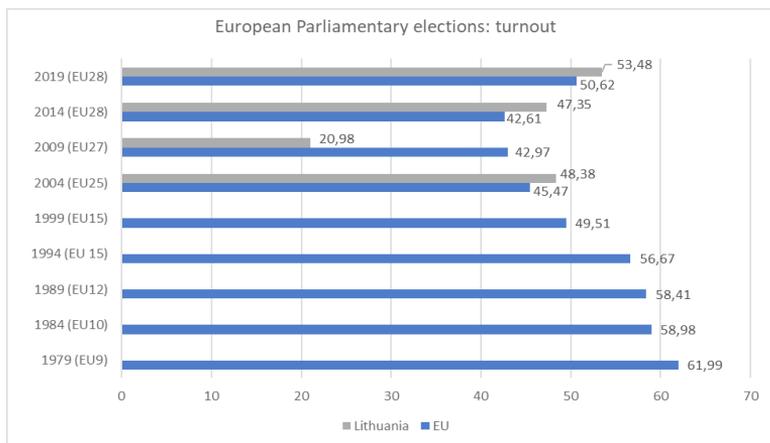
## The case of Lithuania (the EP's democratic legitimacy): research results

### a) Are the European elections in Lithuania still of secondary importance?

Both *de facto* and *de jure*, the European Parliament is gaining more and more symmetrical political and legal power in the European Union's bicameral system. Although much has changed since the first direct elections to the European Parliament in 1979, their relative importance remains constant. Citizens perceive them as less important because the electorate does not impact the potential result – the formation of the government (Schmitt 2005).

Can the European Parliament elections in Lithuania be classified as national secondary elections? First, if we assess the turnout in the European Parliament elections, we will notice that the turnout of Lithuanian citizens is slightly higher than the EU average even in three out of four last elections and reaches more than 42 per cent (see Figure 1).

Figure No. 1  
Turnout in  
the European  
Parliamentary  
elections: 1979  
— 2019



Source: Prepared by authors

The data indicate that these elections are rather important for the Lithuanian population and allow not to confirm one of the features of second-order elections. However, knowing that these elections were held three times together with the second round of Presidential elections in the Republic

of Lithuania, the above-mentioned indicators will not rule out the allegations of the second-order elections because the voters treat the presidential elections as the most important. This was confirmed by the 2009 elections when the second round of the Presidential elections did not take place together with the European Parliament elections. Only 20.98 per cent of voters came to vote that year. Notwithstanding, it should be noted that the last 2019 EP elections, both in the whole EU and in Lithuania, reactivated citizens and exceeded 50% voter turnout. MEP Bronis Ropé tends to relate this voting activity to an increase in the powers of the EP Parliament: "At the same time, of course, <...> in the past, those weak powers had little influence. The Parliament has already gained importance and power" (Interview with Ropé, B., 4 December 2019, Brussels).

He is also echoed by MEP Juozas Olekas (3 December 2019): "More people have come, and perhaps there has been a turning point in the way people see and realise that we are part of the European Union, that it is not just some superstructure that is not important to us. I am glad that it is so because after working for half a year, it is possible to understand very clearly that the decisions that are made here are very important for Lithuania and respond to people's lives". Of course, the increased power of the EP and the increased role of the EP during the campaign may have had a small effect. Still, in Lithuania, the most relevant argument would be the highly competitive last Presidential elections and a more visible campaign in these elections than in the previous ones. Despite a slightly more active European election campaign when compared to the first three elections, the Presidential election campaign still dominated. Some political parties had their candidates in the Presidential elections and traditionally used this campaign to increase their visibility to achieve better European election results.

Secondly, the number of participants in the EP election campaign indicates that the interest of politicians themselves in the elections has increased. In 2019, even 22 lists of candidates participated (previously the number of participants varied from 11 to 12 lists). One of the possible explanations for such an increase of participants could be a change in the rules, allowing not only political parties but also election committees to participate in the EP elections. The above-mentioned activity of politicians shows the growing importance of the elections

under analysis. However, the number of winning lists has not increased, and the number of winning seats has changed slightly. Just one elected MEP has appeared on the electoral committee list. Accordingly, we cannot say that the last EP elections were more important for citizens than the previous ones. In addition, a post-electoral European barometer study (2019) showed that only 45% of Lithuanian respondents voted for the same party they always vote for in the elections and only 23 per cent decided a few months before the election. Even 30 per cent decided whom to vote for only a few weeks before or on the election day. This late decision suggests that voter decision is not likely to be driven by long-term beliefs, the knowledge of the institution's importance, or the analysis of party proposals, but rather by random factors and even likely by a lot of random voting.

Thirdly, an analysis of the content of the election campaign and the issues discussed during the campaign shows that national issues and problems are still common in the European election debate and that European issues, while becoming more dominant, do not imply all parties can present their integrated approach to European integration. Among the European issues, the campaign was dominated by European prosperity, solidarity (equal benefits, common social policy standards), the equality of EU citizens, a strong Europe, the preservation of European values, the preservation of green energy and nature, and respect for human rights. Issues relevant to Lithuania were discussed as national problems, such as strategic projects of Lithuania and their financing, statements that Lithuania's interests are the most important ones, that problems relevant to the Lithuanian people need to be addressed — poverty, social exclusion, unemployment; that EU funds are required in order to modernise schools further, etc.

It is interesting to note that in the previous elections, the slogans were not necessarily directly related to Europe or the EU. In the 2019 elections, almost every list tried to use the European name (for example, Lithuania in Europe: Let's not stop growing; For a Europe based on Christian values! For a Europe of the Nations). Thus, although formally the name of Europe was heard more often, the desire to talk about problems relevant to Lithuania and its domestic policy as well as the urge-intimidation of the ruling party chairman Ramūnas Karbauskis to show voters' support for the government policy in the 2019 European elections demonstrates that some Lithuanian political parties

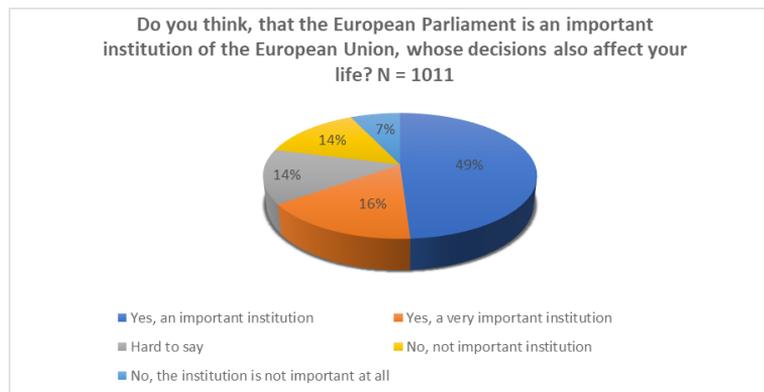
are still inclined to make the European elections national.

All these observations suggest that, for the time being, the European elections remain of secondary importance for Lithuanians, despite the growing powers of this Parliament. Many MEPs interviewed also agreed that voters still lack the knowledge and understanding of what individual MEPs can do for them in Europe. Research shows that, despite minor changes and differences, these elections remain of secondary importance to Lithuanian citizens (Unikaitė-Jakuntavičienė 2017).

### *b) Do Lithuanians recognise the significance of the European Parliament?*

According to the public opinion survey conducted from 20-30 April 2020, most respondents (65%) recognise the European Parliament as an important institution whose decisions affect their lives. More often, the European Parliament is considered a very important institution by men with higher education and the highest income living in the metropolitan area. Women of age 36 and older respondents with higher education residing in larger cities are more likely to agree that the EP is an important institution. These survey data show that the significance of the European Parliament is mostly admitted by the educated residents of Lithuania's major cities. The institution is seen as unimportant by 23% of the Lithuanian population (not important— 16% and not important at all — by 7% of respondents).

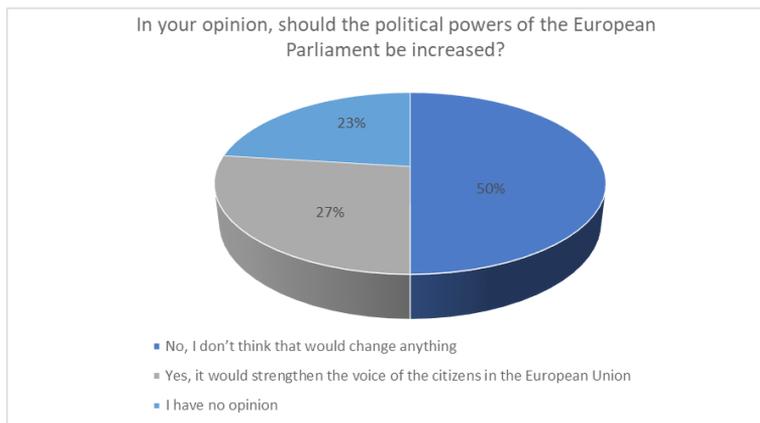
Figure No. 2  
The significance  
of the EP to  
Lithuanian  
citizens



Source: Spinter Survey in Lithuania, April 2020

Should Europeans continue to strengthen the powers of this institution, and what would that change? According to the survey data, 50 per cent of Lithuanian respondents believe that this would not change anything in the EU governance system. Meanwhile, 27 per cent of the respondents agree that strengthening the EP's powers would also strengthen the voice of Europeans in the European Union. Men and younger people aged 18-35 are more likely to believe that the EP's political power should be strengthened.

Figure No. 3  
The attitudes  
of Lithuanians  
towards the  
political powers  
of the EP



Source: Spinter Survey in Lithuania, April 2020

Meanwhile, the Members of the European Parliament elected in Lithuania noted the importance of this institution in making useful decisions for all citizens of the European Union and in pursuing a far-sighted and long-term Union policy. One member of Socialists and Democrats' political group in the EU, already elected for a third term, highlighted that the European Parliament sometimes has to harshly stand for its position even if facing opposition from the Member States' governments:

«... we are the institution that is directly elected by the people, and I want to say that we are right to demand, although to some Member States it seems that we are demanding more than can be achieved, but if we do not demand it, we will not express our political positions, then nothing will move forward. <...> we often hear from the Member States - we do not have the money, there are no funds, but it's always like that - in good times and in bad ones - depending on which priority you have. I will

give an example of — a five-day leave for family care, for example, old parents, disabled family members, who mainly takes care of them — of course, a woman. And our position, like that of the European Parliament, was such that there should be at least the five-day leave plus that it should be paid. <...> failed to reach a full agreement with the Council, < Member States> agreed with the leave, but payment must be negotiated within each country to be something adequate. The way I say, we make seemingly higher demands, please agree that this is, because if you do not fight, if you do not do anything, we will get nothing. It is therefore natural that we politicians, here in the European Parliament, say that we need to invest in people and that is moving little by little.” (Interview with one Member of the European Parliament, Socialist and Democrats’ political group, 4 December 2019, Brussels).

Other Members of the European Parliament have also noted the usefulness of the European Parliament as a political institution in the European Union decision-making, although before becoming a Member of the European Parliament, those opportunities to influence EU decisions did not seem significant: “The European Parliament has already acquired powers, especially the eighth term. <...> Lithuanian citizens have more confidence in the European prism. And now that we are preparing a new common agricultural policy here - we often hear from the citizens - do not pass it on just to the Member States governmental level in any way. It shows, in fact, that the European project is alive, necessary.» (Interview with a Member of the European Parliament, Greens political group, 4 December 2019, Brussels).

One other MEP, working in its second term in the EP, explains the importance of the EP: «The European Parliament will have even more powers because we must properly reflect not only the national but also the European political level. We are not only national but also the citizens of the European Union, and that element cannot be ignored. Those who resist and think it has become more expensive in terms of time and the like - they live in the past. <...> It will be completely different in the future, and there will be even more dialogue, even more joint decisions, called co-decisions and that is inevitable. The European Union is a unique political structure” (Interview with a Member of

the European Parliament, "Renew Europe"- Alliance of Liberals political group, MEP, 5 December 2019, Brussels).

As data indicate, Lithuanians acknowledge the importance of the EP. Nonetheless, is this opinion related to the information the voters have about the EP activities and decision?

***c) Does the electorate have enough information about the European Parliament?***

Although the level of awareness of the significance of the European Parliament is relatively high, only less than a half of the respondents (41%) indicate that they have sufficient information and knowledge about the European Parliament. Usually, respondents between 26-55 years of age with higher education and higher income have enough information.

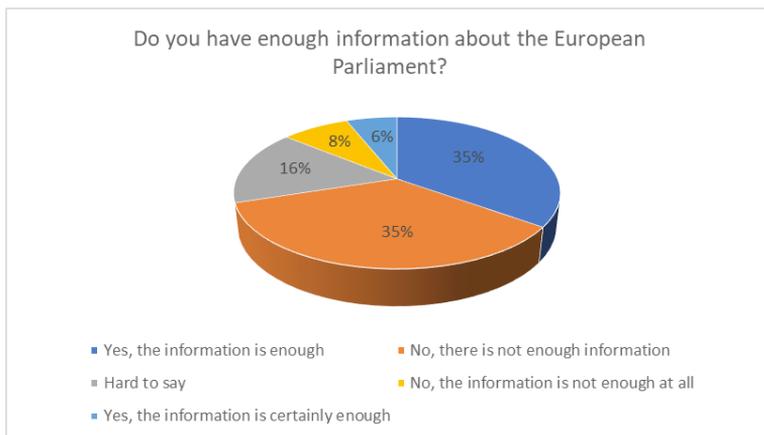


Figure No. 4  
Dissemination  
of information  
about the EP

Source: Spinter Survey in Lithuania, April 2020.

This is likely due to the fact that younger respondents may not yet be very interested not only in the European Parliament but also in politics in general, and older respondents may not have enough access to information because usually, they use traditional sources of information on EP activities. Currently, most institutions and politicians focus on communication through various internet channels, and older people are still not active participants in and the users of social media.

Not surprisingly, respondents do not have enough information

about the European Parliament and the decisions it takes. As the survey shows, the majority of them does not explicitly look for information on the activities of MEPs and is satisfied with the information heard or read in the news. There are very few respondents who regularly follow the activities of MEPs - about 4%. Occasionally, only 18 per cent of them with a particular interest. Among them are more men and respondents aged 26-45. All others are either not particularly interested in and find information by chance — 49%, or not interested at all — 29%. Seeing these results, the major question is how to find the best way for attracting voters' attention to European issues and finding the best channels to provide the information.

Several Members of the European Parliament elected in Lithuania mentioned the problem concerning the lack of Lithuanian interest to search for the information (Interview No. 3 2019) and related it to the secondary nature of the European elections. They noted that the media is important for informing about the activities of the European Parliament and its Members. However, the Lithuanian media is not very inclined to stimulate public interest in the EP activities and does not pay much attention to European issues: "Although it does, it puts information, but perhaps it does not reflect as much as it reflects the activities of the Seimas or the activities of the Government" (Interview No. 3 2019).

## Conclusions

The European Parliament has increased the political authority and legitimacy provided by European law since the first European elections quite impressively. Despite that fact, the democratic legitimacy of this institution remains not very high.

The EU citizens, including Lithuanians, still do not consider the European Parliament elections as important. In the many Member States, these elections have long been considered as national secondary elections. Nevertheless, the institution of the European Parliament itself has been strengthening its role over the last decade, both in the extension of the ordinary legislative (co-decision) procedure to more and more political areas and in international affairs. The development of the European Parliament's political and legal competences,

especially following the implementation of the Lisbon Treaty, has strengthened the EU's bicameral political system and legitimised the EP role on a legal basis. The growing competences of the European Parliament are recognised by both the electorate and politicians, who have made significant efforts to mobilise the EU voters and increase their turnout in many EU countries in the last 2019 elections. However, in the case of Lithuania, the increased voter turnout correlates not so much with the growing role of the EP, but more with the simultaneous holding of the Lithuanian Presidential elections.

As survey results indicate, one year after the European elections (2019), the EP institution remains important for the respondents. Still, there are no clear signs that voters' habits have changed and their interest in their elected European Parliament has increased. Respondents talk about the lack of information, but at the same time indicate that most of them are not specifically looking for information. Most seem to rely on randomly found information. As information is obtained without a specific search and many expressed having the lack of information, such results may be compounded by poor media coverage of European issues and the ineffectiveness of MEPs' own dissemination of information about the European Parliament and its activities. Thus, it is not yet easy to activate the interest of the Lithuanian population in the activities and decisions of the EP.

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Croatian  
International  
Relations  
Review

—  
CIRR

—  
XXVI (87) 2020,  
86-119

—  
DOI 10.37173/  
cirr.26.87.4

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UDC 614.88:342.7:341

# The Challenges to the Emergency Medical Services to be Recognised as a Human Right in International Human Rights Law

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**Jenna Uusitalo**

*Faculty of Law, University of Helsinki, Finland*

*jenna.uusitalo@helsinki.fi*

*ORCID: 0000-0002-7799-7289*

## **Abstract**

### **Key words:**

*Emergency Medical  
Services; Health  
Care; Human Rights;  
International  
Humanitarian Law;  
Peacebuilding*

*The Emergency Medical Services (EMS) are emergency services generally been designed to provide urgent treatment of patients with life-threatening conditions outside medical facilities. Even though the EMS belongs to the category of socio-economic rights, it nevertheless has great significance in safeguarding one of the most fundamental human rights, the right to life. In fact, international humanitarian law has recognised this important connection by establishing explicit legal rules that oblige states to ensure urgent medical care for the wounded and sick. International human rights law, on the other hand, has no such expressed provisions. However, the problem is not the lack of legal rules applicable to the EMS as such but rather the challenges in human rights perception, which hinder the EMS being perceived as a valuable human right. Therefore, this article essentially argues that international human rights law does not recognise the EMS as a human right sufficiently and that more thorough actions are required from the UN Committee of Economic, Social and Cultural Rights (CESCR) in this regard.*

## Introduction

International law contains numerous legal provisions designed to ensure the right to health and health care. For example, international humanitarian law (IHL), regulating the conducts of warfare, provides many explicit norms concerning the urgent treatment of the sick and wounded. During peacetime, the right to health is guaranteed, *inter alia*, by Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Furthermore, the importance of a functioning health care system is also perceived as part of a conciliation process and a fundamental condition for peace in post-conflict states (Evert and Evans 2008: 81-82). However, despite the right to health care being recognised and applied during armed conflicts, post-war situations and peacetime, the extent of the protection and the perception of its importance seems to vary, depending on which rules of international law are applicable. In fact, it seems that health care and, in particular, emergency medical service, have great legal importance during armed conflicts but faces challenges during peacetime.

Acknowledging the wide scope of health and health care, this article focuses primarily on analysing the emergency medical service (EMS). According to the World Health Organization (WHO), the EMS consists of out-of-hospital treatment that is provided to patients with an acute illness or injury requiring urgent medical attention (WHO 2019a; WHO 2019b). While the WHO's approach to the EMS is more or less medically-oriented, from a legal perspective likeminded definition is codified, *inter alia*, in Article 40(1) of the Health Care Act in Finland and Article 16(1) of the Health Service Organisation Act in Estonia. Notably, the EMS is distinguished from a broader term of 'emergency medical care', which generally also includes in-hospital-patients (WHO 2019a; Reynolds et al. 2018). While these two health care concepts can mainly be regarded as synonyms, the distinction is best demonstrated through a medical example of cardiac arrest. According to medical research, defibrillations should be started as early as possible, preferably within 3 to 5 minutes after the collapse, because each minute of delay reduces survival probabilities (Perkins et al. 2015: 83). In hospital, resuscitation can be initiated within minutes while outside hospital settings even dispatching ambulance takes some time, placing a person's life at greater risk if the cardiac arrest occurs outside the hospital. Therefore, the EMS is not

only an integral element of the functioning health care system but is also an essential component in safeguarding the most fundamental human rights, such as the right to life, which is protected, *inter alia*, in Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

Notably, Article 12(2)(d) of the ICESCR urges the states to create conditions which would assure medical service and medical attention to all in the event of sickness. As the essential function of the EMS is to provide urgent medical care for acute illnesses or injuries, the present analysis already considers that Article 12(2)(d) of the ICESCR is applicable to the EMS as well — as explained more thoroughly in Section three below. In turn, the legal basis for arguing that the EMS is protected under IHL lies in the Articles obliging states to provide urgent medical treatment to the wounded and sick without undue delay. This principle has been codified, *inter alia*, in Article 12 of the 1949 Geneva Convention I, Article 10(2) of the 1977 Additional Protocol I, and Article 7(2) of the 1977 Additional Protocol II.

Interestingly, the EMS in peacetime entails more comprehensive protection than during wartime. According to Article 8(a) of the Additional Protocol I, for instance, the wounded and the sick are defined as persons who are in need of immediate medical assistance or care because of trauma, disease or other physical or mental disorder or disability. This indicates that only the most crucial medical cases are to be treated, whereas, in peacetime, the coverage of out-of-hospital care is much broader. In Finland, for instance, situations to which the ambulances are responding vary from severe traumas to milder medical conditions such as acute deprivation of smell or vision, as well as to psychosocial help offered to the patients and their relatives (Silfvast et al. 2013: 62; Salminen-Tuomaala, M. et al. 2018: 1376). In fact, in Finland, the EMS missions are divided into four categories according to their urgency. In the most life-threatening situations, the patient should be reached preferably within 8 minutes from the dispatch, whereas in less severe cases indicated timeframe is 30 minutes or even 120 minutes (Hoikka et al. 2017: 551; STM 2017: 10-11). Moreover, medical research shows that the ambulances are increasingly receiving calls relating to non-critical situations (Paulin et al. 2020; Roivainen et al. 2020: 556; Hoikka et al. 2016). Yet, from the legal perspective, the EMS is not recognised expressly in IHRL.

Regarding IHRL, it should also be noted that human rights are separated into two categories, based on the different nature of the rights. The first category includes civil and political rights, such as the right to life. Nowadays, it is widely acknowledged that the protection of civil and political rights demands active actions from states as well, as explained more thoroughly in Section five below. Yet historically, these rights have been prioritised over the socio-economic rights as the violations of first-category rights are easier to detect (Chandhoke 2007: 182; Evju 2009: 84). The protection of economic, social and cultural rights (i.e. the second category of rights), has always been identified to require active contributions and resources from states (Charvet and Kaczynska-Nay 2008: 86-87; Baderin and McCorquodale 2007: 6-12). The separation of these two human rights categories is visible in the UN Covenants in which first-category rights are found in the ICCPR and socio-economic rights in the ICESCR.

Moreover, this distinction seems still to prevail in state practice, even though the Vienna Declaration and the Programme of Action in 1993 stated that despite the two categories, all human rights are equal in importance (Vienna Declaration 1993; Chandhoke 2007: 191). Many human rights surveys, to give an example, have placed Finland among the leading states in protecting human rights.<sup>1</sup> Yet, Finland seems to regard the EMS as an economic expense rather than a human right even though the Parliamentary Ombudsman has repeatedly stated that geographical dead zones in emergency medical physicians' availability are not in accordance with fundamental rights codified in the Constitution (Parliamentary Ombudsman 2015 and 2017; STM 2018).<sup>2</sup>

Consequently, the purpose of this article is to identify the challenge that the EMS faces because it belongs to the category of socio-economic right and because it has not been expressly mentioned in the human rights law. Essentially, the article argues that international human rights law does not recognise the EMS as a human right sufficiently

- 1 According to the 2020 World Press Freedom Index, Finland has the second free press in the world. Transparency.org has listed Finland as a third least corrupted country, and the Sustainable Development Solutions Network rates Finland as the happiest country in its survey on how happy citizens in different states perceive themselves to be.
- 2 The report, initiated after the Ombudsman's decision, discussed the organisational and financial structures primarily and did not refer to human rights provisions in Finland's Constitution or in any human rights treaties applied in Finland.

and that more thorough actions are required from the UN Committee of Economic, Social and Cultural Rights (CESCR) in this regard. To support this argument, the article analyses the legal challenges for the EMS to be recognised as a human right and how the CESCR could tackle them. For this purpose, the article reflects the UN Human Rights Covenants in terms of the legal norms applied during armed conflicts as well as in post-conflict situations as all of these legal frameworks are binding upon states. A specific focus is on the EMS, but some analysis is dedicated to health care in general in order to provide a more comprehensive overview. The aim of this article is not to provide an exhaustive answer for the CESCR to be adopted as such but rather to offer some tools and ideas for further analysis.

Lastly, this article acknowledges that IHL faces challenges in practice, especially in relation to respecting the rules, and that the provisions protecting the EMS are not an exception in this regard. In fact, the International Committee of the Red Cross (ICRC) has established position papers and recommendations aiming to enhance and strengthen the protection of health care workers during armed conflicts (ICRC 2014; ICRC 2016). However, it is not the aim of this article to engage in an analysis of such challenges but simply to recognise the precise scope of the Geneva Conventions in terms of protecting the EMS. It is equally noted that IHL does not provide any further guidance on the quality or quantity of health-care service (Breitegger 2013: 95). However, this aspect is not relevant for this article as a leading argument is that a legal provision on urgent out-of-hospital medical care has been codified in IHL. In contrast, they are absent from international human rights law (IHRL). The main analysis, therefore, focuses on the practical challenges of guaranteeing and protecting emergency medical services outside armed conflicts.

The article is structured as follows: after the introduction, Section two briefly explains the legal basis for the EMS under IHL and IHRL. The main discussion regarding the challenges of recognising the EMS as a human right under international law is presented in Sections three to five. Section six summarises the findings and draws conclusions.

## Legal grounds of the EMS — from *jus in bello* to full peace

According to traditional understanding, IHRL is generally applicable during peacetime and is replaced by the rules of IHL during armed conflicts (Müller 2013: 4). However, a modern perception emphasises a more complementary application of both, according to which IHRL and IHL cannot be distinguished from one other completely during wartime (IJC 1996: 25; Müller 2013: 14-15; Lubell and Prud'homme 2016: 107). Nevertheless, despite the contemporary approach, IHL and IHRL have essentially been developed to guarantee relatively different levels of protection for individuals in entirely different situations. While IHRL is generally regarded as having originated from the establishment of the Universal Declaration of Human Rights (UDHR) in 1948, rules regulating the means and methods of warfare have existed for centuries or even millennia (Martin 2006: 335; Greenwood 2006: 784). In addition to customary rules and bilateral treaties, the first multilateral documents codifying the norms of armed conflicts began to emerge in the 19<sup>th</sup> century (Roberts and Cuelff 2010: 4-5).<sup>3</sup>

The EMS has always been at the heart of *jus in bello* rules — either explicitly or implicitly. Article 2 of the 1864 Geneva Convention relating to the wounded and the sick, being one of the first binding international documents in terms of wartime laws, already acknowledged the importance of protecting ambulances and medical personnel. Currently, the most prevailing provisions, explicitly safeguarding the integrity of mobile medical units, can be found, *inter alia*, in Article 19 of the 1949 Geneva Convention I, Article 12(1) of the 1977 Additional Protocol I and Article 11(1) of the 1977 Additional Protocol II.<sup>4</sup> Moreover, while the rules of armed conflict do not have explicit legal provisions stating that *the EMS shall be provided for the injured*, this ideology can be interpreted from the spirit of IHL seeking to ensure urgent medical treatment of the wounded and the sick. Article 12 of the 1949 Geneva Convention I, for

3 These are, for example, the 1856 Paris Declaration on maritime war, generally regarded as being the first international treaty regulating armed conflicts, followed by the 1864 Geneva Convention relating to the wounded and the sick and the 1868 St. Petersburg Declaration on explosive projectiles.

4 The full titles of these documents are the Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

example, states that “only urgent medical reason will authorise priority in the order of treatment to be administrated.” Identical wording in Article 10(2) of the 1977 Additional Protocol I and Article 7(2) of the 1977 Additional Protocol II, on the other hand, stipulates that medical care must be provided with the least possible delay.

The application of *jus in bello* rules generally becomes redundant when peace is achieved. However, very rarely does the transformation from hostilities to full peace occur automatically. Instead, certain interphases, such as peacekeeping or peacebuilding, are required. During these stages, the legal framework for the EMS is already more difficult to interpret than during ongoing conflicts.

Notably, international law does not provide a direct legal basis or definition for peacekeeping or peacebuilding operations. The concept of peacekeeping emerged during the Cold War because of the impasse of the United Nations (UN) Security Council, and with the purpose of assembling independent forces to pursue collective security by keeping two conflicting sides apart (Nye 2005: 171-172; Ramcharan 2008: 138; White 2015). Peacebuilding, on the other hand, is most commonly defined as “promoting sustainable peace by addressing the root causes of violent conflict and supporting indigenous capabilities for peace managing” (UN 2010: 5). Therefore, the general legal foundation for both concepts can be found in the UN Charter, Articles 55 and 56, which perceive the conditions of stability and well-being as necessary for peace and pledge all states to take joint and separate actions to achieve such conditions.

Due to the absence of expressed legal rules, designed specifically to peacekeeping and peacebuilding, the protection of the EMS in transitional states emerges from the general legal provisions of IHRL. Peacekeeping and peacebuilding operations can, of course, be occasionally initiated while the conflict is still ongoing, however, as a general rule, the troops are usually sent in a *post jus in bello* environment, stipulating the applicability of IHRL rules (UN 2008: 19; ICJ 2004; Bethlehem 2013). The application of IHRL in fully stable states and countries recovering from armed conflicts cannot, however, be regarded as similar.

Under “normal” circumstances, the protection of (first-category) human rights is an internal matter of the state, and other states

are restricted from any intervention under Articles 2(1) and 2(4) of the UN Charter. On the other hand, because of its supporting role in peacekeeping and peacebuilding operations, and based on Articles 55 and 56 of the UN Charter, the international community is *de facto* engaging in promoting and protecting human rights within the territory of another state in a post-conflict situation. Furthermore, Article 2(1) of the ICESCR recognises the mandate for international assistance and co-operation in relation to economic, social and cultural rights,<sup>5</sup> and is equally applicable in post-conflict situations and within peaceful states. Such a transnational human rights effect is discernible in relation to socio-economic rights through, for example, development assistance (Skogly and Gibney 2002: 784; Woodward 2000).

Moreover, the essential purpose of post-conflict management – especially peacebuilding – is to prevent future conflicts not only by creating stability through the promotion and implementation of the rule of law, democracy and respect for human rights but also through the strengthening of institutional structures and the creation of internal security (Ramcharan 2008: 165-166; Bellamy and Williams 2015; Cahill-Ripley 2016: 226). In other words, one of the basic principles in a post-conflict situation is the assistance provided by the international community in building up a state that can ensure sustainable safety for individuals at all levels, including health care.

Similar to transitional states, the protection of human rights in peacetime is primarily guaranteed by the ICCPR and ICESCR which have, in fact, been highly endorsed, as nearly 170 states have ratified them (OHCHR 2020). Naturally, the EMS is not expressly referred to in either of these documents. Admittedly, protection can be implied from Article 12(1) of the ICESCR, which guarantees the right of everyone to the highest attainable standards of physical and mental health. Article 12(2)(d), on the other hand, obliges the contracting states to take steps to realise the creation of conditions ensuring access to medical service and medical attention for all in the event of

5 Art. 2(1) of ICESCR states that “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

sickness. General Comment No. 14, drafted by the Committee of the Economic, Social and Cultural Rights (CESCR) to clarify the scope of Article 12 of the ICESCR, is often perceived as a basis for the interpretation of how the right to health should be understood (CESCR 2000; Hunt 2016). Read and applied in conjunction with General Comment No. 3, which clarifies the general obligations of states under the ICESCR, General Comment No. 14 establishes valuable guidelines highlighting the states' obligations regarding the right to health (CESCR 2000: 30-32; CESCR 1991: 10). However, the fact that the General Comment No. 14 does not specifically mention the EMS can be regarded as one factor in explaining why urgent out-of-hospital medical care faces challenges in striving to be perceived as a human right.

### **Challenges in identifying universal standards for the EMS**

Since the essence of the EMS has been defined as providing urgent treatment for the sick and injured, the EMS reflects *de facto* the same principle of humanity which IHL has been designed to protect in all circumstances during armed conflicts. In other words, IHL recognises the EMS as an essential element for safeguarding the right to life by codifying expressed provisions relating to the integrity of ambulances in Article 19 of the 1949 Geneva Convention I and emphasising urgent treatment in Articles 10(2) of the Additional Protocol I and 7(2) of Protocol II.

Regarding post-conflict situations, the impact of conflicts causing various health problems, such as famine, the lack of proper sanitation and shortage of medical supplies, has also been widely acknowledged (Santa Barbara 2008: 120; Gutlove 2007: 8; Toabes 2015: 488-504). Equally, it is understood that failure to guarantee the social well-being of individuals as such, can compromise the whole peace process (Cahill-Ripley 2016: 225; Niemelä 2008: 102). According to the same logic, the failure to guarantee a properly functioning and accessible EMS undermines the main goals of peacebuilding aiming to create a safe environment for the individuals to live their daily lives.

A survey shows that properly functioning and accessible emergency care is perceived as one of the critical elements of primary health care also in developing countries. Still, the lack of emergency medical transport is a common barrier

to accessibility, especially in the most life-threatening situations (Razzak and Kellermann 2002: 901; Kobusingye 2005: 629). According to the studies, the availability of the EMS causes a 25% reduction in trauma-related mortality alone, simultaneously indicating that the effective EMS system is an important component in preventing deaths caused by injuries or the sudden onset of illness (Mehmood et al. 2018; Kobusingye 2005: 627). Equally, an analysis from Latin America illustrates that an increase in the number of ambulances and trauma training offered to the ambulance crew reduces the number of deaths during transport (Razzak and Kellermann 2002: 901; Arreola-Risa et al. 2000: 119-124). Therefore, the EMS, serving as the first link in the health care chain, has great significance not only in developing states. It should also be recognised as one of the first requirements that need to be guaranteed when peace processes are initiated after violent conflicts.

However, out-of-hospital care outside armed conflict is highly prone to legal shortcomings. A prevailing challenge is caused by the lack of harmonised guidelines under international law because the EMS is neither expressly codified in the ICESCR, nor is it referred to in any of the General Comments. Notably, General Comment No. 14 does shed some light on the concept of and the basic requirements for a minimum level of health care, *inter alia*, by introducing the so-called AAAQ framework, which stands for availability, accessibility, acceptability and quality (CESCR 2000: 12). This framework can be applied to the EMS as well.

In general, *availability* obliges states to ensure that functioning public health and health-care facilities, goods and services are available in sufficient quantity within their territories (CESCR 2000: 12(a)). While the precise nature of this obligation can vary depending on numerous factors- such as the states' development level - hospitals, clinics, health-related buildings, and trained medical staff are, nonetheless, among the underlying determinants for availability (CESCR 2000: 12(a); Special Rapporteur 2013: 23). In the EMS context, availability requires, *inter alia*, the guarantee of a sufficient number of adequately equipped ambulances with a trained staff that can respond to medical emergencies throughout the states' territories (Burkholder, Hill, and Calvello Hynesc 2019: 613; WHO 2019a).

*Accessibility*, on the other hand, requires health facilities, goods and services to be accessible to everyone without discrimination. The said refers equally to non-discrimination among different groups, to physical accessibility as regards the location of the facilities, to affordability, and the accessibility of information regarding health (CESCR 2000: 12(b); MacNaughton and Hunt, 2009: 303; Buer Haddeland 2019: 334). Regarding the EMS, the accessibility consists of, at the very minimum, specific evaluations on how to locate the ambulances to optimise their usage but simultaneously to ensure timely emergency care in sparsely populated areas as well.

*Acceptability* means that health facilities, goods and services must respect medical ethics and cultural specifications (CESCR 2000: 12(c); Hunt and Backman 2008: 83). The *quality* requirement includes, *inter alia*, skilled medical professionals, suitable medical equipment, as well as scientifically and medically appropriate services (CESCR 2000: 12(d); Hunt 2007: 370-371). Consequently, *acceptability* and *quality* are somewhat intertwined, as properly educated ambulance crew should not only be expected to know applicable medical procedures but also to respect patients.

Furthermore, General Comment No. 14 establishes core obligations that all states should fulfil immediately to ensure the very minimum level of primary health care. In relation to the EMS, these include access to health facilities, goods and services without discrimination; the provision of drugs which are considered essential; the equitable distribution of health facilities, goods and services; and the adoption and implementation of a national public health strategy and the plan of action to address health concerns of the whole population (CESCR 2000: 43; Burkholder, Hill, and Calvello Hynesc 2019: 614).<sup>6</sup> In essence, these core obligations amplify the AAAQ framework in many ways. The access to and equitable distribution of services are attributable to availability and accessibility reflecting on how to locate the ambulances and ensure their timely availability throughout the state. Essential drugs, on the other hand, form a sub-category to quality as proper medicines are a vital part of medically and scientifically

6 Notably, other core obligations defined in the General Comment No. 14, which nevertheless are not directly applicable to the EMS, refer to access to essential food, and access to shelter and sanitation (CESCR 2000: 43.; Burkholder, Hill, and Calvello Hynes 2019).

appropriate treatments. Finally, public health strategy offers a comprehensive layout on how states strive to fulfil the obligations under Article 12(2)(d) of the ICESCR.

Nonetheless, the AAAQ framework and core obligations pertain to the right to health at a general level. While they are applicable to the EMS as well, in the absence of an expressed indication at the international level on how the EMS should be structured, states must decide on its exact content. National legislation relating to the EMS shares, of course, certain significant similarities by referring to the out-of-hospital treatment of patients who have suffered an injury or an onset of illness, as has been demonstrated, *inter alia*, in Article 40(1) of Finland's Health Care Act and article 16(1) of Estonia's Health Service Organisation Act. However, roughly speaking, there can be 170 different interpretations of the ICESCR, Article 12(2)(d) in relation to the EMS, as each state can implement that Article according to its vision. It remains even disputable whether social emergencies, which nonetheless are non-medical in nature, such as loneliness, fall within or outside the scope of the EMS (Kosonen et al. 2016).

Therefore, a detailed General Comment explicitly dedicated to the EMS should be drafted in order to establish a more harmonised basis to urgent out-of-hospital medical care at the international level. To start with, in this new General Comment, *availability* and *accessibility* under the AAAQ framework, as well as the core obligations of *access to* and the *equitable distribution of health services* should indicate standards according to which ambulances should be located. Finland, for instance, has codified highly technical details in its Decree on Emergency Medical Services (585/2017) whereas the Estonian legal framework has no such indicators (Uusitalo 2018a: 392-393). Ensuring harmonised availability and accessibility to the EMS would consist, for instance, of an analysis on how many ambulances per 100.000 inhabitants or in the 100-kilometre radius are needed to meet the core obligations.

The provisions on *acceptability* and *quality*, on the other hand, should establish the least minimum level of education required from ambulance crew, and what medical equipment and staff ambulances must, at the very minimum, have. The former Soviet states, for example, tend to emphasise physician-staffed ambulance whereas, in other states, such as Finland, the EMS

units are staffed by two, or even one, health care professional (Sarapuu and Lember 2015: 1033; Lai et al. 2013: 133; Uusitalo 2018a: 394). State practices also vary in relation to *essential medicines* used in out-of-hospital care and the extent to which ambulance crew tasks have been regulated. Estonia, for instance, has codified a specific list of medicines used in ambulances and the particular tasks of each crew member in the Estonian Decree of EMS (Kiirabibrigaadi koosseisu ja varustuse nõuded ning tööjuhend). However, Finland only indicates in its Health Care Professional Act (559/1994) that health care professionals must employ empirically justified methods in accordance with their training. Thus, the aspects of essential medicines and ambulance crew tasks should also be addressed in the EMS-specific General Comment to ensure that patients receive urgent out-of-hospital care according to more or less equal basis despite their geographical location. Finally, this new General Comment should guide states to include the EMS provisions in their national health strategies as well to ensure that also this core obligation enshrining from Article 12(2)(d) of the ICESCR is fully acknowledged in relation to the EMS as well.

Consequently, this new General Comment should be drafted at the UN level because the legal framework is already detectable from the UN Covenants and General Comment No. 14. Indeed, the UN, as a whole, has its own deficiencies. Its processes of drafting legislation have been criticised for being too lengthy, and the scope of its mandate to be too wide (Alston 2012: 38; Warren 2007: 242). However, as explained above, almost all states in the world are parties to the ICCPR and ICESCR. In comparison to the human rights protection in Europe, for example, the European Convention on Human Rights is legally binding in 47 states, and the European Social Charter in 34 states (CoE 2020a; CoE 2020b). Moreover, neither of these documents confer the possibility to issue General Comments on the interpretation of legal Articles according to the similar standards as both the ICCPR and the ICESCR do.<sup>7</sup> Furthermore, as the EMS falls within the scope of Article 12(2)(d) of the ICESCR, the UN Committee of Economic, Social and Cultural Rights (CESCR) is the best instance to draft

<sup>7</sup> In fact, the European Convention on Human Rights (ECHR) allows the European Court of Human Rights only to deal with specific circumstances either through inter-state complaints in accordance with Article 33 of the ECHR, through individual complaint in accordance with Article 34 of the ECHR, or by issuing an advisory opinion as stipulated in the Protocol 16. Likewise, the European Social Charter confers the European Social Council only the rights to review the state reports under Article C in Part IV, and to evaluate collective complaints in accordance with Article D of Part IV, providing that state party has accepted such a mechanism.

this new General Comment. However, close co-operation with the Human Rights Committee, a treaty body under the ICCPR, is needed to guarantee that the crucial interconnection between the EMS and the right to life, protected in Article 6 of the ICCPR, is adequately acknowledged.

Another challenge hindering the EMS of being recognised and fully protected under IHRL relates to the question of how the connection between Article 12(2)(d) of the ICESCR and Article 6 of the ICCPR is understood. As repeatedly emphasised in this paper, the fundamental function of the EMS is to safeguard the right to life by warding off a hazard which is threatening a patient's health and life. General Comment No. 14 (CESCR 2000: 3) *de facto* expressly acknowledges such an intertwined connection. Implied recognition, on the other hand, can be read in General Comment No. 6, in which it is stated that the right to life should not be interpreted narrowly (HRC 1982: 1). Therefore, at least at some theoretical level, IHRL seems to understand that socio-economic rights also share a connection with civil and political rights. However, unlike General Comment No. 14 on the right to health, referring explicitly to the rights covered in the ICCPR, the Human Rights Committee's General Comment No. 6 does not expressly refer to socio-economic rights. Enhancing the connection between the EMS and the right to life by establishing a new General Comment including this matter would also strengthen the perception according to which the EMS is, in fact, an essential human right that has been fundamentally designed to safeguard life.

Finally, one challenge on drafting universal guidelines for the EMS is to find a proper balance among different states. Namely, high-income countries, such as the Scandinavian ones, have already fairly advanced health care systems, and they are engaging in thorough medical research in the EMS field (Müller 2013: 148; FinnHEMS 2020; Kerikmäe, Hamulak and Chochia 2016: 98; IPI 2013: 20). Developing and post-conflicts states, on the other hand, are more likely to face challenges in relation to health care (Kandelman et al. 2012: 98; Naicker et al 2009: 62). Therefore, the General Comment should be drafted so that, on the one hand, it would not allow more advanced states to lower their standards and, on the other hand, less-developed countries and post-conflict states would not face a too heavy burden. The following section enlightens further how these aspects should be ensured.

## Challenges caused by resources and political will

One of the key aspects of economic, social and cultural rights is that they cannot be guaranteed all at once. States must take steps and use the maximum of available resources to achieve the full realisation of these rights progressively (Roth 2007: 171-172). However, these obligations, codified in Article 2(1) of the ICESCR, impose a further challenge for the EMS to become recognised as a human right both in post-conflict situations and in peaceful states.

To start with, Article 2(1) of the ICESCR does not only require states to enact legislation and, for instance, financially support out-of-hospital care but also obliges them to engage in wider administrative and educational activities (CESCR 1990: 7). These measures include, *inter alia*, the establishments of national health plans and strategies, and ensuring proper education for health care workers – being *de facto* attributable to the AAAQ framework and the core obligations under Article 12 of the ICESCR (Hunt and Backman 2008: 84; Hunt, P. 2007: 370-371). Nonetheless, a new General Comment should also explicitly recognise this connection between Articles 12 and 2(1) of the ICESCR to give broader importance to the commentary as a whole.

The progressive realisation, on the other hand, refers to an intent according to which states would do their very best by using the maximum of the available resources to move as expeditiously and effectively as possible towards the full realisation of the rights covered in the ICESCR (CESCR 1990: 9-11; CESCR 2000: 31; Roth 2007: 173-174). Therefore, it is not sufficient merely to establish the very minimum EMS conditions states need to fulfil under Article 12(2)(d) of the ICESCR. Instead, the General Comment should also establish an exemplary list on how states should progressively proceed once the minimum standards are met.

This list could, for instance, oblige states to evaluate their EMS systems on a yearly basis to ensure that progressive realisations of the AAAQ framework and the core obligations are, at least, considered. More thoroughly, the periodical evaluations should assess, *inter alia*, whether *availability and accessibility* could be enhanced by increasing the number of ambulances, or by

relocating them to meet demands better (Uusitalo 2018c: 54-56 and 62-65). Additional consideration could be given to the questions of how public information regarding the access to the EMS could be advanced, and whether the costs caused by urgent out-of-hospital treatment of patients could be reduced to promote *affordability* (MacNaughton and Hunt, 2009: 303; Buer Haddeland 2019: 334).

In relation to *acceptability and quality*, states should ensure that additional training for ambulance crew is available to maintain and enhance their level of professionalism. An analysis of patient injury reports and complaints to health care supervisory authorities could enlighten potential quality deficiencies further (Kuisma et al. 2019: 15-16). Likewise, the systematic analysis should include the medical equipment and essential medicines used in the ambulances and the need to update, renew or expand them to ensure that *quality* required under the AAAQ framework and the core obligation of *essential medicines* are noted (Burkholder, Hill, and Calvello Hynesc 2019: 614). The obligation to update the *national health strategy* to comply with completed annual evaluation on the EMS would ensure that the core obligation of publishing national health strategy is duly connected to obligations under Article 2(1) of the ICESCR as well (Burkholder, Hill, and Calvello Hynesc 2019: 614).

Moreover, the obligation of states to use the maximum of available resources to achieve the realisation of the rights in the ICESCR progressively also includes a strong presumption that the already acquired level of protection should, at the very least, be upheld (CESCR 2000: 32). Indeed, deliberately retrogressive measures can be adopted only after detailed consideration and in the context of the full use of the maximum available resources (CESCR 1990: 9). Nonetheless, the full scope of such requirement remains unclear. To give an example, the Administrative Court in Finland did not find violations in its case where the Hospital District removed two ambulances from rural, but populated areas (Administrative Court of Oulu 2014). The Hospital District's decision, upheld by the Court, located the closest ambulances in the city centre nearly 100 kilometres away, thus making it impossible to reach these rural areas within 8 minutes, which is the indicated timeframe in Finland for the ambulance to reach the patient in the most urgent

medical cases.<sup>8</sup> Therefore, the new General Comment should also oblige states to include specific reasoning in national health strategy if progressive steps in relation to the EMS are not taken.

Notably, though, it is a well-known fact that the realisation of socio-economic rights requires financial, as well as technical resources and expertise which need to be used effectively both in the peace processes and in a fully stable states (Spear 2000: 146; Woodward 2000: 183). It has equally been noted that maintaining properly functioning health care system is costly and that the costs are rapidly increasing, even in economically stable states (Gilbert, Wen and Pines 2017: 39; Hoffman and Mancini 2017: 361). Yet, while insufficient resources can be raised as an excuse for not meeting the obligations under the ICESCR (Zaidi 2010: 125-126), such a justification appears questionable in relation to the EMS. Indeed, the failure to guarantee emergency care does not only compromise the progressive realisation required to fulfil the obligations of the ICESCR Article 12(2)(d) but can also be seen as endangering the enjoyment of the right to life, guaranteed by Article 6 of the ICCPR. Unlike Article 2(1) of the ICESCR, Article 2(1) of the ICCPR does not allow states to take progressive steps towards the realisation of the rights, but merely requires that the rights, recognised in the Covenant, are respected. Furthermore, as stipulated in Article 4(2) of the ICCPR, the right to life is among those rights that cannot be derogated from under any circumstances. The said indicates a high level of respect towards its importance and follows the likeminded logic of IHL, which seeks to protect life by adhering to specific rules that, *inter alia*, prohibit attacks against civilians.<sup>9</sup>

However, even though the importance of the EMS may have been acknowledged, by connecting it to Article 6 of the ICCPR, a further challenge, especially in a post-conflict situation, could relate to the mere fact that violent conflicts have a negative impact on state economies (Woodward 2000: 184). Therefore, when comparing states that are not overcoming hostilities,

8 Notably, the EMS legislation in Finland does not require that every patient is reached within 8 minutes even in the most urgent medical situations but rather obliges the hospital districts to organise out-of-hospital care so that most of population would receive the medical help within the indicated timeframes that are based on medical research findings.

9 These specific prohibitions are found, *inter alia*, in Article 51(2) of the Additional Protocol I and Article 13(2) of the Additional Protocol II stating that civilians shall not be the object of attack.

transitional regimes may simply not have sufficient financial resources to fulfil the obligations international Human Rights Covenants impose on them. In order to avoid such situations, Article 2(1) of the ICESCR expressly calls for international assistance and co-operation.

The precise understanding of what is meant by international assistance and co-operation in Article 2(1) of the ICESCR is, however, somewhat unclear. As states, first and foremost, have an obligation to their citizens, it is questionable to what extent should states provide international (financial) assistance without compromising the obligations towards their citizens (Uusitalo 2018b: 97). Article 2(1) of the ICESCR also obliges the developing states to strive to ensure the widest possible enjoyment of the right under the existing circumstances and to contribute to international co-operation and assistance (CESCR 1990, para 11-12). However, the General Comment No. 3, which clarifies the state obligations under Article 2(1) of the ICESCR, emphasises explicitly that international cooperation for development is an obligation of all states, but particularly incumbent upon those states that have the ability to assist other states (CESCR 1990, para 14). This indicates not only the obligation to provide international assistance but also the right to request it in cases where the state's resources are not sufficient. However, in the absence of specific guidelines regarding the minimum standards of the EMS, it remains unclear when states can *de facto* ask for international assistance. Consequently, the General Comment on the EMS would also clarify the scope of international assistance because states would have a clearer understanding of what is required by them to ensure the EMS.

Ultimately, international assistance or progressive realisation are not the questions of the existence of *de jure* obligations but are linked to political will and values as well. When all states have economic expenses to cover, international assistance, as well as the progressive realisation of socio-economic human rights, become subjects to politics (Frankenberg 2012: 36 and 50; Easley, Marks and Morgan Jr. 2001: 1922-1925). This scheme does not merely emerge in post-war situations but is also visible in highly developed states.

The implementation of human rights still seems to be affiliated with a historical misunderstanding that the progressive realisation of socio-economic rights in the ICESCR, such as

health care, requires resources and higher contributions on the part of the state in comparison to civil and political rights (Chandhoke 2007: 182). In reality, all human rights require continuous resources (Skogly 2012: 395). To give an example, the right to a fair trial cannot be achieved unless the judges are trained to understand and apply, *inter alia*, the essential principles of criminal law such as the presumption of innocence under Article 14(2) of the ICCPR, and the prohibition of *ex post facto* laws under Article 15(1) of the aforementioned Covenant.

Furthermore, General Comment No. 6 of the Human Rights Committee, dealing with the most fundamental human right to life, obliges states to take preventative actions in relation to criminal acts aimed at taking one's life (HRC 1984: 3). Representing a more or less traditional and somewhat old-fashioned perception, according to which the right to life and the deprivation of life are associated with criminal actions, there is no valid reason why a state should not be compelled to maintain a functional EMS system. The failure of any state to provide a sufficient number of ambulances to accommodate the needs of the population is likely to cause unnecessary loss of life contrary to Article 6 of the ICCPR (Uusitalo 2018c: 54-56). Therefore, civil and political rights are not exempt from economic evaluation either and do not operate independently of socio-economic rights.

Moreover, the challenge of dividing the resources between different human rights to ensure progressive realisation, or to provide international assistance, may not derive from the resources *per se* but from political considerations and the fact that some rights are more attractive than others, without necessarily reflecting upon the seriousness of the right (Kerikmäe and Nyman-Metcalf 2012: 47; MacDougall 2017: 136). The right to education, for example, is a right which concerns every family with children, whereas individuals can live their whole lives without needing to call for an ambulance. It is, therefore, understandable that a politician seeking to gain votes in an election would rather promote free elementary education for all children than utilise direct state resources to maintain expensive emergency services the majority of the population may never need. Equally, individuals may be more likely to vote for a candidate who supports the realisation of rights that are present in the daily lives of all individuals (Albarello, Crisp and Rubini 2018: 317; Montgomery 2020: 373). Thus, the right to

education may prevail over the EMS despite the fact that failure to guarantee equal access to primary education can hardly be associated with a potential violation of the right to life under Article 6 of the ICCPR.

Further consideration should be given to the fact that the ICCPR and the ICESCR represent a comprehensive list of numerous different rights which require different contributions. As all rights are regarded as being of equal importance, states cannot direct all available resources to the EMS, even when correctly functioning emergency care is perceived as an essential element of safeguarding the most fundamental right to life. Instead, a balance must be sought between the EMS and other rights (Young 2008: 128; Vienna Declaration 1993). It follows that, even without any political motivations, the state is obliged to consider a wide range of institutions, including police forces, the court system, social security, care for the elderly and primary education to name just a few examples, while drafting budgets and directing resources to human rights. Therefore, certain rights, such as the right to participate in cultural life for example, which seem irrelevant in post-war situations, should be guaranteed at least to some extent (CESCR 2020; Chandhoke 2007: 193). Consequently, instead of aiming to achieve the full realisation of one specific right, like the EMS under Article 12(2)(d) of the ICESCR, the state may distribute the resources among several rights, in which case none of these rights is fully protected, however, no right is left without any protection. Thus, the General Comment on the EMS would establish basic guarantees for the EMS not to be entirely overlooked in these political processes.

Consequently, the new General Comment on the EMS should not only indicate the minimum acceptable level of the EMS under Article 12(2)(d) of the ICESCR but also connect it to the ICESCR, Article 2(1). Harmonised, international EMS standards, comprehensively taking also progressive realisation into account, the usage of available resources as well as international co-operation and assistance, would not only complement the equality of human beings worldwide but would also facilitate the identification of states which are not fulfilling their obligations to ensure urgent out-of-hospital medical care. The following section enlightens some of the challenges relating to the enforcement of the right to the EMS.

## Challenges regarding enforcement in domestic courts

A legal rule, however, regardless of how it may have been devised and for whatever purpose it has been formulated, has little importance without an effective enforcement mechanism to ensure compliance. In this regard, IHL ensures comprehensive and unequivocal judicial provisions in situations in which the rules of armed conflicts have been violated, as the Geneva Conventions criminalise grave breaches of the Conventions and oblige all states to pursue criminal proceedings at the national level.<sup>10</sup> Article 86 of the Additional Protocol I, for instance, obliges states to take necessary measures to suppress all breaches of the Geneva Conventions or the Additional Protocol I, and in case of violation, to pay compensation in accordance with Article 91 of the Protocol. Consequently, as Article 10(2) of the Additional Protocol I requires medical care to be offered without undue delays, failure to provide adequate out-of-hospital care represents a violation of IHL.

Furthermore, as grave breaches of the Geneva Conventions constitute international crimes with universal jurisdiction and non-applicability of statutory limitations, the inability or unwillingness to prosecute on the part of one state, does not grant acquittal to the perpetrator but in fact, shifts the responsibility of enforcement to other states (Zyber 2018: 3; Broomhill 2003: 106-107). Such a strong obligation of enforcement not only acts as a deterrent by seeking to prevent future attacks against medical institutions and ambulances but also emphasises the importance of the EMS and health care in general.

While IHL invokes only individual criminal liability in limited cases and, therefore, does not offer that much of an individual remedy for the victims who have not received urgent out-of-hospital care during wartime, the enforcement of the *jus in bello* rules, nevertheless, reflects robust international

10 Legal bases are found, inter alia, in Articles 49 to 54 of the Geneva Convention I; Articles 50 to 53 of the Convention II; Articles 129 to 132 of the Convention III; Articles 146 to 149 of the Convention IV; Articles 85 to 91 of the Additional Protocol I. Notably though, the Additional Protocol II does not include such Articles, although the Protocol II shares similar Articles with the Protocol I on prohibiting the attacks against civilians and ensuring urgent medical treatment. As the Additional Protocol II is applicable to non-international armed conflicts, the violation of the provisions in that Protocol are subject, first and for most, to national proceedings. Notwithstanding, states may choose to exercise universal jurisdiction emerging from customary international law also in relation to the Additional Protocol II (Zyber 2018: 5; ICRC 2003).

protection by obliging states to pursue legal proceedings. IHRL, on the other hand, offers grounds for individuals to seek justice, but the enforcement is affiliated with some challenges. To start with, IHRL and socio-economic rights, in particular, have been criticised for being too imprecise and lacking sufficient measures for coercing the offending state into meeting the human rights obligations codified by the UN Covenants (Coomans 2018: 10; Scheinin 2001: 30; Lempinen 2005: 30; Egan 2013). Monitoring the compliance under the ICESCR and the ICCPR is mainly based on the state reporting system. Optional Protocols do indeed confer the right to individual communication. Still, the Protocol to the ICESCR is not widely ratified and, similar to the state reporting system, does not result in any legally binding or coercive judgments (OHCHR 2020).<sup>11</sup> On the other hand, IHRL (including the EMS) is enforceable for individuals also in domestic courts at the national level.

How international treaty obtains its legally binding force at the national level depends on a legal approach applied by the state. In a dualist — or pluralist — approach, the state must adopt relevant domestic law to give effect to obligations under the international covenant emphasising the distinction between international law and national legislation (Crawford 2019: 45; Ssenyonjo 2017: 273; Finegan 2011: 478). Contrary to dualism, in monist systems, international law may become part of domestic law and can be directly applied without the need to take further legislative action (Crawford 2019: 45; Ssenyonjo 2017: 283; Finegan 2011: 478). In reality though, and especially in dualistic legal systems, such as in Finland, individuals or even courts seem to very rarely expressly refer to international human rights in domestic courts (CESCR 2014: 6; Hyttinen 2012). Instead, applicants tend to rely on legal provisions that are more tangible to them. Unfortunately, human rights aspects are easily missed when the litigation evolves around national legislation.

Thus, in Finland, the compatibility of the Hospital District's decision on the implementation of legal provisions on the EMS and reducing the ambulances from rural areas was challenged by relying merely on the Health Care Act (Administrative Court of Oulu, 2014). No constitutional references or international

11 In April 2020, only 23 states had ratified the Optional Protocol to the ICESCR and 116 the Protocol to the ICCPR.

human rights provisions were invoked, although the facts would have offered ground for such considerations. Lawyers, on the other hand, have little chance of pursuing and succeeding with human rights-based arguments if judges are uneducated or unaware of IHRL. Additionally, health care and the EMS at the national level may too often be regarded as a branch of administrative law, without having any connection either to constitutional or international law (Juskevicius and Balsiené 2010: 98). It is, in fact, questionable as to what extent domestic courts can reasonably be expected to apply human rights deriving from international covenants to the cases concerning out-of-hospital care when the EMS has not expressly been recognised in IHRL.

Notably, human rights protection is more concrete and effective when litigation takes place in close proximity to where the accused violation or non-fulfilment of the obligation occurred. Furthermore, IHRL unequivocally requires states to monitor compliance with human rights obligations and to ensure accountability at the national level (CESCR 1998: 3; Craven 2007: 72; Footer and Rubenstein 2013: 186). Establishing a new General Comment, which lays down a minimum level for the EMS, indicates the resources that should be directed to out-of-hospital care, and enlightens the progressive realisation doctrine in relation to the EMS, also offers a more tangible tool for courts and lawyers to deal with the EMS-related claims. Moreover, as the establishment of the judiciary system is one of the main goals of peacebuilding as well (Baker and Obradovic-Wochnik 2016: 286-287; Lapente 2008: 333), a detailed commentary on the EMS would ensure that claims regarding the non-fulfilment of the obligation relating to urgent out-of-hospital care could also be litigated in transitional states.

### **Concluding remarks**

The EMS has generally been designed to provide urgent treatment for the life-threatening conditions of patients outside medical facilities. Even though the EMS, being a sub-category of the right to health, classically belongs to the second category of human rights, it nevertheless has immense significance in terms of protecting the right to life. Surprisingly, however, the legal provisions of the EMS are somewhat inconsistent during war- and peacetime.

While urgent out-of-hospital medical care is perceived as an essential element of protecting lives during armed conflicts, in peacetime, the EMS faces challenges to be recognised as a valuable human right. The primary cause is the fact that, while Article 12(2)(d) of the International Covenant of Economic, Social and Cultural Rights (ICESCR) is applicable to out-of-hospital care as well, the EMS has not been expressly mentioned in international human rights law (IHRL). Consequently, how legal rules concerning the EMS are implemented, depends on states. This leads to non-harmonised protection.

In order to overcome these challenges and to enhance the protection by the EMS as a human right, the UN Committee of Economic, Social and Cultural Rights (CESCR) should draft a new General Comment specifically dedicated to urgent out-of-hospital care. The CESCR appears as the best instance to draft this new documents because, with Article 12(2)(d) of the ICESCR and the General Comment No. 14, the UN human rights system already has the legal framework applicable to the EMS.

The starting point for the commentary should be to expressly acknowledge the vital connection between the EMS under Article 12(2)(d) of the ICESCR, and the right to life guaranteed by Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Therefore, close co-operation with the UN Human Rights Committee would be beneficiary and highly recommended. Moreover, the General Comment on the EMS should not only cover the standards for an acceptable minimum level of the EMS, reflecting the AAAQ framework and the core obligations enshrined in Article 12 of the ICESCR. Instead, it is equally important to address the variety of resources that need to be directed to out-of-hospital care for states to comply with their obligations under Article 2(1) of the ICESCR. Moreover, the commentary should also enlighten specific steps required to fulfil the progressive realisation of the EMS, as well as measures regarded as prohibited or undesirable retrogressive measures. These guidelines would ensure a more harmonised EMS settings, both in peaceful states and in post-conflict situations, as well as help to assess the situations in which international assistance can be asked and offered, within the scope of fulfilling obligations in relation to the EMS.

Regarding the enforcement, concrete rules would also provide more tangible grounds for lawyers and individuals to argue

on human rights terms when challenging public authorities' actions regarding the EMS in domestic courts. Finally, harmonised rules at the universal level would also ensure equal protection available in every country, irrespectively of whether they have just overcome a violent conflict or whether they are regarded as already advanced in the area of human rights protection.

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Croatian  
International  
Relations  
Review

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CIRR

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XXVI (87) 2020,  
120-144

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DOI 10.37173/  
cirr.26.87.5

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UDC 341.3:355.71:327

# The Significance of Foreign Military Bases as Instruments of Spheres of Influence

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**Tomasz Klin**

*University of Wrocław, Poland*

*tomasz.klin@uwr.edu.pl*

*ORCID: 0000-0002-8630-4659*

## Abstract

### Key words:

*Spheres of Influence;  
Great Power Rivalry;  
Foreign Military  
Bases; Globalisation*

*The category of the sphere of influence can explain some contemporary international processes. To define that category, however, much stress is laid on great powers' exclusivity within their spheres of influence. The author takes into consideration the thesis of the aforementioned exclusivity's erosion. Because foreign military bases are essential instruments of spheres of influence due to their strong impact on security policy, it is worth investigating their presence in this context. Specifically, the author carries out an in-depth study of military bases of more than one major power in one host country. Further, the article discusses the extent to which the gradual erosion of exclusivity undermines the significance of spheres of influence as such. In conclusion, the author states that the case of Djibouti undermines the idea of great power exclusivity. Yet, other cases do not provide sufficient evidence on such deep transformation because of either limited periods of bases' existence or great power cooperative attitudes.*

## Introduction

For a long time, spheres of influence have caught the close attention of International Relations (IR) scholars. The issue focuses on geopolitical regions with special and dominant involvement of a given major power. However, after the Cold War, spheres of influence ceased to be relevant as the IR theoretical category. The notion survived in the ordinary discourse and is quite commonly used by political practitioners and journalists. This use seldom results from in-depth considerations of what criteria a phenomenon should fulfil to be called a “sphere of influence”. Nevertheless, it is commonly accepted that spheres of influence clearly link with security issues. On the global scale, political power has been usually exercised by armed forces or at least with some military support. Foreign military bases serve well for such purposes. For instance, occupations require permanent basing. Also, military interventions are feasible through bases in adjacent countries, and — if protracted — interventions need basing in a target-country. Basing became an important element of strategic presence abroad. Even declared projects of new bases or suspicions of adversary’s plans trigger discursive actions such as warnings or condemnations. In sum, foreign military bases clearly link with the problematic of the spheres of influence as essential instruments of exercising power.

The article researches the question of whether contemporary foreign military bases still serve as crucial components of spheres of influence which result from mutually recognised responsibilities, or if basing leads to major power rivalry which undermines spheres of influence or intends to shift their boundaries. The method of this article consists in studying countries hosting military bases of more than one major power on their territories as a possible indicator of the erosion of superordinate powers’ monopoly. Rivalry, cooperation or mutual ignorance become a second-rank variable which explains the context. Regardless of the conditions explored in this article, the erosion of major powers’ monopoly would undermine the whole idea of spheres of influence.

The article proceeds as follows: the first part is theoretical and aims to conceptualise spheres of influence and foreign military bases and their relations. Specifically, it provides the reader with the definition of spheres of influence framed within the

category of international hierarchy. As a result, the history of spheres of influence can be analysed, and here an important aspect regards the role of military presence. The first part also considers how foreign military bases contribute to exploring the contemporary transformation of spheres of influence. The second part of the article analyses countries hosting major powers' military bases on their territories. This analysis aims to detect circumstances in which two or three major powers installed military bases or facilities in similar locations. An important purpose of this part is to address the rivalry/cooperation nexus regarding major powers' involvement. In conclusions, the article summarises its contribution and considers some further research paths.

### **Understanding relations between spheres of influence and foreign military bases**

The ongoing era, called simply the post-Cold War period, seems to be reach in various phenomena associated with the issue of spheres of influence including military interventions and occupations, establishment and maintenance of foreign military bases, trade agreements, expansion of investment and aid. The notion "spheres of influence" commonly appears in public discourse but is seldom theorised (Hast 2014: vii; Jackson 2020: 255). Moreover, political practitioners often use its too broad meanings. This results from a moral evaluation embodied in notions. In the case of spheres of influence, their notional use serves to accuse great powers of immoral practices. The notion is also useful for a simplified description of complex international affairs. The most striking in the contemporary era is how pejorative and normative the notion is. The meaning of spheres of influence undergoes changes not only by real political interactions but discursively: behind the spheres, there are judgements and power, interrelated. This encourages accusations of the stronger actors (Jackson 2020: 256-257), denials (Hast 2014: 4-6) or excuses, which are typical reactions to accusations. The pejorative use of spheres of influence does not exhaust their normative foundations: the spheres can contribute to the international order by stability, limiting great power conflicts and lesser powers' conflicts within a given area. The spheres can also raise constant expectations between great powers and between subordinates and their hegemon (Bryła 2002: 162, 170). However, a positive or negative evaluation of

spheres of influence is a highly subjective and contextual issue, and usually a consequence of ideological preferences.

Fortunately, it is still conceivable to create an acceptable definition of spheres of influence. The analysis of the category of spheres of influence implies they contain the following elements: first, they cover certain geographic units of relatively coherent characteristics such as regions or subregions. Second, the presence of great or major power is indispensable. Third, the spheres are grounded in some relations of subordination or dominant external influence that questions full territorial sovereignty of lesser powers. And fourth, the spheres are founded on the exclusion of other external powers (Jackson 2020: 255), which means formal or informal recognition of other great powers of such a state. Thus, the reflection on the spheres of influence in the post-Cold War must consist in verifying the presence of the above-mentioned elements. Three former of these elements are observable; what is debatable, however, is the extent of their presence and functioning, and whether they are still common. Nevertheless, the main direction of criticism heads for the fourth element, namely “exclusivity/monopoly” of a given great power’s influence. If this article can demonstrate a lack of such exclusivity, it would also undermine the existence of firm spheres of influence.

The legitimacy of subordination is also important as a component of spheres of influence (Lake 2009: 21-22). The general mechanism of authority on the international arena basically does not differ from intrastate authority. Scholars’ growing attention to the issue of international authority resulted in fruitful intellectual contribution (Cooley 2005; Fearon and Laitin 2004; Hurd 1999; Kreuder-Sonnen 2019; Lake 2007, 2017; Voelsen and Schettler 2019; Zürn, Binder and Ecker-Ehrhardt 2012); nevertheless, it is still contested and replaced by a less controversial category of hegemony. A hegemon not only coerces subordinates but alters their agenda of policy options by his/her own presence and size (Destradi 2010; Ikenberry and Nexon 2019; Lanoszka 2013; Nexon and Neumann 2018; Prys 2010; Saull 2012). Some scholars add that shared beliefs on hegemony pose an important intervening variable (Jerdén 2017). In general, analytical approaches differ in explanations by using various material/ideational factors and causation/constitution (Jackson 2020).

Historically, military and economic powers have played a decisive role in obtaining and maintaining spheres of influence, and the former is most important. It is inconceivable to expand spheres of influence without military instruments. The question arises: Which military indicators can serve best and which are irrelevant to gain knowledge on reshaping of the spheres of influence? As scholars noted, nuclear weapons themselves do not create great powerhood, because they cannot alter economic foundations of power (Waltz 1979, 180-181), threats of the use of nuclear weapons against a lesser power proved ineffective; therefore, they are indifferent to create a sphere of influence. Likewise, the size and technological advancement of conventional armed forces do not play a serious role: there existed strong but isolated states in history. A more relevant indicator seems to be military bases out of a given great power's territory.

A military base is defined as an extraterritorial unit with an external actor's sovereign or semi-sovereign rights. For the last decades, numerous installations called military facilities which serve similar functions but lack this extraordinary status have also been established (Harkavy 1989: 7-8). Basing became particularly important in the Cold War era. Bases served as tools of deterrence, potential offensive, and for the pacification of the host country's revolution. Scholars observe the changing functions of basing throughout the last century. Before World War II external basing seldom occurred in sovereign states. Preponderant military powers preferred occupations or colonial acquisitions in which bases aimed to prevent rebellions. The norm undermining sovereignty gradually changed after the war when more mutual agreements indicated the status of bases. Still, most of them were related to occupations and post-colonial influences (Schmidt 2014, 2020). Post-Cold War basing results even more from contracts, not coercive power. Single installations like the US Guantanamo base, occupied despite the Cuban objections, became curious relics (Schmidt 2020).

Great powers' conflicts, rivalry and cooperation have taken place throughout history but resulted from various modes of expansion and different instruments of power (Ó Tuathail 2002: 178). Also, spheres of influence can be analysed by numerous dimensions and features. The spheres are controlled by superordinates whose power could vary, and the relations

between superordinates also vary across international systems. It is particularly interesting which of superordinates approve and which contest adversary's monopoly within the spheres. Another dimension embraces causality: how major powers created and maintained their spheres of influence. And then consequently, what patterns of relations constrained subordinates' freedom. Another dimension regards the geography of spheres, and here there appear two important aspects: the scale of spheres and their boundaries. Further, the spheres were or have existed for some time: how long is another telling feature that sheds light on the stability of international order. Finally, the spheres have undergone changes at the beginning, but also in further stages of their existence. Directions in which they have headed for seem to be important too. The dimensions are summarised in Table 1.

**Table 1.**  
Major features  
of spheres of  
influence across  
three eras

Dimensions and features of spheres of influence	Advanced colonialism	Cold War	post-Cold War
Superordinate's power	Increasingly centralised	Highly/medium centralised	Less centralised
Contesting monopoly by other major powers	Incidental contest by rising powers	Declared contest by other major powers	Rising disagreements over the monopoly?
Main instruments of expansion and maintenance of spheres of influence	Military forces and diplomacy	Ideology, military intervention or assistance, economic assistance, diplomacy	Military interventions, armed assistance, economic aid
Subordinates' sovereignty	None or strongly restricted	Formal; restricted both "Westphalian" and domestic sovereignty	Formal; constraints of both "Westphalian" and domestic sovereignty
Size/scale	Large-scale, often subcontinental	Multiple scales	Medium-scale (individual countries) and small-scale (parts of countries)

Dimensions and features of spheres of influence	Advanced colonialism	Cold War	post-Cold War
Boundaries	Delimitation without demarcation	Strict, often militarised borders	A tendency to overlap with state or quasi-state borders
Time	Decades	Decades	Differentiated periods
Direction of changes	Multiple powers' expansion (win-win); zero-sum since WWI	Zero-sum	Shrinking and eroding?

Table 1 contrasts three eras: advanced colonialism of the industrial era approximately of the second half of the 19th and the beginning of the 20th centuries; the bipolar Cold War system; and the contemporary era after the fall of communism. Advanced colonial powers tended to gradually centralise their power and create empires. By contrast, the Cold War system saw informal empires rather than highly centralised ones. This was a process, too: the Soviet system was initially centralised, but after Stalin had died, even the USSR lost interest in complete control over its subordinates. It is uneasy to find a brief and accurate description of the post-Cold War period; nonetheless, a gradual decentralisation has been demonstrated. For instance, the US arms industry has dragged companies from multiple countries into a long-term collaboration. This, in turn, partially dispersed responsibilities for the production of key weapons. Another example regards friendly regimes of the USA, Russia or France that have had fewer limits in foreign policy than in the previous eras. A clear example is Iraq, whose Prime Minister Nouri al-Maliki opened the country to Iranian influences, despite complete dependence on the US military support (Chulov 2010).

As mentioned earlier, the monopoly of one major power was seldom contested by other major powers in the previous eras. In the advanced colonial period, some rising powers declared objections, yet their primary goal was to sign new, more favourable agreements. In the post-World War II system, the

superpowers largely applied the rule of implicit acceptance of spheres. The post-Cold War era seems to be more troubling for accurate description. Apparently, the expansion of trade agreements effectively undermines any major power's monopoly. Yet the security domain does not exert such effects. Indeed, it is too early at this stage of the study to give a clear answer to major powers' attitudes to adversary's monopoly.

The next dimension regards major instruments of expansion and maintenance of spheres, and this does not create serious controversy: advanced colonialism saw conquest by military and diplomatic tools; the Cold War superpowers also acted by ideology, and military and economic support for friendly regimes; major powers after the fall of communism had to be more attractive to lesser powers, which required large-scale military and economic assistance, which in turn encouraged investment and opened markets for trade. For subordinates who needed security assistance, hosting powerful allies' military bases has been more important than trade. And still, military interventions of major powers resulted in subordination such as Iraq in 2003 and Mali in 2012.

A more challenging issue is subordinates' freedom of action in spheres of influence. A starting point can be Stephen Krasner's (1999: 11-25) typology of sovereignty that points out four types of which three are interrelated with the spheres of influence: domestic which regards the organisation of the authority; international legal that can be called formal which embraces legal rights and duties in the international society; and "Westphalian" based on territoriality and the exclusion of external political superordination. Advanced colonialism transformed the status of subordinated units into semi- or non-sovereign regarding all three types. The subordinates in the Cold War, by contrast, preserved basic formal sovereignty and simultaneously had rather limited freedom of the domestic organisation through ideological interferences and external political superordination. In the Cold War, military bases contributed to subordinates' constraints. As for the newest period, formal sovereignty gained even more interest and support, whereas the domestic and external political freedoms at first glance have been less constrained and highly differentiated. For instance, the establishment of foreign military bases more often resulted from bilateral contracts.

The next two aspects regard geographic issues: the scale and boundaries of spheres of influence. It is observable that the spheres are smaller than in the two previous periods. The areas of special and uncontested interests of the US, France and Russia shrank in the 1990s. Any expansion succeeded in the protection of quasi-states like South Ossetia or single medium-sized states such as Iraq. Some great powers organised large-scale regional conferences that resulted in economic cooperation, such as China-Africa, Russia-Africa or China-Central and Eastern European countries. Nevertheless, these regions do not meet criteria of spheres of influence but are targets of great power *rivalry* for economic interests. As for boundaries, the post-Cold War era differs from the Cold War because of promoting demilitarisation of borders. However, if there have existed spheres of influence after the fall of communism, usually they have overlapped with state borders. The most important counterexample is Syria which experienced intrastate division of major powers' armed responsibility. Another counterexample is Ukraine. In this case, however, great powers openly disagree over adversary's monopoly and compete over influences.

The next dimension is the time which shows the stability of the orders based on spheres of influence. In the advanced colonial era and in the Cold War, spheres of influence, once established, survived for decades. Obviously, there were single changes: for instance, the Soviet Union withdrew from Austria in 1955 and entered Cuba in 1960. But this was incomparable with the post-Cold War era, in which the stability of spheres of influence is discernible only in some countries such as Belarus or Colombia. A superficial observation shows numerous changes: the United States entered some Central Asian countries and then had to withdraw. Many Latin American states had temporarily anti-US governments after the Left had won elections. The cases of Ukraine and Georgia demonstrate the intense Russian-Western rivalry rather than the stability of external influences. Also, France resigned from military support for some African governments against domestic threats: there was a telling case of Central African Republic in 2013 when France did not defy a victorious rebellion (Darracq 2014). In sum, the subordination of states in the post-Cold War period seems to be more chaotic, not as long-term as in the previous two eras.

The last dimension regards expansion and related directions of changes. The most expansive period was the advanced

colonial era called the “scramble” for Africa. Still, the exhaustion of major powers’ resources in World War I limited expansionism and introduced the zero-sum rule: if one major power obtained new areas, another one lost them. However, the British withdrawal from Afghanistan in 1919 could be an interesting counterexample. In the Cold War, the zero-sum rule basically remained. It was the most challenging part of Table 1 to define the pattern regarding the expansion of the spheres of influence after the fall of communism. As mentioned earlier, major powers lost decisive control over numerous countries because there has been much more rivalry. Admittedly, great powers took expansionist actions in Iraq, Afghanistan, Syria, Georgia, Ukraine and many more, but on the whole, the existing spheres shrank in the 1990s. China, as a new potential candidate for a superordinate, has been gradually expanding its influences onto all the continents. But so far neither area has been subordinated by China and uncontested by other great powers. This embraces Central Asia, large parts of Africa or Latin America. Thus China is a more effective rival that aims at obtaining advantage rather than dominant control.

### **Contemporary foreign military bases as elements of major power rivalry**

The issue of military bases receives closer attention of the public, particularly after incidents with local residents (Yeo 2009). A foreign base is a hardly definable phenomenon: the United States itself possesses installations of various size, functions and status in approximately 70 countries. The US military has not presented any specific definition of a military base, because it also controls small premises such as repair facilities (Vine 2015: 3-4). Moreover, it is difficult to determine the bases of “strategic” value precisely. This can be carried out according to qualitative studies and scholarly intuition. Indeed, the first criterion should be durability—provisional outposts that serve for international missions do not catch the full attention of competing powers. Other criteria consider size, the number of troops, and the quality of weaponry located in a base: bases with combat aircraft or long-range radar stations are among those urging adversary’s military planners to take them into account.

The most striking case which supports the thesis of the erosion

of the spheres of influence is Djibouti. French soldiers appeared first in that country in the colonial era. France quickly noticed its strategic location close to the strait of Bab-el-Mandeb, the southern entrance to the Red Sea. While gradually transferring competencies to the local residents until 1977, the French were constructing a multifaceted military base for land army, navy and air force. After the 9/11 terrorist attacks, the United States looked for establishing a new base close to the Horn of Africa, and a former site Camp Lemonnier fulfilled the criteria. The USA wanted to control both the Arabian Peninsula area, notably Yemen, and a part of Africa such as Sudan and Somalia. The location gained special significance due to the rapid increase of piracy near the Horn of Africa and thus proved its military value (Melvin 2019: 1-2). In 2011, counter-piracy campaigns brought Japan to adjust its law and install its first overseas military base after World War II in Djibouti (Melvin 2019: 10). Also, select European powers have established small military outposts in Djibouti due to their campaigns against piracy. Nonetheless, until that moment, this multinational military presence could not serve as an argument that the spheres of influence were challenged since all these states belonged to alliances led by the USA. Even incidental presence of the navy of South Korea or Saudi Arabia in Djibouti's civilian facilities does not undermine the US hegemony in the counter-piracy campaign (Vertin 2019: 12, 15).

A significant change started recently: since 2017, Djibouti has hosted China's multitask military base for 20 million USD annually. The Chinese forces have participated in peacekeeping and anti-piracy missions for over a decade (Melvin 2019: 3-5). However, a final establishment of a permanent base seems to be a serious transformation. On the one hand, Chinese officials call the installation "a strategic strong point" (quoted in Melvin 2019: 3), but on the other, they downplay the "hard security" perspective by emphasising that their facility serves as logistical support for escort missions (Ministry of Foreign Affairs of People's Republic of China 2016; Headley 2018). Still, the opening ceremony of the base in 2017 was performed with armoured vehicles and hundreds of soldiers (Bearak 2019), and analysts claim the construction contains large underground structures (Headley 2018). Despite common enemies: pirates and terrorists, China and the USA publicly accused one another of using Djibouti bases for geopolitical rivalry and even hostile

actions such as blinding American pilots by Chinese lasers (Browne 2018). This discourse demonstrates military rivalry is now present in one small country, which challenges the idea of spheres of influence comparable with the Cold War era. However, the exclusion of non-Chinese major powers is possible in the nearest future. Djibouti's officials admitted that the size of their public debt towards China was over 70% of the country's GDP, but they needed China's investment to develop infrastructure. Thus, an essential part of the Djiboutian-Chinese agreement is a new railway line and facilities in the civilian seaport near the base (Bearak 2019). The entire investment should be worth \$590 million (Vertin 2019: 12). Some US intellectuals started to consider China's economic ties with Djibouti as a potential tool against the United States, and they suggest to move the US base to another country. Barbera port in Somaliland is taken into consideration. The United States has not recognized Somaliland, but, as suggested, de facto military cooperation does not require formal recognition (Rubin 2019), and the United Arab Emirates has already located bases in Somaliland without the recognition (Vertin 2019: 2-6). This thinking follows the patterns of exclusivity in spheres of influence, and the US removal would become serious evidence for that.

Another case explored in this study is Syria. For over half of the decade it has served as a battleground in proxy wars of regional and global powers. A typical civil war quickly transformed into a mixed conflict with various political groups' armed forces supported by stronger external patrons. The illegality of armed support for rebel groups constrained data sharing by governments; therefore, scholars have to rely on media releases in order to analyse the Syrian conflict. As for the type of support, for years the dominant coverage said that patrons had trained and equipped their favourite armed groups. The only installation called a military base was the Russian naval facility in Tartus which had limited personnel and was seldom used before the Syrian War. In 2008 the facility gained a more substantial interest of the Russian authorities in the context of worsening relations with the West due to the Russo-Georgian War (Macleod 2008). Throughout the Syrian War Russia was increasing the facility's use, although its port was unprepared to serve a medium-sized naval group until 2017. Then Russia signed a 49-year agreement with Syria, under which an extended terrain obtained extraterritorial status with the right to receive forces without additional permission of the Syrian

government. The port can now support eleven vessels at once, and there have been plans to construct a shipyard (Russian Naval Base at Tartus n/d.). In 2015 Russia officially started a full-scale military intervention to support Bashar Assad by sending and using all the military branches including ground and air forces, many of them located in Syrian bases other than Tartus (Snyder 2015). It turned out Russia could not accept any result of the war that would weaken the most pro-Russian regime in the Middle East. But the United States also installed a military base in Syria near the border with Jordan and Iraq, which aimed at facilitating combat against the Islamic State in eastern Syria. The USA then further established several posts in north-east Syria to protect their pro-democratic, partially Kurdish ally Syrian Democratic Forces (SDF). The USA acted without any serious legal basis and aimed at numerous objectives including destroying the Islamic State, protecting borderlands around Iraq, and certainly also disturbing the attempt of Assad's forces to retake full territorial control.

Any explanation of the events of 2015-2020 in Syria needs to include great power rivalry. For instance, Russian officials openly accused the USA of illegal military presence. There was also a serious battle incident between the US forces and Russian mercenaries called the Wagner group. The Turkish army also intervened in Syria in 2016 and again in 2019. However, rivalry cannot explain all the aspects of relations between major powers in Syria. Until 2011 Syria was a pro-Russian regime, which was reflected mainly in weaponry purchases and the small naval post in Tartus. At the beginning of the Civil War, regional actors challenged Syria's pro-Russian status, making Syria a battleground. Russia's full intervention in 2015 was decisive for the outcome of the war: Assad's regime gradually retook territorial control, and as of 2020 nothing indicates any armed group could overthrow it.

Syria does not entirely fit into the category of the spheres of influence; nonetheless, Russia, the USA and Turkey repeatedly delimited provisional zones of their exclusive control. Turkey seized the Afrin province in 2016, and Rojava in late 2019 (Burc 2019). The most famous example of the mutually recognised boundary was the so-called deconfliction line between Russian-backed Assad forces and US-supported anti-Assad coalition (Starr and Browne 2018). However, the local monopoly on military presence was neither permanent nor unquestioned.

The battle between the US army and Wagner group in 2018 might suggest that Russia tested the US zone, although Russian officials denied they had known of the clashes in that area (Schmitt, Nechepurenko and Chivers 2018). Furthermore, the USA intentionally established military posts in north-east Syria to protect SDF, particularly against Turkey, which accused the Kurds of terrorist actions on Turkey's territory. The character of spatial divisions of power in Syria provides the scholarly community with important knowledge on the ongoing great power rivalry. Great powers and medium powers do not hesitate to use armed forces against one another. The US president Trump's announcement to abandon Syria in late 2019, which encouraged Turkey to attack the Kurds and extend its buffer zone, cannot be interpreted as a final withdrawal from the rivalry over Syria because practically the US troops remained and media reveal serious military incidents with the Russian military (Syria war: US deploys reinforcements to Syria after Russia clashes 2020). Exclusive zones did not disappear since the Turkish forces still occupy the northern part of Syria as of late 2020. Interestingly, the Kurds cooperated with Assad's forces and Russia to avoid the Turkish occupation of the whole Rojava province. Assad and Russia have not permitted Turkey to enter these areas. Certain spatial exclusivity persisted. Still, this is indecisive in terms of a permanent sphere of influence due to dynamism of three major powers' military presence in Syria.

In 2019 media released information on an unofficial military base of China in Tajikistan, which is the third interesting case for how military bases reflect the patterns of spheres of influence. Even though the Chinese government denied their army's base in Tajikistan, the sources include interviews with local residents and the analyses of pictures. The post is large enough to maintain dozens, perhaps even hundreds of soldiers. The location of the mysterious military base is adjacent to the Chinese border and the Afghani border, near the Wakhan Corridor which is an elongated part of Afghanistan's territory with a loose connection with the rest of that country's affairs (Shih 2019). The sources are reliable; therefore, the Chinese post needs consideration framed in the problematic of the spheres of influence. The obvious purpose of the base seems to be the prevention and detection of cross-border smuggling and illegal movement of people, including terrorists or potential Uighur rebels. The geographic conditions of that area imply a much more effective control near the Wakhan Corridor than typical

border control in China because crossing the Corridor brings easier access to the Chinese territory. As for the great power rivalry, two points can be considered. First, the location in Tajikistan somehow undermines Russia's sphere of influence in that country. Nonetheless, Tajikistan's territory is quite large and elongated, Russian bases are situated in the West, and the location of the Chinese base near China's border can be interpreted as not competitive to Russia. Second, China could construct the outpost in the Afghan part of the Corridor. Why it did not is an interesting question. Either China wanted not to collide its security interests with the USA in Afghanistan, or the Chinese government just ignored that option. However, the Chinese soldiers may have entered the Afghan territory anyway, because members of a Himalayan expedition in Wakhan Corridor released they had been interrogated by the Chinese soldiers there. The US officials also declared their awareness of the Chinese security operations in that location, which, interestingly, they had not objected to (Shih 2019). It is too early to form any conclusion regarding the Chinese, US and Russian mutual relations in the borderland of Tajikistan and Afghanistan. At present they do not indicate any agreement on adversary's monopoly on the whole territory.

For over a decade some media have claimed both Russia and India had located their military bases in Tajikistan. A careful study brings a different picture, though. Indian companies had modernised airports in Ayni and Farkhor. However, in the former, India's armed forces were not allowed to quarter at all, and in the latter, Indian aircraft were based only periodically (Putz 2015). The issue of the Indian air force in Tajikistan attracted attention, particularly in the context of "China's encirclement by India" (Scott 2008: 8-9). The facts might be portrayed as "a circle" on a map, but the real actions of India in Tajikistan and other locations were quite limited. From the perspective of this analysis, Tajikistan seems to be a mixed example of the logic of spheres of influence, because, on the one hand, India did not locate there its substantial military for permanent use, but on the other hand, Russia has not revealed any objection to the unofficial Chinese base.

Other cases, however, do not provide solid evidence for a compelling argument against great power exclusivity of influences in one country. Kyrgyzstan has hosted substantial Russian armed forces after the disintegration of the Soviet

Union. After the 9/11 attacks, the US military established a base in Manas which served until 2014 (Manas International Airport n/d.; Kyrgyz MPs vote to shut US base 2009). Soon after the 9/11, the United States and Russia improved their relations. But they worsened again very quickly when the USA started open preparations for invasion on Iraq. Russian diplomacy did not support the US military presence in Central Asia, although it openly started hostile actions about a decade later. In 2013 the pro-Russian President of Kyrgyzstan Almazbek Atambayev influenced the parliament to finish its allowance for hosting the US military (Manas International Airport n/d.; Kyrgyz MPs vote to shut US base, 2009). In such circumstances a 13-year long US-Russian military co-existence in Kyrgyzstan reached its end, thus demonstrating that Russia lost monopolist control over security issues in Kyrgyzstan only for some time, and later regained it as its sphere of influence.

As mentioned earlier, in our era, states tend to limit the establishments of new permanent extraterritorial military bases. They prefer to alter the geostrategic situation by less eye-catching means. A great contributor to this phenomenon is China, for years accused of building a net of military bases called “String of Pearls” strategy. Careful analyses hardly confirm these allegations. Chinese companies constructed or repaired some facilities in seaports of Myanmar, Bangladesh, Sri Lanka and Pakistan, which are in use by commercial fleets (Marantidou 2014: 6-8). The obvious purpose is the improvement of conditions for commercial trade in the region of the Indian Ocean. China’s rivals, however, perceive this as a potential security challenge. The question arises: Whether and how China could transform these objects into permanent naval military bases? It is beyond discussion that China has financial arguments for effective persuasion, but permanent positioning in seaports requires official bilateral agreements that would be commonly commented in public. The practice of anti-piracy operations has proven that China can use friendly countries’ seaports for logistical purposes (Marantidou 2014: 12). Since the rational method is achieving goals at the lowest possible cost, in this case, permanent military presence certainly will not be required in the nearest future.

Vietnam is another case of multiple great powers’ military presence. Russia withdrew its military base in 2002. However, it officially considers a return (Russia ‘considering military bases

in Cuba and Vietnam' 2016). Moreover, some sources indicate the Russian personnel, uncertain if military or civilian but linked with the military, have been present for recent years in the same location of Cam Ranh (Grossman and Huynh 2019). Vietnam also accepts joint naval exercises and visits of combat ships of the United States and India. Apparently, an Indian military post in southern Vietnam is under consideration (Indian Naval Base in Vietnam at Cam Ranh Port to Protect Hanoi's Economic and Territorial Interest 2018). Vietnam's official defence policy excludes defence pacts and foreign military bases (Grossman and Huynh 2019). Nevertheless, in front of China's expansion on the South China Sea, Vietnam does not want to preserve neutrality. Official opening of external states' bases would be indeed perceived provoking for China and the domestic audience. What might be expected in the nearest future is the unofficial opening of small posts with civilian personnel for the USA and India for naval logistical support, without any official extraterritorial bases. Hitherto nothing clearly undermines the idea of an exclusive sphere of any great power in Vietnam, but the situation is dynamic. As long as China avoids confrontational policy resulting in Sino-Vietnamese incidents on the South China Sea, Vietnam remains satisfied with limited military cooperation with India and the USA.

The case of Oman suggests a limited analogy to Vietnam. Some sources allege that India constructed its own net of listening posts around the Indian Ocean, and one of them located in Oman (Manthan 2012: 152-153). Their presence and status cannot be easily verified because India eschews official statements. If the installation in Oman really is a military base and not just a small intelligence post, then Oman hosts two great powers: India and the USA at once. In this case, the problem with the verification of data does not allow to draw a final conclusion. Besides, the case of Oman regards the USA and India, which before a decade abandoned bilateral rivalry for cooperation in selected domains.

Another aspect of (the lack of) exclusivity regards medium or regional powers' rivalry. The press claimed that Israel and Iran at once had military bases in Eritrea (Pfeffer 2012), but it took place for a limited time. Later Saudi Arabia created effective pressure on Eritrea to join the anti-Houthi coalition in Yemen and thus cut security ties with Iran who allegedly is Houthi's patron (Ahmad 2017). Another case of consideration can be

**Table 2.**  
Regional  
distribution of  
countries hosting  
competing major  
powers' military  
bases

Regions	Host countries	External major powers	Major powers' attitude towards adversaries' bases
Horn of Africa	Djibouti	China; France; the USA	Sino-US rivalry and diplomatic conflict
	Eritrea	Iran*; Israel	Unknown
Middle East	Syria**	Russia, Turkey; the USA	Rivalry, proxy armed conflict, limited skirmishes
	Oman	India***; the USA	Unknown
Central Asia	Tajikistan	China; India****; Russia	Mutual ignorance
	Kyrgyzstan	Russia; the USA*****	Russia's open contest
Southeast Asia	Vietnam	India*****, Russia*****	—

\* Terminated certainly in 2015.

\*\* Multiple bases, movements of troops.

\*\*\* Intelligence post, details unknown.

\*\*\*\* Temporary use of a modernised airport.

\*\*\*\*\* 2004-2014.

\*\*\*\*\* Navy's permanent access to a seaport, no permanent personnel.

\*\*\*\*\* Limited personnel of unknown status.

As Table 2 summarises, there have been several locations of more than one major power's military in the Horn of Africa, the Middle East, Central Asia, and Southeast Asia. Among them, two are examples of rivalry: Djibouti and Syria, the third: Kyrgyzstan in which Russia effectively won rivalry. However, the analysis of countries that host superordinate powers' military facilities proves that there still exist numerous areas detached from great power rivalry. The United States commands dozens of military bases in NATO countries, Australia, Japan, South Korea and Israel, among others. Russia exclusively has military facilities in Armenia, Belarus and Kazakhstan (Dyner 2020). China has maintained some military presence in Myanmar,

although apparently not a permanent military base (Selth 2007: 3-15). India has an exclusive military presence in Bhutan. What is striking, however, is a shrinking list of such countries, and a growing number of cases that bring more doubts about any military monopoly of a particular great power. Djibouti, Syria, Tajikistan, Afghanistan, Iraq and Ukraine to some extent—all these countries remind us that great powers' monopoly on military presence can be challenged. However, this is not a unidirectional clear transformation that allows researchers to discover a new paradigm for the problematic area of the spheres of influence.

### Conclusions

Spheres of influence are repeatedly revolving in the public discourse. Yet, few authors discuss their essence and attempt to find a correct understanding of their reconfiguration after the Cold War (Ferguson and Hast: 280). The above study of military bases demonstrates that the rise of globalisation has partially transformed the security domain at the global level. Basically, great powers still avoid full military installations in countries considered either as the sphere of influence of another great power or simply located in their adversary's close neighbourhood. There is, however, at least one convincing case: Djibouti that hosts substantial military installations of Western countries and China. The Syrian case seems to be less clear because military bases of rivals have served as an element of rivalry, conflict and cooperation at once. The security situation of Tajikistan and Kyrgyzstan as explained earlier does not clarify if the great powers intend to altogether resign from recognising other great powers' spheres of influence. Overall, the discussed cases cannot seriously undermine the thesis that spheres of influence are an element of the contemporary international system. However, along with Susanna Hast's (2014: 19-20) observations, a pejorative aspect of spheres of influence persisted: the idea of "encirclement" by establishing military bases functions as a public accusation.

What is striking is that results summarised for the post-Cold War period are often imprecise. The study of military bases gives an incomplete answer to important questions. This implies a need for further research. Therefore, the issue requires studies in the field of security, such as weaponry

purchases from great powers. The economic domain can be investigated by analysing free trade agreements, customs unions and single market communities dominated by one major power. Another path for research is the trade share of each major power in a particular country or region. If one has most of the international trade volume, he/she is still far from “monopoly”, nonetheless, “a dominant power” might be the correct description. Finally, discursive practices regarding spheres of influence need to be reconsidered. This should encompass not only normative aspects but also highly political ones: discourse analysis can reveal de facto acceptance of spheres of influence, disagreements over subordination and intentional superordination.

Another interesting and promising path for further explanation of spheres of influence regards democracy. At first glance, the sovereignty of *demos* contradicts any external superordination. Thus, the post-Cold War “wave” of democratisation can contribute to the erosion of the spheres of influence. The methodological challenge consists in detaching democratisation as explanatory variable from other coincidental processes including globalisation or the collapse of formal empires such as the Soviet Union. If democracy is taken seriously, spheres of influence cannot survive. Then, endless competition is the rule of the game, not a geographic division of influences.

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**Contact** Croatian International Relations Review  
Institute for Development and International Relations (IRMO)  
Ljudevita Farkaša Vukotinovića 2, 10000 Zagreb, Croatia  
T +385 1 48 77 460  
F +385 1 48 28 361  
E [cirr@irmo.hr](mailto:cirr@irmo.hr)  
W [cirr.irmo.hr](http://cirr.irmo.hr)

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