

SECURITY AND SOVEREIGNTY IN THE 21ST CENTURY

CONFERENCE PROCEEDINGS



SESCO
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BUDAPEST

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ICRP INTERNATIONAL CONFERENCE



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FOREWORD

The sixth international conference – “Security and sovereignty in the 21st century” (SESCO 2017) – organised by the Institute for Cultural Relations Policy (ICRP) was hosted by Kodolányi János University of Applied Sciences on the 10th of November 2017. The academic meeting was the second annual conference that aims at facilitating the public exposure of important current issues in terms of security and defence policy, as well as various sovereignty related questions.

The conference was attended by academics as well as students of social sciences interested in security policy. During the conference more than ten speakers from four European countries held their presentations.

The Institute for Cultural Relations Policy recognises the emerging importance of security studies and thus, would like to provide a platform for researchers to present their recent findings and analyses on contemporary security issues and sovereignty related problems. The ICRP intends to make “SESCO” as an annual series of conferences which are held in every autumn in Budapest.

This aim cannot be achieved without the professionals who share their work during the academic meetings. Therefore, we are grateful to all participants for their contributions to the conference, wishing success to the presenters in their future researches, and hoping that the conference proceedings will serve as resources for researchers as well as for a wider audience.

Finally, the editor would like to thank the members of ICRP Advisory Board for assistance and the sponsors for supporting the event and the proceedings.

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CHALLENGES OF EUROPEAN COSMOPOLITANISM AND GLOBAL NATIONALISMS

THE EUROPEAN COUNCIL ON FOREIGN RELATIONS' ROLE IN FORMING THE COMMON EUROPEAN DEFENCE AND FOREIGN POLICIES

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The European Council on Foreign Relations a leading think tank organisation established in 2007, a knowledge centre forming European Union's foreign policy. After the Lisbon Treaty with establishment of the European External Action Service and the High Representative for Foreign Affairs the EU officially took the role of an international global actor.

“The European Council on Foreign Relations (ECFR) is an award-winning international think-tank that aims to conduct cutting-edge independent research on European foreign and security policy and to provide a safe meeting space for decision-makers, activists and influencers to share ideas. We build coalitions for change at the European level and promote informed debate about Europe's role in the world. In 2007, ECFR's founders set about creating a pan-European institution that could combine establishment credibility with intellectual insurgency. Today, ECFR remains uniquely placed to continue providing a pan-European perspective on some of the biggest strategic challenges and choices Europeans need to confront, with a network of offices in seven European capitals, over 60 staff from more than 25 different countries and a team of associated researchers in the EU 28-member states.”

As from the ECFR mission is clear, the EU is a global actor, with pan-European perspectives. It is a new political unit, but the ECFR sees it as an UN like global organisation. Traditional IR theories (Realism, Liberalism, Constructivism, Evolutional, Critical) or theories of the EU (Neo-functionalism, Intergovernmentalism, Liberal Intergovernmentalism, Multilevel Governance) are unable to explore the phenomena of the EU: is it a region-state or empire, it can be a cosmopolitan region state or cosmopolitan empire? Or it can be treated a neoliberal international policy regime? The ECFR's six themes for analysing the activity of the EU as a foreign policy actor are the next:

- An empire like policy: the EU neighborhood, Great Europe, later (after the Arab Spring) MENA policy
- In case of Russia and China the EU behaves as a cosmopolitan power, with strong accent on human rights, and cosmopolitan democracy
- Traditional realist state's like balance of power policy: relations with the USA, China, Russia
- An International governmental organisation type policy: multilateral issues.

In case of the European H2020 and earlier programmes we could see a new interest researching the empires as political units. Most studies concerning the EU made their research from the point of view is it a state or is it an intergovernmental organisation. After the Lisbon Treaty the EU was transformed into a new polity. If we want to understand this transformation we need to explore the nature of the EU in its external environment, and the nature of the EU from inner structure. The new approach for studying the EU as a polity in its environment, to compare it with a classical category in the study of politics with the empire. In case of the inner structure the new approaches connected with global political ideologies, using theories of cosmopolitanism and populism. The first part of the article investigates the challenges of the EU as an empire, the second part of the research focuses on dynamics of cosmopolitan and populist divide, the third part of the research investigates the role of the EU in world politics as a great power, balancing the European-Asian international area, the fourth element is evaluating the EU activity as universal power in multilateral issues.

Transition of the EU to a political entity, a Cosmopolitan Empire

The political science neglected the study of empire as political units, while in the human history the empire, and large size political units are the most common political communities. In case of Russia, China, as well as the USA, and the European Union can be treated as mixed regimes, with democratic or authoritarian character. In case of empires we can speak as an alternative to the state, with fixed or not fixed boundaries, external sovereignty, aimed or not for internal homogenisation. Empires can be built on different and high number of political units, states, regions, cities, and so on. (Colomer, 2017) By Norkus Z., the empire is a highest secular authority, one state controls the sovereignty of another political society by force, collaboration, economic or cultural dependence, formally or informally, voluntary or involuntary. (Norkus, 2007)

The formation of empires needs thresholds, first a non-imperial entity expands and becomes to empire. Second, the so-called Doyle threshold, the former subjugated have got common liberty, with common law and equality for different units.

The distinctions between primary empire and the shadow empire are also important in Norkus explanations: the primary empire is a proper empire with highly developed central administration, transportation and communication system, stabilized borders, and common ideologies, with an imperial grand strategy and values, demolished former coexisting political entities. The shadow (mirror, maritime, nostalgia, vulture) empire is copying, mirroring real empires. Phoenicia, Venetia, Genova as maritime empires, vulture empire formed on the ruins of a former empire, nostalgia empire as the Carolingian without a metropole or a centre and integrated infrastructure. (Norkus, 2017)

The main characteristics of empire are the next: it has a large size in terms of territory and population, empire has no fixed boundaries, the diverse groups and territorial units have asymmetric links with centre, with different forms of parliamentary or presidential, monarchical or republican governments. There is a set of multilevel and overlapping jurisdictions. Using the

conception of the empire is important turn in political approaches analysing the European Union.

By using the empire formation vocabulary for understanding recent challenges of the EU we can state that the European Integration went through different thresholds:

- During the Cold War era the formation of the European Community was built on ruins of former 3rd Reich of fascist Germany in informal voluntary alliance with the US, on the territory of the Caroling Empire a thousand year ago. The Treaty of Rome set the European Community with objective establishing a single market. The prospects of first enlargement were connected to the fall of the British Empire, the second to the fall of remaining fascist and autocratic regimes in southern Europe.
- The first threshold was the Maastricht Treaty in 1992 (TEU, 1992), establishing the EU as a legal political entity, with new prospects of enlargement. In case of Central Europe, the enlargement related to increased power of the Union and fulfilling pre-entry conditions. It was an aggressive enlargement of the EU accompanied with NATO enlargement. The shift was taking place in more administrative or diplomatic realm, away from formal sites of political contestation. The Amsterdam and Nice Treaties related to development of new market economies, with a detailly prescribed accession criteria for the countries wishing to be member states. (Copenhagen Criteria, 1993) The Agenda 2000 adopted in 1997 paved the way for new the member states to dismantling the functioning legal and economic system, for accession negotiations. The EU worked as a shadow empire, the enlargement process was copying the USA universal empire model, using the US resources (NATO), developing the Eurozone similarly to the dollar as international monetary tool.
- The second threshold of the EU was the Lisbon Treaty. It aims was incorporating of member states into one sovereignty, with giving more power of EU institutions and abolishing the member states. With aiming the Great Europe objectives, it can be adapting for further enlargement (Eastern Europe Balkans and the Mediterranean Area). The Lisbon treaty created a more solid basis for the EU to adopt autonomous acts on trade in services, and commercial aspects of intellectual property, the cultural, audiovisual, educational, and social and health services became EU power area.
 - The Lisbon Treaty strengthened the EU political dimension, recognized the appearance of a common political entity, it became a representative and participatory democracies. It was introduced the possibility of voluntary leaving the Union.
 - It has introduced the catalogue of competences. The member states became guarantor of the national competences in relation to the Union. The exclusive, the common, and complementary competences established legitimate monitoring procedure over the subsidiarity and proportionality principles.

- The member states can take part in the process of ex ante political control of the community's legislation accordance with solidarity principles.
- The Charter of the Fundamental Rights became compulsory character of EU. The Lisbon Treaty established new judicial grounds for the union development of actions and policies in the field of humanitarian aids, space research, energy climate change, youth, sports, civil protections and administrative cooperation. The freedom, Justice and Security space have got new competencies.
- The CSFP has registered a significant progress making visible the international profile of the EU. The framework for values and objectives was firmly established, made the EU a global player with exclusive responsibility. The EU established a new legal basis, for the privileged association relations with countries in the neighborhood. With the newly created function of High Representative for Foreign Affairs and Security Policy of the EU, and the European External Action Service. The Common Security and Defence Policy is developed through the Lisbon Treaty with the cooperating capacity of the European Defence Agency, the solidarity clause between the member states, and the procedure of consolidated cooperation.
- The Lisbon Treaty reformed the procedure of treaty revision giving the European Parliament several additional competences.

In summary, the Lisbon Treaty made a substantive scale and content of the reforms, with growing the Union's power of actions in the fields of former exclusive national sovereignty areas. (Circa, 2015) The thresholds from an international and economic organisation in case of the EC and European Single Market into a European imperial size and structure was in an era of the third wave of globalisation. The structural changes of Lisbon Treaty implementation have got the context of the 2008 financial crisis.

Cosmopolitanism in EU's identity making

The concept of the EU as a global political actor depended on the legitimacy of its institutions. The introduction of the EU identity policy has two functions: first it have to be play a role making distinctions with other parts of the world (USA, Eurasian Union, China and other emerging powers). The European identity and independence of the EU made possible to defend the EU against international threats. The European identity was formed as a step toward the ideal of cosmopolitanism. The European symbols, the blue flag with stars, the European Anthem, the Day of Europe, and the Euro are evaluated as very weak symbols that don't serve a strong European identity. The symbols can serve their purpose if they are based on collective identity. So, in case of the EU, the role of cosmopolitanism (moral, legal, normative, economic, political and cultural) as a central ideology and political project is vital for foreign and defence policy, and as a tool against the nation state's particularism and nationalism.

- The moral cosmopolitanism insists on the duty to aid foreigners who are suffering and respect the promotion of basic human rights and justice. It needs from the people to attachments to the humanity and not to the national community. It has a form of a global or European open immigration policies. (Held, 2017)
- The normative cosmopolitanism is an approach for understanding everyday living practices, the condition of ethnic and religious plurality, experiencing life together. The normative cosmopolitanism place accent on conviviality, compatible living and life-styles, intergenerational and inter-ethnic solidarity. (Nowicka, 2015)
- The political cosmopolitanism is aimed to change the existing system of the states, developing a world republic, a global, regional, local governance system, a voluntary federation of the states. The political cosmopolitanism makes enemies from other groups of ideologies: moderate liberalism, non-cosmopolitan liberalism, nationalism as populism. Contrasted the EU-centred Europe the Cosmopolitan Europe concept treats the EU as the most promising post-national organisation, a path to the global justice. Ulrich Beck forms the Cosmopolitan Europe concepts for stronger political integration transcending the national sovereignty – Delanty defends the Cosmopolitan Europe against national Europe, Europe of the Nations, and global Europe, an EU led Europe plays a global role. (Beck, Grande, 2007) (Delanty, 2005)
- The economic cosmopolitanism is often defended by the richest politicians and economists of the global economic market with free trade and minimal political involvement of the states. The side effects of global free market are the largescale immigration and the needs for re-schooling when the jobs disappear, and the absence of control over financial and markets and the political role of multinational corporations. The economic cosmopolitanism a liberal economic market based cosmopolitanism as servants of capital and markets, and it was connected with dismantling the welfare states and restructuring labour relations. The European cosmopolitan liberalism and cosmopolitan capitalism moved Europe from Southern dictatorships and Eastern Communism to supranational rule of law with Cosmopolitan values and neoliberal culture. (Inglis) The economic cosmopolitanism in other approaches reflects the new political role of international corporations providing public goods and contributing the solution of societal problems.
- Legal cosmopolitanism sees the international law as real law, and all national legal systems are subordinate parts of the one global legal system based on the moral value of global legal peace. The legal cosmopolitanism is part of the international duties, the international human right law, and the duty of developed states in fulfilling the human rights and the duty for international development, the right to development. Legal cosmopolitanism is committed to the global order under which every citizen have equivalent legal rights and duties, are citizens of an universal republic, with emergence of global social institutions, a single global institutional scheme, involving institutions of territorial states. Cosmopolitan law is a combination of constitutional law and international law and sees the European Community Law as a compulsory law for its

member states, doesn't respect the traditional state sovereignty. The new approaches involved the idea of responsible cosmopolitan states: the state doesn't cause harm others living outside its border, states are accountable for their actions abroad and outsiders and non-citizens, to extend the social contract with negative duties and positive duties granting legal status to outsiders. The cosmopolitan state could adopt forms of cosmopolitan extraterritoriality, extend criminal law on their citizens abroad, or on multinational corporations. National states represent a threat to the inner diversity and lack of responsibility for others. National states are the causes of the world (national) wars, while cosmopolitan states are guaranties of the national and religious identities through the principle of constitutional tolerance.

- The cultural cosmopolitanism speaks about the ability of the persons to connect across culture, it encourages cultural diversity and opposes to nationalism, the right to minority culture, and rebuffing the right to national self-determination. The cultural cosmopolitanism is an elite predisposition and practice, it involves extensive mobility, the right for traveling, the consume many places and environments, understanding many places historically, geographically and anthropologically, to take the risk working and living with others, to have an ability to map own society, interpreting images of various others with semiotic skills, openness to other peoples and cultures. The cultural cosmopolitanism has no common memory or past or tries to create it: as in case of holocaust as a common European later a globalised memory. All memories connected to national past are its enemies (in case of Ukrainian Holodomor or the rejection of the Polish concentration camp formula).

The cosmopolitanism and the ECFR

“The Council is the strongest and most visible expression of ECFR's pan-European identity. Through their individual networks and collective engagement with ECFR policy and advocacy initiatives, Council Members help us to Europeanise the national conversations in the EU capitals on the EU's foreign policy priorities and challenges.” The words are written in the ECFR introduction website. The ECFR introduced the European Foreign Policy Score Card project as an innovative systematic, annual assessment of Europe's performance in dealing with the rest of the world. The scorecard assesses the performance of the EU institutions and member states in 80 policy areas. The ECFR prioritized the EU policy around the values of cosmopolitan foreign policy. (About ECFR, 2017)

Empire type balance of power approach in EU foreign policy making

In 2010 introduction and analyse the EU as a global power, the Imperial objectives of the Union was clearly disclosed. “European Leaders” finally woke up to the fact that they inhabit a post-American world; the relationship with the US “no longer has the powerful emotional significance”, the US is no longer provider of public goods to the EU's security realm or the

economic sphere. In case of China the EU stopped the cooperation, but the member states pursued their's own diplomacy undermining European coherence (Germany and Spain). For the EU the most important danger is the increasing importance of the G20, in which the EU performs badly. In 2010 the EU as a regional power was concentrating on the economic crisis, and the ECFR study was worried with a fear of a weak Russia, and with the Russian and Turkish foreign policy neglect the EU lost its influence. The report evaluated the performance of the EU as weak in case of southern neighborhood policies as well.

The report mentions a new battle between member states and the EU, who were fighting for exclusion of the European Commission from the EEAS. The inner consequences of the Lisbon Treaty were the emergence of Germany as a dominant power in the EU and different coalitions were formed balancing the German power. The EU as a global power was compared in the report with the US and China. It was declared it has 17% of the world trade (US 12), 50% of the international aid (20% in case of USA), 20% of the military spending (43% of the US, 7% in case of China, 4% of Russia, 2% of India, 2% of Brazil). The report states, the EU is active and competent in low politics, but it is weak in high politics, hard power issues. (ECFR FPSC 2010)

The 2015th year report was evaluated as an awakening to power politics in Europe. The partnership for modernisation with Russia ended, and the EU proved ill prepared to deal with Russian use of force and rejection of post-Cold War European order. Germany became the EU's first political power, leader of common foreign policy. The new threat for the Northern and Eastern member states led new activation of the national power policies of the British, German and French states. (FPSC 2015)

The 2015th year report stated, that the "Rest of the world" didn't helped the EU with sanctions against Russia for cracking the global order. The worst performance of the EU was the response to the migrant crisis. It became clear, that the EU is unable to fulfil its claim to be a humanitarian actor. The UK announced in October its withdrawal from rescue operations because it is a pull factor. The EU's failure concerning regional security in MENA region, supporting the rule of law, human rights and democracy led to the radicalisation of European young people in Muslim communities. (FPSC 2015)

The 2016th year report was published in early 2017 and concluded the failures of the EU foreign policies: spiraling number of the refugees, coordinated terror attacks in European capitals, conflicts around Europe the European elite lost its credibility, arrival over one million migrants contrasted with limited capacities of the member states in case of bordering states and in case of objective states for settling. The report stated that as the internal border were growing up across the Union, the principle of free movement became for leaders able to defend. The inability of the EU was evident dealing with autocratic states as Russia and Turkey, and their realistic policies. (FPSC 2016)

The analyses concerning Brexit and Trump's election, its policies were evaluated for the cosmopolitan ECFR as the tragedy of the EU. The new discourses on more flexible cooperation opposed the idea of moving the same speed in case of all countries and issues. The ECFR

introduced a new category of the states: the rebel countries as UK, Hungary and Poland, aiming re-strengthen the national sovereignty, and slide line the European Commission.

If we want to understand the new fault lines in case of the EU countries and member states, we can go through the consequences of the Lisbon Treaty. The Lisbon Treaty was a fully cosmopolitan project. The Lisbon Treaty with its legal cosmopolitanism led to the Brexit and clash with Visegrad' fours countries on migration countries. The new power of the European Commission and the European Parliament made more visible the EU's power. Clashes between Victor Orbán Hungarian prime minister and Daniel Cohn Bendit in 2011 was a symbolic clash between European Cosmopolitan elite and nationalist and populist defenders of non-cosmopolitan, but state-centred Christian faith and democracy, and caused the EU cosmopolitan project great harm. The role of the European Parliament and the European Commission forming a new cosmopolitan Europe made the EU a clear defender of political cosmopolitanism. The 2015–2017 migrant crises questioned the moral cosmopolitanism of the EU, because it proved unable to handle the problem. The normative cosmopolitanism, conviviality between different religious civilizational groups in Europe was questioned by frequent terrorist attacks in Paris, Nice, Berlin and other places, with new insecurities caused by the presence of large groups of migrants in European capitals (Cologne attacks) and public spaces. Cultural cosmopolitanism has led to wars of histories, and clashes of foreign politics of history because of neglecting suffering of Central Europe during communist regimes and treating the Holocaust as exclusive European memory. (EFPSC 2016)

The 2016-17 years proved as years of rising a new type of nationalism in world politics: in case of Europe it led to the strengthening of the far-right parties, and new victories in elections. In case of the global or regional power Erdogan, Putin, Narendra Modi, Duerte, Shinzo Abe and Donald Trump caused an external threat to global cosmopolitanism. Jan-Werner Müller the main criteria of populism are the next:

- Only some of the people are really the people (part of citizens is closed from it, Romas, migrants, liberals, Muslims or Dalits as second class citizens)
- They are antipluralists and anti-elites who controls the media.
- They treats themselves as victims even when they are in power
- The populist parties are monolithic, the rank and file members clearly subordinated to a single leader.
- The populist pride themselves on their proximity to the people.
- They can only think in simplistic terms, with oversimplification of policy challenges and demonization some issues.
- They tend to believe in conspiracy theories and views the history itself as a giant conspiracy theory. (Müller, 2016)

Populism in foreign policy can be seen as a specific type of reaction to concurrent political and economic crises in a rapidly denationalised and deterritorialized world. Populist foreign policies preoccupied with sovereignty, national interests outside established processes of global or

regional governance. It is connected with nationalism and isolationism. (Angelos Chryssolegos, 2017) The European Parliament is a coregulator in asylum related issues, it plays a critical role in EU's foreign policy. With 20% share of the votes, populist and rightwing parties are pushed toward an antimigration policy and question partnership with unsafe third countries. Issues of race, immigration, welfare and social inequality accompanied with distrust of all EU institutions, returning the power to national institutions, opposed to further enlargement of the EU and call for reduced immigration policy. Impact of the populist policy a new trend from 2016 the so called EU Migration Partnership Framework, cooperation with third countries on migration issues. The principle of non-refoulement was a corner stone of the EU fundamental rights regime. In 2017 the EU renewed the Action Plan on a more Effective Return Policy with development aid and economic and commercial cooperation. (EC, 2017) The second impact is, that the migrants who are came through a safe third country the return and deportation can be used. The EU-Turkey, Egypt, Tunisia, Libya, Afghanistan and Pakistan agreements are reflections of this policy shifts. The most visible impact of populism is confusing the domestic and international audiences and fulfil the foreign policy administration with less experienced foreign policy professionals. The inexperienced foreign policy elites cannot make quality calculation in difficult environment and it is common to commit serious errors in foreign policy and unable to skilfully manage risks and crises. The populism influenced the NATO's role as it must fight terrorism at home, and work toward a solution of the migrant problem.

Battles concerning consensus in case of Climate agreement, migration, free trade, growing sign of turning democracies into illiberal ones seems a new trend in global politics.

In case of Putin, the so called healthy conservatism (linking the Christianity and the states, treating them as foundation of the European order, making accent on family values versus to human values, defence of national interests versus universalism, states against the international role of IGOs and INGOs, the policies of the economies of national interests, balanced immigration policy, maintain and not blur national cultural distinction) made him the most feared enemies of cosmopolitanism, and equal with Evil.

Paleo-conservatism of Donald Trump has caused a similar shock, the new values of virtue, the fair trade instead of free trade, tariffs and protectionism, dismantling the NAFTA, oppose illegal migration, building new fences, foreign policies of non-interventionism (against responsibility to protect), strong national defence and military budget, neglecting the NATO, America first as opposing globalism has led neglecting the USA as an universal power, treating Donald Trump as an another Evil of the Cosmopolitan power.

The EU as an universalist power, multilateralism in EU policy making

The European Union by the EFRC could gain limited impact in multilateral issues. It was active for the reforming of the UN, UN 2030 Sustainable Development strategy, but are less effective in case of global crises and human right issues, because of the BRIC countries successful strategies preventing the reform of the UN Security Council and giving greater role for European powers. The EU is forehand in forming new policy initiatives as Climate Agreement,

Well-being policy or standardisation. Its influence on other regions, as Africa, remained weak. The ECFR evaluates the EU multilateralism as a weak and depending on agreements of the member states. It was unsuccessful for the EU to gain membership in multilateral organisations instead of its member states or reaching the member states competencies for voting. From the global governance approach the EU is trying to export its ideas and solutions in different functional issues.

In summary, the 2010 years proved not so the clashes of civilisation, but clashes between global Cosmopolitanism and global nationalism in the centre of the EU. The failure of the EU with migration crisis led a new level of policy making, the UN Migration compact, making the EU the most important pillar of the UN. The UN Summit for Refugees and Migrants on September 2016 and the adopted New York Declaration for Refugees and Migrants can be evaluated as legitimising important elements of EU current migration policy, such as the focus on border controls and the EU “migration compacts”.¹ The EU represented itself with 11 ministerial ranking leaders. The Italian suggestion for EU Migration Compact, was adopted as part of the EU foreign policy in 2016 (Migration Partnership Framework), with conditioning development aid with a reduction in the number of irregular migrants and accept returns at all costs. The EU-IOM cooperation on migration process is active, and at the international levels there is a replication of the EUs MPF.

The EPRS, European Parliamentary Research Service & Directorates-General for External Policies study on a global compact on migration collected those EU documents, which are opening legal migration channels². Between 2005–2015 65 million euro was funding 96 programmes on migration to return and reintegrate in their home country. The study declares “The EU” would like to position itself more concretely as a global actor in migration. It plays a strong role in the preparation of the GCM, by promoting effective multilateralism. The DG DEVCO finance the GCM process with 1,7 million euro. EU priorities focuses on human rights of migrants, addressing the drivers on migration (climate change impact, natural disasters, man-made crises), connecting migration and development, including remittances and portability of earned benefits, promoting international governance on migration (cooperation on return, readmission, integration and reintegration), addressing irregular migration (trafficking in human being, smuggling of migrants, promoting border management), promoting regular pathways. (EPRS, 2017)

The failure of making the EU a federative state led to new global policy against sovereign nation states, called building resilient states. The failure of European hospitality, with positive responsibility to protect refugees outside borders, led to a new global policy, to accept moral imperative of global hospitality. The other side of the coin to make the EU into a global security power, while eliminating the security power of the states. The ECFR was a driving force behind

¹ <https://refugeesmigrants.un.org/migration-compact>

² Directive 2016/801/EU about third country nationals entry for the purposes of research, studies, training, voluntary service, pupil exchange or educational projects and au pairing. Directive 2004/66/EU on intra corporate transferees, Directive on seasonal workers Directive 2014/36/EU, new legal migration package on integration of third country nationals, Family Reunification Directive, Long term residence directive, EU Blue card directive, the New Consensus on Development adopted in May 2017

the EU's ambitions became a hard power and it was accompanied with new policies of soft power, making in the centre the cultural policy as memory for the Future and memory of the Holocaust on global scale. Mogherini, as the High Representative for Foreign Affairs and Security Policy of the EU and vice president of the European Commission, presented a new strategy for the EU in 2016. After the failed Greater Europe Plan, the new Global Strategy sees the EU as an imperia, a superpower with 3rd defence finance in the world, first superpower with EU external services, a global power in case of UN projects (climate change, migration, human rights), great power in neighborhood including Central Asia as well, as an autonomous defence power with newly established EDA, and a sacred power with new special legal role and political entity above nation states. The new vocabulary of the EU Imperial Grand Strategy includes the next:

- Strategic autonomy against threats: terrorism, hybridity, economic volatility, climate change, energy volatility. The EU as provider of global security from Central Asia to Central Africa.
- State and Societal resilience (new entry criteria, EEA membership). The resilient state connects the democracy with cultural sensibility and real state building, surrounded deep and comprehensive FTAs, SDG with Cosmopolitan aims in new member states: education, culture, youth, poverty, access to public services, social security for refugees and migrants as well.
- The EU's preventive diplomacy, the new cultural, interfaith, scientific and economic diplomacy together with security capability development can be the main tools for fights against criminal war economies, arm export and trafficking.
- Cooperative regional order: The main enemy of the European security order is Russia, but the EU needs cooperation in Arctic area, the MENA region is suffering from terrorism, demography revolution, migration, climate changes, and the main partner is Turkey while it is a democracy. The new trend in foreign policy a closer Atlantic area, remaining with membership in NATO as outer security community, opposing the Silk road, the one belt and one road policy and insisting on ASEM paved framework.
- New global governance – joined up policies with real representation of the EU in Bretton Woods organisation (UN, IMF, World Bank, WTO, OECD), with using euro in IMF, and withdrawal from U forces. The EU is ahead of institutionalise new environment, health, digital economy, energy, maritime, security issues in WTO FTA framework system. The EU is for the responsibility to protect and the legal possibility of interventions and new policies in case of cyber securities. The EU is promoting the new plural international order making accent on IGOs, INGOs, regimes against states. It started new policies for governance regimes for space-based services, global energy, pandemic matters, biotechnology, artificial intelligence and robotics. The EU is a main financial investor behind non-state actors, financing their activities in case of human rights and forming a new international society.
- The ECFR is most important think tank in forming and measuring the EU global strategy and guides the fragmented actors for operationalisation of it.

In summary, the Maastricht Treaty founded the European Union and made it capable for an aggressive enlargement process. The Lisbon Treaty made from the EU a new Cosmopolitan political entity capable for dealing with inner and outer threats. It made the possible it for dismantling the member states and capable for entering the vacuum left behind the American unilateral power. These thresholds were accompanied with clashes in inner structure of the EU (Brexit, Visegrad Fours, problems with Eurozone) and national and cosmopolitan forces. In the European region the regional order suffered crises with ending the Greater Europe plans in case of Ukraine and Arabic Spring failures. Regional powers like Russia and Turkey, China contested the EU's Grand Strategy, as well the US turned against the EU states as competitive for US economy and parasitic living on US security umbrella.

EU is a Super Power	European Empire	Cosmopolitan Power	EU on the road to Security Power
Contribution to peace	A responsible neighborhood,	Development partner, Europe Aid	European coercive power?
Contributing to global security	Trading bloc	Human rights policy	Dealing with migration
Crisis response, humanitarian aid and civil protection	An expanding Union: European Economic Area	Partner to the UN	Counter - terrorism
Nuclear safety, disarmament	EU enlargement	Advocate of action on climate change	Energy diplomacy
Conflict prevention, peace building	Sanctions policy	Democracy	Culture
EU international cyberspace policy	Rule setting	Responsible sourcing of mineral	Health
Fight against piracy		Resilient state builder	Science diplomacy
Maritime policy		Sacred power above nation state	Water diplomacy

It seems the populist revolts cannot stop the EU from overstretching as an empire. Ulrich Beck called the EU a Cosmopolitan post-imperial empire, as a political community with Charter of Human Rights, and ceasing the nation states to be sovereign, making the nationalism as main Evil and enemy of Cosmopolitanism. The Brexit is withdrawal from a Cosmopolitan Region State, from a new empire, form EEAS, EDA and EU army. The frustration of Central and East European states and forming the Three Seas Initiative is a pilot project for strengthening the Eastern European part of the EU against leftist pushes from Western Cosmopolitanism. The battle is not over but seems that the former Carolingian empire' territory of founding states cannot be stopped with Cosmopolitanism and they are capable for forming a federative entity.

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THE EU'S COUNTER-TERRORISM STRATEGY

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Introduction

Counter-terrorism, political or military activities, represents one of the leading priorities of European Union to prevent terrorism. Terrorism, violence with political objectives against civilians designed to have specific secondary effects, explicitly is threat to the whole world if we consider the situation in Syria, Iraq, Yemen, Europe, West Africa, South and South-East Asia. The reality and extent of jihadist terrorist threat across Europe clearly urges appliance of stricter measures, especially in France, which has been the most affected Member State in 2015, losing 148 citizens and more than 350 injured according Europol (TE-SAT, 2016, p.2). The most recent attack, taking place in Nice on July 14, 2016, alarmed Europe and resulted in tightening security on the short-run, but we need to wait for EU's strategic impact on long-term basis. (RT News, 2016)

Overall aim of my essay is to show gradation of the most important EU counter-terrorism strategies with their pros and cons between 2001–2016. First, I will address historical roots including very first measures and organizations, 9/11's impact on EU policies and assessment of Madrid and London attacks. Continuation and intensification of the attacks at that point did question the effectiveness of the EU counter-terrorism strategy especially regarding Countering Violent Extremism (CVE) and foreign fighters. Consequently, EU and Member States' (MS) close cooperation was indubitably essential for internal and external measures that I analyze under second subtopic of my essay. Further focus is also put on border security measures, assessment of counter-terrorism strategies between 2000–2007 and initiatives before Paris and Brussels attacks. Between 2009–13 1,010 attacks – aborted, foiled or successful – occurred, which led to the deaths of 38 people according statistical data (Delivet, 2015, p.1). The flow of my essay continues with assessment of two most disruptive, Paris and Brussels attacks and recently planned or applied strategies such as establishing ECTC and IRU within Europol, strengthening role of TFTP, developing hotspot approach and revising the Schengen Information System (SIS) which I believe to be some of the most crucial initiatives. There are other important aspects of the topic that I will not address in details including cooperation with the U.S., NATO and UN on internal and external measures of counter-terrorism strategy in different parts of the world as well as the EU's external strategy, which is largely discussed and analyzed in "Terrorism and counterterrorism" written by Brigitte Nacos.

1. History

1.1 The birth of Counter-terrorism strategy

I would like to start with a brief history of EU counter-terrorism strategies. It is still not familiar for many that terrorism was at the origin of the first type of cooperation in terms of justice and internal affairs under the TREVI network, intergovernmental cooperation, back in 1975, because in the 1970's Europe already faced a terrorist threat from the far left. The attacks of September 11, 2001 in the U.S. were a powerful factor accelerating the adoption of an action plan, in which a separate section was dedicated for "The European policy to combat terrorism" (Conclusions and plan action of the extraordinary European Council meeting on 21 September 2001, 2001, p.1). The plan was finalized on 21st September by an extraordinary European Council. Firstly, adoption of a common definition of terrorism, police and judicial cooperation was addressed introducing a European arrest warrant, operational in the Member States since 2007. In addition, the extradition system between MS was introduced allowing the European arrest warrant to directly hand over wanted people from one judicial authority to another. Setting up Joint investigation teams was another crucial step that could indeed improve exchange of information and cooperation between all intelligence services of the Union. Europol's role was put forward from 2001 in terms of MS sharing all useful data regarding terrorism with them as a specialist anti-terrorist team, that was planned to be set up cooperating closely with its U.S. counterparts. Nowadays Europol is an integral part of the EU security architecture six years after the entry into force of the Europol Council Decision, that gradually became trusted partner of law enforcement authorities. Its role changed through years and in 2016 the core focus is "continuation of support to law enforcement authorities in their fight against terrorism, but the strategic emphasis of the organisation will progressively shift from laying the foundation of increased capability to one based on full-scale delivery of operational service and impact." (Europol strategy 2016-20, 2016, p.5) It puts emphasis on consolidation of all its capabilities and expertise for the purpose to deliver effective support to MS for criminal information management in the EU. Moreover, it is essential to mention that Europol's rapid development in terrorism did occur in 2015 when Europe strongly felt the need of counterterrorism measures.

1.2 Changes after 9/11

Another measure introduced as precaution after 9/11 was development of international legal instruments such as issuing a general convention against international terrorism within the UN to enhance the impact of the strategies applied. Equally important aspects mentioned were putting an end to the funding of terrorism calling upon the ECOFIN and Justice and Home Affairs Council on taking necessary measures such as adopting the extension of the Directive on money laundering and the framework Decision on freezing assets. The Union's initiative has not been implemented until 2004 with further revision in 2008. (Delivet, 2015, p.2) MS were also encouraged to sign and ratify the UN Convention for the Suppression of the Financing of terrorism. Strategies mentioned above would be explicitly incomplete without strengthening air security which had to be implemented by the Transport Council introducing classification

of weapons, technical training for crew, checking and monitoring of hold luggage and quality control of security measures by MS. One of the most important role was also given to the General Affairs Council coordinating the EU's global action through consistency between all the Union's policies.

1.3 Madrid attack

Decisive counter-terrorism measures started to be introduced in Europe after the terrorist attacks in Madrid on March 11, 2004, followed by creation of the post-Counterterrorism Coordinator and a declaration on combating terrorism adopted by the European Council in Brussels, March 25, 2004. According declaration, The Union and its MS pledged "to do everything within their power to combat all forms of terrorism in accordance with the fundamental principles of the Union, the provisions of the Charter of the UN and the obligations set out under United Nations Security Council Resolution 1373." (Declaration on combatting terrorism, 2004, p.1) When a single country is affected by a terrorist act, it indeed alarms the whole community and seeks for collective action and solidarity. It is necessary to mention that terrorism was identified as one of the key threats of the EU in the European Security Strategy adapted in December 2003 by the European Council, but train bombings in Madrid, directed by an al-Qaeda-inspired terrorist cell, stressed urgency of countermeasures. The most important measures taken were adoption of a Plan of Action to Combat Terrorism focusing on Legislative Measures and judicial cooperation and 2001 precautions strategies were applied in 2004 including the European Arrest Warrant, Joint Investigation Teams, Combating Terrorism, establishing Eurojust, the implementation of specific measures for police and judicial cooperation. Moreover, the specific measures discussed in the document represent general essential actions to detect, prevent and efficiently react on terrorism acts.

1.4 London attacks

Counter-terrorism strategy was again put forward on July 2005, when London's public transport system was subject to two waves of terror attacks. The first occurred on Thursday, July 7, and involved the detonation of four bombs. The second wave occurred two weeks later on July 21, consisting of four unsuccessful attempts at detonating bombs on trains. Despite the failure of the bombs to explode, this secondwave of attacks caused much turmoil in London. There was a large manhunt to find the four men who escaped after the unsuccessful attacks, and all of them were captured by July 29. As it was necessary, in November 2005, the Council adopted new EU strategy based on four main points: prevention of people turning into terrorists by tackling root causes of radicalization, protecting citizens and infrastructure and reduce vulnerability to attack, tracking and investigating terrorists across European borders and globally and responding the attacks effectively. (The European Union counter-terrorism strategy,2005, p.5) The strategy also acknowledged the importance of cooperation with third countries and international institutions in these four areas. On this basis, a series of legislative and operational initiatives were taken, being successful on the short-run.

2. Strategies

2.1 Borders and security

EU introduced the "Schengen Borders Code" that resulted from the regulation of 15th March 2006, retaining the principle of no checks on internal borders according Delivet (2015, p.2). However, in terrorist attack instances, the temporary re-introduction of internal border controls was possible for a limited length of time. The Schengen Information System, operating since 1995, has significantly developed in terms of having new features such as biometric data - finger prints and photographs - or new types of descriptions - regarding aircraft, vessels, containers and stolen means of payment. With the use of new technologies, a smart borders package could help to strengthen border verification procedures of foreigners travelling into the Union. The idea of this entry-exit system was introduced by European Commission at the end of 2015 "addressing the role of information systems in enhancing external border management, internal security and the fight against terrorism and organised crime." (Elsevier, 2016) The proposed EC entry-exit system will apply to all non-EU citizens who are admitted for a short stay in the Schengen area strengthening the process of monitoring.

2.2 Effect of counter-terrorism strategies between 2000–2007

Before I move onto more recent attacks and counter-terrorism strategies, I would like to reflect on policies developed between 2000–2007. International efforts dealing with terrorism were indeed influential for MS supporting Policy convergence theory which "suggests that joint recognition of a common problem and the establishment of institutions to deal with it will increase the likelihood for national policies to become more similar over time." (Nohrstedt D, Hansen D. 2010, p. 2) Basic five policies introduced during the period were codification of terrorist offence, prosecution procedures, freezing of financial assets, inter-agency counterterrorism body and national counterterrorism strategy. Following 9/11, the problem of terrorism indeed gained prominence on international scale and EU's responses accordingly were creating intergovernmental organizations such as Europol and Eurojust applying supranational laws. EU institutions did play important role in supporting member states to develop their capacity for dealing with terrorism. However, fundamental counterterrorism policy reforms introduced after 9/11 are still contradictory regarding their impact on policy developments within the EU. I would also like to reflect on the reasons of European mobilisation weakness up to 2007 despite numerous measures taken. One of the reasons for ineffective legal certainty was the limited role of the Court of Justice in addition with the European action not being operational enough. Although Europol has accomplished a significant support mission with the MS to facilitate the exchange of information, its operational role has been limited until roughly 2014 with low participation in joint investigation teams. Moreover, Europol and Eurojust's potential has not been fully used by Police and judicial cooperation as noted by Delivet (2015, p.3). Terrorism investigative services on top of this were not always passed through Europol and Eurojust, privileging direct contact with their counterparts in other MS. Finally, a balance between repression and the respect of the principles

of the rule of law has been difficult while fighting to counter terrorism at European level because of the concerns regarding data protection.

2.3 Initiatives before Paris and Brussels attacks

EU also faces phenomenon of fighters leaving Europe to undertake a holy war-Jihad in various places, particularly in Syria. "It is believed that between 3,500 and 5,000 Union citizens have left their country to become foreign fighters since the start of the war and violence in Syria, Iraq and Libya." (Delivet, 2015, p.1) Upon their arrival to Europe, they explicitly pose further threat to security. I would also like to mention that in the beginning of 2015, European Council (2015, p.40) identified the seriousness of the threat underlining importance of backing national authorities by mobilising the instruments of judicial and police cooperation with a reinforced coordination role for Europol and Eurojust through several measures including the review and update of the internal security strategy by mid-2015, further development of a comprehensive approach to cybercrime and cybersecurity, improvement of cross-border information exchanges and prevention of radicalisation with the use of existing instruments for EU-wide alerts and the EU Passenger Name Record System, one of the most effective strategies EU have come up with. The EU PNR proposal, after 2011 rejection, was renewed and concluded by Parliament and Council negotiators on December 2nd, 2015 for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. The EU PNR directive obliges airlines to hand EU countries their passengers' data for flights entering or departing from the Union. It will also allow, but not oblige, member states to collect PNR data concerning selected intra-EU flights. As of storage, "data will initially be stored for 6 months, after which they will be masked out and stored for another period of four years and a half, with a strict procedure to access the full data" (Garcia, 2015) Privacy and personal data is sensitive part of the proposal, which of course has been foreseen and hence, strong safeguards are provided and guaranteed by national supervisory authorities and a data protection officer in each Passenger Information Unit.

2.4 Paris and Brussels attacks

My essay would be incomplete without analyzing and assessing Paris attacks, November 2015, and Brussels, March 2016, which showed the need of new counter-terrorism strategies appliance as ones existed could not detect or stop these acts of violence on European soil. Starting with multiple assassinations on Charlie Hebdo offices on 7 January 2015, followed by the hostage-taking at a Jewish supermarket two days later in Paris left 17 people dead and 22 injured according Estrada & Koutronas (2016, p.2). On November 13, several multisite terrorist attacks occurred again in Paris, followed by suicide bombings and mass shootings. This year, on March 22 2016, three coordinated bombing attacks occurred in Brussels where two explosions hit the Zaventem airport followed by a further blast at the Maalbeek metro station. The overall attack caused the lives of 32 people whereas over 300 people were wounded, provides the same study (E&K, 2016, p.2). Before these attacks, Game-theoretic approaches introduced in 2011, was believed to benefit countries providing them with freedom to take

defensive measures and in the case of transnational terrorism, free ride on the pro-active measures of others. Let me also touch upon some of the reasons of Muslim immigrants' segregation rather than integration in France and Belgium, being one of the possible motives for attacks. These countries' government with substantial Muslim population, which stands at nearly 7.5 and 5.9 percent of the total population (E&K, 2016, p.12), seemed to be failing in terms of minorities' integration in their multi-cultural setting. Muslim population facing high integration barriers in the areas of employment, housing, education, political involvement and state community funding makes them stay segregated and meanwhile, susceptible to radical influencers. Equally important issue is trafficking in firearms, which continues to be a key concern in Paris attack. Further attention was drawn on how the terrorists had access to high-power assault weapons, the kind outlawed in France. The reason why rifle and assault weapons were discussed more than bombs or chemical weapons is that more death and destruction was caused by firearms. On the one hand, it was unusual and different from previous attacks where explosives were main tools of extremists. On the other, some of the notable attacks with firearms were in the French city of Toulouse in 2012, May 2014 in Brussels, January 2015 Charlie Hebdo attack, etc. according Time (2016). Europol will explicitly increase its support to MS in the fight against trafficking in firearms and will also provide a First Response Network to investigations but the root-cause of the shift in tactics is not addressed, which I believe to be the rise of "lone wolf" terrorism operations, usually resulting in comparatively few casualties. Contemporary terrorism explicitly uses unconventional development strategies bypassing the traditional counterterrorism mechanisms. Therefore, EU cannot apply previous strategies and needs to be multi-faceted and flexible, evaluative and cost effective.

2.5 Recent counter-terrorist measures

Further emphasis will be put on cooperation with Interpol to set up common strategic actions to handle global challenge of terrorism the EU faces today. The MS exercise of responsibility in maintaining public order and the protection of internal security, according Article 72, TFEU (The Treaty of the functioning of the European Union) needs to be coupled with EU's work to ensure a high level of security most importantly via measures involving coordination and cooperation between police and judicial authorities. (Delivet, 2015, p.1) Consequently, for the intelligence picture improvement and increase of operational support to MS, "Europol will work towards an intelligence-led, user-driven and sustainable approach to collaboration amongst EU-MS, partners and Europol on counter-terrorism issues." (Europol strategy 2016-2020, 2016, p. 19) The role of European Counter-Terrorism Centre (ECTC) is also remarkable bringing together Europol's existing capabilities to build the necessary infrastructure to enhance information exchange, under competence of the Secure Information Exchange Network Application (SIENA) which has been broadened with creation of an area allowing direct exchange of information between CT authorities and Europol. One of the strategies also addresses online radicalization, terrorist groups tool through which they reach out to young people using the internet, that provides entertainment, connectivity and interaction for millions of people across the world. Europol uses The EU Internet Referral Unit (IRU) to "target terrorist material online and has made over 3,200 referrals for internet companies to remove content,

with an effective removal rate of 91%.” (Communication from the commission to the European Parliament, the European Council and the Council, 2016, p. 7) In order to address the threat posed by returning foreign fighters, revision of SIS and introduction of hotspot approach including integrated and systematic security checks have been introduced, that I believe to be the most important innovations in addition with initiatives mentioned throughout my essay. It is necessary to also refer to European External Action Service (EEAS, 2016) according which counter-terrorism as a matter of national security is Member States competence while external dimension-is the subject of collaboration between relative institutions and Member States.

Conclusion

To sum up, terrorist incidents and threats throughout years directed EU’s drastic measures and counter-terrorism strategies, which do not seem to be valid and effective enough as atrocities keep occurring on European soil. I clearly showed terrorist incidents being highly diverse and volatile over time and across countries make it extremely difficult to estimate terrorism risk depending upon number of factors. The idiosyncratic nature of terrorist incidents indeed is based largely on the duration and magnitude of the event, the size and state of the local economy, the geographical locations affected, the population density and the time of the day they occurred. Gradation of measures introduced starting from 2001 after 9/11, strengthening in 2005 because of Madrid and London attacks occurrence and reaching its peak of attention in 2015-16, as a reaction to more recent atrocities, has been carrying the same goal of combating terrorism, ensuring the security of citizens and preventing radicalization through safeguarding European and global values and enhancing international efforts. I believe, reduction of terrorists’ access to financial and other economic resources addressed by TFTP, maximisation of capacity within EU bodies and MS to detect, investigate and prevent terrorist attacks are indeed essential. As argued in my essay, introduction of Smart border packages and EU PNR can explicitly contribute to protection of the security of international transport and ensure effective systems of border control. I would also like to recap on Policy convergence theory proven with enhance of MS capacity to deal with the consequences of terrorist attacks closely cooperating and working with relevant EU branches of Europol, Eurojust, Interpol, ECTC, EEAS as well as UN, NATO and international actors including third world countries, where counter-terrorist capacity or commitment to combating terrorism needs to be enhanced.

Effectively countering online radicalization is also indubitably key strategy addressed by EU with creation of Radicalization Awareness Network Center of Excellence and Internet Referral Unit in 2015, but these initiatives are not enough, further innovative measures need to be taken with MS assistance. Breach of human rights is another aspect for which blame cannot only be put on terrorists because counterterrorism measures may also be found unjustified when restricting certain rights for the protection of the public. Additional attention, in my view, needs to be paid to phenomenon of deradicalization and disengagement as well analyzing push and pull factors to minimize repetition and further extremization as majority of the terrorist suspects involved in Paris and Brussels attacks are EU nationals who had been radicalized towards violent ideologies. (Communication from the commission to the European Parliament, the

European Council and the Council, 2016, p.6) Last but not least, absence of information has recently been realized to represent crucial setback for CT policies; Therefore, there is a clear necessity of further cooperation, trust and support to continue building upon established tools and strategies at the National and European level providing European citizens with high level of security.

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A TREATY TO REMEMBER**MORE THAN 55 YEARS OF FRENCH-GERMAN RELATIONS IN A HISTORICAL PERSPECTIVE****Péter Krisztián Zachar, PhD**

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The year 2018 will mark a great anniversary in Franco-German relations. This year we are celebrating the 55th anniversary of the Élysée Treaty. This treaty is considered to be the basis of modern relations between the two states. Since then, the ‘French - German tandem’ – after the opposition of a century – has been regarded as the driving force of the integration in Europe. During the 20th century the old enemies have gradually become cooperative partners that significantly determined the operation of the European political system after 1945. Their former opposition eased as a result of the perception of safety and their agreement contributed to further development of the European Union. The cooperation may be an example for several nations that are still confronting with each other politically and psychologically. So we can confidently ask ourselves, “What has the Élysée Treaty ever done for us”? In this contribution to the diplomatic history of Franco-German relations, I am looking for the answer to this question. I would like to highlight a number of aspects of the creation of the Élysée Treaty and also emphasise the importance of the treaty for today's EU.

The intensification of relations between the two states after World War II was not an ad hoc idea. The aspirations for cooperation, understanding, and reappraisal of the past and good neighbourly relations, all had their roots – after decades of rivalry – in the interwar period. (In detail: Erbar, 2003.; BPB, 2003; Zachar, 2013.) During this time there was both economic, cultural and political ambitions in France for an intensive relationship with the Weimar Republic. Instead of ‘grandeur’ much more ‘sécurité’, instead of hostility much more cooperation. After the stubborn attitude of George Clemenceau and Raymond Poincaré, and after the Ruhr crisis (Diószegi, 1994. 286-296.), this was achieved with the help of Aristide Briand, who sought dialogue with German chancellor and minister of foreign affairs, Gustav Stresemann. “The followers of this approach believed that the recovery of Germany cannot be hindered after more than one decade and this new Germany is going to be even stronger than France and its allies together. The German revenge may be avoided only if France makes

concessions at an early stage to Germany and reconciles the German nation as well as protects French interests.” (Diószegi, 1994. 268.) Thanks to the two ministers of foreign affairs, the relationship between Germany and France became so improved that negotiations – first in secret – could be started on further economic and political rapprochement. Stresemann proposed a German financial aid, Briand considered the emptying of the Rhineland as they realized that they mutually needed each other. France needed the German coal as well as Germany needed the French iron ore. The next actions were defined on 17 September 1926 in Thoiry, near Geneva, in a restaurant during a common lunch. (Ormos-Majoros, 2003. 314-315.) As a result of the negotiations, the example of a later European economic cooperation was born in September 1926: it was a cartel agreement of German, French, Belgian and Luxembourgian iron and steel factories (Internationale Rohstahlgemeinschaft). Austrian, Hungarian and Czechoslovakian firms also joined in 1927. These actions were internationally acknowledged. Consequently, Briand and Stresemann were awarded the Nobel Peace Prize shared in 1926. Moreover, the following year it was granted to two, a French and a German pacifist: Ferdinand Buisson, the founder and president of the International League of Peace and Freedom, and Ludwig Quidde, representing Germany at several peace conferences. (Bock – Meyer-Kalkus – Trebitsch, 1993.)

Cooperation also continued: according to the ‘spillover’ theory on international integration, heavy industry encouraged German-French pharmaceutical firms to form cartels in 1927: the merger of the German IG Centrale des Matières colorantes (C.M.C) integrating French firms covering 80% of the German and French market. (It was also expanding when in 1929 the Swiss Basler Chemie and in 1931 the British Imperial Chemical Industries joined.) These economic initiatives started to establish the free circulation of varied products and raw materials, and exact regulation of the markets, raw material supply and job creation. As a result later several important plans were made to unite Europe economically. Ideas of large-scale industrial, economic cooperation are known from 1932. They were also French-German initiatives. Therefore, in 1932 the leaders of the French and German pharmaceutical and electronic industry met in Luxemburg, where the Germans suggested that the compensation payments should be stopped in order to prevent the country from the national socialist and communist takeover. To improve further cooperation they developed the replacement of the American loans with the French funds and also the establishment of a (German-Belgian-French-Luxembourgian) regional customs union. The latter one was an answer to the German-Austrian customs union, and André Tardieu, French Prime Minister’s plan related to the establishment of a customs union along the Danube. (Vizi, 2012.) However, all these ideas were eliminated by the upcoming global economic crisis and the rise of nationalism, protectionism and populism. Nonetheless, this few years may be considered one of the most intensive periods of the French-German reconciliation. They created the basis for a new beginning after 1945.

After the horror of World War II the global scope for the European states changed. The old continent was unable to free itself from the war and the consequences and it depended on the powers from outside Europe, the Soviet Union and the USA. However, this time the intervention of the two powers seemed permanent unlike after World War I. Leading powers of Europe had to conform to the decisions of other states and find possible solutions. (Gazdag, 2005. 62.) Consequently, the German-French relationship no longer was a system of relations

with global influence. It was restricted from the platform of global politics to a segment affecting the situation inside Europe (mainly Western Europe).

After the Second World War French politics were divided again. Many influential diplomats wished for a return to the grandeur's policy and the implementation of Clemenceau's goals. Even the leader of the temporary administration, Charles de Gaulle recalled the grandeur concepts after World War I based on historical realities, and even communicated the suppression of Germany. (Gazdag, 2005. 72.) On the other hand we find the idealistic approach, a policy considering the Versailles Treaty the reason that made the system collapse – and in accordance with the opinion of several other contemporary philosophers – and wanting to remove the selfishness of the national state. This concept was focusing on the solidarity with the Germans and the new order of peace in the European Federation. According to the concept only the European collaboration and the elements beyond nations would provide the long term control over the German aggression. (Schuman, 2004. 28.) Their opinion was that a free (i.e. not under communist influence) Europe could perform any long-term integration only if its two central nations return to the policy of cooperation like before the war and the economic crisis. (Ziebur, 1970. 49.) This let a new chapter begin in the history of the two nations, it seemed that the period of the ancient French-German opposition finished. Especially, as Konrad Adenauer, the key player of the German politics after 1947, from the first moment he returned to politics, stood up for the cooperation with France and the European integration. (Die Zeit, 1949.) /For the sake of simplicity, in this study under Germany and German politics we only understand the political steps and politicians of West Germany (Federal Republic of Germany, FRG)./

During these years, the process of European unification experienced a new beginning and was able to record the first important successes. Without giving any details of the first phase of the European integration, the sectoral cooperation derived from Jean Monnet and Robert Schuman's concepts were significant and similar to the industrial cooperation of 1926 described above. (Schuman, 2004. 26-27.) They led to the European cooperation of the Coal and Steel Union and the Treaty of Rome. (Lőrinczné Bencze, 2009.)

Despite the successes in foreign policy, however, there were numerous difficulties in the domestic policy of the European states. During these years, France and Germany also followed different paths. In France that decade was the most confused and anxious period of current politics: Indochinese war, the Suez Case, rebellions in Algeria and the fall of the European Security Community (Pleven Plan), which was of key importance regarding integration. Political crisis resulted in an economic situation close to bankruptcy with huge budgetary deficit and lack of foreign exchange reserves. On the other hand, the other side of the Rhein, due to the policy and social market economy of Adenauer and Ludwig Erhard the era was an 'economic miracle' with full employment and complete national sovereignty (the FRG was member of the NATO). Voices requiring new politics were gradually louder in France demanding the return of the 'Saviour of the home'. (Gazdag, 1996. 132-135.) As Charles de Gaulle lived in the Colombey estate, which was the 'island of peace' for him in solitude. Finally, in 1958 he returned to politics as the president with full power, creating a new constitution. (See in detail: Csizmadia, 2000.; Defrance – Pfeil, 2011.)

De Gaulle's political return was interestingly related to the halt of the European integration. Apparently, the cooperation stopped contrary to the Treaties of Rome and further actions was in danger. It was obvious that the common action behind the attempts for the union slackened after the pressure had weakened and several players had left the front line of politics that launched integration. The implementation of the concepts on the European Union was always driven by the unsolvable 'German issue', as the most serious stage of the Cold War. At the moment when it was indicated that the bipolar system was consolidated and the nuclear stalemate would also hinder it, the political unity attempts in Western Europe stopped and particular national interests appeared. Mainly de Gaulle's return slowed down the process of integration. The president was known – based on his communication while living retired – that he was against any supranational integration that would hurt or restrict the sovereignty of France. In his opinion, as Kissinger (1996, 598.) quotes, "it cannot be tolerated that the well-being of a country cannot depend on the decisions and actions of another country, even if they have amicable relationship between them". A key question was therefore that what the attitude of the new president would be toward the new situation.

De Gaulle's absolute objective – as it was indicated above – was to improve and recover the 'grandeur', i.e. the French power politics and the 'gloire', i.e. state glory. He wanted to provide France influence to the global politics as a new pole in the bipolar world. Consequently, he intended France to be a mediator between Washington and Moscow in political terms. However, he was aware that France was not strong alone to play that role. Therefore he tried to recruit the existing organisations of integration for his purposes. A 'European Europe' regaining independence from the United States became an important element of his strategy of foreign policy. Its core was not the integration, but the frequent cooperation of the member nations. (Gazdag, 2005. 198.) The French president wanted to build such cooperation between nations, mainly between France and the Federal Republic of Germany (FRG).

The first step toward the cooperation was the de Gaulle-Adenauer meeting in September 1958. The French statesman hosted the other right wing, conservative and Catholic politician in his family estate and their conversation was easier than he had expected. Maybe this was the first mentioning of the 'European Europe' concept he wanted to get the support from the FRG. He explained in the concept that common actions of foreign policy should be made in the form of 'organic relationships' not only toward the east of Europe, but the regions also further – independently from the USA. (Lappenküper, 2001.) De Gaulle's concept considered the closer German-French relationship part of regaining the global power of France. He wanted to make use of the rapidly developing German economy within the EEC without having to pay high political price for it. The two states would be able to establish the self-defence of Europe, which would be guaranteed by the status of a nuclear power and an independent nuclear arsenal ('force de frappe'). (Gazdag, 1996. 115.) Thus, at the time of modern imperialism and internationalism 'Gaulle-ism' was born. It was trying to count on the German state and the European cooperation. (Gazdag, 1994.)

The cooperation of the two old gentlemen greatly improved after they first met. Adenauer and de Gaulle met 15 times personally and sent 40 official letters to each other altogether. Private conversations (both spoke the other's language well) exceeded one hundred hours. (Baumann, 2002.) The most epic moment of the French-German thaw must have been a row of events in

July and September 1962. They could even be considered ‘the symbolic finale of the reconciliation of the two nations’. (Salgó, 1972. 126-127.) During the personal meetings and mutual conferences, the French president explained his concepts of closer cooperation to his German partner on 18 September 1962. It was a short memorandum suggesting the coordination of foreign policy, policy of defence, educational and training issues between the two countries. The German response arrived on 8 November indicating a few clarifications and corrections, but basically each suggestion was accepted. Finally, both ministers of foreign affairs, Gerhard Schröder (only the namesake of the later chancellor) and Maurice de Murville developed the final draft of the text in Paris on 16-17 December 1962. While the negotiations started and resulted in quick success, the motivations for the negotiations were very different. For France, the treaty should ensure a new radius in foreign policy. De Gaulle wanted to strengthen his European concept and break away from the USA. On the other side, elderly Adenauer thought that a constitutional agreement binding to his successors was essential to continue his heritage. Moreover, he thought that a treaty with foreign political coordinating mechanism could prevent France from establishing eastern policy with the Soviet Union without the FRG. Thus after the short period of preparation, the treaty was finally concluded ceremonially on 22 January 1963, in the Élysée Palace. The document was named ‘Treaty between the French Republic and the Federal Republic of Germany on French-German cooperation’.

The core element of the treaty was the agreement that the two countries consult with each other on issues of foreign affairs to form a common point of view. This is facilitated by the meetings of the heads of the states and government leaders, the ministers of foreign affairs and education every half year, as well as the consultation of ministers of defence, and the meetings of the commander-in-chiefs and ministers of youth and sports every two month. Also this agreement included the mutual acceptance of higher education degrees, teaching each other’s languages, the possibility of labour force swap and common policy of aiding developing countries. Additionally a commission between ministers was established in both countries for monitoring the cooperation. The treaty was rather a program than explaining exact tasks: implementing common negotiations, coordination of the relations with developing countries, common projects of weapons industry, swapping experience of those serving in the army, student swapping programs, mutual language learning programs, mutual acceptance of degrees and implementation of common scientific projects. (Gazdag, 2003.) It is worth mentioning that economic issues were not involved in the treaty. On the one hand the cooperation of the two countries was so developed that the parties did not find further regulation of the topic important. On the other hand in terms of the European economic integration the French and the German ideas were quite different (which was later indicated by the ‘empty chair crisis’). Therefore it was reasonable that they did not intend to make a joint statement. (Pfeil, 2013.) The treaty created a frame and according to the German chancellor’s concepts defined the future of the French-German cooperation. However, the implementation was performed by Adenauer and De Gaulle’s successors. They tried to prevent the treaty from interfering the ongoing European integration and the Euro-Atlantic relations.

In this context the process of the ratification of the treaty is a significant event of diplomacy. While the French National Assembly easily codified the treaty, Bundestag in Germany – as a result of the political dividedness – attached a preamble by breaching the regulations of the

international laws. This indicated serious Atlantic devotion: the foreign policy of the FRG based on the close relationship with the USA, the military integration realized in the NATO, the West European integration developing over the nations and the participation of Great Britain in the Common Market. In other words it is completely the opposite what de Gaulle imagined. (Gazdag, 2003. 22.) However, it did not generate a dramatic turning point in the relationship of the two countries, rather the Élysée Treaty was a sample for several current initiatives of the European integration. For example, mutual acknowledgement of diplomats or the regular conferences of the heads of government.

One key area of cooperation was to facilitate the development of the youth; no wonder that one of the first organizations in 1963 was the *Deutsch-Französisches Jugendwerk*, which was a common swap program for the youth. Successful actions for mutual acknowledgement of degrees and the educational cooperation (e.g. common German-French series of History books for students) resulted in the establishment of a common German-French College in 1997. As a result 70 German and 80 French institutions work and issue common degrees of specific trainings. But even more significant is that three dozens of bilingual kindergartens were established.

Also to emphasize technical cooperation it is worth mentioning that the telecommunication satellite called *Symphonie* was constructed as a common French-German project in 1967 as the benefit of the Elysée Treaty. As the resumption the common French-German satellite, the TV/AT-TDF, was constructed in the 70s, which provided the broadcasting of common TV (ARTE) and radio channels. The European launcher Ariane had been constructed by the '80s, which transported weather, communication and geological observing satellites to the space.

Good relationship between German chancellors and French heads of government remained outstandingly important to encourage integration. In the '70s Helmut Schmidt and Valéry Giscard d'Estaing made private initiatives to realize the first global economic summit (1975), for the submission by Schmidt and Giscard, the European Council (1974) was realized for the suggestion of Jean Monnet, according to the sample described in the Élysée Treaty, then in 1979 also encouraged by the same players the monetary cooperation was launched (ECU, EMS). (Defrance – Pfeil, 2005.)

The festive commemoration on 22 September 1984 in Verdun was outstanding in the relationship of the two countries. The participants and millions of TV viewers could see the historic holding hands of François Mitterrand and Helmut Kohl. After the passport union was established between the two countries in 1985 (the precursor of the present Schengen zone) in September 1987 the first common French-German military exercise took place near the Bavarian Manching. The Bundeswehr had 55,000 and the Force d'Action Rapide had 20,000 soldiers in the action which resulted in extremely important decisions on significant initiatives. For the 25th anniversary of the Élysée Treaty, in 1988 a common Council of Defence and Security Policy and another common Financial and Economic Council were founded between the two countries, which later made the introduction of the euro much easier. In the city hall of Aachen (the historic seat of Charlemagne) President François Mitterrand was speaking about the 'common well-being' of the French and the German nations. All these were less important compared to the establishment of the French-German military brigade. But it was realized only

more than one and a half year later due to the European progress of transformation and the German unity movement on 17 October 1990. (Miard-Delacroix, 2011.) The common brigade may have been an example for the Eurocorps established in 1992 and the highest level of common conference of defence and security policy led to the development of the French-German security and defensive concept published in 1996. Moreover, in the same year the common German-French common brigade absolved the first military mission in Bosnia-Herzegovina. The collaboration of Helmut Kohl and François Mitterrand – after the ones by Adenauer and de Gaulle, and Schmidt and Giscard d’Estaing – seemed really historically significant. It was also found by the contemporary publicity as the two statesmen were granted the Charlemagne Prize shared. (Miard-Delacroix, 2011.)

For the 40th anniversary of the treaty, on 23 January 2003, the German Federal Assembly and the French National Assembly had a joint session in Versailles. They sent a message to those having historical affinity: the nations succeeded in getting over the grievance felt by the French in 1871 and by the Germans in 1919. Now together, visualizing a new picture of the future, they are expecting the current challenges of the European Union. Also an example to follow is the creation of dual citizenship not existing before, and the foundation of a common foreign mission in Podgorica in 2003. Gerhard Schröder, German chancellor, could not only inaugurate a common German-French police and border control cooperative centre based in Kehl, but was invited first in the history to a central commemoration of World War II, the 50th anniversary of the battle of Normandy. The friendly hug of Jacques Chirac and Schröder was a worthy continuing of the gestures taken by the ancestors.

The two states celebrated the 50th anniversary with common initiatives again. The most outstanding is a 2 euro coin, which is issued in the member states. On the back the portraits of Adenauer and de Gaulle and the bilingual texts ‘50 years – 2013’ and ‘Élysée Treaty’ were graved. Also a unique stamp was issued in Germany with the value of 75 euro cents and (maybe as the symbol of the ‘unusual marriage’?) on which a man and a woman are watching the future through a common telescope. Its left lens is coloured with the German and its right lens with the French national colours. (50 Jahre Elysee, 2013.) Also the two fast train networks, the French TGV and the German ICE were connected and the cross border medical supply was planned. A common German-French military training institution has already began operation in the suburb of Kabul for the Afghan non-commissioned officers.

All this symbolizes well: the two nations are essential players in the formation of the European politics. Regarding directly measurable results, the first is the positive impacts of the stable political connections on the society and the economy. The common dependence of the two nations is the key and condition of further integration. For the past fifty years this connection has been indicated by 2200 twin city relations, over 350 cooperative actions of research organizations. These historical moments have successfully carried out reconciliation between the Germans and French. Today the polls show that more than 85% of the citizens of the two states have a good or very good image of the neighbouring country. The ‘motor function’ of the two countries in the European processes cannot be denied. In this development, the historical reconciliation, the special connection that was realized by the Élysée Treaty, were the landmarks of the period. They were able to give an outstanding content to the rigid international law that may be an example for other nations carrying various historical harms. Even today, the

two states are still working together to find answers to the current questions and problems of integration – despite the individual solitary attempts in foreign policy from time to time. (Hettyey, 2015) After the financial crisis overcome and the joint solution of Greece's problems (Molnár, 2013), Brexit or migration is now on the European agenda. These problems can only be solved by intensified cooperation. And all the signs point to a continuation of this strengthened cooperation between Germany and France in the coming years...

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THE BREXIT ECONOMIC EFFECTS ON UNITED KINGDOM

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Abstract: *This paper highlights the consequences of Brexit on the economy of United Kingdom and also of Europe. The United Kingdom is officially on its way out of the European Union after 44 years as a member. This exit i.e. invocation of a part of European law known as Article 50 of the Lisbon Treaty, was triggered as a follow-up to the Brexit referendum result. Article 50 sets out the process for any country that wishes to exit the EU. Before that treaty, there was no formal mechanism for a country to leave the EU. Despite the process, there are many complications involved in any such exit. 'European Union (Withdrawal Bill)' attempts to remove one such complication i.e. to restore supremacy of UK's judiciary and laws over EU laws and to ensure smooth exit from union by adopting EU laws and regulations into the UK laws thereby, ensuring that the required regulations and standards are in place. In addition, the exit process could very well shape the future of UK's economy putting UK as part of European Economic Area (EEA) or Free Trade Agreement (FTA) or some transitional arrangement. Any such arrangement would require trading off sovereignty with liberalising trade. The Brexit impact is perceived by Bank of England to cost nearly 25% of the business investment when compared to the pre-Brexit numbers. UK is also home to the world largest financial centre and with Brexit, possible end of free movement, could very well bring the demise of the centre and the world financial system. Through this essay, we attempt to look into how the Brexit determines the economic issues of UK, and the EU. Also we wish to analyse how the relationship has changed between UK and the EU due to the Brexit. Our aim with this essay is to analyse the implications on financial sovereignty, state sovereignty due to the Brexit.*

Keywords: *Lisbon treaty, Brexit, EU, global challenge, financial sovereignty, state sovereignty, European Union (Withdrawal Bill), The Great Repeal Bill, UK*

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Introduction

“England still stands outside Europe. Europe is apart and England is not of her flesh and blood.” (Keynes, 2000) This sentence was put on paper by world-famous economist John Maynard in 1920 after the end of World War I, in his work on the Versailles peace treaty. This sentence shows us, that this issue of Brexit is not new and dates back in time. However, in contrast, Winston Churchill, had shared his vision for „the United States of Europe” and in his letter to then Foreign Secretary Anthony Eden, expressed his desire to see the Europe without barriers and with unrestricted travel. (Nelson, 2016) Despite that, when it came to formation of European Coal and Steel Community in 1951, United Kingdom chose to skip it as it found the proposal supranational in nature. The same reasoning applied in 1957, when Treaty of Rome was signed, which led to the foundation for the European Union's predecessor, the Common Market. (Smith, 2016)

UK did eventually join the EU in 1973 but not without public discontent. It was 44 years later on 23 June 2016, that the United Kingdom voted for a British exit (a “Brexit”) from the European Union in a referendum held with 72.2 percent participation. The majority of British citizens voted for leaving the EU. (Koller et al., 2016) As a result, the United Kingdom is officially on its way out of the European Union after 44 years as a member. This exit i.e. invocation of a part of European law known as Article 50 of the Lisbon Treaty, was triggered as a follow-up to the Brexit referendum result. Article 50 sets out the process for any country that wishes to exit the EU. Before that treaty, there was no formal mechanism for a country to leave the EU. Despite the process, there are many complications involved in any such exit. In order to examine the effects of Brexit, we need to take a little look back in the past at the antecedents of this phenomenon. Clear signals can be traced across the time scale, which lead to today's position.

Through this paper, we attempt to explore the consequences of Brexit on the economy of United Kingdom and also of Europe. In addition, we examine the issue of sovereignty versus supranationality, which has haunted the UK from the early days of EU formation process. The essay is strongly based on the hypothesis that the Brexit decision cannot be explained only by referring to economic considerations. The explanation should point out the desire of the voters to defend national sovereignty and reject the supranational project of European integration. We attempt to examine those definitions as well.

History

In 1973, the United Kingdom became a member of the European Economic Community. (BBC, n.d.) Country's journey from there to one day become member of EU was not smooth and was marred with doubts, be it related to Exchange Rate Mechanism (ERM) or European Union itself. (BBC News, 2007) In fact, Eurobarometer No.40 survey carried out by the European Commission in months of Oct, Nov 1993, just before the EU treaty (the Maastricht Treaty) came into force, noted the lack of UK's public support for the treaty. The people of country did not associate with the European identity, unlike their counterparts in other EU member nations.

The survey results showed that 49% of the UK's populace was against the formation of European Union with a European Government responsible to the European Parliament and only 27% favoured it. (Eurobarometer, 1993)

Fast forward to the recent times. The government of David Cameron vigorously stated that European integration has gone too far and in the wrong direction. The 18th paragraph of the European Union Act, the so-called "sovereign clause", stated in principle that the British Parliament is completely sovereign, according to which EU law only applies because parliament so wishes. (European Union Act, 2011) The opportunity for Brexit i.e. the UK's exit from the EU, first appeared in 2013 when David Cameron, then UK prime minister, promised to hold a referendum on EU membership if re-elected in 2015. Soon after his re-election, Cameron initiated the process to hold the referendum despite being supporter of UK's EU membership. (Iyengar, 2016)

The main problems prompting Brexit were unrestricted labour inflow from other member states triggered by huge divide within the EU(while southern Europe reels with high levels of unemployment of near 20%, Germans face mere 4.2% unemployment), (Friedman, 2016) too much regulation, and UK payments to the common budget. In addition, the Brexit attempted to prevent dilution of the democratic political system, which has come into question since the inception of European Parliament and to take back control, which has been lost to the EU. (Johnson, 2017)

Lisbon Treaty

The foundation of the European Union had been laid down by the Maastricht Treaty and by the Treaty of Rome. The two treaties together formulated the direction of the operating principles of the EU. The Lisbon Treaty signed later on 13 December 2007, served to amend the existing treaties with the purpose to make the union more effective. The Lisbon Treaty is divided into two parts: the Treaty on European Union and the Treaty on the Functioning of the European Union. (The Lisbon Treaty, n.d.) The Lisbon Treaty was ratified in all the 28 EU Member States and entered into force on 1 December 2009. Its purpose was to close the processes started in the Amsterdam and Nice Treaties. (Making the EU more efficient and consolidating its democratic legitimacy). In addition, the treaty had created a legal opportunity for member states to leave the EU. Article 50 of the Treaty stipulated an exit clause from the union. (Treaty of Lisbon, 2007) It is this Lisbon Treaty, which has played a critical role in the Brexit process.

According to the Article 50 of the Lisbon Treaty, in accordance with its constitutional requirements, any member state may decide to leave the union. The member state planning to make an exit from the union, shall notify this intention to the European Council. On the basis of guidelines issued by the European Council, the union negotiates and concludes an agreement with the state, in which the state concerned determines the detailed rules for the exit of that state in the light of its future relations with the union. Not later than two years after the date of entry into force of the agreement on exit and, failing that, the intention of withdrawal shall be no longer applicable to the state concerned, unless the European Council, acting in agreement with

the member state concerned, decides to extend this deadline unanimously. Because of the supranational nature of the union, member states delegated part of their sovereignty to the community, which led to supremacy of EU law over the national law. With the withdrawal of all obligations to the European Union, the follow-up of the directives will cease.

If a state which has withdrawn from the union requests a re-admission, the application of the procedure laid down in Article 49 shall apply at its request. (Treaty of Lisbon, 2007) Treaty on European Union's Article 50 does not establish any substantive requirements for the initiation of an exit procedure, and the member state concerned does not yet have any obligation to state reasons. (Koller et al., 2016)

Supremacy of EU law plays a critical role. The legal doctrine of supremacy of EU law means that EU law takes precedence over national laws of the member states. (EurWORK, 2011) The precedence principle applies to all European acts with a binding force. Therefore, Member States may not apply a national rule which contradicts to European law. (EUR-Lex, 2010) The definition was created by the Court of Justice of the European Union, when enshrined the precedence principle in the Costa versus Enel case of 15 July 1964. In this case, the court declared that the laws issued by European institutions are to be integrated into the legal systems of member states, who are obliged to comply with them. European laws therefore have precedence over national laws. (EUR-Lex, 2010)

Role of sovereignty and supranationality in Brexit

From above, one can note that the aspects of sovereignty, supranationality have influenced the decision makers of UK even from the earlier days, when the country attempted to be part of EU. In addition, both these aspects are considered to have played a significant role in the Brexit decision as well. For instance, Boris Johnson, the mayor of London at time of Brexit referendum, had shared that EU membership is incompatible with parliamentary sovereignty. (The Economist, 2016) Given the importance of these aspects, we attempt to analyse the role of sovereignty and supranationality in Brexit.

Stephen Phillips, a Conservative MP for Sleaford & North Hykeham, shared that Brexit was about taking back control and restoring democracy. He added that EU was not answerable to the citizens and UK citizens prefers to have control to choose and elect people, who work for them and are answerable to them. The elected people, who can decide policies like whether to raise taxes or not, in-order to support its public services among others. (Phillips, 2016) However, it is important to note that though it is true that European Commission is unelected and can draft legislations, but it will be wrong to ignore that these legislations are adopted by Council of Ministers, which comprises of elected national governments and the elected European Parliament. (The Economist, 2016)

European Parliament plays critical role in legislation, which can be understood from the fact that EU is involved in almost half of the legislations in Europe. This raises concerns over the national parliaments playing limited role in EU. The concerns, which were bolstered by a deal

which provides provision for a law to be withdrawn if 55% of national parliaments object to it. Despite the role played by European Parliament, voters as per Martin Schulz, the parliament's president (2014-2017), have limited awareness about the parliament's work and perceive parliament as ineffective. (The Economist, 2014) It also explains the low turnout of near 38% in European Parliament elections, which is much lower than the 60+% turnout in the national elections.

It is important to ponder over voter's perception of the European Parliament and their disinterest in the election process. Concerns raised by Heather Grabbe of the Brussels-based Open Society Foundations that parliament tends to pass laws, which do not resonate with the voters and statement from Alex Stubb, Finland's trade minister (2015-2016) and a former MEP, that MEPs tend to have power without responsibility, do provide some clues. In addition, European Parliament's elections are noted to be inconsequential. A national election vote, could mean an end of power for an unpopular government, however it is not the case for European Parliament, where votes do not really change the course of parliament irrespective of the parliamentary majority of European People's Party (EPP) or the centre-left Socialists and Democrats (S&D). (The Economist, 2014)

These concerns, had created an environment of distrust among the voters, who felt the need to take control back and have a parliament which is accountable to them. Damian Chalmers, the professor of the London School of Economics, shared that it is very important that in Europe today the negotiation of sovereignty is inseparable from the EU and the discourse on EU law. (Chalmers, 2013) The result of the referendum cannot therefore be explained by economic factors; the leaders of the exit and the Brexit voters, were led by the intent of protecting national sovereignty. (Egedy, 2016)

Impact on UK's economy

Brexit decision has been taken and Article 50 of the Lisbon treaty has been invoked, however with Brexit agreement discussions going on between UK and EU, it is important to look into economic effects of the Brexit and how the uncertainty around Brexit agreement is impacting businesses and economy at large.

In 2017, economy grew at a slower rate of 1.5%, which was much lower than the 2.7% prediction made by a forecasting group, Economists for Brexit, provided the UK votes to leave EU. The numbers however, were in contrast to Treasury expectation of a mild recession. (Financial Times, 2017) While looking at numbers especially for Brexit, it is important that we do not ignore the possibility that current economic behaviour is weak because of fundamental factors and not the one arising from the referendum vote. A good measure for that is possible by analysing predictions made before, and comparing them with current behaviour. Another is to compare behaviour of UK's economy with that of other G7 countries. (Financial Times, 2017)

The analysis on above lines, suggest that UK economy was expected to grow between 2.5% and 3.2% during the post referendum period, based on the historical trends. However, the numbers are actually lower by nearly 0.6 to 1.2%. Julian Jessop, head of the Brexit unit at the Institute of Economic Affairs, acknowledged that the economy is weaker by 0.5 to 1%, then it could have been and found the performance on expected lines. He added that Brexit opens a lot of opportunities, which government should look forward to grabbing. (Financial Times, 2017)

Firms have attributed the lower output to the uncertainty in business climate caused by the slower pace of Brexit negotiations. A study by academics at the University of St Andrews based on information from a UK government attitude survey of about 10,000 firms paints the picture. The study suggests that uncertainty due to Brexit is likely to impact access to finance, curtail expansion and product development, and hinder companies from having a global outlook. In addition, Dr Ross Brown, who the led the research added that with limited investment, the growth potential of Small and Medium Sized Enterprises (SMEs) and thereby the economy will be negatively impacted. One of the biggest concern regarding Brexit is the institutional instability it brings. It has potential to change the rules, regulations of business, which would mean that the firms need to re-evaluate their business model, strategy and their operations. The extent of concerns vary based on industry, but innovative, hi-tech, export oriented firms bear the larger brunt. (BBC News, 2018a)

It is important to note that the slowdown in Britain's economy is despite the strengthening Global growth. Though the economy witnessed slowdown, inflation rose from 0.4 % at the time of Brexit referendum to the 3.1 % in Dec 2017. Thomas Sampson and colleagues at the London School of Economics have cited direct relationship between the near 10% decline in sterling post the Brexit referendum and the rise in inflation. Mr Sampson have also raised the worsening situation for UK households, who despite the rising inflation have seen wage inflation of mere 2%. The decline in sterling has surely helped the British exports. The extent of which can be understood from the significant change in Office of Budget Responsibility (OBR)'s expectations about the rise in volume of goods and services sold abroad from 2.7 % to 5.2%. Post the Brexit referendum, net migration to UK fell by more than 40%. (Financial Times, 2017)

The impact of Brexit on average worker has resulted in no increase in wages in real terms since 2016. The increase in spending is attributed to the increase in employment and decline in saving rates. While the business have postponed their investments and curtailed spending on transport equipment, while they wait for uncertainty over trade relations with EU to clear. (Financial Times, 2017)

Recently, in Jan 2018 at World Economic Forum in Davos, David Cameron, former British Prime Minister, acknowledged that the negative economic impact of Brexit was less than what was feared earlier. He had earlier warned about decline in pound, rise in unemployment and mortgage rates. In fact, the UK economy has continued to grow, mortgage rates have not changed and are on same low levels seen since the 2008 financial crisis and employment figures have actually improved, leaving unemployment rate at a 42 year low. (BBC News, 2018b)

Having shared above, there is also a possibility that Brexit agreement does not materialize, in which case there will be no deal between UK and EU. Such a situation would impact both UK and EU economy badly, costing UK roughly 125 billion pounds and EU nearly 112 billion euros. Germany's supply chain would bear the max impact. The impact could typically shake up the motor industry, which is the EU's largest export to UK. (Partington, 2018)

Impact on Businesses

With UK being in EU for more than 44 years, the integration has meant that UK businesses have conformed to standard and practices as per EU law and have participated in exchange of knowledge and technology. In addition, the free movement of workers has also meant that good number of migrant workers have been employed in UK's businesses.

Brexit poses threat to businesses and one such threat is to the dairy sector, which is heavily dependent on migrant workers from EU. The sector could face serious challenges if access to these workers is impacted. The extent of dependency is huge. Nearly 56% of British farmers employ workers from EU, which is unhealthy and must be looked into, as communicated by Tim Bristocke, policy director at Royal Association of British Dairy Farmers (RABDF). He further added that country needs to identify aspects about the sector, which are not tempting to the UK workers and resolve them. (Jones, 2018)

Livestock sector, shares another aspect of the Brexit impact on economy, in terms of daily working of the veterinary professionals, who play a significant role in animal health and welfare. Federation of Veterinarians in Europe (FVE) have sent a plea to Brexit negotiators that there be continued mutual recognition of veterinary degrees, current level of animal health and welfare, food safety standards be maintained ensuring single standard for import and export markets and continued collaborations in field of research, science and technology. It is important to note that such concerns are not limited to only livestock sector but other sectors as well. (Jones, 2018) 'European Union (Withdrawal Bill)' attempts to address some of these concerns. The bill focuses on restoring supremacy of UK's judiciary and laws over EU laws and to ensure smooth exit from union by adopting EU's laws and regulations into the UK's laws thereby, ensuring that the required regulations and standards are in place. (Rothwell and Hughes, 2018)

Limiting Brexit Impact

With possible change in UK trade relations with EU, it is important to ensure that business are not impacted. Government must work towards addressing the concerns of the business community and resolving any uncertainty around the Brexit agreement. Recently, Burnley MP Julie Cooper met with farmers and the National Farmers' Union to evaluate the possible impact of Brexit on the rural industry, their jobs and roles. Discussion also included the role Brexit agreement would need to play in ensuring supply of farm workers, which could likely be impacted by any change in free movement of workers, labour regulations. In addition,

discussion included need for financial assistance, once the EU subsidies were discontinued. Farmers sought continued support in order to ensure quality and availability of local produce, which to work would need protection from the cheap imports. Sharing transitional details and ensuring continuity of policy will give businesses a sense of clarity and stability. (Athey, 2018)

In addition, UK Government Department for Exiting the EU spokesperson highlighted that the department is actively working with stakeholders including the SMEs as it works with EU to formulate a good deal, which works for all of UK. (BBC News, 2018a) The statement is much welcomed by the business community, which wishes to be heard and longs for a say in the Brexit agreement.

Impact on EU's economy

In an integrated union like EU, it would be surprising if only one member state got impacted by the Brexit. As expected, the impact spreads across borders and involves more or less all the member states. The stakes for EU members vary but the countries close to UK like Ireland, Belgium, Netherlands and the ones engaged in high volume trade with UK like Germany, France face the biggest impact. (Barigazzi, 2018)

One of the major impacts EU could face lie in trade and agriculture sector. Cyprus, regions in Germany like Bremen, Berlin have UK as a major trading partner. While, Polish province of Lublin, Murcia in Spain depend on UK for exports, especially related to agri-food products. The extent of possible impact can be understood from the fact that Murcia's agri-food industry sends 75% of its exports to the UK. In addition, Paul Lindquist, the Swedish official, raised concern over UK being the third largest foreign investor in the country. Ireland, which lies in close vicinity of UK and has built strong and deep economic ties with the UK, is the most concerned. Being part of single electricity market with UK, it has huge energy dependency on the region. The country in fact imports 89% of its oil products and 93% of its gas from UK. (Barigazzi, 2018)

There are major concerns with regards to Brexit leading to UK's exit from the EU's Common Fisheries Policy (CFP), which would mean that the UK could get back the control of fishing rights. That could disrupt the 170 small-scale and deep-sea businesses operating in the Hauts-de-France's coastline, a French region, which are mainly engaged in treatment and processing of sea products. Netherlands is not immune to this either and its region could see a drop of near 60% in the fishing business. (Barigazzi, 2018) On another note, François Decoster, official of Hauts-de-France region, raised concerns about impact of Brexit on the automotive sector especially Toyota, for which UK is a major exports destination. In 2016, as much as 13% of Toyota Yaris were exported to the UK. (Barigazzi, 2018)

The economic implications of Brexit require that EU's member states hold a united front and work with UK to have a deal, which mitigates the concerns of the involved parties and is a win-win for both sides.

Conclusion

The twin issues of sovereignty and supranationality have influenced the decision making of UK since the World War II. They have been one of the key factors in UK's decisions to skip United Europe proposals like European Coal and Steel Community, Exchange Rate Mechanism (ERM), among others. Even UK eventually joining the EU was not without much debate, negotiations over these aspects. It was not surprising when the twin issues were at the centre point of Brexit campaign and led to majority of UK voters opting UK out from EU.

While, the exit should give back UK back its supremacy of law and put its national interest at the centre. It goes without saying that the elements of European law, standards, and regulations have made their way into the UK's economy. Whether the country likes it or not, but incorporating EU's standards and regulations would benefit both import, export traders and make Brexit seamless. The same is being worked upon as part of the 'European Union (Withdrawal Bill)'. While law, regulations are one aspect, the business community is likely to be impacted by Brexit both in short term and long term. With Brexit negotiations for an agreement still going on, business environment in short term is marred by uncertainty over rules, regulations, and possible access to credit. This uncertainty in itself is impacting investment, growth and global outlook.

The possible impact of Brexit would be across sectors. The possible restrictions on flow of migrants is forcing UK to rethink about its economy, which is overly dependent on the migrants. The country needs reforms, skilling of workers to reduce the scarcity, which any restrictions on flow of labour may bring upon. While, for EU, which has countries trading heavily with UK or see UK as one of the biggest investor, could witness potential impact on economy. Such an impact could lead to job loss, shutdown of businesses among others.

In light of the possible issues, which both parties to Brexit negotiations may be forced to bear, forming an agreement, which addresses concerns of people and businesses from either side will be really helpful. Their dependency also means that they are more to gain by caring about each other interests than only theirs.

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PAYMENT OF CHILD MAINTENANCE AS THE FACILITATOR OF CRIME PREVENTION IN GERMANY

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Introduction

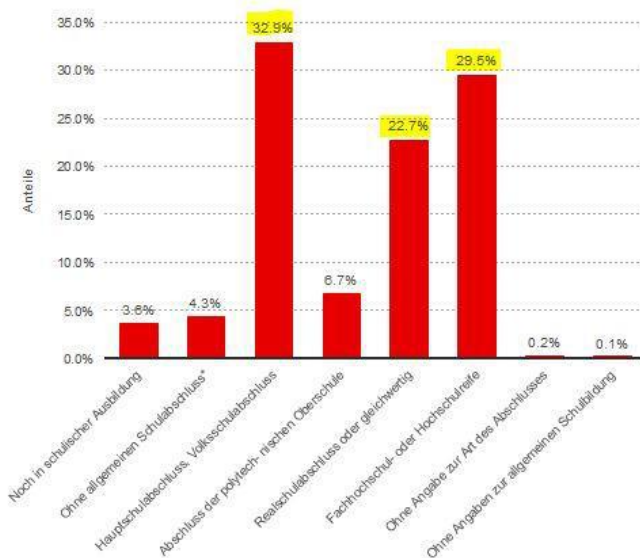
In my analysis I am studying the German regulation of payment of child maintenance as crime prevention too. My choice of subject is also motivated by the topicality of the theme, namely, the rule of law is still not effective when the analysis was written that contains the changes of the payment of child maintenance. All this, however indirectly, is in close connection with the crime prevention because the new rule of law decreases the financial vulnerability of the socially disadvantaged children and their families through the disbursement of the child maintenance guaranteed for children. The lack of the financial vulnerability and the measures introduced in order to ease vulnerability can cut on the chance of becoming a criminal.

Relationship between the crime committed and the income level

Unfortunately, one can observe a direct collaboration between the school qualification level and the social situation of the person in Germany. The proportion of children with higher school qualification (final examination) of the disadvantaged families is much lower. The highest school qualification that can be obtained in the public education is meant by the school qualification in Germany that is the precondition of the application for the university, the school-leaving certificate. The higher education is not called school but university and college. I explain it just for the suitable interpretation of the following diagram, namely, on the basis of the statistics on school qualification of the German population, the proportion of people with final examination is the lowest but it does not mean that there are not living people with higher education. On the diagram one can see that the proportion of people who have not even finished the 9th class runs to just 4.3 per cent and those who have the lowest school qualification is 32.9 per cent, the data of 2015 show. (Statistisches Bundesamt, Statistic 1988)

Bildungsstand - Bevölkerung in Deutschland nach Schulabschluss 2015

Bildungsstand: Verteilung der Bevölkerung in Deutschland nach höchstem Schulabschluss (Stand 2015)



A német lakosság 29,5%-a rendelkezik érettségivel, amely a felsőoktatás megkezdésének feltétele

22,7%-10. osztály elvégzését igazoló bizonyítvánnyal, amely a legtöbb olyan szakképesítés megkezdésének előfeltétele amely Magyarországon főiskolai tanulmányokhoz kötött (pl. óvópedagógus, gyógytornász)

32,9%-9. osztály elvégzését igazoló bizonyítvánnyal, amely leginkább a magyarországi 8 általános iskolai osztályhoz hasonlít. A legtöbb szakképesítés elvégzése elkezdhető ezzel az iskolai végzettséggel, azonban elsősorban a fizikai munkák.

Németországban az általános iskola csupán a 4. osztályig tart, ezt követően van lehetőség gimnáziumba illetve a 10. és 9. osztály elvégzését követően végbizonyítványt adó intézményekben folytatni a tanulmányokat.

Hinweis: Deutschland, ab 15 Jahre

Weitere Angaben zu dieser Statistik, sowie Erläuterungen zu Fußnoten, sind auf [Seite 3](#) zu finden.

Quelle: Statistisches Bundesamt ID 1908

statista

People living in the German prisons usually have lower school qualification. 45.9 per cent of the prisoners have the certificate that proves the fulfilment of the 9th class on average, the number of those who not even have passed the 9th class runs to four times more among the prison population, 17.4 per cent. Among the sentenced persons convicted of intentional crimes (robbery, physical abuse, murder) this number is even higher, more than 25 per cent. (Entorf and Sieger, 2010)

The question that there is a connection with the low education level and the income level of the person can already be handled as a well-known fact matter in Germany, unfortunately. The children of the poorer families have not only a greater participation in the school type of 9 classes that provides the lowest qualification compared to the other institutions, but they also perform worse by the reading and complex reading tasks than those of the middle-class children. (Solga and Dombrowski, 2009) All this refers to the direct connection between the financial situation of the family and the performance of children at school. This is also evidenced by the study that was executed at Federal level in 2010 which was investigating the relationships between the lack of integration and becoming criminals. During the investigation it was proved that people with social difficulties have the lower school qualification independently of other factors than people living on the average living standard in Germany. (Baier et al., 2010) As mentioned above this increases the chances of becoming criminal, among others for the reason that on an IT labour market that is specialised for the service sector first of all people with low school qualification have less chance than those who have higher school qualification.

Several programmes have been worked out in Germany to ease the social differences, however, the introduction and analyses of them are not the topic of this study. The present study only introduces one factor, the regulation of the payment of child maintenance and its direct function of preventing criminal infiltration.

Family tax allowances in Germany

The improvement of the stable financial situation of the families is particularly important because of the criminological consequences of poverty. The taxpayers in Germany can receive entitlement for the personal income tax allowance on the basis of their marital status. (Steuerklassen, n.d.) It means that the highest family tax allowance can be achieved by the families (married) with one full time employee. This form that gives entitlement for the allowances is contrary to the Hungarian system because while in Hungary one can receive entitlement for the family tax allowance after the number of children this is considered only to a minimum extent, the marital status is dominant first of all. The critics of the system say that the German family tax allowances are not future-proof because the number of single-parent families increases and they are not entitled to receive the advantages that is provided by the tax category No. 3 regarding their marital status. There is a tax class (Nr.2) for the single people and single-parent families but this provides more advantageous conditions only to a minimal extent than the class No. 1 which includes single, tax payers without children of whom expenses are lower because of having no children. (Brutto-netto Rechner 2017, n.d.)

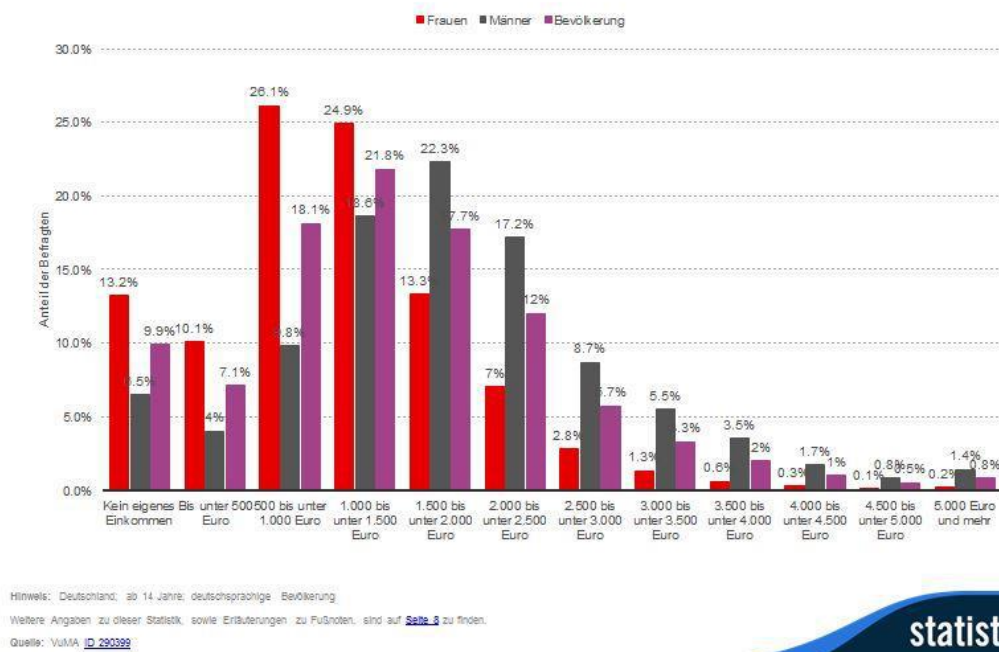
The 2016 data of the German Federal Statistical Office clearly show too that the number of single mothers and fathers is increasing from year to year too. While, 352,000 men and 1,980,000 women were bringing up their children alone in 2000, this number has increased by more than 16 per cent to 409,000 in the case of single fathers, while this number has increased more drastically by nearly 19 per cent to 2,331,000 by the year of 2015. (Statistisches Bundesamt, n.d.)

The employees who are bringing up their children alone are not entitled to receive the same tax allowance in Germany than those who are married, which alone can also be the source of a social difference because even in the case of employees with the same gross earnings they would also reach a worse situation and if we consider that the single parents are mostly women the situation is much more drastic because women in Germany earn less on the average than men. The survey that was executed by IPSOS in 2016 and published in 2017 in which they have analysed the monthly income of women and men also shows this. (Umfrage in Deutschland, n.d.)

On the diagram it is shown very well that 13.2 per cent of women do not have any income on their own, 10.1 per cent of them does not earn 500 Euro per month. The income of more than their quarter ranges between 500 and 1000 Euro per month and the income of 7 per cent of them exceed 2000 Euro only.

Umfrage in Deutschland zum Einkommen von Frauen und Männern 2016

Frauen in Deutschland nach Nettoeinkommen im Vergleich mit Männern und der Bevölkerung im Jahr 2016



It is worth mentioning that the following graph does not reflect the situation of women with migration background and having integration problems because people questioned were native German speakers.

On the graph you can see that a little proportion of women has higher income than 2500 Euro, however, it is presumable that the single women belong to this group first of all in the case of whom the problem of coordinating children and career does not come up.

I have emphasized the lower income of women than the average because most of the single-parents are female, so this can mean a disadvantage on its own too. Moreover, if there is a connection between the low income level and the lower school qualification and between the low school qualification and becoming criminal too, the fact that even more women are breeding their children alone, of whom financial situation is twice disadvantageous because they do not receive any family tax allowance and statistically they belong to people with lower income, can mean that also their children are socially disadvantaged and endangered. This disadvantage can be compensated by the child maintenance paid by the other parent.

The legal background of the payment of child maintenance

Infant children living in single-parent households are entitled to receive child maintenance that has to be paid by the other parent not living together with them. The § 1603 of the German Civil Code is regulating the title for child maintenance. This means that the children under 18 are entitled without any limitation, those between 18-21, if they do not have any income on their

own, are not married and are studying in the public education. (Bürgerliches Gesetzbuch, n.d.) One can also learn from this regulation that the education is divided into public education and higher education and the fact too that the German rules of law do not put the university/college studies into the category of “school”. They handle the university/college students as adults who can access the student support (BAFÖG) but they are not entitled for the child maintenance from the parents. This student support is just like the Student Loan in Hungary but BAFÖG (BAföG, n.d.) is not only a credit but a support too because the amount the student received will not be paid back in full.

In most cases the sum of the child maintenance paid by the parent living separately is not determined during long negotiations in Germany because the so-called Düsseldorf table that was introduced in 1962 and contains the rate determined on the basis of the age of the children and the income of the parents is applied in most cases. The Supreme Düsseldorf Regional Court of Justice wants to create transparency with the predetermined amounts and ease the work of the courts. (Düsseldorfer Tabelle, 2017) The Judges usually use this table when determining the sum of the child maintenance in Germany.

DÜSSELDORFER TABELLE

NETTOEINKOMMEN DES UNTERHALTSPFLICHTIGEN IN €		ALTERSSTUFEN IN JAHREN (§ 1612 A I BGB)				PROZENT	BEDARFS- KONTROLL- BETRAG IN €
		0-5	6-11	12-17	AB 18		
1.	bis 1.500	342	393	460	527	100	
2.	1.501-1.900	360	413	483	554	105	1.180
3.	1.901-2.300	377	433	506	580	110	1.280
4.	2.301-2.700	394	452	529	607	115	1.380
5.	2.701-3.100	411	472	552	633	120	1.480
6.	3.101-3.500	438	504	589	675	128	1.580
7.	3.501-3.900	466	535	626	717	136	1.680
8.	3.901-4.300	493	566	663	759	144	1.780
9.	4.301-4.700	520	598	700	802	152	1.880
10.	4.701-5.100	548	629	736	844	160	1.980

Bei Einkommen über 5.101 Euro netto wird einzelfallabhängig ermittelt:

The values are revised in every year and corrected, if needed. It can be applied in case of the income under 5101 Euro, if the children have special needs because of their diet, diseases or injuries, the Court can define individual sums.

The sum of the child maintenance has been formed in accordance with their needs at certain age. One can see very well that in case of the low incomes the sum of the child maintenance can exceed 30 per cent, while in case of a higher income it can be under 15 per cent even by a higher sum too. The first point of view is the interests of the children, however, it can also mean safe information for the individuals having to pay child maintenance and it is not only left to the discretion of the person who is obliged to pay.

Children have the right to the child maintenance which the parent who is breeding the child cannot give up. (Unterhaltspflicht, n.d.)

The question is what happens, if the parent who is obliged to pay, does not have any income or has reached his/her limit of capacity because he/she is obliged to pay child maintenance after several children. The limit of capacity is also regulated per income classes in Germany. (Scheidung.org, n.d.) Accordingly, the sum that has to remain every month for the individual who is obliged to pay the child maintenance in order to provide for his/her own living, runs as follows:

Nettoeinkommen des Barunterhaltspflichtigen in Euro pro Monat		Altersstufen in Jahren (§ 1612a Abs. 1 BGB) / Beträge in Euro pro Monat				Prozentsatz	Bedarfskontrollbetrag in Euro pro Monat
		0-5	6-11	12-17	ab 18		
1.	bis 1.500	342	393	460	527	100	880/1.080
2.	1.501 - 1.900	360	413	483	554	105	1.180
3.	1.901 - 2.300	377	433	506	580	110	1.280
4.	2.301 - 2.700	394	452	529	607	115	1.380
5.	2.701 - 3.100	411	472	552	633	120	1.480
6.	3.101 - 3.500	438	504	589	675	128	1.580
7.	3.501 - 3.900	466	535	626	717	136	1.680
8.	3.901 - 4.300	493	566	663	759	144	1.780
9.	4.301 - 4.700	520	598	700	802	152	1.880
10.	4.701 - 5.100	548	629	736	844	160	1.980

If the parent, who is breeding the child, has claimed the sum, that is a guaranteed family benefit (Kindergeld¹, just like the Hungarian family allowance), the above sums can be reduced by half (in 2017 192 Euro/month/child), by 96 Euro at present, so the parent paying the child maintenance can deduct his/her part of the family benefit from this sum. (Unterhalt.net, n.d.)

Authority which temporarily pays the child maintenance instead of the parent

According to the on the 28th of May 2017 still effective German rule of law the child maintenance can temporarily, not more than 72 months long, be paid by the local Guardian Office and the Social Office instead of the parent who is obliged to pay the child maintenance, if the individual does not have any income on his/her own or his/her income is so low that it does not exceed the living minimum. (Gesetz, n.d.)

In this case the Guardian Office prepays the missing sum or the whole child maintenance, however, it will be distrained upon the obligor in the form of taxes, if his/her financial situation gets better.

If the other parent of the child is unknown the child maintenance is paid by the Guardian Office in full. In this case the sum prepaid cannot be reclaimed.

However, the sums that are paid by the Guardian Office are also lower than the lowest value of the Düsseldorf table. In 2017 this sum runs to 150 in case of children under 6 and 201 Euro

¹ Familienkasse-info (n.d.)

between 6 and 12. (Unterhaltsvorschuss²⁰¹⁷) After children over 12 years no prepayment of child maintenance can be claimed according to the currently effective rules of law. On 1st of July 2017 the change of the rule of law will be effective which repeals the 72-month time limit. Accordingly, the child is entitled to receive the child maintenance prepayment until the age of 18. From the age of 12 this sum will be 268 Euro per month. (Familienleistungen, n.d.)

Importance and summary of the payment of child maintenance

The significance of the modification of the rule of law is also important from the point of view of prevention of crime because it improves the situation of the single-parent families of teenagers. The research Alex Dessecker executed among the prison population in 2007 and was dealing with the questions of becoming criminals concluded that unemployment and the lack of education are the most important factors of becoming criminals. (Dessecker, 2007)

The prepayment of child maintenance until the finish of the school (in Germany the age of 15-18 years depending on the types of the school) and the beginning of the qualification that is still available can be critical from the point of view of the quality of life of the child and the parent breeding him/her. The prepayment of child maintenance is mostly claimed by the single-parent in need who in addition to not receiving any financial support from the father/mother of his/her child but the breeding of the child also falls upon them in full. The teen-age is when the chance that the child gets into bad company, goes wrong is bigger. As I have introduced above this endangers the families with low income, so, every single initiation that effects against this and results in the reduction of the child poverty, can be appreciated from the point of view of prevention against crime.

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HOLDING MEMBERS OF IS RESPONSIBLE FOR THEIR CRIMES: CHALLENGES IN INTERNATIONAL AND DOMESTIC PROSECUTIONS

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Abstract: *Since 2014, The Islamic State (IS, also referred to as ISIS), has invaded territories in Iraq and Syria and there is ample evidence that IS is committing international crimes such as genocide, crimes against humanity and war crimes. This article addresses the complexity of prosecuting these crimes and seeks to find out the best venue to prosecute them. There are serious problems regarding the applicability of international criminal law in this situation. Firstly, as neither Iraq nor Syria is party to the International Criminal Court's Rome Statute, the ICC cannot exercise territorial jurisdiction over the crimes committed on the soil of Iraq or Syria. The ICC has very little competence to exercise jurisdiction if a State has not ratified the Rome Statute. It may pressure its members to refer the situation to the Security Council and hence start the prosecution but this would require the support from the permanent council members. In 2014 – despite of the fact that all other member states voted in favour of the referral – permanent member states Russia and China vetoed and made it impossible for the Security Council to adopt the resolution and make a referral. The Prosecutor of ICC also stated that the jurisdictional basis for opening a preliminary examination into this situation is too narrow at this stage.*

The Prosecutor has then publicly supported an idea of a special tribunal for Syria. However, the national institution recovering from a civil war might be too weak for handling the atrocities occurred in their country. The Rome Statute states in its Preamble that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation. A special tribunal combines international and domestic law in its statutes and rules. The establishment of one regional criminal tribunal, to be set in compliance with two different national legal orders, taking into account of two different ideologies (Western and Islamic), would be a real legal challenge. This article however provides one possible model.

Keywords: *international criminal law, Middle East, jurisdiction, International Criminal Court, Hybrid Court*

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1. Introduction

Horrible human rights violations and breaches of international law have been committed during the conflicts in the Middle East. There is a “growing symbiosis between the conflicts in Syria and Iraq”¹, nevertheless with their own differences. Conflicts in the territories of these States still represent two separate armed conflicts of non-international character, one between the Iraqi Security Forces and associated armed groups such as the Islamic State (hereinafter IS) and one between the Government of Syria and the rebellious civil-war fighters later turned on IS.² According to a report published jointly by the United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), at least 24,015 civilians have been killed or injured in Iraq during the first eight months of 2014.³ The alleged crimes IS has committed include for instance genocide against the Yezidis (also referred to as Yazidis), crimes against humanity pursuant to the Article 7 of the Rome Statute and war crimes such as destruction of cultural civilian property and enlistment of child soldiers pursuant to Article 8.⁴ The article addresses the complexity of prosecuting these crimes inside and outside of the territory of Syria and Iraq. The complexity results from, for instance, the assembling of the evidence and contacting witnesses which is proved to be extremely difficult in these cases. Another aspect why the legal process is complicated is because the Court has to assess questions about whether accusations involve for instance war crimes, crimes against humanity, terrorism or crimes subject to national laws.

The article argues that the IS members are committing international crimes, and that it is essential to find the best way to prosecute them for their crimes, either using international criminal law or the national jurisdiction. The article seeks to find out the best venue to prosecute crimes committed by the members of the IS. In parts one and two the conflict status and the alleged crimes are introduced. These crimes will be covered in more detail in chapter two. The problems with international prosecution is also addressed. In April 2015 the ICC Prosecutor stated that the jurisdictional basis for opening a preliminary examination into this situation is too narrow at this stage. The article also compares different jurisdictional mechanisms and seeks to find the best venue for prosecution.

¹ http://www.ecfr.eu/article/commentary_syria_and_iraq_one_conflict_or_two280, website visited February 17, 2016

² *Id.*, see as well Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, 27 March 2015, A/HRC/28/18, p. 6., available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>

³ Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July – 10 September 2014, published jointly by the United Nations Assistance Mission for Iraq (UNAMI) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), available at: http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_POC_Report_FINAL_6July_10September2014.pdf

⁴ Report: ISIL: Nationals Of ICC States Parties Committing Genocide And Other Crimes Against The Yazidis, report submitted by Yazda and the Free Yezidi Foundation Supported by the Kurdistan Regional Government of Iraq on September 2015, available at: <http://peacewomen.org/resource/isil-nationals-icc-states-parties-committing-genocide-and-other-crimes-against-yazidis>

2. Typology of crimes committed in Syria and Iraq

There is extensive evidence that IS is committing crimes in Syria and Iraq. The attempt of the article is to 'label' these crimes using the framework of international and domestic law. In order to determine the applicable law for punishing these crimes, the status of the conflict must be determined first.

The Hague Conventions 1899 and 1907 on international warfare set those limits for warfare and 4 Geneva Conventions and their Additional Protocols set the rules for the treatment of persons who no longer take active part in the hostilities. However, not every crime that violates international humanitarian law can be considered as a war crime subject to international criminal law. International humanitarian law will be discussed here as a reference point, however it does not provide a framework for prosecutions. It only informs the ICC Statute (hereinafter Rome Statute) provisions related to war crimes.⁵ The article will analyze crimes potentially committed by IS members in the light of the provisions of international criminal law (Rome Statute) and domestic law.

Since the conflicts are internal, they are so-called Common Article 3 non-international armed conflicts, referring to "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties".⁶ Common Article 3 of the four Geneva Conventions sets the minimum standards that all parties involved in a non-international armed conflict should observe concerning the treatment and protection of civilians, those no longer actively participating in the hostilities, and civilian objects. Under international law binding on those States, "States have the responsibility to protect their populations from crimes against humanity, war crimes and other international crimes, irrespective of whether they are Parties to the Rome Statute."⁷ Even if a foreign state intervenes on behalf of a legitimate government to put down the insurgency, the armed conflict still remains internal. If state A is fighting against a rebel group (not a state) within its borders and state B comes to give assistance to state A, the conflict is still internal. However, if state B gives assistance to the rebel group fighting against state A, now there are two High Contracting Parties against each other and the conflict status transforms to an international armed conflict between two States.⁸ The Geneva Conventions however do not provide any authoritative definition of an 'armed conflict'.⁹ Riot, disorder and banditry do not rise to Common Article 3 armed conflict status.¹⁰ According to Derek Jinks,

⁵ Rome Statute of the International Criminal Court, entered into force on 1 July 2002, Article 8: "For the purpose of this Statute, 'war crimes' means: Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention [...]", for instance taking of hostages as part of an armed conflict not of an international character (Article 8(2)(c)(iii)), also prohibited by Geneva Convention Common Article 3

⁶ The Geneva Conventions, Article 3 (common to all four Conventions)

⁷ 'Legal framework on the Protection of Civilians in Non-International Armed Conflict', in Report on the Protection of Civilians in the Armed Conflict in Iraq: 5 June to 5 July 2014 (UNAMI/OHCHR July 2014), available at: http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_POC%20Report_FI-NAL_18July2014A.pdf

⁸ Solis, Gary D.: *The Law of Armed Conflict: International Humanitarian Law in War*, Cambridge University Press, 2010, p. 154

⁹ Jinks, Derek: The applicability of the Geneva Conventions to take the 'global war on terrorism', *Virginia Journal of International Law*, Vol. 46:1, 2006, p. 19-21

¹⁰ See Solis, supra note 8, p. 153

hostilities that constitute a severe threat to humanitarian values should be classified as ‘armed conflict’. When arguing whether an armed conflict exists or not, one applicable criteria is the intensity of violence.¹¹ For instance, the armed violence in Afghanistan has been argued to have had a sufficient intensity to constitute an armed conflict of a non-international character.¹² International Criminal Tribunal for Former Yugoslavia (hereinafter ICTY) stated in its *Tadić-judgment* that “armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and **organized armed groups** (emphasis added) or between such groups within a State.”¹³ Taking into account these following factors, *inter alia*, IS can be seen as an organized armed group. In order to define the word ‘organized’, both ICTY Chamber as well as the ICC Chamber have referred to factors such as the existence of a command structure, internal hierarchy, the existence of headquarters, access to weapons and the ability to procure, transport, and distribute them, ability to plan and carry out military operations and military training.¹⁴ If a terrorist group amounts to this sufficient organizational character, it can be considered as a part of a Common Article 3 non-international armed conflict. An organized armed group can be considered as the armed force of this non-state party to the conflict. Membership in the organized armed group is “not evidenced by uniform but by function.”¹⁵

Terrorist groups are nonetheless considered as criminal organizations and not as states. Therefore they can not be parties of any international treaty such as the Geneva Convention or its Additional Protocols.¹⁶ The applicability of international law to armed non-state actors remains highly controversial, even though its applicability to such actors exercising control over a population – like IS does (*de facto*, though) in its invaded territories – is becoming more universal. In addition, “violations of *jus cogens* (‘peremptory norms of international law’, more discussion on this term in section 4.2.1.) can also directly engage the legal responsibility of such groups.”¹⁷

Some academics and governments consider that recognizing terrorist group as a party to a non-international armed conflict heightens the terrorist group to an unjustifiably high level by granting the terrorists protection of the Geneva Convention and putting them on an equal footing with state forces. However, law (of armed conflict) should not exclude any human being, or “demonize the perpetrators, brand them as less than human, and hence expel them from the circle of those who deserve human regard. This creates a paradox that doing so undercuts the root idea of international human rights, namely that *everyone* deserves human regard.”¹⁸ Some rather see terrorists and other unlawful enemy combatants as *hostis humani*

¹¹ Gandhi, M: Notes and Comments, Common Article 3 Of Geneva Conventions, 1949 In The Era Of International Criminal Tribunals, 2001, available at <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/11.html#Footnote2>

¹² Bellal Annysa, Giacca Gilles and Casey-Maslen Stuart: International law and armed non-state actors in Afghanistan, *International Review of the Red Cross*, Volume 93 Number 881 March 2011, p. 52

¹³ Prosecutor v. Dusko Tadić, Decision On The Defence Motion On Jurisdiction, 1995, para 70

¹⁴ See Solis, supra note 8; See also Prosecutor v. Ramush Haradinaj et al., ICTY, Trial Chamber I, Judgment of 3 April 2008, para. 60

¹⁵ See Solis, supra note 8, p. 205-206

¹⁶ Id.

¹⁷ See Annysa et al., supra note 12

¹⁸ Luban, David: A Theory of Crimes Against Humanity, 29 *Yale Journal of International Law* 85-167, 2004

generis, ‘enemies of humanity’. However, this term itself has been seen as demonizing by some academics.¹⁹

Thus a non-state actor can be held accountable “not only for their violations of the domestic law of the State in which they act, but also for their violations of Common Article 3”.²⁰ In a non-international armed conflict, aside with Common Article 3, Additional Protocol II can apply as well, but neither Iraq nor Syria have signed it. No other parts of the Geneva Convention apply.

The alleged crimes IS has committed in Syria and Iraq include, *inter alia*, war crimes such as the use of child soldiers, taking of hostages and destroying cultural property, crimes against humanity and terrorism.

2.1. Enlistment of children into armed forces

Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities is a war crime according to the Rome Statute Article 8.²¹

According to a CTC Sentinel study from February 2016, 89 children and youth were eulogized in IS propaganda during the period of January 1, 2015 – January 31, 2016. 51 percent were alleged to have died in Iraq and 36 percent died in Syria. Of those 89 cases, 39 percent died upon detonating a vehicle-borne improvised explosive device (VBIED) against their target. 33 percent were killed as foot soldiers in unspecified battlefield operations, 6 percent died while working as propagandists embedded within units/brigades, and 4 percent committed suicide in mass casualty attacks against civilians.²² 18 percent of the children killed were ‘marauders’ who “carried out so-called ‘plunging attacks’, that is a military operation in which a group of fighters attack an enemy position before blowing themselves up.”²³ In other conflicts, the use of child soldiers usually represents a strategy of last resort, as a way to “rapidly replace battlefield losses,” or in specialized operations for which adults may be less effective. However, IS does not differentiate children from adult combatants.²⁴ According to Peter Singer, 60 percent of the world’s non-state armed forces use children as soldiers. Children are usually targeted for recruitment because “they represent a quick, easy and low-cost way for armed organizations to generate force.”²⁵

¹⁹ For more discussion on this term, see for instance: Duff, Anthony: “Authority and Responsibility in International Criminal Law” in Besson, Samantha & John Tasioulas (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press), 2010

²⁰ See Solis, *supra* note 8, p. 154-157

²¹ Rome Statute, *supra* note 5, Article 8 (2)(c)(vii)

²² Bloom, Mia, Horgan, John and Winter, Charlie: Depictions of Children and Youth in the Islamic State’s Martyrdom Propaganda, 2015-2016, Combating Terrorism Center Sentinel Report, February 18, 2016, available at: <https://www.ctc.usma.edu/posts/depictions-of-children-and-youth-in-the-islamic-states-martyrdom-propaganda-2015-2016>

²³ <http://edition.cnn.com/2016/02/19/middleeast/isis-child-soldiers/index.html>, website visited February 22, 2016

²⁴ See Bloom et al., *supra* note 23

²⁵ Singer, Peter: *Children at War*, University of California Press, 2005, p. 95

2.2. Taking of hostages

Common Article 3 of the Geneva Conventions prohibits the taking of hostages in both international and non-international armed conflicts. This will amount to war crime according to the Rome Statute Article 8 (2)(c)(iii). According to the Elements of Crimes taking of hostages means that the perpetrator seized, detained or otherwise held hostage one or more persons not taking actively part in hostilities and threatened to kill, injure or continue to detain them. The perpetrator is also “intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.”²⁶

Taking of hostages for ransom is one of the sources of income for IS. On February 22, 2016 IS released the last of some 230 Assyrian Christians kidnapped a year ago in Syria after receiving millions of dollars in ransom, Christian officials said.²⁷ Britain’s incumbent prime minister David Cameron said that he will try to persuade other G8 nations to stick to an agreement not to pay hostage ransoms. The United States agrees, and goes even further. If an American company or private organization pays ransoms in order to free a captive employee, the US Department of Justice will accuse them of funding terrorism. In UK on the other hand, private persons or firms will not be prosecuted for paying ransoms. Unlike the US or UK, European States such as Germany, France, Italy, and Spain, have directly paid ransoms.²⁸ The UN Security Council expressed its determination to end hostage-taking by the terrorist groups in its provisions of Resolution 2161 (June 17, 2014) which banned the payment of ransom to such groups, regardless of how or by whom the ransom is paid. It repeated its call on Member States to help secure the safe release of hostages without payments or political concessions. It further emphasized the importance of all Member States in preventing their nationals and others in their territories from making donations to the terrorists.²⁹

Additional Protocol I and Geneva Convention IV prohibit the use of civilians as shields for military objectives from attacks. Rome Statute Article 8 also recognizes the use human shields in an armed conflict as a war crime. However, there is no treaty-based prohibition on the use of human shields in a non-international armed conflict. According to Solis, if civilians are forced to act as human shields, as is most often the case, they are hostages and the use of them constitutes a grave breach.³⁰

²⁶ Elements of Crimes, published by International Criminal Court, 2011, p. 33

²⁷ <http://www.dailymail.co.uk/news/article-3458615/ISIS-release-40-hostages-230-Assyrian-Christians-kid-napped-Syria-religious-group-raises-millions-dollars-ransom-worldwide-appeal.html>, website visited February 24, 2016

²⁸ <http://www.independent.co.uk/news/world/politics/isis-hostage-threat-which-countries-pay-ransoms-to-release-their-citizens-9710129.html>, website visited February 24, 2016

²⁹ Security Council Resolution 2161, 2014, available at: <http://unscr.com/en/resolutions/doc/2161>; See also <http://www.un.org/press/en/2015/sc11775.doc.htm>

³⁰ See Solis, *supra* note 8, p. 320

2.3. Destruction of cultural property

IS has destroyed architecture and antiquities in northern Iraq. Libraries with invaluable manuscripts, detailing the heritage of Mosul and other towns were burned to the ground. IS has also destroyed religious images and monuments for religious motives, calling the targeted objects as ‘false idols’.³¹ Ancient Assyrian cities Nimrod and Khorsabad, including archaeological treasures such as sculpres, stones and statues, were destroyed by IS in March 2015. In 2014, UNESCO World Heritage sites in Syria were largely destroyed.³² According to a statement by UN, “World Heritage sites have suffered considerable and sometimes irreversible damage. Four of them are being used for military purposes or have been transformed into battlefields: Palmyra; the Crac des Chevaliers; the Saint Simeon Church in the ancient villages of northern Syria; and Aleppo, including the Aleppo Citadel.”³³ UN Secretary General has stated that “the deliberate destruction of our common cultural heritage constitutes a war crime.”³⁴ Irina Bokova, director general of UNESCO, stated that “the bulldozing of the archaeological site of Nimrud marked a new step in the cultural cleansing underway in Iraq. These acts are a deliberate attack against civilians, minorities, heritage sites and traditions. In the minds of terrorists, murder and destruction of culture are inherently linked.”³⁵ As a phenomenon, ‘cultural cleansing’ is not new. Different Islamist groups have destroyed numerous historic sites during the past centuries. However, IS has done this more than any other group. These acts affect the identity and history of the people. According to UN, “the protection of cultural heritage, both tangible and intangible, is inseparable from the protection of human lives and should be an integral part of humanitarian and peace building efforts.”³⁶ The destruction of cultural property is prohibited in the Hague Convention 1954 protecting cultural property, as well in the Rome Statute Article 8. Rome Statute considers “intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives”, as a war crime.³⁷ It shall be considered as a war crime when the perpetrator wittingly destroyed or appropriated certain property in an armed conflict and it can not be justified by military necessity.³⁸

2.4. Crimes against humanity

Crimes against humanity are inhumane acts such as murder, torture, rape, sexual slavery and persecution, or any other act causing great suffering, or serious injury to body or to mental or physical health, with a connection to a widespread or systematic attack directed against civilian

³¹ Singer, Graciela Gestoso: *ISIS's War on Cultural Heritage and Memory*, available at: http://ukblueshield.org.uk/wp-content/uploads/2015/06/Singer-Isis_Against_World_Heritage.pdf

³² <http://edition.cnn.com/2015/03/09/world/iraq-isis-heritage/>, website visited February 24, 2016

³³ UNESCO Statement, 2014, available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/12_March_2014_SG_Bokova_Brahimi_signed_Joint_press_on_Syria.pdf

³⁴ <http://www.un.org/press/en/2015/sgsm16570.doc.htm>, website visited February 24, 2016

³⁵ <http://edition.cnn.com/2015/03/07/opinions/bokova-isis-artifacts-destruction/>, website visited February 24, 2016

³⁶ See UNESCO Statement, 2014, *supra* note 33

³⁷ Rome Statute, *supra* note 5, Article 8(e)(iv)

³⁸ See Elements of Crimes, *supra* note 26, p. 15

population.³⁹ In the *Tadić*-case the ICTY held that at customary law, crimes against humanity could also be committed “on behalf of entities exercising *de facto* control over a particular territory but without international recognition or formal status of a *de jure* state, or by a terrorist group or organization.”⁴⁰ The Pre-Trial Chamber in the Kenya-case has adopted a similar statement which states that “individuals ‘with *de facto* power or organized in criminal gangs’ are just as capable as State leaders of implementing a large-scale policy of terror and committing mass acts of violence.”⁴¹ Such an organized armed group as IS, which exercises *de facto* control over some areas, would increasingly be considered to be bound by international law and thus committing above mentioned acts with knowledge as part of a widespread or systematic attack directed against any civilians would give rise to individual criminal responsibility.⁴² However, it might be the case that the perpetrator does not always have the knowledge of all characteristics of the attack or the precise details of the plan or policy of the organization.⁴³

The conduct of element of murder as a crime against humanity and murder as a war crime (willful killing) is the same. The difference is the contextual element and the scale.⁴⁴ The ICC Element of Crimes indicates that extermination means killing within the context of destruction of a part of population. Major difference is that extermination requires a nexus to mass killing. Extermination also include indirect means of causing death.⁴⁵ One murder is sufficient if it is linked to a widespread attack, but for extermination multiple murders are a must. When attacking Yezidi villages, IS reportedly engaged in the systematic and widespread killing of men, including boys over the age of 14.⁴⁶ There are also overlaps between genocide (discussed in Chapter 2.3.) and extermination, however, genocide can only be committed against the four types of groups. This list is a closed one.

2.5. Enslavement

Enslavement includes all forms of being someone’s property, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.⁴⁷ IS has committed widespread and systematic enslavement especially towards Yezidi

³⁹ Rome Statute, supra note 5, Article 7(1): “For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack [...]”

⁴⁰ See *Tadić*, supra note 13, para. 654

⁴¹ Prosecutor v. Blaskic, 3 March 2000, para. 205; See also Pre-Trial Chamber II Situation in the Republic of Kenya, 31 March 2010, p. 39

⁴² See Report on the Protection of Civilians in the Armed Conflict in Iraq: 5 June to 5 July 2014, supra note 7, p. 6-7

⁴³ See Elements of Crimes, supra note 26, p. 5

⁴⁴ Cryer, Robert, Friman, Håkan, Robinson, Darryl, and Wilmshurst, Elizabeth: *An Introduction to International Criminal Law and Procedure*, 2. Edition, Cambridge University Press, 2010, p. 245

⁴⁵ Id.; See also Elements of Crimes, supra note 26, Article 7

⁴⁶ Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General: Report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, 13 March 2015

⁴⁷ See Elements of Crimes, supra note 26, Article 7

people, by turning women and girls into sex slaves and selling them as a property to IS members. They have also been systematically raped by the IS members. International Criminal Tribunal for Rwanda's (hereinafter ICTR) *Akayesu-case* was the first to include rape as crimes against humanity. It was in violation of the Common Article 3 and punishable by Article 3(g) of the Statute of the Tribunal.⁴⁸ In March 2016 ICC convicted former Congolese vice president Jean-Pierre Bemba for e.g. using sexual violence as a weapon of war. The crime of rape was conducted during a civil war in widespread and systematic way and it was directed against a significant number of civilians. Thus it amounted to a crime against humanity and war crime.⁴⁹ The conviction has been seen as a significant step towards prosecuting sexual violence as a part of crimes against humanity, since the ICC has been criticized for that "despite the broad range of sexual and gender-based crimes contained in the Rome Statute, Prosecutor Ocampo's early failures to pursue evidenced investigations and tendency to develop the theory of the prosecution case in the abstract led, unsurprisingly, to a very weak record on prosecutions for crimes of sexual violence."⁵⁰

2.6. Torture

According to Amnesty International's report, IS has targeted civilian population and their crimes have been widespread, as well as systematic in nature and they have been part of organizational policy of the group. The crimes against humanity committed by IS include murder, enslavement, imprisonment, rape and sexual slavery, persecution and torture.⁵¹ Under certain conditions torture can amount to crimes against humanity or war crimes as well.⁵²

There is material which shows that IS has committed torture against civilian people. IS for instance requires women living at the territory it exercises control over to be fully veiled or they will be punished (tortured) with so-called 'biter', a metal torture device.⁵³ Should this be considered as widespread and systematic attack against women or an isolated act under national criminal law? Since it happens on a national level, on the territory over which IS has control and the victims as well as the perpetrators are nationals of this country, the crime could fall within national jurisdiction. This will be discussed in more detail below in paragraph 2.5.3. On the other hand, foreign IS fighters originally from ICC member countries committing the act of torture in a large-scale matter could theoretically also fall within the international jurisdiction. Additionally, if the act of torture can be considered to be a part of IS's policy and a large-scale, systematic attack, it could be a crime against humanity not having the nexus to the actual

⁴⁸ The Prosecutor v. Jean-Paul Akayesu, Trial Chamber I, 2 September 1998

⁴⁹ The Prosecutor v. Jean-Pierre Bemba Gombo, Judgment scheduled for March 21, 2016

⁵⁰ Post by Niamh Hayes: The Bemba Trial Judgement – A Memorable Day for the Prosecution of Sexual Violence by the ICC, 26 March 2016, available at: <http://humanrightsdoctorate.blogspot.com/2016/03/hayes-bemba-trial-judgement-memorable.html>, website visited 6 June 2016

⁵¹ Amnesty International report: "Escape from Hell, Torture and sexual slavery in Islamic State captivity in Iraq", December 2014, available at: https://www.amnesty.org.uk/sites/default/files/escape_from_hell_-_torture_and_sexual_slavery_in_islamic_state_captivity_in_iraq_-_english_2.pdf

⁵² See Cryer et al., *supra* note 44, p. 344-345 footnote

⁵³ <http://www.ibtimes.co.uk/isis-using-new-torture-weapon-women-showing-too-much-skin-1545878>, website visited March 8

conflict. Elements of Crime indicate that persons being tortured must have been in the custody or under the control of the perpetrator. If we consider this in a broader sense, persons being tortured were actually under the control of the organization of IS, even though they literally were not held in custody by the actual perpetrator of the crime.

2.7. Genocide

Genocide means an intent to destroy, in whole or in part, a national, ethnical, racial or religious group. Genocide differs from above mentioned crimes as crimes against humanity require a connection to a widespread or systematic attack directed against civilian population, and war crimes need to be committed during an armed conflict. The gravity of genocide is marked by subjective *mens rea*; the intent to destroy a national, ethnic, racial or religious group as such.⁵⁴ IS has an open and clearcut policy to destroy Yezidis because of their religion, which it sees as infidel.⁵⁵ Yezidi women and children have been separated from men, and after men being killed, forcibly transferred into captivity. United Nations Human Rights Council has also heard Yezidi witnesses providing “credible and consistent accounts of separate incidents and attacks, detailing how they were forced to convert to Islam or face death.”⁵⁶ These acts meet the requirements for the crime of genocide as stipulated in Article 6 (a) and (e) of the Rome Statute.

2.8. Crimes under national jurisdiction

National courts may prosecute international crimes, either under their national jurisdiction, under Common Article 3 or under universal jurisdiction. Regardless of the fact that neither Syria nor Iraq are parties to the Rome Statute, for the sake of article’s analysis it is essential to mention the ICC’s principle of complementarity. The principle of complementarity gives primacy to national investigation over international prosecutions, giving international court the possibility to discharge responsibilities only in cases in which national courts are unwilling or unable to discharge or if national courts have failed to do so.⁵⁷ The alleged crimes occurred in Iraq and/or Syria might have been committed by nationals of the ICC State Parties. In that case the ICC could have jurisdiction over them, or, as an overwhelming trend in international criminal law, give discretion to national authorities in dealing with the crimes. The principle of complementarity is based “both on respect for the primary jurisdiction of States and on considerations of efficiency and effectiveness, since States will generally have the best access to evidence and witnesses and the resources to carry out proceedings.”⁵⁸ Nevertheless, the Rome Statute Preamble states that the most serious crimes of concern to the international

⁵⁴ See Cryer et al., *supra* note 44

⁵⁵ See Report ISIL: Nationals Of ICC States Parties Committing Genocide And Other Crimes Against The Yazidis, *supra* note 4

⁵⁶ See Report of the Office of the UNHRC on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, 27 March 2015, *supra* note 2, p. 5-6

⁵⁷ See for instance Rome Statute, *supra* note 5, Article 17

⁵⁸ ICC-OPT Informal expert paper: The principle of complementarity in practice, 2003, available at: <https://www.icc-cpi.int/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf>

community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.

3. Comparison between existing international jurisdictional mechanisms

Many countries as well as the UN Commission of Inquiry have weighed the aim of holding the alleged perpetrators to account. In this Chapter, different jurisdictional mechanisms are being examined in order to find the best possible venue to prosecute crimes allegedly committed by IS. There are significant problems regarding the applicability of international criminal law in exercising jurisdiction in the case of IS. As stated before, neither Iraq nor Syria are parties to the Rome Statute. Therefore, the ICC has no territorial jurisdiction over crimes committed on their soil. However, according to the Rome Statute, there does exist three possible circumstances in which the Court can have jurisdiction over nationals of non-parties. First situation is, according to Article 13, a situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party. Secondly, non-party nationals are subject to ICC jurisdiction when the crime they have committed occurred on a territory of a state which is a party to the ICC Statute. Thirdly, according to Article 12 (3), if the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. Fourthly, a non-State to the Rome Statute may be referred to the ICC by the Security Council (Article 13(b)).

The biggest challenge with the Rome Statute is its minimum amount of competence to exercise jurisdiction if a State has not ratified the Statute. The political weight of the ICC to pressure members of the Security Council to refer to the situation to the ICC is somewhat limited. The Security Council states in its draft resolution⁵⁹ that the situation in the Syrian Arab Republic (the violence in the Syrian Arab Republic that transferred from an unrest in March 2011 into internal disturbances and further emerged to a non-international armed conflict in February 2012)⁶⁰ constitutes a threat to international peace and security and condemns the widespread violations of human rights and international humanitarian law by both the Syrian authorities and pro-government militias as well as by non-state armed groups such as IS. Thus it decided to refer the situation to the ICC in 2014. The referral was supported by 65 member states including 13 of the permanent member states, which all voted in favor of the referral. However, permanent member states Russia and China vetoed and made it impossible for the Security Council to adopt the resolution and make a referral. There might be a slight possibility of extending the jurisdiction via retroactive acceptance – nevertheless not a real Security Council referral, seeing that Russia and China would presumably block it.

According to Rome Statute Article 11 the Court has jurisdiction only with respect to crimes committed after the entry into force of the Statute. If a State becomes a Party to the Rome

⁵⁹ Security Council French draft resolution referring Syria to the ICC, S/2014/348, available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_348.pdf

⁶⁰ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 5 February 2015

Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of the Statute for that State, unless that State has made a declaration under article 12.⁶¹ The State thus may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question.⁶² In April 2003, the Republic of Côte d'Ivoire, which was not a State party to the Rome Statute, lodged a declaration under Article 12(3) of the Statute accepting the jurisdiction of the Court for crimes committed in its territory since the events of 19 September 2002 and, additionally, “for an unspecified period of time”.⁶³ The jurisdiction was accepted to cover the crimes referred to in Article 5 of the Statute that were of relevance to the situation and that the provisions of Part 9 of the Statute and any Rules thereunder concerning States Parties apply to the situation.⁶⁴

In April 2015 the Prosecutor of the International Criminal Court issued a statement why she decided not to open a preliminary examination of the alleged crimes committed by IS, even though IS undoubtedly commits serious crimes of concern to the international community and threaten the peace, security and well-being of the region, and the world”. However, she stated that the jurisdictional basis for opening a preliminary examination into this situation is too narrow at this stage. Foreign fighters who may have been involved in atrocities such as crimes against humanity and war crime include a significant number of State Party nationals. Nevertheless the military and political organization of IS is primarily led by nationals of Iraq and Syria. Thus, the Prosecutor states that “the prospects of my Office investigating and prosecuting those most responsible, within the leadership of IS, appear limited.”⁶⁵

3.1. Ad hoc tribunals

UN Commissioner Carla Del Ponte, the former chief prosecutor of the ICTY, argued that an ad-hoc tribunal could eventually work in Syria. She thinks that an ad-hoc tribunal could be more efficient and work faster than the ICC and it could prosecute more offenders than an ICC prosecution could. It could also be based near the region, facilitating access of witnesses and documentation.⁶⁶ In theory, an ad hoc tribunal established by the UN Security Council may potentially be an option. The obstacles would be again reaching an agreement at the Security Council. With ICTR and ICTY, the members managed to agree bringing Russia and China onboard, but in the present day circumstances, it will pose real difficulties. Del Ponte however suggested that “Russia could be more amenable to a special tribunal on Syria than a ICC referral, as a tribunal would be able to handle more cases. That would mean it would pursue

⁶¹ See Rome Statute, *supra* note 5, Article 11 (1) & (2)

⁶² *Id.*, Article 12(3)

⁶³ ICC Pre-Trial Chamber III, Situation in the Republic of Côte d'Ivoire, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, No.: ICC-02/11, 3 October 2011, para 10

⁶⁴ *Id.*, para. 13

⁶⁵ Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS, 8 April 2015, available at: https://www.iccpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-08-04-2015-1.aspx

⁶⁶ <http://www.theguardian.com/world/2015/mar/17/call-for-special-tribunal-to-investigate-war-crimes-and-mass-atrocities-in-syria>, website visited 11 March 2016

more prosecutions of atrocities carried out by extremist elements of the opposition as well as members of the regime.”⁶⁷ Russia and United States had not reached a level of cooperation – predominantly because of Russia’s “al-Assad-favorable” policy – until the end of March 2016, when some signs of wider military cooperation in Syria become apparent as Russia revealed that discussions have taken place about coordinating the liberation of the IS stronghold of the Syrian city of Raqqa together with the US.⁶⁸

3.2. Hybrid court

In a hybrid model international actors can learn about local issues, culture and population. This would create fruitful “crossfertilization of international and domestic norms regarding accountability for mass atrocity.”⁶⁹ The hybrid model would also fit with the transnational dimension of IS crimes. In media interviews, the ICC Prosecutor had publicly supported the idea for a special tribunal for Syria, stating that “I will support (a special Syria tribunal) because for me its justice, accountability, rule of law, specially justice for the victims, the victims of these crimes, this is absolutely important that it must be addressed.”⁷⁰

However, the establishment of one regional criminal tribunal, to be set in compliance with two different national legal orders, would be a tremendous legal challenge.⁷¹ There can be questions about which side, international or national, has the most power in the process.⁷² It should be ensured that both of the national systems as well as the international component would work in agreement in order to ensure the fairness of the trial. There might be “differences in mentality, language, experience and legal way of thinking.”⁷³ Parties may have different legal definitions and different rules regarding to evidence, if the evidence is even available. Security threats are also something to be considered in regards to hybrid courts. The dangers following from the ongoing hatred, resentment, and social conflict in those countries may pose a serious risk to those working in the judicial process. Internationalized hybrid court would require more funding than a domestic prosecution. Thus, such a tribunal may only operate successfully if “there is active international support and if there is a genuine will to facilitate the process of reconciliation in a society.”⁷⁴ Serious international crimes might however be extremely difficult for national courts to deal with. In post-conflict states, domestic courts often suffer from

⁶⁷ Costi, Alberto: Hybrid Tribunals as a Valid Alternative to International Tribunals for the Prosecution of International Crimes, Human Rights Research

⁶⁸ <http://www.theguardian.com/world/2016/mar/30/russia-and-us-planning-military-coordination-against-isis-in-syria>, website visited 14 April 2016

⁶⁹ Dickinson, Laura A.: The Relationship Between Hybrid Courts and International Courts: The Case of Kosovo, *New England Law Review*, Vol. 37:4, 2003, p. 307

⁷⁰ <http://english.alarabiya.net/en/News/middle-east/2014/05/18/Interview-ICC-prosecutor-to-examine-al-leged-British-crimes-in-Iraq-war.html>, website visited 10 March 2016

⁷¹ Prosperi, Luigi: A Closer Look: Prosecuting ISIS Under International Law: Pros And Cons Of Existing International Justice Mechanisms, 13 April 2015, available at: <http://www.progressivelawyer.com/international-criminal-law/a-closer-look-prosecuting-isis-under-international-law-pros-and-cons-of-existing-international-justice-mechanisms>

⁷² Dickinson, Laura A.: The Promise of Hybrid Courts, *The American Journal of International Law*, Vol. 97, No. 2, 2003, p. 306

⁷³ Cassese, Antonio: *International Criminal Law*, 2nd Edition, Oxford University Press, 2010, p. 334

⁷⁴ See Costi, supra note 67

“systemic problems that include inadequate laws, endemic corruption, incompetence, poor conditions of service and pay, lack of access to justice, including inadequate legal representation, and little, if any, case-law reporting.”⁷⁵ Even after a stable government would have taken place, the judiciary may not be able to administer justice in a crucially fair way.

As it would be highly unlikely that either Iraq or Syria would wholly adopt international jurisdiction (Rome Statute), another form of internationalized court could become a better option. With the possibility of Syrian government to be emerged⁷⁶, a hybrid court would fit within the transitional aspect of the situation. While it is “entirely unlikely that the current Syrian government would agree to the formation of such a tribunal, the current Iraqi government or a future Syrian government might.”⁷⁷ Without the consent of the respective country it would be very challenging to establish any court and not to violate state’s sovereignty. However, even in the absence of the consent from the host state, “a group of concerned states (possibly even NATO or another regional organization) could probably create a hybrid tribunal outside of the United Nations framework that could be empowered to exercise international jurisdiction or even a delegated form of domestic jurisdiction, e.g. universal jurisdiction.”⁷⁸ This would however require huge steps in developing international law.

One of the biggest problems of creating a hybrid court in Iraq/Syria for the crimes occurred during the conflict would be the security threats. Even though the ongoing conflict would come to an end, tensions in the area between different ethnic groups would still highly likely exist. The risk of physical security threats such as attacks against the court but would probably be very high. As IS and its supporters heavily resist the Western ideology, there might be resistance for an internationalized court in Iraq or Syria. The resistance might be large-scaled even among the population who are not exactly supporting IS, but still resisting the West. Cross-fertilization between judges, prosecutors and lawyers from different background can be very profitable but then again international judges need to be consolidated with the information about the countries specific nature (such as language, culture, religion, national legal system) as well as the approach of these people.⁷⁹ The Rome Statute may not be “sufficiently compatible with Islamic (international criminal) law, due to the former’s secular character.”⁸⁰ Islamic law’s character shall be taken into consideration.

Some hybrid courts have applied both domestic and international law directly (Cambodia, Sierra Leone, East Timor), while other hybrid courts (in Kosovo and Bosnia and Herzegovina)

⁷⁵ Office of the United Nations High Commissioner for Human Rights publication: Rule-of-law Tools for Post-conflict States, Maximizing the legacy of hybrid courts, 2008, p. 1

⁷⁶ Post by Trahan Jennifer: New Paths to Accountability for Crimes in Syria and Iraq (Including ICC Jurisdiction Over Foreign Fighters), 12 November 2014, available at: <https://www.justsecurity.org/17308/paths-accountability-crimes-syria-iraq-including-icc-jurisdiction-foreign-fighters>

⁷⁷ Id.

⁷⁸ Post by Van Schaak, Beth: Options for Accountability in Syria, 22 May 2014, available at: <https://www.justsecurity.org/10736/options-accountability-syria>

⁷⁹ See Cassese, supra note 73

⁸⁰ Post by Sayapin, Sergey: A “Hybrid” Tribunal for Daesh?, 4 May 2016, available at: <http://www.e-jiltalk.org/a-hybrid-tribunal-for-daesh/#more-14290>

have applied only domestic law.⁸¹ In the possible hybrid court for Iraq/Syria the applicable law could be a combination of elements from both domestic as well as international laws. One model statute for a hybrid tribunal for Syria already exists: The Chautauqua Blueprint for a Statute for a Syrian Extraordinary Tribunal to Prosecute Atrocity Crimes (hereinafter Syrian Extraordinary Tribunal or the Tribunal). The purpose of the Syrian Extraordinary Tribunal would be to prosecute those most responsible for atrocity crimes committed in Syria by all sides of the conflict when the political situation permits, presumably following a change in government.⁸² In Syria IS is not the only one committing war crimes, since it has been recognized that Assad regime does it too.⁸³ According to Article 3 of draft for the Tribunal, the Tribunal should be domestic, but with international elements, and have its seat in Damascus.⁸⁴ In Syria Extraordinary Tribunal two of the three judges (including the President of the Trial Chamber) shall be Syrian and one shall be a foreign judge. All of the judges in the Trial Chambers shall be Syrian. The Court shall permit foreign judges as international observers.⁸⁵ This model could be used in the possible tribunal for Iraq/Syria. Tribunal's judges, prosecutors and defense lawyers "must be scholars and practitioners of Islamic criminal law, in order for the tribunal to be credible in the eyes of Islamic communities"⁸⁶ since modernization has often been criticized and feared in traditional Islam societies.

In order to help to ensure that serious international crimes do not go unpunished, it should be a high priority for the international community to actively remind States of their responsibility to adopt and implement effective legislation and to encourage them to carry out effective investigations and prosecutions.⁸⁷

6. Conclusion

The article underlines the problem of IS is committing crimes, of both international as well as national nature, in Syria and Iraq as a part of the ongoing armed conflicts. An armed conflict exists as there is protracted armed violence between governmental authorities and organized armed groups such as IS. Noting the facts that IS has a command structure, internal hierarchy, the existence of headquarters, access to weapons, ability to plan and carry out military operations and military training, it can be considered as an organized armed group. Ending the atrocities in Iraq and Syria is the agenda of the whole international community, prioritized especially by those states themselves. But as neither Iraq nor Syria are parties to the Rome Statute which covers the most serious international crimes, the International Criminal Court has

⁸¹ Nouwen, Sarah M.H.: 'Hybrid courts', The hybrid category of a new type of international crimes courts, Research Paper published by Utrecht Law Review Volume 2, Issue 2 (December) 2006

⁸² The Chautauqua Blueprint for a Statute for a Syrian Extraordinary Tribunal to Prosecute Atrocity Crimes, On August 27, 2013, several Chief Prosecutors of the various international criminal tribunals, convened at the Chautauqua Institution, called for accountability for atrocity crimes committed in Syria, available at: <http://publicinternationalallawandpolicygroup.org/wp-content/uploads/2014/01/Chautauqua-Blueprint-2014.pdf>

⁸³ Id.

⁸⁴ Id.

⁸⁵ Id., Article 5

⁸⁶ See Sayapin, *supra* note 80

⁸⁷ See ICC Informal Expert Paper, *supra* note 58

no territorial jurisdiction over crimes committed on their soil. A referral by the Security Council could theoretically be an option, however in reality the politics will step in and the referral will presumably be blocked by Russia and China. The Rome Statute states in its Preamble that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation. There is a pressing need for finding a solution, holding perpetrators accountable for their crimes and bringing justice to thousands of victims. As it would be highly unlikely that either Iraq or Syria would wholly accept international jurisdiction (Rome Statute), another form of internationalized court could be an option. A hybrid court as a venue to prosecute members of IS has many plausible positive aspects. Firstly, adding international know-how concerning the more difficult international criminal law to the domestic criminal prosecutions might help damaged, possibly weaker national institutions to act impartially regarding to the atrocities happened in their country. Secondly, it has been discussed that a hybrid court could be better accepted by Russia and China. In the event of trying to solve the situation in Iraq and Syria, there is a great need of political uniformity between the other countries involved in the situation.

Nevertheless, there are drawbacks as well regarding to an international(ized) proceeding. The establishment of one regional criminal tribunal, to be set in compliance with two different national legal orders, taking into account of two different ideologies (Western and Islamic), would be a huge legal challenge. Another challenge would be security threats, both physical but also the remaining tensions in the area between different ethnic groups. International help would be crucial in creating a fully functioning institution suitable for prosecuting these crimes as well as in providing independent and impartial justice and preventing serious international crimes.

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FUNDAMENTAL HUMAN RIGHTS OF THE UNACCOMPANIED REFUGEE CHILDREN

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Abstract: *Refugee children are children firstly, and as children, they should get unique care. Our duty is to improve the protection and care of refugee children. These children experience more distress than average children. The study examines the United Convention on the Rights of the Child, the European Convention on Human Rights and the European Social Charter which say a child who owns refugee status cannot be forced to return to the country of origin and no distinction is made between children and adults in social welfare and legal rights.*

All children should get basic human rights, including legal representation during asylum processing.

Keywords: *refugee, children, exploitation, freedom, globalization, legislation*

Introduction

Children rights are – or at least they seem to be – relatively new achievements in Law (and in social sciences in general). However, the United Nations Convention on the Rights of the Child that is considered as the international code of rights is only just adult (It was accepted on 20th of November 1989 in New York), international standards and national rules of law have been laying down rules regarding the particular situation of children for more than a century. However, nearly a hundred of years was needed that the state (and the society) recognizes that the particular situation of children, protection of their (best) interest and the exercise of their rights concern just all fields of life. (UN, 1989)

The international documents on the rights of children consider the immigrant children as a “special” or “sensitive” group of minors and on behalf of their increased protection they lay down special rules. The United Convention on the Rights of the Child has developed a very important requirement that the participant state shall evaluate the application of any children or their parents to travel in or leave a state for family reasons in a “positive spirit”, with humanity and due care. (In addition, all of the rights declared in the Convention are due to the immigrant children of course who stay on the territory of the participant states) The *Modified European Charter* (1996) not only includes regulations for family reasons but for the language use (language learning) too which declares that reunification of the families of the immigrant workers who received permission for the settlement shall be supported in order to protect the

children of the refugee (with last resort) parents and they shall have the possibility to learn the language both of the country of origin and the host state. From the supranational legislation, the EK council directive on the minimum requirements of the family reunification and the reception of asylum seekers and the directives of the United Nations High Commissioner for Refugees (UNHCR) for the refugee reception policy and the procedural directives regarding the asylum seeker children (2000) contain important provisions for the migrant children.

In addition, a lot of international legal documents (so: EK directives, decisions and recommendations belonging to the scope of immigration and asylum regulations of the European Union and the directives issued by the UNHCR and the decision and recommendation of the Council of Europe) contain rules (derogating from the ordinary rules) for the minors. Considering these documents one can state that the corner points of the regulation for the migrant children are as follows. The relevant legal standards formulate as basic principals in connection with the migrant children

- the interests of children above all,
 - non-discrimination,
 - collaboration among the organizations on behalf of children,
 - respect of the citizenship, (cultural) identity of the children,
 - search of the families and the rights of keeping contact and
 - confidentiality regarding children (registration and documentation).
- However, the rights provided in the New York Convention are due to all children (on the participant states), the relevant international documents stress also separately the rights of the migrant children to
- healthcare,
 - education (training),
 - temporary care,
 - integration,
 - stay in the host or asylum country or the return to the country of origin.
- Those rights can be listed into an independent group, which are due to the children during the aliens policing or asylum procedure. They are the following:
- the right to participate in the procedure,
 - the right to information,
 - to provide a guardian representative (guardian/counsellor) for the child and
 - non-detention.

The New York Convention (UN, 1989) sets out the regulations for the refugee children in one single paragraph (in the Article 22). First of all it states that the international human and humanitarian rights shall be provided for all children who apply for the refugee status or can already be considered as refugee and the protection of the practicing of these rights shall be guaranteed too. These rights (and the state responsibility in connection with the implementation of the rights) are not only due to the children who arrive with their parents or with other persons but the unaccompanied minors too. The Convention recommends the collaboration with the institutions of the UN for the participant states not only in general in order to implement the rights of the refugee children but it especially identifies the case when the collaboration (in

order to collect the necessary data) is needed to search the parents or family members of the refugee children so that the family reunion can be realized. If the family reunion is still unsuccessful because the parents or any other family members cannot be found the children (unaccompanied minors) shall receive the same protection as those who lost their family environment from any reason finally or temporary. The act regulating asylum tries to provide specific treatment with guarantee rules. If the applicants are unaccompanied minors the Asylum Authority is obliged to search the persons who are responsible for the custody of the minors. The Authority does not have to take measures for the search, if it can be reasonably assumed that there is conflict of interests between the minors and the persons who are responsible for the minors' support or in the interest of children it is not appropriate from any other reason. The Authority orders trustees for the unaccompanied minors – notwithstanding the fact whether they are legally incapacitated or of limited legal capacity – who provide the legal representation and the procedure is carried out as a matter of urgency. The law requires in basic principle the “most important principle” of the Convention, i.e. that one has to proceed taking into account *the interest and rights of children above all*.

European Convention on Human Rights

The European Convention on Human Rights (ECHR) that was accepted in 1950 (Council of Europe, 1950) regards the granting of rights that are needed to the maintenance and operation of the democratic structure as its goal. Among the rights you cannot find any that are specific for the children but there are some provisions that are in connection with the rights related to childhood.

The Article 8 of the Convention provides „*the respect of private and family life*”, several decisions made by the Court for this (i.e. in this case for the intervention of the state) which affect or concern the rights of children. On the basis of Article 14 (non-discrimination), the relationship between the children born out of wedlock and their parents is qualified as “family relationship”, one recommendation of the Committee of Ministers for the relationship between parents and children (traditional hierarchical independence) was issued as a new tendency, it emphasizes the responsibility of parents instead of the power of them, this concept reveals both the rights and the obligations of the parents. The Additional Protocol 1 of the Convention (1952) provides *the freedom of education*: „the right for education cannot be denied anybody”. Formulating this from another side it means that the state has the obligation to provide the possibility for using the education institutions. During the education the human dignity (Article 3), freedom of thought (Article 9) and freedom of expression and freedom of opinion forming (Article 10) of children has to be respected. The Additional Protocol 7 of the Convention dated in 1984 – also touches upon the children – orders *on the equality between spouses*. The importance of ECHR does not lie in the catalogue of the human rights so much but in the institutional system and in the particular mechanism of judicial protection that is realized through it and was established by the Convention (Protocol 11). The *institution of individual right to complain* that is provided by the Convention mean the most effective mechanism of right protection. In case of breaching any rights in the document, “not only” the other state but

the injured private person can also submit a claim against the unlawful state by the European Court of Human Rights in Brussels. However, the Court is not allowed to obliterate any internal court decision – its power “only” covers the statement of breaching the rights in the Convention and in the Protocols and to award of damages - , this protection of rights is much more effective than that of the institution of human rights of the UN. It is a non-negligible procedural fact that the Convention does not provide for the legal capacity of natural persons in order to submit a claim, this way it can also be done by minors without the permission of their legal representatives (the parents or their legal representatives can only (until that time) submit any claim to the court until they exercise the custody rights.

The European Social Charter

The European Social Charter that was accepted in Torino in 1961 (Council of Europe, 1961) has set itself the recognition and protection of social rights. Today, it is more appropriate to talk about a “charter package” that is consisting of five elements, the part of which is the charter that contains the “original” nineteen social rights. The main character of the European Social Charter is that the participant states can choose which obligations in the document they consent to be bound for themselves. However, they have to take responsibility for the provision of ten rights at least (five of them have to come from the determined seven rights). The Modified European Social Charter (1996) is the most important European institution which provides the children’s rights. The Modified Charter also lays down rights which concern especially only children (and young people) but we can find rights in several places of the document which have particular significance from the point of view of children.

The Article 7 states following rights in the interest of children’s and young people’s protection (against physical and moral dangers) regarding the *employment*:

- the minimum age of employment is 15 years, with the exception of those children who are employed by imposed easy work without doing harm to their health, ethics and education;
- the minimum age of employment is 18 years by those employments which are considered as unhealthy or dangerous;
- children who took part in the compulsory education are not allowed to be employed for works which could deprive them from the full advantages of education;
- the working hours of children under 18 years can be limited according to their development, in particular, the need for the vocational training;
- the young workers and students in apprenticeships are entitled for fair pay or any other suitable appropriate allowances;
- the vocational training of young people they receive during the normal work time can be considered as the part of work time with the consent of the employer;
- fair pay or any other allowances for the young workers;
- workers under 18 years are due to at least four weeks paid leave per year;
- night work is forbidden for workers under 18 years;

- in certain occupations which are determined by the state the regular medical examination is obliged for workers under 18 years

The Article 17 sets that on behalf of the *protection of children's and young people's rights to the social, legal and economic protection* the states are obliged to

- provide that children and young people taking into consideration their parents' rights and obligations receive the care, assistance, education and training they need (with the establishment of institutions and services);
- protect children and young people against neglect, exploitation, violence;
- provide protection and particular assistance for those children and young people who temporary or finally miss the support of their families;
- provide the free elementary and intermediate education of children and young people and that they regularly attend school.

In connection with the *status of children*, the Charter lays down on one hand the right to the uniform legal status, notwithstanding the family status, and in connection with adoption the right for identification. In connection with the children's *criminal liability*, the Charter provides that it shall be adjusted to the age and the children can only be held in exceptionally, in case of the commitment of serious crimes and imprisonment can only be imposed for a (short) time that is stated by the court, in all cases separated from adults. The document lays down *the protection of children's health* in connection with the education too: smoking, alcohol consumption, healthy diet and sexual education have to be especially emphasized in the education at schools. Children are particularly entitled for the protection from *violence, physical and mental rudeness and exploitation*. The Charter – in connection with this – is especially dealing with the questions of physical abuse, physical and mental rudeness, sexual and other kind of exploitations and protection against harmful content in the information technologies and with those of children in the care of the protection system.

In connection with the *right to education*, the document emphasizes the following:

- free elementary and intermediate education,
- available and effective education,
- career guidance,
- right to vocational training,
- apprenticeship,
- taking part in the university education,
- equal opportunity to access to education for children from the “sensitive” group (belonging to the minority, refugees or those who received asylum, children in hospital, in the protection system or in detention, etc.)

The Charter declares that on behalf of the protection of children of refugee parents (with last resort) the reunion of the families of the migrant workers who have received the permission to settle down has to be supported, furthermore, that the *migrant children* shall have the possibility to learn the language both of their country of origin and that of the host state.

The following provisions of the Charter can be associated with children's rights too. According to the Article 16 of the Modified European Charter, the states undertake to the full development of the families – as the basic elements of the society – that they support the *economic, legal and social protection of family life* with suitable measurements (family benefits and financial supports for the families, the right to adequate housing, childcare facilities, rights of the workers with family obligations to the equal opportunities and treatment). This provision (and the Article 17 in connection with the protection of children and young people) reflects the attitude that the welfare of the individuals cannot be separated from the families' welfare and that the welfare of the families cannot entirely be left to the efforts of the individuals, *women workers are entitled to the specific protection* (maternity leave, maternity benefit, prohibition of notice during pregnancy).

According to the Charter, the states are obliged to provide certain services and maintain certain institutions on behalf of the economic and social protection of mother and child (e.g. protection of mothers without husband, orphans, homeless children). The control mechanism of the protection of the rights in the Charter differs – even out of the character of the rights too – from the system of right protection in the European Convention of Human Rights but the control organs of the Charter can refer to the case-law of ECHR too. The states have to make a report in every second year on the execution of the provisions they have undertaken. The reports of the member states are examined and interpreted – if needed –, the Committee of Ministers of the Council of Europe makes decisions on the acceptance of any warnings or recommendations.

Refugee children and human trafficking

Refugee children are unquestionably those persons who affected by human trafficking. Being an invisible crime it is almost a bigger trade than the drug business, nevertheless the harmful-caused by sexual exploitation- can not be cured properly. As most of the people are not aware of the difference between human trafficking and smuggling it is essential to define the distinction. Since some cases are mistaken for smuggling most of the evidences remain in slavery. Smuggling is one of the type of illegal migration which is about paying for smugglers for delivering migrants. In contrast with it human trafficking is about slavery, abusing, exploitation and ravishment. The methods and devices are varied, traffickers use different tricks to trap young girls and women. (International Centre for Migration Policy Development, 2000) Of course some victims who payed for a better future become slave as they are taken in. Unfortunately a good deal of „ratified” cases exist in poorer regions. Poverty can lead to selling your own children to get by, or sometimes it is the children who make the decision to support their family. The victims are going to suffer from serious, lifelong mental diseases which makes hard to integrate into the society. It is a severe weight mainly for children who can hardly bear the brunt of this tribulation. According to a UNICEF survey the earlier they go through these outrageous the earlier they will recover from it. Those victims who are between 10-12 years are not able to cure by any mental recovery methods they will carry this stigma for their whole life. The older ones who are from those lucky victims who was rescued can not return to their home as they are stigmatized and their family do not recognize them as innocents.

(Report from the Commission to the European Parliament and the Council, Report on the progress made in the fight against trafficking in human beings, 2016) Having unwanted pregnancy and deadly venereal disease their life are sealed forever and they will never have the choice to live like any other common people. These children experience the feeling of defencelessness and despondency. Becoming grownup they keep on doing prostituting or involve in crime as they do not possess any knowledge and did not have the chance to come in for education. The resolution of this problem would be a standard principal which can be a proper guideline to define these cases and convict the right person.

Conclusion

Every human community agree that we have to feed, educate, teach and protect all children. Due to this fact their parents, the education system and the whole society must fulfil this duty. Child is not just a legal body but a human who has fundamental need of human nature, emotions and dreams. Being underage and inexperienced persons they are vulnerable, therefore appropriate function of the public authority is indispensable. In addition to the right applying of laws concerning children, well-functioning norms and rules would be essential, which is a common responsibility.

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TURKEY-IRAQI KURDISTAN REGIONAL GOVERNMENT RELATIONS WITHIN THE FRAME OF SYRIAN CIVIL WAR

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Abstract: *This analysis sheds light on political relations between Turkey and the Kurdistan Regional Government (KRG) within the frame of Syrian civil war. All Turkish governments have always been unsettled about the Kurdish nationalist movement in northern Iraq, Syria and Iran. All Turkish governments all the time have assumed not only Kurdish autonomy region in northern Iraq but also Kurdish nationalist movements in Iran and Syria as a major threat to national security and unity of Turkey, for the fear that the Iraqi Kurdish experience would have been an example for Turkey's Kurds to take similar steps towards autonomy and even independence sometime or other. After the Erdogan led-AKP (justice and development party) came to power without the support of a coalition partner in 2002, Turkey-the KRG relations acquired positive dimension. Due to common interests in the Middle East, the political and economic relations between Turkey and KRG made remarkable progress in recent times. The outbreak of the Syrian civil war, the developments in Syria have had a crucial impact on the Kurdish-Turkish peace process in Turkey and the relations between Ankara and Erbil. Under these circumstances, well-developed Turkish-Kurdish relations have been heavily wounded. In particular Erdogan's speech about Kobani city (Kurdish city located in Turkey's border) under the siege by ISIS, escalated tension between Turkey and Kurdish people.*

In addition to these, this study focuses on the relations based on the common and mutual interests between Turkey and the KRG before and during the Syrian civil war.

Keywords: *Turkey-the KRG relations, Barzani-Erdogan, Syrian civil war, Kurdish nationalist movement*

Introduction

Estimated at a population of 25 million, the Kurds are the largest nation in The World without its own state. They are an ancient and ethnically distinct people who have developed a common identity over the past 2,000 years. (Haddad, 2001) Kurds have never existed as an independent political community, and thus, have been under different rulers throughout their history, including the Sassanian Empire, the Safavid Empire, the Ottoman Empire, and the Turkish Republic, among others. (Çelik, n.d.) Kurdish people are one of ancient civilization in the Middle East. The Kurds have also generally lived in the more isolated regions of larger empires, such as the Persian, the Arab Abbasid Caliphate in Baghdad, or the Ottoman; isolation from imperial centres slowed their development as a united and strongly self-conscious people. Isolation and an often the pastoral way of life in many areas contributed to the development of a strong clan and tribal structure that perpetuated political and regional divisions. During the time of the Ottoman Empire, the Kurds, along with other Muslims were part of a broader Sunni Muslim core within a multi-ethnic empire. The empire was fully cognizant of its minorities but it defined them in religious, not ethnic, terms. (Barkey and Fuller, 1998) That's why Ottoman Empire or other Islam empires have never identified Kurds as an ethnic group or different nation. On the other hand, the Kurds have been exposed to being assimilated by the dominant culture in the different times. Because of carrying out the dominant and assimilation policies to Kurdish people for a long time in the Middle East, it caused huge unsettlement in Turkey, Iraq, Iran and Syria. In the intricate mosaic of the unresolved issues in the Middle East, the Kurdish question is undoubtedly one of the most difficult and, at the same time, constantly underestimated. Nowadays, the Kurdish people represent one of the largest "Stateless nations", whose grievances about unachieved independence or at least autonomy have been systematically disregarded for decades. The Kurds continue to constitute a problem that touches different fields and different Middle Eastern countries. This contributes to making it an extremely complex issue. (Torelli, 2016)

As it is well known, Kurdish people mostly live under the rule of Turkey, Iraq, Iran and Syria. Each country has similar issues with Kurdish people. Common points of issue, above the countries have been pursuing dominant, aggressive and assimilative policies to Kurdish people. The Human right watch about minority rights and human right violation in the recent times issued many reports and research. According to the report of Human rights watch in Syria, Kurds are the largest non-Arab ethnic minority in Syria, comprising about 8.5 to 10 per-cent of the population of 13.8 million. They are not permitted to own land, housing or businesses. They cannot be employed at government agencies and state-owned enterprises, and cannot practice as doctors or engineers. They are not eligible for food subsidies or admission to public hospitals. They may not legally marry Syrian citizens; if they do, the marriages are not legally recognized for either the citizen or the "foreigner," and both spouses are described as unmarried on their identity cards. Kurds with "foreigner" status do not have the right to vote in elections or referenda, or run for public office. They have not issued passports or other travel documents, and thus may not legally leave or return to Syria. "When you live it, you cannot believe that it is happening to you," one Kurdish "foreigner" who was born in North-eastern Syria in 1952 told Human Rights Watch. (Report by Human Rights Watch, 2006) On the other hand, Iraqi

Kurds have struggled to have political status from Baghdad administrations for a long time. To a certain extent, they have managed to have political and economic achievements from Baghdad after a long time. The dominant forces of post-Saddam Iraq have accepted the current status quo of Kurdish self-rule. The new Iraqi constitution, adopted by a national referendum on 15 October 2005, recognizes Kurdistan as a federal region with its own institutions (regional government, parliament, presidency and internal security forces) in the framework of a to-be-created federal order. (Rogg and Rimscha, 2007) So Kurdish people would have represented themselves at the administrative. It was a remarkable achievement for Kurdish people.

The situation of Kurdish people in Turkey is not so different in the comparison with Iran, Iraq and Syria. The founder of modern Turkey, Kemal Atatürk, after exploiting the Kurds for years to fight and defend the Republic against external enemies, enacted a constitution 70 years ago, which denied the existence of distinct cultural sub-groups in Turkey. All religious or ethnic identities other than the Turkish were seen as a challenge to the state. As a result, the Kurds were referred to as "Mountain Turks" and the area known Kurdistan became known as southern Anatolia. (Haddad, 2001)

In Turkey, the only language of instruction in the education system is Turkish; Kurdish is not allowed as the primary language in the education. Kurdish is permitted as a subject in universities, but in reality there are only few pioneer courses. However, currently Kurdish is elective among other lessons in some schools. Due to the large number of Turkish Kurds, successive governments have viewed the expression of a Kurdish identity as a potential threat to Turkish unity, a feeling that has been compounded since the armed rebellion initiated by the PKK in 1984. One of the main accusations of cultural assimilation relates to the state's historic suppression of the Kurdish language. Kurdish publications created throughout the 1960s and 1970s were shut down under various legal pretexts. Following the military coup of 1980, the Kurdish language was officially prohibited in government institutions. (Human Rights, n.d.) As a result, Kurdish people mostly are under the identity and cultural pressure by the local countries. Turkey as a threat to its national security considered the existence of Kurdish population all the time.

Turkey's Foreign Policy of the AKP Government to the KRG

Turkey changed its internal policy to Kurdish people in the recent times. The AKP, which came to power in 2002 after five years of unchallenged military influence, took the issue seriously from the outset and lifted the state of emergency imposed on the region since the early days of the Republic. It further introduced Kurdish TV broadcasts and lifted the ban on use of Kurdish names for the places. In 2005, Prime Minister Erdoğan publicly acknowledged while in Diyarbakır, the largest city in the Kurdish region, that Turkey has a Kurdish issue, an unprecedented move by the highest government official. The AKP administration also introduced an unprecedented reconciliation campaign in 2009, which involved a program to integrate PKK militants to the society. (Bilgin, n.d.) At the first stage, it was remarkable political alternation and promising for Turkey and future of Kurdish people in the Middle East. Because the AKP ruling party had accepted that former governments of Turkey pursued a

wrong policy to Kurdish people for a long time. Erdogan's political stance to Kurdish people caused very excitement even in Iraq and Syria. For the first time, one leader in Turkey was trying to reconcile the offended Kurdish people with the state. After almost 30 years of armed struggle, costing tens of thousands of lives, Turkey's Kurdish problem recently witnessed serious efforts to settle the conflict through an AKP government initiative declared in July 2009. By November 2014, the process had reached a point where both the government and the Kurdistan Workers' Party (PKK), which led the Kurdish insurgency in Turkey, began to signal an approaching date for the disarmament of the insurgent group. (Bezci, 2015) Erdogan officially invited the leader of KRG Barzani to Turkey first time. On 16th November 2013, Turkey's Prime Minister Recep Tayyip Erdogan held a mass meeting in Diyarbakir, the biggest city in Turkish Kurdistan, with the President of the Kurdistan Regional Government Masoud Barzani. While many political analysts hailed the meeting as historical, the opposition and a number of commentators attacked Erdogan for abandoning Turkey's traditional policies towards Kurds in general, and the Kurdistan Regional Government in Iraq in particular. Especially the fact that Erdogan addressed Barzani with his official title: "The President of the Kurdistan Regional Government", and his reference to the Kurdish populated area in Northern Iraq as "Kurdistan" was seen as a radical break from traditional state policy towards the Kurds. The present news analysis argues that the "Diyarbakir Meeting" was indeed a break with traditional Turkish state policies towards the Kurds and possibly an important step on the road to full recognition and equality between Kurds and Turks in Turkey. (Necef, 2013) In an atmosphere never seen before with Kurdish and Turkish flags flying side by side, the Turkish Prime Minister Recep Tayyip Erdogan (current President) greeted the President of the Kurdistan Regional Government (KRG) Masoud Barzani in his Kurdish clothes in the Kurdish city Diyarbakir, Turkey. The event attracted media nationwide in Turkey and Barzani's speech was translated from Kurdish to Turkish, including his concluding statement: "Long live Turk-Kurd brotherhood, long live freedom, long live peace". (Ahmed, 2015) Although the main opposition party (CHP) and other parties (MHP...) slammed Erdogan, he was strong-minded to pursuing a peace process with Kurdish people. Barzani appreciated Erdogan's stable political stance about Kurdish issue in Turkey. The peace process was so helpful to develop the relations between Ankara and Erbil. Turkish-Kurdish relation acquired positive dimension. Sometimes Turkey made some agreements with Erbil without informing Baghdad. In May 2012, Turkey and the KRG cut a deal to build one gas and two oil pipelines directly from Kurdish-controlled northern Iraq to Turkey without the approval of Baghdad, taking the rapprochement started between the two in 2008 one step further. (Tol, 2014) On the other hand, good economic relations between Turkey and KRG caused unrest with Baghdad. Because Northern Iraq is still dependent upon Baghdad and officially Turkey cannot make any deal without the approval of Baghdad. On the other hand, Turkey pursued to establish close ties with Erbil directly. Ankara and Erbil are both committed to developing infrastructure within the KRG, thus further deepening economic interdependence. Building an industrial zone along the Iraq-Turkey border, two more border crossings, additional oil and gas pipelines, airports, and upgraded highways will signal growing cooperation and promote long-term economic stability within the region. Turkey, which imports 95 percent of its oil and natural gas consumption, now buys three-quarters of its gas and oil from Russia and Iran and wants to decrease its energy dependence on both countries. Turkey's determination to diversify its oil and natural gas

sources, aimed at averting disruptions that could cripple the Turkish economy, serves as a major incentive to deepen relations with the KRG. Despite past relations characterized by suspicion and disdain, Turkey and the KRG share a strong interest in maintaining their economic partnership for the long-term socioeconomic benefit of both. (Cagaptay et al., 2015) Turkish-KRG relations are based on common interest because Turkey wants to decrease its energy dependence on Iran in the particular and KRG wants to import its oils directly without approval of Baghdad. Remarkably, Ankara has even opened a consulate in Erbil, the KRG capital. In the process, Turkey has also emerged as a far more influential actor in Iraq. (Barkey, 2010)

The outbreak of Syrian civil war

Since its independence from France in 1946, Syria has passed through many periods of political instability. Increasing Arab nationalism fuelled many military coups, until the Syrian Corrective Revolution in 1970 brought the Arab Socialist Ba'ath Party and Hafez Al-Assad to power. The new regime was autocratic, one-party, and very totalitarian, meaning that any opposition was to be repressed. (Bērziņš, 2013) In December 2010, when trouble erupted in Tunisia, the Arab countries of West Asia and North Africa was mired in serious problems. In the entire Arab world, political freedom was at a premium, to varying degrees. There was large-scale unemployment. Benefits of economic growth were cornered by a few, and the younger generation was restive. The crisis in Tunisia spread swiftly to other regional countries, for the economic and political conditions were not much different. (Haran, 2016) Syria was one of the countries, which were affected by Arab spring wave. In March 2011, a local popular uprising broke out and the Arab Spring reached Syria. The uprising rapidly spread across the country and two years later, more than 100,000 people are dead, including 7,000 children. This violence approaches that of the war in Bosnia, both in quantity and in quality. (Üngör, 2013) In a short span of time, Syrian people kept marching on the streets against Al-Assad regime. The regime's opponents inside Syria have been predominately-unarmed protestors, but by the end of 2011, armed resistance in Syria became more robust. The terms protestors or demonstrators refer to the largely young, male, and Sunni throngs of Syrians who have taken to the streets to demand Assad's ouster through unarmed, if not wholly peaceful, means. (Holliday, 2011) Protests have continued for weeks. Besides that protests turned into a Sunni uprising against Shia Assad regime. Damascus administration showed a very strong response to demands of protesters instead of defusing tension.

Turkey's reaction to uprising in Syria

When the uprisings hit Syria in March 2011, Turkey was well positioned to have an influence in this country. In the first few months Turkish officials, including Foreign Minister Davutoglu, during which attempts, made several trips to Damascus were made to convince Assad to initiate reforms. The Baath regime also started violently suppressing demonstrations. Turkey's response to this was also twofold: while efforts to persuade Assad to reform continued, both Prime Minister Recep Tayyip Erdogan and Foreign Minister Ahmet Davutoglu became

increasingly vocal in their criticism of the regime's crackdown. For instance, in early August 2011, ahead of Davutoglu's visit to Damascus, Erdogan said that they were running out of patience and that Turkey could not remain indifferent to developments in Syria, as the Syrian crisis was "almost an internal problem for Turkey." Upon his return from what turned out to be his last visit to Damascus, Davutoglu described the methods used by Syrian security forces as "unacceptable" and announced that, "We discussed ways to prevent confrontation between the army and the people, and tensions like those in Hama, in the most open and clear way." (Altunışık, n.d.) Thus, Turkey completely involved in the uprising and Syrian internal policy. As mentioned before, the uprising in Syria inclined to be a much more Sunni movement against Damascus administration. On the other hand, AKP government had been carrying out a pro-Sunni policy during and after Arab spring. In fact, Turkey began to support the countries that started to experience political transition. The electoral successes of Muslim Brotherhood parties in these countries were perceived as an opportunity by the AKP government. Having itself grown out of Turkey's Islamist movement, the AKP leadership historically had ties with Muslim Brotherhood movements. More importantly, however, the AKP with its own transformation to a "conservative democratic" party, presented itself as a model for the transformation of the Muslim Brotherhood parties to work within a democratic system. (Altunışık, 2013) That's why Turkish AKP-government supported some pro-Sunni protests and movements in Egypt in and in Syria. So Turkey could have made its Middle East policy much more effective.

The rise of Kurdish movement in the Syrian civil war

The 2011 uprising in Syria and subsequent civil war have created the conditions for a major shift in Kurdish politics and society in Syria. Most Kurdish political parties trace their descent from the Kurdistan Democratic Party of Syria – the first Kurdish nationalist party, which was founded in 1957. These parties have always been illegal and have struggled to mobilize. Undermined by state repression and internal fractures, they have mainly confined their activities to the cultural sphere. Syria gave sanctuary to the PKK in the 1990s, and the numbers of Syrian Kurds who joined the party increased during this period. Following the PKK's expulsion from Syria in 1998, former members of the party established the PYD in Syria in 2003. (Gunes and Lowe, 2015) The PYD/YPG has recently gained a degree of international support, becoming a key ally to the anti-IS coalition. The YPG represents the coalition's most successful partner on the ground in northern Syria, in part because persistent doubts about the nature of many other opposition groups have precluded the provision of comparable coalition support to those groups. The combination of US airstrikes and YPG intelligence and follow-up on the ground lies behind the most significant battlefield defeats that IS has suffered in Syria, including in Kobani and Tel Abyad. US air support has enabled the YPG to fight IS, but also in the process to gain control of most of Turkey's border with Syria. The PYD/YPG now controls three largely Kurdish enclaves in northern Syria, which it refers to as "cantons": Jazira (Hassakeh province), Kobani (east of the Euphrates), and Afrin (north-west of Aleppo), as well as the territory between Jazira and Kobani. (Salih, n.d.) Turkey was not pleased with these developments in Northern of Syria.

Rojava-Kobani revolution and Turkey-KRG relations

When a wave of civil protests swept across Syria in 2011, the political movements in the predominantly Kurdish areas in Northern Syria assumed a different *modus operandi* from other regions in the country. All other areas in Syria were drawn to the emerging conflict between the state apparatus of the Syrian president Bashar al-Assad, on the one hand, and various opposition formations, on the other. The leading political organizations in the predominantly Kurdish areas in Northern Syria, most of all the largest Kurdish political party in Syrian Kurdistan, the Democratic Union Party (PYD), made a decision to stay out of the battle over the control of Syria that was taking shape in all the largest Syrian cities. Instead, the major political forces in Northern Syria began to manoeuvre towards a declaration of a multi-ethnic social contract. (Jäntti, 2017) On the other hand Damascus administration made very important decision about the control of area. The republic of Rojava was declared in 2012 as a way for the Syrian president Bashar al-Assad to prevent a Kurdish uprising. All military and government officials were pulled out of the region, leaving the area in the hands of the Kurds and Yezidis. This gave rise to a tension between the possible parties that wanted to take over the region: PYD (Democratic Union Party) in Syria and the parties aligned with KRG (Kurdish Regional Government) in Iraq. They managed to resolve the tensions by creating a coalition of fifteen parties, non-Kurdish groups, assemblies and different citizen groups called TEV-DEM (the Democratic Society Movement). The coalition created the governing body of Rojava with the use of Democratic Confederalism, and its only responsibility now, according to Rojava's constitution, is to make sure that all decisions made by the administrations are anchored within the grassroots. Politically the area is divided into three autonomous cantons: Efrîn, Kobanê, the area most attacked by Daesh, and Cizîrê, the most populated canton. (Ghotbi, 2016) As Rojava comes to life as a socio-political entity it faces numerous challenges, not least the devastation caused by ISIS. 80% of Kobani lies in ruins; the majority of its people have fled to Turkey and are unsure as to whether they will be allowed to return to a town ridden with hidden bombs and little working infrastructure. Rojava's three cantons of Afrin, Kobani and Jazeera remain separate entities lacking contiguity and a defined political future, especially as the war in Syria still looks far from being over. As ISIS weakens militarily, retreating from territories it once held, and factions such as the al-Qaeda-linked Jabhat al Nusra and Syrian regime look to capitalise, Syria's Kurds undoubtedly have to continue fighting as the war drags on indefinitely. (Stephens, n.d.) The rise of the Islamic State in Iraq and Syria (ISIS) in towns along the Euphrates Valley, immediately adjacent to and in one case bisecting Kurdish areas, and the effort by a new U.S.-led coalition to defeat ISIS gave the YPG-PYD a chance to extend its territorial reach east and west of the river and create a contiguous entity. (Middle East Report, 2017)

Turkeys approach towards Rojava (Kobani)

Since September 16, 2014 the Islamic State in Iraq and the Levant (ISIL or ISIS) fighters launched an assault on the Kurdish city of Kobani (Ayn al-Arab), attempting to take control of the strategic territory on the Syria-Turkey border. (Karmon, 2014) In October 2014, protests

erupted across the majority Kurdish south-east of Turkey in response to the advance of the armed group calling itself Islamic State (IS) on the predominantly Kurdish city of Kobani/Ayn Al-Arab on Syria's border with Turkey, then held by the Kurdish Peoples' Protection Units (YPG) armed group which has links to the Kurdistan Workers' Party (PKK) an armed group in Turkey. Up to 200,000 Syrian Kurdish refugees fled across the nearby border into Turkey. Demonstrators protested against the IS and those they claimed to be its supporters within Turkey and its government, who they alleged to be allowing the IS to advance. A week of protests and linked large-scale violence, left more than 40 people dead, including Kobani protestors, political opponents they accused of supporting IS, bystanders and three police officers. The clashes also brought scores of injuries and the destruction of public and private property across the majority Kurdish south-east of Turkey and beyond. (Amnesty International, 2015) Turkey did not want Kurdish people in Syria to gain strength along Turkey's border. Turkey deems Syrian Kurdish ambitions a threat to its national security because of the YPG's intimate links with the Kurdistan Workers' Party (PKK). The group has been battling for self-rule inside Turkey since 1984. (Zaman, 2016)

The Turkish Prime minister (Current President) Recep Tayyip Erdogan "Kobani is about to fall," he told Syrian refugees in the Turkish town of Gaziantep, near the border. (Saul, 2014) Erdogan's speech made Kurdish people much angrier with. On the other hand, Turkish authorities always expressed that Turkey is one of the country, which fights against ISIS, and it is ready to help. Turkey allowed Kurdish Peshmerga forces from northern Iraq across its territory to defend Kurds in the besieged Syrian border town of Kobani, in a move that fighters say could tip a month-long battle against Islamic state (Isis) insurgents in their favour. (Chulov et al., 2014) Kurdistan Regional Government (KRG) Prime Minister Nechirvan Barzani yesterday thanked President Recep Tayyip Erdoğan and Prime Minister Ahmet Davutoğlu for their roles in aiding the forces that fought back the Islamic State of Iraq and al-Sham (ISIS) from the northern Syrian town of Kobani after 134 days of the ISIS siege.

"I thanked Turkish President Erdoğan and Prime Minister Davutoğlu for their efforts. Had they not been so brave, peshmerga forces would not have been able to arrive in Kobani to help [Kurdish fighters in the town]. Turkey played a significant role in sheltering refugees from Kobani," Barzani said. (Alkan, 2015)

Conclusion

Turkey fears Kurdish independence not only in Turkey but also anywhere in the world. That is why all Turkish governments followed completely rigid policy towards Kurdish people even in Turkey. In the first periods of Erdogan and AKP led Turkish government carried out a moderate foreign policy towards KRG in particular. Actually, it was quite a big step for the peace of Middle East.

It is wondered that Turkey really wants to turn over a new leaf with Kurds or everything is based on common interests. Initially, Turkish-KRG relations developed rapidly. Mutual political visits, economic agreements, petrol trade, military common actions and common

foreign policy towards Tehran-Baghdad. When Barzani pays official visits to Ankara, it was raised a KRG flag in Ankara. That happened the first time in the history. It means that Turkey recognised KRG as a county unofficially. In that time, Erdogan maintained cooperative policy towards KRG, although Turkish nationalists slammed Erdogan. Generally, Erdogan led Turkish government maintained to develop the relations with KRG until KRG holds an independence referendum. Even although Turkey reluctantly allowed KRG Peshmerga (Kurdish soldiers) through Turkey to fight in Kobani against ISIS, there was quite a good relationship between Ankara and Erbil. After Erbil government announced the independence referendum, all Turkish authorities including Erdogan showed a very strong reaction to Erbil. So, Turkey lost its best ally in the Middle East and KRG lost its best trading partner. On the other hand, Turkey's strong reaction to KRG made Kurdish people in Turkey angry with.

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ONE BELT AND ONE ROAD: UNDERSTANDING THE NEW SILK ROAD

CASE STUDIES OF HUNGARY AND PAKISTAN

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Abstract: *During the academic year 2016–2017 I was pursuing the European Master in Law and Economics programme* in Bologna, Hamburg and Mumbai. I wanted to choose a thesis topic which involves both Europe and Asia, and which is very relevant nowadays politically and economically. For this reason, I choose to investigate the One Belt & One Road Initiative -which was announced by the Chinese President Xi Jinping in 2013 – from a law and development perspective. Till now, the OBOR involves 65 countries and the huge infrastructure project's aim is to connect Europe, Asia and Africa, for geostrategic ambitions and economic aims. The thesis consists of three main chapters divided into twelve subchapters. In Chapter 1 the initiative will be presented: the main corridors, the Action Plan and the financial and economic scope of the OBOR will be analyzed. Chapter 2 will analyze the law and development perspective of the project and the main focus will be on human rights issues and environmental concerns. In Chapter 3, I will introduce two case studies: Hungary's and Pakistan's role will be presented. While the project may improve transport and logistics, many concerns were raised as the countries involved have different political and economic background which can lead to conflict of interests during the implementation.*

Keywords: *China, New Silk Road, infrastructure, trade*

Introduction

The ancient Silk Road

*“The earth had no roads to begin with,
but when many men pass one way, a road is made.”*

This quote above from Lu Xun – who is a leading figure of modern Chinese literature – refers to the history of the Silk Road. Sericulture (from the Latin sericum, “silk”) was established in China by the third millennium BCE. (Jinchen, 2016) The term Silk Road was first used in the late nineteenth century by a German geographer, Baron Ferdinand von Richthofen in 1877. He used the German phrase ‘*Die Seidenstrassen*’ to illustrate the historical trade routes of silk between China, India and the Mediterranean. (David, 2000, p.2) It is crucial to highlight that the Silk Route was never a single road but a collection of land and maritime roads. The Overland

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Silk Route was more than 10000 km long connecting China with Rome, and it dates back to the Han dynasty (206BC–220 AD). The Maritime Silk Road developed because of the Chinese trade with Southeast Asia. (Pop, 2016, p.2) It is crucial to understand what role the Silk Road played between the different civilizations and the different continents. Trade and cultural relationships further developed between China, India, Persia, Arabia, Greece and Rome. (David, 2000, pp.22–23)

Scholars such as Andre Gunder Frank and Barry Gills indicated that trans-civilizational exchanges flourished mainly in four periods: at the end of the first millennium BCE, at the beginning of the first millennium CE, between the sixth and eighth centuries CE, especially during the Tang dynasty (608–907 AD), and last but not least during the Mongol empire. (David, 2000, p.5) After the fifteenth century, sea routes became more important than the overland trade routes, therefore the golden age of Silk Road ended after the Mongol period. After the fall of the Mongol Empire, political powers located on the Silk Road became more divided, therefore the overall trade decreased. Another factor which contributed to the shrink was the decline of pastoralist communities along the Silk Road. In 1453 with the rise of the Ottoman Empire the trade on the Silk Road was over. (David, 2000, p.6.; Ivory and Kang, 2016, p.11)

Many scholars and economists believe that the Silk Road provided a “*model of idealized exchange*.” (Chin, 2013, p.194) Around 1850 the modern global silk trade started, when East Asia became the world’s major supplier of raw silk. (Debin, 1996, p.330) This reemergence symbolized the revival of the Silk Road; silk again was exported from East to the West. (Debin, 1996, p.335) However, it is important to emphasize that the means of transport and the speed of the trade dramatically changed. (Debin, 1996, p.352) After the construction of the transcontinental railway across the United States, Richthofen anticipated in 1869 that one day a railroad will connect China and Europe. (Chin, 2013, p.210) Less than two centuries later there is a plan to build a new high-speed iron Silk Road, which would connect Beijing and London. (Chin, 2013, p.196)

Since the end of the Cold War, different organizations such as the United Nations, and countries like the United States, Russia, Iran, Turkey and South Korea worked on where and how to develop a New Silk Road. As in the ancient times the Silk Road derived from China, today as well, China is the key player. In October 2012, Professor Wang Jisi was the first Chinese scholar to talk about the need of revitalizing the ancient Silk Road while referring to trade routes to Southeast Asia, South Asia and Central Asia. One year later, Chinese President Xi Jinping announced the “*One Belt, One Road*” (OBOR) Initiative. Due to the globalization, China recognized the need of the Silk Road’s revival in order to achieve common prosperity in Eurasia. (Pop, 2016, p.2)

If we look in the past, China began the economic reform at the end of the 1970s, when it was a “*small, under-developed and closed agrarian economy*.” One can argue that the country’s economic growth and success is due to the open international economic system. (Huang, 2016, p.317) China’s real GDP increased by an average of 9.6% a year, and the GDP per capita grew from US\$200 to US\$8000 between 1980 and 2015. However, the economic growth faced

several slowdowns, namely in 1989-90 and 1998-99 and 2012. In 2015 GDP growth slowed down to a 6.9%. It can be argued that the decline in economic growth is correlated with the weaker global economy. For this reason, if the major economies would recover, Chinese growth could also improve. (Huang, 2016, p.321) From another point of view, the World Bank and the Asian Development Bank predicted that China's growth will fall to 5-6% by 2030. (Huang, 2016, p.316)

Currently China's goal is to advocate a greater role for itself in the international order and to expand its influence overseas. The Chinese president, Xi Jinping is pushing to strengthen the country's global position, the project "*Silk Road Economic Belt*" was introduced in September 2013 by the president during his visit to Kazakhstan. One month later, the president called for the establishment of the Asian Infrastructure Development Bank (AIIB) and the construction of the "*21st Century Maritime Silk Road*". The two initiatives: the "*Silk Road Economic Belt*" and the "*21st Century Maritime Silk Road*" are officially called as the "*One Belt & One Road Initiative*." In November 2013, the Party leadership adopted the initiative as a reform blueprint and emphasized its importance as a key priority before 2020. In March 2015, detailed plans for the OBOR were laid out by different government departments, which were also approved by the State Council. (Huang, 2016, p.314)

As the Chinese growth slows, it seeks to find new ways to support the economic growth. Therefore, it is China's interest is to lead the international economy and to implement the OBOR project. China officially proclaimed its "*going global*" policy in 2002. One of China's primary goals is to "*conquer world markets by opening up the markets of emerging and developing economies*". Due to direct investments in these countries, China would secure supply of resources, especially natural resources. (Huang, 2016, p.320) China's intention with the OBOR project is to maintain its economic growth, by developing new mechanism of international economic cooperation both with new and old trade partners. By implementing the project, China would gain more influence on the regional and international level. China wants to connect neighboring markets not just via roads, railways, waterways but also via oil and gas pipelines. In addition, China has financed several airports in Asia, such as in Cambodia, Laos, Sri Lanka, Pakistan, and Mongolia (*see Appendix II*). (Holslag, 2012, p.648) Therefore, "*China's new road diplomacy is thus an important element in the pursuit of competitive regionalization*." (Holslag, 2012, p.658) The crucial elements of the projects are the followings: "*infrastructure development, policy dialogue, unimpeded trade, financial support and people-to people exchange*." (Huang, 2016, p.321)

Scope of the research

Till now, the OBOR involves 65 countries and diplomatic cooperation has begun regarding the project. Most of the countries are emerging or developing countries which are located on the route. Thanks to the OBOR trade transport and logistics will improve, and industrialization in developing countries will accelerate. Telecommunications, high-speed railways, shipbuilding and many other infrastructure projects will be implemented. According to the Chinese government, the new era of the Silk Road's aim is to promote mutual political trust, economic

integration and cultural inclusiveness. However, as the project is huge, involving many countries on several continents with different political and economic background, the initiative and its execution is challenging. Many concerns were raised by experts in the EU that the OBOR could cause environmental degradation and human rights issues problems if the regulation and implementation does not go correctly.

The purpose of my research is to analyze the implication of the OBOR. Consequently, the objective of my thesis is to investigate the project from a law and development perspective. Therefore, the economic, geopolitical and environmental impacts of the initiative will be discussed in the following three chapters. The overall research questions that should be answered through my research will be as follows:

1. What is the law and development perspective of OBOR?
2. What kind of environmental consequences and human rights problems can the project cause?
3. What is Hungary's and Pakistan's role in the OBOR initiative?

Generally, economic analysis of law relies on the tools of microeconomics in order to analyze legal rules and institutions. My goal is to investigate and interpret the OBOR project relying on tools of microeconomic theory in order to better understand the economic and ecological impact of the project. In the standard market model, the assumption is that agents are self-interested and in the thesis, I will argue that China cares only about its own economic advantage. The thesis will provide a policy analysis of OBOR. China can be seen as a policymaker who explains and predicts the effects of legal rules and institutions regarding the OBOR. From a political economy perspective, I will attempt to analyze how the content of law is determined; I will evaluate how institutions such as the AIIB make policy. It is important to emphasize that policy analysis and political economy examines behavior, thus during my research I will focus on China's role.

In my thesis, I will examine the linkage between trade, investment and development; therefore, it is crucial to clarify their meanings. For China, to maintain its economic growth which is declining now it is crucial to export goods and services in order to establish new markets and for this reason China is developing new and old trade routes in Eurasia. Pareto efficiency is a focal point in the field of law and economics; however, in my thesis I will seek to answer if the involved parties have acted voluntarily and if they consented to the rule. For example, in several Southeast Asian countries infrastructure projects were suspended due to environmental concerns. Both in Myanmar and Cambodia the locals were not asked prior to the execution of the dam projects, but as soon as they realized the ecological harm of the projects they demonstrated.

To conduct my research, a wide variety of sources and materials have been collected. The prediction to answer my questions will be supported through available books and articles. This thesis analyses and interprets international agreements between China and partner countries. As I will analyze two case studies - Hungary and Pakistan - I will mainly rely on official documents of these two countries signed with China. I will also interpret current and important

international events related to the OBOR. The Belt and Road Forum was held in May 2017, and I will present how the international community reacted.

Structure of the thesis

The thesis is structured as follows. In *Chapter 1* I will present the OBOR initiative. First the main corridors will be presented and then the Action Plan which was adopted in 2015. Financial and economic scope of the OBOR is crucial, but due to limitations I will analyze only the Silk Road Fund and the Asian Infrastructure Investment Bank's role. Finally, the Belt and Road Forum for International Cooperation will be discussed which was held recently in May 2017. *Chapter 2* will focus on the law and development perspective of the OBOR, legal and geopolitical challenges will be examined. As the infrastructure projects will involve so many people across different continents, human rights issues could challenge the implementation. In addition, the environmental implication of the New Silk Road will be evaluated.

In *Chapter 3*, I will analyze case studies. Being a Hungarian student at the Indira Gandhi Institute of Development Research (IGIDR) in Mumbai, my goal is to compare Hungary's role and economic involvement in the OBOR project. It is important to mention that Hungary was the first European country to sign the cooperation agreement for China's new Silk Road initiative. A 350-kilometer high-speed rail line will be built from Belgrade to Budapest, which will connect the China-run Piraeus port in Greece with Central Europe. (Shepard, 2017) The second case study will evaluate the China-Pakistan Economic Corridor. The final part of the chapter will highlight the differences and the similarities between the OBOR initiative and the Marshall Plan. In the conclusion, I will review my research, and then I will give recommendations for policy improvement.

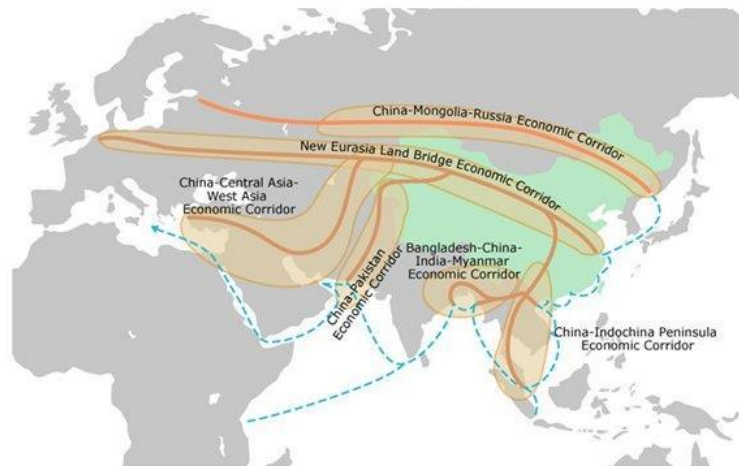
Chapter 1 – One Belt and One Road

Mapping the Silk Road Initiative

China announced that the OBOR is open to everyone but till now it has identified 65 countries along the New Silk Road, which means that 64 nations plus China will “*account for 62% of the world's population and 30% of its economic output.*” (Huang, 2017) The OBOR's overall goal is to connect Asia, Europe and Africa along the following routes. It is important to mention that some infrastructure projects of the OBOR were planned long before its announcement. For this reason, some infrastructure projects have already been completed. (1) *The New Eurasia Land Bridge Economic Corridor* is an international railway from Lianyungang, China to Rotterdam in Holland through Kazakhstan, Russia, Belarus and Poland. (2) *The China-Mongolia-Russia Economic Corridor* includes rail and highway connectivity between China, Mongolia and Russia. In July 2015, the three leaders of the countries adopted the Mid-term Roadmap for Development of Trilateral Co-operation between China, Russia and Mongolia. (3) *The China-Central Asia-West Asia Economic Corridor* will run from China to the Mediterranean coast and to the Arabian Peninsula through Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan

and Turkmenistan), Iran, and Turkey. (4) *The China-Indochina Peninsula Economic Corridor* will connect China and countries along the Greater Mekong River via international rail line and air routes. The involved countries are engaged in constructing nine cross-national highways. (5) *The China-Pakistan Economic Corridor* will include highways, railways, oil and natural gas pipelines and optic fibre network from Kashgar, China to Gwadar Port in Pakistan. (6)

The Belt and Road Initiative: Six Economic Corridors Spanning Asia, Europe and Africa



Finally, the *Bangladesh-China-India-Myanmar Economic Corridor*, which was proposed long before the OBOR, is aiming to further develop transportation infrastructure, commercial circulation, and people-to-people connectivity. (HKTC, 2017b)

The Action Plan

The *Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road* was issued by the National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of People's Republic of China in March 2015 with the State Council authorization. The document is structured as follows: (I) *Background*, (II) *Principles*, (III) *Framework*, (IV) *Cooperation Priorities*, (V) *Cooperation Mechanisms*, (VI) *China's Regions in Pursuing Opening-Up*, (VII) *China in Action*, (VIII) *Embracing a Brighter Future Together*. The overall aim of the Action Plan is to promote the implementation of the OBOR initiative. (NDRC, 2015) As part of the Action Plan, countries along the OBOR have the following cooperation priorities: policy coordination, facilities connectivity, unimpeded trade, financial integration and people-to-people bonds. In order to enhance mutual political trust and reach consensus regarding economic development strategies and policies the promotion of intergovernmental cooperation is essential. (NDRC, 2015)

The Action Plan highlights that deepening financial cooperation, including the implementation of a currency stability system is important. Investment and financing system and credit information system should be developed in Asia. As it is written in the Action Plan the “*people-to-people bond provides the public support for implementing the Initiative*”, which includes the promotion of cultural and academic exchanges, media cooperation, and tourism etc, in the aim

of winning public support for the OBOR project and to deepen bilateral and multilateral cooperation. (NDRC, 2015)

The last part of the Action Plan includes section about “*China in Action*” and “*Embracing a Brighter Future Together*”. President Xi Jinping and Premier Li Keqiang have visited over 20 countries before the Action Plan was published participated at the *Dialogue on Strengthening Connectivity Partnership* and at the sixth ministerial conference of the *China-Arab States Cooperation Forum*. The President and the Premier met with leaders of many OBOR countries’ leaders in order to deepen bilateral relations and to facilitate regional development issues. China has already signed with several partner countries the memorandum of understanding (MoU), which is the cooperation framework for the OBOR initiative. To promote the project cooperation, China has enhanced communication and consultation with the partner countries. The role of cooperation platforms, such as international summits, forums, seminars and expos about the OBOR are playing an important role. (NDRC, 2015)

It is important to clarify that China never published one list of all OBOR-related projects. It is difficult and complex to measure it. According to the Chinese government, around 50 Chinese state-owned companies have invested in 1700 OBOR related projects since 2013. The biggest projects include “*the \$46 billion China-Pakistan corridor, a 3,000km high-speed railway connecting China and Singapore, and gas pipelines across central Asia.*” The OBOR is so dispersed and it enters many different regions such as New Zealand, Britain and the Arctic. (Huang, 2017)

Financial Scope

The OBOR initiative is a massive project, which will be implemented in several decades. The New Silk Road will receive financial assistance from the Silk Road Fund, the AIIB, BRICS Bank, and the SCO Development Bank. (Chaturvedy, 2017) In addition, China will provide US\$100 billion as initial capital for the project. (EUI, 2015, p.3)

The Silk Road Fund

The US\$40 billion Silk Road Fund has been implemented to finance the OBOR Initiative and it will invest mainly in infrastructure and resources and also in industrial and financial cooperation. The Silk Road Fund was established as a limited liability company in December 2014 by its founding shareholders *China’s State Administration of Foreign Exchange*, the *China Investment Corp*, the *Export-Import Bank of China* and the *China Development Bank*. On 14 May 2017, President Xi Jinping announced at the opening ceremony of the *Belt and Road Forum for International Co-operation* that China would allocate additionally \$15 billion to the Silk Road Fund. (HKTDC, 2017b)

The Asian Infrastructure Investment Bank

In October 2013, China proposed the establishment of the *Asian Infrastructure Investment Bank* (AIIB) at the Asia-Pacific Economic Cooperation Summit in Bali, Indonesia. The *new multilateral development bank* (MDB) opened its doors January 16, 2016. The core principles of AIIB „are openness, transparency, independence and accountability and our mode of operating is Lean, Clean and Green.” (AIIB, n.d.) The bank will focus on the development of infrastructure and other sectors in Asia “including energy and power, transportation and telecommunications, rural infrastructure and agriculture development, water supply and sanitation, environmental protection, urban development and logistics.” By December 2015, the 57 Prospective Founding Members of AIIB had signed the Articles of Agreement. As of 13 May 2017, it has 77 approved members/prospective members. (AIIB, n.d.)

Projects are being executed in Tajikistan, Pakistan, Bangladesh, Indonesia, Myanmar, Azerbaijan and Oman. It is important to mention that some of these projects are co-financed by the World Bank, Asian Development Bank and Bank for Reconstruction and Development. (Panda, 2017) Up till January 2017, the AIIB has approved nine projects, which is equal to a \$1.7 billion investment. Regional members hold 75% of the total voting power, however it is important to mention that fourteen of the G-20 countries are AIIB members. The AIIB’s initial total capital is \$100 billion, and China is contributing \$50 billion, while India as a second-largest shareholder with \$8.4 billion. China’s voting share is 28.7 %, while India’s 8.3%, which means there is a big gap between the two largest shareholders. Russia has the third largest voting share within AIIB. Regarding the governance structure of the AIIB, it lacks a resident board of executive directors representing member states’ interest on a daily basis. Another important element is that AIIB transfers most of the decision-making authority to regional countries and mainly to China. However, it is important to emphasize that not all the leading members of AIIB endorse the OBOR. For instance, India has opposed the OBOR, because the CPEC – which is an integral part of the OBOR – goes through Pakistan-Occupied Kashmir. (Weiss, 2017, pp.2–3 and Panda, 2017)

In five years, in case AIIB will be a successful story, the bank could lend US\$ 20 billion per year, which is a similar amount to the World Bank’s IBRD lending, however the OBOR initiative is way much larger than the AIIB’s capacity. (Dollar, 2015) It can be claimed that the AIIB will boost China’s status as a global power. Some analysts argue that “*the AIIB and OBOR are direct responses to the Obama administration’s rebalance to Asia; others consider them as examples of a more confident China attempting to reshape the global order.*” (Zhu, 2015)

Economic implications

Until February 2016, US\$250 billion was invested in OBOR projects according to PwC. (PwC’s Growth Markets Centre, 2016, p.3) In August 2016 President Xi said that China had signed formal agreements with more than 30, and with 20 countries projects planning were already ongoing involving 900 deals. (Pike, 2017) In the year 2015, nearly 4000 projects contracts were signed between Chinese enterprises and the OBOR members, valuing of \$92.6 billion. (Shah,

2016) In order to demonstrate China's financial role it is important to look at the FDI, *"China's FDI outflows to the OBOR countries, increased to USD \$ 18.9 billion in 2015 from about USD \$400 million in 2004, with average annual growth between 2004 and 2015, amounting to 43%."* (Tracy et al., 2017, p.73)

According to the UN Economic and Social Commission for Asia and the Pacific (UNESCAP) report, China will invest around \$ 4 trillion in OBOR infrastructure projects. (ANI, 2017) Several European experts argue that the loans which are charged by interest rates as 16% or above for the OBOR projects, such as the CPEC will be difficult to repay. These loans can push Pakistan, Sri Lanka, Bangladesh and Nepal *"into an endless debt trap"*. For example, the UNESCAP estimated that *"the USD 46 billion-dollar CPEC represents a fifth of Pakistan's Gross Domestic Product or GDP if not more."* (ANI, 2017)

It is crucial for China and the investors of the OBOR to conduct a financial risk assessment of the countries. For instance, Venezuela received \$ 65 billion of loans from China the last ten years, but a year ago the two parties had to renegotiate the loans as the Venezuelan economy suffered from the oil price decrease. (Weinland, 2017) Sri Lanka is currently having problems with repaying the \$ 8 billion debt to China. In addition, China is *"willing to give"* in addition \$ 24 billion which would be invested on the OBOR initiative in Sri Lanka. It is important to highlight that according to the recent discussions, it is proposed that a Chinese firm will have the 80 % share of the Hambantota port which was financed by the Chinese (*see Appendix II*). (PTI, 2017) Beijing is giving high interest loans with an eye on conversion to equity in the event of default. This basically means if there is a default, China will hold strategic land for long term freehold. China sees this as a mutually beneficial development; however, it can be argued China is relying on neocolonialism as economic dominance.

According to the estimations of PwC the OBOR will *"mobilize up to US\$1 trillion of outbound state financing from the Chinese government in the next 10 years and most of this funding will come in the form of preferential debt funding, but some will be in equity."* (PwC's Growth Markets Centre, 2016, p.4) If the implementation of the projects goes well at least 30-40 years are needed to complete the constructions. It is important to mention that *"2049 is often referred to as a key milestone as it is the year when the 100th anniversary of the establishment of the People's Republic of China will be celebrated."* (PwC's Growth Markets Centre, 2016, p.4)

The Belt and Road Forum for International Cooperation

The OBOR summit was held May 14-15, 2017 where *"twenty-nine heads of state and representatives of more than 130 countries attended the two-day Belt and Road Forum for International Cooperation in Beijing."* The importance of the summit shows that leaders of democracies such as Switzerland gathered together with leaders of regimes such as North Korea. At his opening speech, President Xi showed a photo about the ancient Silk Road and camel caravans carrying goods and ideas and he said, *"this part of history shows that civilization thrives with openness, and nations prosper through exchange."* (Kuhn, 2017; Richardson and Williamson, 2017) The summit was welcomed differently. The US planned to

send a low-level Commerce Department official to the summit, but *“after the Trump administration announced a major agreement with China on trade, which entails an endorsement of the Belt and Road Initiative”*, Matthew Potthinger senior director for Asia at the National Security Council was sent to represent the US. North Korea was represented by minister of external economic relations Kim Yong Jae. Regarding the EU’s response to the summit, ten countries out of twenty-eight member states were present in Beijing, which clearly shows that the approach towards the OBOR on the European level is very mixed. (Chhetri, 2017) UK, Germany and France however sent lower-ranking officials to China. (Huang, 2017) India did not attend the summit, as the CPEC traverse through Kashmir region which is claimed by both India and China. However, China claims that it will not take a side in the conflict. (Kuhn, 2017)

President Xi announced during his opening speech that extra \$113 billion funding will be provided for the OBOR and it will come from the Silk Road Fund, China Development Bank and the Export and Import Bank of China. (Huang, 2017) As most of the discussions were held about the infrastructure projects, those who are concerned about OBOR’s environmental implications did not almost anything new because hardly anything was publicized. (Kuhn, 2017)

The representatives of the invited governments achieved consensus in many issues, namely 760 projects across 76 categories. (HKTDC, 2017c) Secretary General Antonio Guterres of the United Nations, President Jim Yong Kim of the World Bank Group and Managing Director Christine Lagarde of the International Monetary Fund also participated at the Forum. It is important to mention that the Leaders Roundtable was chaired by President Xi Jinping. (FMPRC, 2017) At the end of the Forum a joint communiqué was issued, *“which confirmed the shared commitment to establishing a more open global economy and ensuring free and inclusive trade, while opposing all forms of protectionism, in line with the aims and objectives of the Belt and Road Initiative.”* (FMPRC, 2017) The Cooperation Principles included in the joint communiqué are the followings: a) *Consultation on an equal footing* b) *Mutual benefit* c) *Harmony and inclusiveness* d) *Market-based operation* e) *Balance and sustainability*. (FMPRC, 2017) According to the plans the next summit will be held in 2019 to discuss the further plans about the OBOR initiative. (Kuhn, 2017)

Chapter 2 – Law and development perspective

Legal challenges

According to Hendrik Andersen *“rule of law is essential from a market economy perspective as it provides the market agents with legal certainty about their investment and should be considered as part of the OBOR strategy.”* The OBOR initiative faces several rule of law challenges. First, it is important to highlight that different countries have various political and normative approaches towards the rule of law. For this reason, it is crucial to compare the differences and the similarities between Chinese and European approach. Second, the multilevel nature of rule of law is perceived differently on national and international level.

(Andersen, 2016, p.1) On one hand, several EU countries are members of the AIIB, and on the other hand, China is involved with the *European Fund for Strategic Investment*. (Andersen, 2016, p.4) It is crucial for OBOR investors to be aware of the rule of law differences across the OBOR states to protect investments and fundamental rights. Openness in the public system is also an important factor in order to avoid corruption. Rule of law not just protects companies but also employees against bad treatment by employers and forced labour situations. Health and safety protection of the employees is also relevant for the OBOR. (Andersen, 2016, p.19) Human rights are perceived differently in China and in the EU member states, which can lead to potential conflicts. The construction sector will require millions of workers. It will lead to severe problems if OBOR opens for mistreatment of workers such as the forced labor conditions of migrant workers in Qatar during the constructions for the FIFA World Cup 2022. On one hand, China in the Action Plan stated it will comply with the UN charter which includes also human rights. On the other hand, the ruling Communist Party of China “*wants to provide guidance to lawyers defending their clients about application of human rights in order to avoid criticism*”. (Andersen, 2016, p.24)

As so many countries are involved in the OBOR project the differences between rules of law across various jurisdictions can lead to legal uncertainty for the market agents, therefore policy coordination between the OBOR states is essential. As OBOR is a global project it must establish institutions which will deal with different legal, economic, and political issues. China seems to be the primus motor in taking the role of central planning of the economic cooperation between the countries. It is argued that China will have the power to reshape laws both on a national and international level, and it will exercise soft power within the already established institutions. (Andersen, 2016, p.22) OBOR rule of law can be seen from a soft and a hard power oriented Chinese policy. China’s approach is to develop policy-led trade facilitation and diplomatic solutions to disputes, while the European approach refers to binding rules and dispute settlement system. Trade facilitation is an important element of the OBOR initiative in order to boost the economic growth. (Andersen, 2016, p.21) For example in the WTO Dispute Settlement System China as a third party can intervene with recommendations on legal interpretation, therefore it can be said that WTO rule of law will be influenced by both soft and hard power channels. (Andersen, 2016, p.24) The initiative will involve “*both private and public parties in a web of contracts, joint ventures, public-private partnerships etc. as well as new and already existing bilateral and multilateral agreements between states.*” In case if the states do not comply with their legal commitments it would be crucial to involve courts and harder legal approaches in order to avoid market uncertainties. Questions about choice of law and law enforcement will arise, but the use of international commercial and maritime arbitration is promoted. China and most of the European States are parties to the New York Convention and it is advocated by the Supreme People's Court, which is the highest court in China in order to recognize foreign arbitration awards. (Andersen, 2016, p.26)

As the choice of governing law in the context of OBOR arise, the question about governing law of contracts and jurisdiction for dispute resolution raises. However, there is no one clear answer, because “*each layer of structuring and transaction documentation will have its own Governing Law and Jurisdiction clause*”. For example, different levels of corporate entities are governed

by different constitutional documents of the incorporation and by the local company law requirements. (Ivory and Kang, 2016, p.18)

At a commercial level, the parties of the OBOR initiative can face the following risks. The political risk includes political support, nationalisation, and cancellation of concession, import/export restriction, and taxation. An OBOR country can face commercial risk if there is currency inconvertibility, currency controls, foreign exchange risk, devaluation or inflation. From a legal point of view if there are changes in law, or there is a risk at law enforcement it can lead to severe problems. The development risk refers to bidding, planning delay and problems with the approval. Under the construction the following issues must be considered: delay, cost overrun, under-performance issues, and technology issues. These elements can cause problems with the completion of the infrastructure projects. (Ivory and Kang, 2016, p.18) Regarding the project's operational level, the laws of the country where the business will be operated will define the documentation and arrangements. Such issues include *“employment contracts, visas and work permits, planning and construction, environmental issues, health and safety, rights to title and transfer of real estate, local Taxation, etc.”* (Ivory and Kang, 2016, p.19) Concession Agreements such as contracts between a government and a company, or a contract between an owner and operator will be often used in the OBOR transactions. The governing laws of the concession agreement will rely on the legislation of the host country where the project will be developed. In general disputes, such agreements will be taken care by the jurisdiction of the host country. (Ivory and Kang, 2016, pp.19–20)

In practice, big Chinese companies and banks are familiar to use foreign laws in case of cross-border transaction. For this reason, the use of foreign law such as English law will not be a problem in the context of OBOR. It is important to mention that meanwhile Chinese law is developing and incorporating international concepts as well. (Ivory and Kang, 2016, p.36) For now the principal documents on the OBOR transactions will rely mainly on English law, Hong Kong and New York law and Chinese law will remain limited. The use of English law is logical as it is *“flexible and can be adapted to the commercial needs of the parties, with largely predictable outcomes in the event of disputes.”* (Ivory and Kang, 2016, pp.237–238) Currently it seems that Chinese parties seem comfortable using English law but it can be argued that the Chinese participants will aim is to use their national law in the future regarding the principal investment documentation. The modern Chinese law started after the establishment of the government in 1949. The government refers to its legal system as a *“socialist legal system having Chinese characteristics, but China's legal system is essentially a civil law system, consisting of statutes, administrative rules and regulations.”* (Ivory and Kang, 2016, p.230)

Geopolitical challenges

Security is an important factor of the OBOR. China is planning to build 81000 km of high-speed railway across 65 countries. The CPEC will traverse *“some of the world's most vulnerable and conflict-ridden territory”*, therefore the question arises, and who will guarantee security of these projects in so many countries? (Zhu, 2015) In Myanmar and Pakistan pipelines and highways will go through areas which are facing ethnic insurgencies, which mean that these

projects should be secured causing additional financial implication. Instead of allocating a huge amount of money for securing the projects, it would be an important step for China if it would communicate with the indigenous people and accommodate their interests. Also, there is a risk that these areas could be a target of insurgent attacks. (Kuhn, 2017)

According to the *Economist Intelligence Unit* (EUI) Afghanistan and Iraq are the countries with the highest ranking in the overall risk assessment, which includes the following risk categories “*security, legal and regulatory, government effectiveness, political instability and infrastructure.*” (EUI, 2015, pp.5–6) We should also not forget that several ASEAN states have territorial disputes with China because of the South China Sea; there are ongoing conflicts with Vietnam, the Philippines, Brunei, and Malaysia over the Spratly and Paracel Islands, the Macclesfield Bank and Scarborough Shoal. (Pop, 2016, p.7) China has also disputes with Russia regarding the Ussuri River, and at the Sino-Russian border of West Mongolia. China has also territorial disputes with India about Aksai Chin which is a disputed border area, and in the northeast region of the Indian state of Arunachal Pradesh. (Pop, 2016, p.8)

It is important to highlight that there is a risk that in several Asian countries, the local governments will not cooperate with foreign investors. Agreements are made between China and the top level of government, but the implementation is run on the local level. (Zhu, 2015) Elections were held in January 2015 in Sri Lanka, and due to the new Prime Minister, Maithripala Sirisena the port project involving US\$1.4 billion in the capital of Colombo was questioned. Mahinda Rajapakse, the former prime minister of Sri Lanka had a good relationship with the Chinese government, which provided loans to the country. However, after taking office, Mr. Sirisena “*promised to review the terms of these loans and investigate foreign-funded projects for corruption, and suspended work on the port.*” (EUI, 2015, p.7) Overall, the most important challenges are the followings “*management of geopolitical risks, international policy coordination and financial sustainability of cross-country projects.*” (Huang, 2016, p.321)

Human rights issues

Human rights issues are also a crucial segment of the OBOR initiative. After opening the markets some local workers could no longer stay competitive. Migrant workers often face poor working conditions, especially in remote areas. For this reason, it can be argued that the OBOR initiative can also cause social unrest and ethnic conflicts. (Chaudhury, 2017) Several minority groups are facing problems due to the OBOR initiative. For instance, the western Xinjiang Province of China is home to ten million Muslim Uyghurs, where “*the authorities have heightened surveillance and repression to prevent potential unrest that could impede One Belt, One Road plans.*” The Uyghur are not involved in the planning and in the implementation processes while their homeland faces transformation. It is argued that “*Uyghur culture, language, traditions and ethnic identity is under threat.*” Similar challenges will occur for the Balochs, who live in Pakistan. (UHRP, 2017) Some governments in Central Asia face human rights problems. In Tajikistan, due to the Rogun dam project citizens who were resettled had “*poor access to social services, were denied full compensation for demolished homes, and lost land for farming and raising livestock.*” (Richardson and Williamson, 2017)

The CPEC goes through Gilgit-Baltistan and India considers the territory as an integral part of Jammu and Kashmir. China and Pakistan signed a MoU to fund and construct five hydroelectric power projects. The execution of the Diamer-Basha Dam which is located in the Pakistan occupied Gilgit-Baltistan will displace around 30,000 people. It is important to mention that 17,000 Chinese workers would move to GB in order to build the Daimir-Basha hydroelectric power. (Arpi, 2017) Countries such as India, Indonesia, Vietnam and Iran which have relatively strong governance will not let China to send many workers to implement the infrastructure project. However, Cambodia and Pakistan which has relatively weak governances might be obliged to accept the Chinese workers. (Dollar, 2015) Overall, population dynamics in Asia can change; the OBOR initiative will encourage both internal and international migration. Urban expansion could also lead to changes in fertility and mortality transitions. (Muttarak, 2016)

For the mentioned reasons, it is crucial that private companies put an emphasis on human rights protection which is mentioned under the *United Nations Guiding Principles on Business and Human Rights*. In addition, potential financiers and banks such as the AIIB, the China Development Bank and the Export-Import Bank of China should also respect human rights. (Richardson and Williamson, 2017)

Environmental implications

The OBOR initiative does not engage with deep strategic environmental assessment or environmental impact assessment. (Tracy et al., 2017, p.58) The Vision and Action document mentions environmental protection under the section Unimpeded trade: “*We should promote ecological progress in conduction investment and trade, increase cooperation in conserving the eco-environment, protect biodiversity, tackle climate change, and join hands to make the Silk Road an environment-friendly one*”. (Tracy et al., 2017, p.74) The 2015 Action Plan declares that “*efforts should be made to promote green and low-carbon infrastructure construction and operation management, taking into full account the impact of climate change on the construction.*” (Pike, 2017)

However, the OBOR project will have environmental impacts across Eurasia, especially in countries facing poor records of environmental governance such as the former Soviet republics and Russia (*see Appendix II*). The Chinese government has announced a new policy paradigm, a green shift to “*ecological civilization*” to “*improve environmental regulations, reduce pollution, and transform industries by adopting new green technologies and higher environmental standards.*” (Tracy et al., 2017, p.56) According to environmentalists the level of air, water shortages and soil erosion can occur due to the infrastructure projects. We should also bear in mind that China, India with some other Asian countries together generates almost the half of all global carbon dioxide emissions. (Tracy et al., 2017, p.57)

Even though China is aiming to change its environmental policy domestically, according to findings it will not have any impact on the OBOR planning. Actually, the OBOR will give the platform for China to “*outsource its polluting industries elsewhere.*” (Tracy et al., 2017, p.57) The cement sector is the most environmentally detrimental one among the Chinese industries.

(Tracy et al., 2017, p.66) China's goal is to relocate some of its cement industries. For example, the Huaxin Cement Company agreed with Tajikistan in 2011 to build a cement plant close to the capital, Dushanbe. In March 2012, the construction for the second plant in the northern region of Tajikistan was completed. (Tracy et al., 2017, p.77) However, this will encourage the carbon- and pollution-intensive economic model instead of decreasing China's dependence on heavy industry. (Pike, 2017) Massive construction projects will likely to impact the air and the water quality. (Muttarak, 2016) According to estimations, *China-Mongolia-Russia Economic Corridor* (CMREC) is one of the most environmentally detrimental infrastructure projects after the CPEC, because it will pass through sensitive ecological areas. (Tracy et al., 2017, p.75) The construction and its maintenance of the projects can “*cause significant environmental damage such as habitat loss, transformation and fragmentation, oil spills, local pollution, proliferation of dust and salt (along highways), and other impacts.*” (Tracy et al., 2017, p.76)

It is important to mention that in Myanmar, Sri Lanka and Cambodia the local made their voice in action and opposed the Chinese investments as they believed the conditions were unfavorable. (Kuhn, 2017) In Cambodia, in February 2015, the government announced that the approval for a US\$400million dam project to be built in the country by the Chinese Sino hydro Corporation had been suspended until at least 2018. The dam had been criticized by non-governmental organizations regarding environmental protection. (EUI, 2015, p.8) A similar situation happened in Myanmar. According to the original plans, the Myitsone US\$ 3.6 billion dam planned by the Chinese, was supposed to transfer 90 percent of its electricity to the Chinese Yunnan province. In Myanmar, several regions are still facing a lack of electricity, due to widespread opposition within the country regarding the environmental and social impact of the dam; the project was suspended in 2011. (Lee and Myint, 2017) Environmentalists argued that the environmental assessment of the project was not transparent. In addition, the local believed that they would have not benefited from the dam project. (Li, 2015)

Overall, the following areas are facing to environmental risks due to the OBOR: The Amur River Basin, the Altai Mountains, Transbaikalia, and Central Asia. Here we can also mention that the Arctic, which is important for the Northern Sea Route is also under environmental risk. Not only national governments, but investment banks could play a key role in environmental protection by introducing environmental standards. For example, AIIB could take an important role in this, especially as several EU countries (Germany, France) are founding members and for whom environmental protection is more highly valued. (Tracy et al., 2017, p.78) However, it is doubtful whether China will take into consideration the mentioned countries' opinion.

Chapter 3 – Case studies

Budapest to Belgrade high-speed rail line

Often the OBOR project is associated with China and its near neighbors as Southeast and Central Asia. Xinhua News Agency said that “*CEE nations will be essential links in the Belt and Road Initiative*”, confirming that European countries will play an important role in the “*new Eurasian Land Bridge*”. According to Xinhua “*Chinese firms have invested more than 5*

billion U.S. dollars in CEE countries in sectors such as energy, infrastructure and machinery.” (Tiezzi, 2015)

The US law firm Baker and McKenzie reported that China doubled its investment in Europe from 2013 to 2014, reaching \$18 billion, which means that the Silk Road's was already present before European countries signed the MoU. (Tiezzi, 2015) From China's viewpoint, there are three key countries in the Silk Road network heading towards Europe: Poland in the north, Greece and Hungary in the south.” (Matolcsy, 2017) Xi Jinping announced the project in Kazakhstan (September 2013) and Indonesia (October 2013), and he already visited Romania in November 2013 to discuss the initiative. In Bucharest, at the meeting of the 16+1 China, Serbia and Hungary signed a MoU about the construction of the 350-kilometer high-speed rail line which would connect Belgrade and Budapest. The \$2.89 billion project would connect the China-run Piraeus port in Greece with Central Europe. (Shepard, 2017)

The Budapest Belgrade route is significant, because the railway is faster than by ship via Venice or Genoa. Also, other transport routes such as passes of the Alps are very much overloaded. Hungary is crucial for the OBOR for several reasons. First, Hungary has a safe road network. Secondly, the country is in the southern center of the East-Central European region. Third, it is close to Germany and to the German market, to the heart of the EU. Finally, labor is cheaper than in Western Europe. (Matolcsy, 2017) The railway line between Budapest and Belgrade will be mainly used for cargo trains which could speed up to 160 km per hour. It is important to mention that direct flights between Beijing and Budapest were launched in May 2015, which led to a 30% increase of Chinese tourists visiting Hungary. In addition, Hungarian exports towards China increased 22%. (HKGCC, 2017)

The Hungarian Prime Minister Viktor Orbán made a state visit to China from 12-16 May 2017, and participated at the Belt and Road Forum for International Co-operation. Both parties agreed to promote bilateral co-operation under the framework of OBOR and Hungary's Opening to the East programme. In addition, the groundwork for the construction of the *China-Hungary Centre for the Promotion of Belt and Road Co-operation* was adopted. In other sectors cooperation between the two parties such as “*infrastructure construction, transportation/logistics, telecommunications, energy, chemical industry, automobile manufacturing, civil aviation, agriculture, e-commerce, science and technology, environmental protection and exhibition industry development*” was also agreed. It is important to mention that Hungarian and Chinese financial institutions will provide financial support and financial services to improve future trade and investment cooperation. (HKTDC, 2017) Currency swaps agreement between China and Hungary was already signed. (FMPRC, 2014)

According to the Economist Intelligence Unit for the OBOR project the “*greatest uncertainty for businesses operating in the country is macroeconomic risk, which scores 50 on a 0-100 scale, followed by financial risk, which scores 42.*” (EUI, 2015, p.38)

From a law and economic analysis, the case of the Budapest-Belgrade railway is appealing. As I have presented earlier the EU and China has different ideologies which can lead to conflict of interest when the two parties work together. (Salemi, 2017) The EU argues that the transparency requirements in public tenders must be respected in large transport projects. (Chhetri, 2017) In Brussels, the Commission is “*looking into the possibility that the deal to build the Belgrade-Budapest rail line may have broke the EU rules on public tenders.*” The investigation mainly involves Hungary as it is a European Union member, while Serbia is not. (Shepard, 2017)

Hungary risk measures	Score
Overall assessment	32
Security risk	14
Political stability risk	25
Government effectiveness risk	39
Legal & regulatory risk	28
Macroeconomic risk	50
Foreign trade & payments risk	29
Financial risk	42
Tax policy risk	38
Labour market risk	32
Infrastructure risk	28

Note: 100=most risky.

1. Figure: Hungary risk assessment

On 26 May, 2016 the European Commission initiated infringement proceedings as it believed that the project faced corruption such as irregularities in the tender procedure for the contract. In November 2016 an agreement was signed between China, Hungary and Serbia in Suzhou, which stated that MÁV Zrt., China Railway International Corporation Ltd. and China Railway International Group will be the main contractor in the transport project. However, according to the Commission this no-bid award is opposed to the EU economic competition rules. It is important to highlight that according to the agreement MÁV Zrt. has a 15 percent stake in the railway project, while the rest is provided by China. (Spike, 2016)

On 20 February 2017, according to the Financial Times newspaper, the European Commission opened the investigation. According to the European Commission spokeswoman „*the Commission is assessing the compliance of the project with the EU law. The dialogue with the national authorities is ongoing.*” The case is crucial as the Budapest-Belgrade railway would be China’s first railway project in Europe, which could represent China’s capabilities and technology. Without the railway, China might not achieve its objective to be able to export goods by rail link to Piraeus and after by sea to different destinations in Europe, Africa and Asia. (Kynge et al., 2017) For the EU it is important to employ its regulatory leverage, and as for now it seems that this approach will only increase in the future, which could lead to counteractions by China. (Allan & Associates, n.d.)

Relying on the initial plans the project will be financed with 85 percent of the money coming from Chinese loans, which should be paid back within 20 years. The National Ministry of Development said to the *Magyar Nemzet* Hungarian newspaper, that the economic impact of the project will not be public for 10 years. For this reason it is hard to estimate how much benefit will the railway project will generate and when the investment will become profitable. (Spike, 2016)

The Chinese government did not comment regarding the Commission's investigation. The Budapest-Belgrade railway case shows that the EU has ambivalent attitudes toward Chinese investment and the OBOR project. In any case, it is important that in the future China should respect both local and EU rules when bidding for infrastructure projects in the EU. (Suokas, 2017)

The China-Pakistan Economic Corridor's

The *China-Pakistan Economic Corridor's* (CPEC) goal is to connect China and Pakistan and to deepen the strategic relationship between the two countries (*see Appendix I & II*). The concept of National Trade corridor was under discussion the last 10 years, but the CPEC concept was developed when Chinese Premier visited Pakistan in May 2013. The MoU on CPEC Long Term Plan and Action Plan was signed when Pakistan's Prime Minister Nawaz Sharif visited China in July 2013. According to the MoU, Pakistan's Ministry of Planning, Development and Reform and the Chinese National Development and Reform Commission are the lead agencies of the project. CPEC is seen as a long-term project of 15 years involving a high level of financial assistance. China is the main investor but it also giving concessional loans. The first meeting of the *Joint Cooperation Committee* (JCC) was held in August 2013, where further details of the project are discussed. In November 8, 2014, the Agreement on the *China-Pakistan Economic Corridor Energy Project Cooperation* was signed in Beijing by Prime Minister Nawaz Sharif and President Xi Jinping. According to the agreement for six years 17.000MW of power projects will be invested in Pakistan. In April 2015, President Xi Jinping visited Pakistan to discuss the \$46 billion infrastructure project plan. (CPEC, n.d.)

The main components of the corridor include the followings. (1) In Gwadar, there will be 8 projects, and its estimated cost is \$ 792.62 million. (2) In the energy sector 21 projects will cost around\$ 33.793 million. Four projects of the transport infrastructure are estimated for \$ 9.784 million \$. (4) Investment and industrial cooperation is also an important part of the CPEC. The Gwadar Free Zone and other industrial parks still need to be finalized. (PMO, n.d.)

The blueprint of the CPEC develops the infrastructures of the social economic zones and energy projects between Kashgar and Gwadar (*see Appendix I & II*). Gwadar sea port is an energy transport hub; therefore, China will invest in the energy sector and it plans to build oil storage facilities and a refinery in order to transport oil to Xinyuan through roads and pipelines. (Calabrese, 2014, p.8) As part of the CPEC, the National Motorway M-4 Gojra-Shorkot Section Project will connect the two cities, in order to have a better access to the Gwadar port. The 62 km project's main co-financers are the ADB, AIIB and the UK's DfID (Department for International Development) and the aim is to complete it in three years. (Panda, 2017) Railway is also a focal point of the CPEC. For example, the development of ML-I line from Peshawar to Karachi is expected to be finished in 2018. (CPEC, n.d.)

Pakistan risk measures	Score
Overall assessment	64
Security risk	86
Political stability risk	60
Government effectiveness risk	79
Legal & regulatory risk	58
Macroeconomic risk	40
Foreign trade & payments risk	75
Financial risk	62
Tax policy risk	50
Labour market risk	50
Infrastructure risk	78

Note: 100=most risky.

2. Figure: Pakistan risk assessment

Regarding the industry, the western and northwestern zone of Pakistan is rich of minerals. China exports 80,000 tons of processed marble from Pakistan, and it plans to set up 12 marble and granite processing sites. The central zone is known for its textiles, household appliances and cement. According to the plan for the southern zone Pakistan will “*develop petrochemical, iron and steel, harbor industry, engineering machinery, trade processing and auto and auto parts (assembly)*”. Gwadar is in the southern zone; the plan recommends transforming it to a base of heavy and chemical industries. The Chinese government had talks about the fibreoptic connectivity from the very beginning of the cooperation. China has a limited submarine landing stations and international gateway stations, and for this reason it will develop terrestrial fibreoptic link with Pakistan which will develop future growth of internet traffic. The plan also discusses the development of a coastal tourism industry between Ketu Bunder and Jiwani, which will include “*yacht wharfs, cruise homeports, nightlife, city parks, public squares, theaters, golf courses and spas, hot spring hotels and water sports.*” The biggest risk to the project is politics and security. According to the plan “*there are various factors affecting Pakistani politics, such as competing parties, religion, tribes, terrorists, and Western intervention*”. Also, inflation in Pakistan is high and it averaged 11.6 % during the last 6 years, which means the cost related to the project will increase and the profits will decrease. The IMF, World Bank and the ADB, emphasizes that “*Pakistan’s economy cannot absorb FDI much above \$2 billion per year without giving rise to stresses in its economy. It is recommended that China’s maximum annual direct investment in Pakistan should be around US\$1 billion.*” (Husain, 2017)

According to the Economist Intelligence Unit, Pakistan ranks 112th out of 167 indexed countries. The country’s political stability risk score is 60, which is indeed high. As we can see on the table the security risk score of 86 is due to the fact that various militant groups are threatening Pakistan. (EUI, 2016, p.72) Pakistan will face economic, political, and social challenges such as “*exclusion of the regions in decision-making processes; exploitation of regional resources without adequate remuneration; land grabbing; forced displacement of the local communities; internal migration, and massive distortions of fair and free economic competition.*” (Shams, 2017) Nicolas de Pedro, a research fellow in charge of the post-Soviet space at the Barcelona Centre for International Affairs argued that the CPEC can be also seen as “*sort of new East India company, basically meaning that the pattern is a very colonial pattern.*” This means that the CPEC could transform into an East India Company in case if Pakistan’s interests are not well protected. (Pannier, 2017)

China’s Marshall Plan?

The international community’s opinion regarding the project is very mixed. Some scholars compare it with the America’s Marshall Plan while others believe that it is a mechanism for international economic cooperation instead of international aid. The *European Recovery Program* is known as the Marshall Plan of 1947 was a decision taken by the US to provide economic and military assistance to Western European countries after the World War II. Recently, international relations scholars have compared OBOR with the Marshall Plan, but scholars from China argue that the two are not comparable.

Melvyn P. Leffler in his 1988 article *“The United States and the Strategic Dimensions of the Marshall Plan”* highlighted the goals of the Marshall Plan, which can be compared to the OBOR project. (1) *“Boosting exports”* After World War II, the US had a problem of overcapacity; therefore, it had to find oversea markets for its products. According to the Marshall Plan, European countries which received aid from the US had to accept US investment and import US goods. Similarly, to the US, China currently *“needs to export excess capacity, resources, and labor through foreign investment in order to achieve an economic transformation”*. (2) *“Exporting currency”* Due to the Marshall Plan the US exported its currency, which became the tool of stability over time. US provided \$13 billion for aid, which is around \$100 billion today. China’s aim is to increase the international use of RMB, which can be encouraged by regional economic cooperation. (3) *“Countering rival”* According to Marshall *“Europe was the key for an effective balance of power between the Soviet Union and the United States.”* The US wanted to emphasize the superiority of capitalism over communism. It can be argued that today, China is seeking to compete with the US with the OBOR initiative. China will import energy via different channels and it will develop trade relationships with many countries, which would decrease its economic dependence on China. (4) *“Fostering strategic divisions”* After World War II, the US’s goal was to incorporate all of Germany due to its geopolitical and industrial significance. It can be claimed that the Marshall Plan contributed to the division of Germany. The OBOR project can *“lower the solidarity of Asia-Pacific integration organizations headed by the United States and Japan, such as APEC.”* China is aiming to develop its bilateral relations in the region in order to avoid that they will form a coalition with the US against China. (5) *“Siphon away diplomatic support”* Eastern European satellite states received Marshall Plan aid if they abandoned the communist model; a relevant example is Tito’s Yugoslavia. The end of the OBOR is in Europe, which symbolizes that China is willing to tighten its relations with Europe, which could decrease US influence in the region. We can mention it here that UK, France and Germany decided to join the AIIB, even though the US objected it. (Shen, 2016)

We can observe there are some similarities between the two projects, but it is also important to highlight the differences. According to estimations the OBOR will be 12 times bigger in dollars than the Marshall Plan. China will allocate around 9% of its GDP, which is approximately the double of the US back in the day. (Curran, 2016) According to Chinese foreign minister the Marshall Plan and the OBOR cannot be compared because the latter one *“concerns the interests of all parties like a symphony performed by all rather than China's solo show”*. However, this point can be argued, as there is not enough relevant evidence of China having had meaningful dialogue with countries where the project passes. One of the biggest differences between the two projects is the policy purposes. According to Qian Feng, Vice President of Asia News Time of Thailand, the Marshall Plan’s aim was to *“offer economic support to rebuild war-devastated European countries, while preventing them from pursuing communist regime and following the then Soviet Union”*. Qian believes that *“OBOR’s emphasis was placed on stronger and closer economic cooperation, on joint infrastructure projects, the enhancement of security cooperation, and environment technical and scientific cooperation.”* Another main difference lies within the participants of the projects. Only Western nations received the Marshall Plan aid and countries which shared Soviet Union’s ideology were excluded. However, China’s project

is open to all countries along the New Silk Road “*irrespective of their ideological and societal leanings*”, as Gao Cheng, senior researcher said. (Xinhua News Agency, 2015) In conclusion, an important difference between the two projects is that “*OBOR does not emphasize ideological factors as heavily as the Marshall Plan did.*” (Shen, 2016) However, as the OBOR project involves human rights problems as well, the current and the future members of the project should take into account that China has a different approach.

Conclusion

Overview

After my research, I have concluded that the One Belt, One Road Initiative is clearly Chinese President Xi Jinping’s most ambitious foreign and economic policy plan. My thesis argued that the New Silk Road has the potential to promote economic development among the concerning countries. Nearly four years after OBOR’s announcement, the project involves 65 countries together with China. However, the perception of the New Silk Road differs. China is currently relying on its export-driven model to perform an economic growth. For this reason the OBOR project is very promoted by the Chinese government in order to decrease transportation costs for Chinese commodities. The country is facing overcapacity in several sectors such as steel and cement industries, which leads to Chinese construction companies to search for opportunities abroad. China wants to invest its huge foreign exchange reserves and for this reason the OBOR project is a good platform. If the economies of the OBOR members will grow, their demand for Chinese goods and services will also grow. In addition, Beijing is promoting renminbi as a global reserve currency in order to justify and to be recognized as a leading economic power. (Tonchev, 2017)

The OBOR can be analyzed from legal perspective that interprets institutional instrumentalism, which means that legal institutions rather than specific legal rules promote the goals of the designer, in this case the Chinese government. The cost-benefit analysis can be seemed problematic as it does not identify representations on moral grounds. The Pareto criterion regarding the OBOR project can oppose with principles of rationality, liberty and responsibility. Moral concerns such as equality and fairness are very much present. It can be argued that it is unfair that Chinese workers are doing the infrastructure works on the field and the locals stay jobless.

It is important to emphasize here, that the social structure – a more egalitarian society or a more hierarchical society – will have an impact on the agent’s well-being. (Stanford, 2017) China relies on rule instrumentalism which means that the Chinese government and the relevant agents design the law in order to promote collective goal. However, the concept of the collective goal can be argued in this case, as the OBOR involves so many countries with different political, economic and cultural background and I do believe that there are some ambiguities. Human rights issues are very much discussed for example in the EU; however, it is important to highlight that China has a different approach and it focuses more on economic growth rather

than human rights or ethical values. I assume that China as a policymaker has chosen legal rules that promote best its economic objectives.

I believe that I have found the answers to my research questions. In Chapter 1, the financial and economic implication of the project was discussed. China has an excess in industrial capacity, therefore exporting high-speed rail, power generation equipment, and telecommunications equipment will be beneficial for the recipient's countries as well. The goal is to promote policy coordination and trade flows, in order to allocate the resources efficiently. Deep integration of markets and deep regional cooperation will lead to economic development in the participating countries. In addition, the development of facilities and connectivity through infrastructure development will be crucial. Moreover, financial integration and people-to-people bonds is also important element of the initiative. The OBOR is a massive project and it involves enormous sums of money. The success of the implementation depends on if the funds will be available and how the governments will deploy the received financial support. Chinese major banks, AIIB and the Silk Road Fund will play a key role regarding the future scenario of the OBOR. If money is used correctly, then it is all good. However, there are some concerns that corruption and the misuse of the money can lead to severe problems in the future.

China claim's that it will provide 'win-win' situations, however we should admit that there are many concerns. Chapter 2 analyzed the law and development perspective of the project. After discussing the legal challenges, the geopolitical concerns were evaluated. Several OBOR participating countries are facing security risks such as Afghanistan, Iraq. Southeast Asian nations are more skeptical about the OBOR due to territorial disputes with China. Several Asian countries such as Myanmar and Tajikistan's ecology are facing the environmental problems due to the OBOR construction projects. In addition, human rights abuses will be a crucial element, as the different countries along the New Silk Road have different regulations and norms.

Chapter 3 analyzed Hungary's and Pakistan role in the context of OBOR. Hungary is a crucial European country for China. Several Chinese firms choose Hungary for their European headquarters. The rail line between Budapest and Belgrade will be an important element as it will connect Central Europe with Piraeus, which is a Chinese owned port in Greece. Relying on the Hungarian case it can be assumed that the EU or the individual EU member states have different approach towards Chinese investments and the OBOR.

While Hungary is crucial in Europe, Pakistan is a key country in Asia. The China-Pakistan Economic Corridor is a good example of developing regional connectivity in the globalized world. Not only China and Pakistan will benefit from the CPEC but also Iran, Afghanistan and the region overall. Is important to emphasize that the corridor will transform Pakistan into a regional economic hub and it will attract investment from other countries as well. However, the CPEC involves serious ecological and human rights issues. As discussed before many people will be displaced due to infrastructure projects meanwhile the Chinese workers will benefit from the newly created job market. The last section of Chapter 3 compared the OBOR initiative and Marshall Plan. Indeed, the two plans have some similarities; however, the two have

different objectives. In addition, the Marshall Plan provided aid for Europe, while the OBOR initiative involves many countries across Europe, Asia and Africa.

Overall, China will utilize its overcapacity and it will provide employment to a huge number of people thanks to the OBOR initiative, by which China's economy would improve in a long term. However, the success story will very much depend on the governance and strategic planning of the OBOR initiative. I believe that the OBOR initiative is a very relevant subject for the field of law and economics. After doing my research I realized I would like to continue to deepen my knowledge on the OBOR initiative, write further papers or do a PhD one day.

Recommendations for policy

To improve the OBOR project, China should focus on the initiative's planning and implementation. It is crucial that the Chinese government and other Chinese actors such as the major financiers, involved firms and stakeholders clearly define their goals. To be recognized as a liable power internationally, China should develop its bilateral relations in the region and also with the great powers. For this reason, the OBOR can be perceived as a good tool of economic cooperation. For boosting economic growth and development in the region, China should demonstrate its contribution to resolve existing disputes, such as territorial disputes in a nonviolent way relying on international law. However, as we are living in a globalized and very much interconnected and interdependent world, China should share the investment risks with the countries along the New Silk Road. (Pop, 2016, p.10)

"OBOR is a global project and it will pose both international and transnational rule of law challenges" because globalization affects cross-border issues. In order to promote transnational activities, the investors of the projects should be provided by applicable legal tools. (Andersen, 2016, p.19) Countries along the New Silk Road have different political landscape; however, rule of law is applied both in liberal and authoritarian systems. The investors should be aware of those differences in order to implement a successful project, and comparative analyses would be a good tool. It is important to emphasize that rule of law gaps such as weak law enforcement can lead to the decline of legal certainty causing problems for the investors. However, international law is not static, as the World and the great powers system are changing as well. (Andersen, 2016, p.30)

To implement sustainable projects, China should put more emphasis on the evaluation of the environmental protection risks and on the human rights issues of the concerned OBOR countries. For this reason, both the local requirements on environmental protection and international agreements should be respected. The communication with local governments, NGOs and the citizens is an essential step before the implementation of the projects. (Li, 2015) Clearly, China should develop its cooperation with the governments of the OBOR partner countries. In addition, universities and think tanks could also contribute to the success story of OBOR by their participation in the development of policy frameworks and cultural exchanges. (Shah, 2016)

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List of Abbreviations

AIIB	Asian Infrastructure Development Bank
CMREC	China-Mongolia-Russia Economic Corridor
CPEC	China-Pakistan Economic Corridor
DfID	Department for International Development
EUI	Economist Intelligence Unit
JCC	Joint Cooperation Committee
LTP	Long Term Plan
MDB	Multilateral Development Bank
MoU	Memorandum of Understanding
OBOR	One Belt, One Road
UNESCAP	UN Economic and Social Commission for Asia and the Pacific

List of Figures

3. Figure: OBOR Project Map

Source: Belt and Road Initiative. 16 May 2017 [online] Available at: <<http://china-trade-research.hktdc.com/business-news/article/One-Belt-One-Road/The-Belt-and-Road-Initiative/obor/en/1/1X000000/1X0A36B7.htm>> [Accessed on 21 May 2017]

4. Figure: Hungary risk assessment

Source: The Economist Intelligence Unit: One Belt, One Road: an economic roadmap. March 2016, p.38.

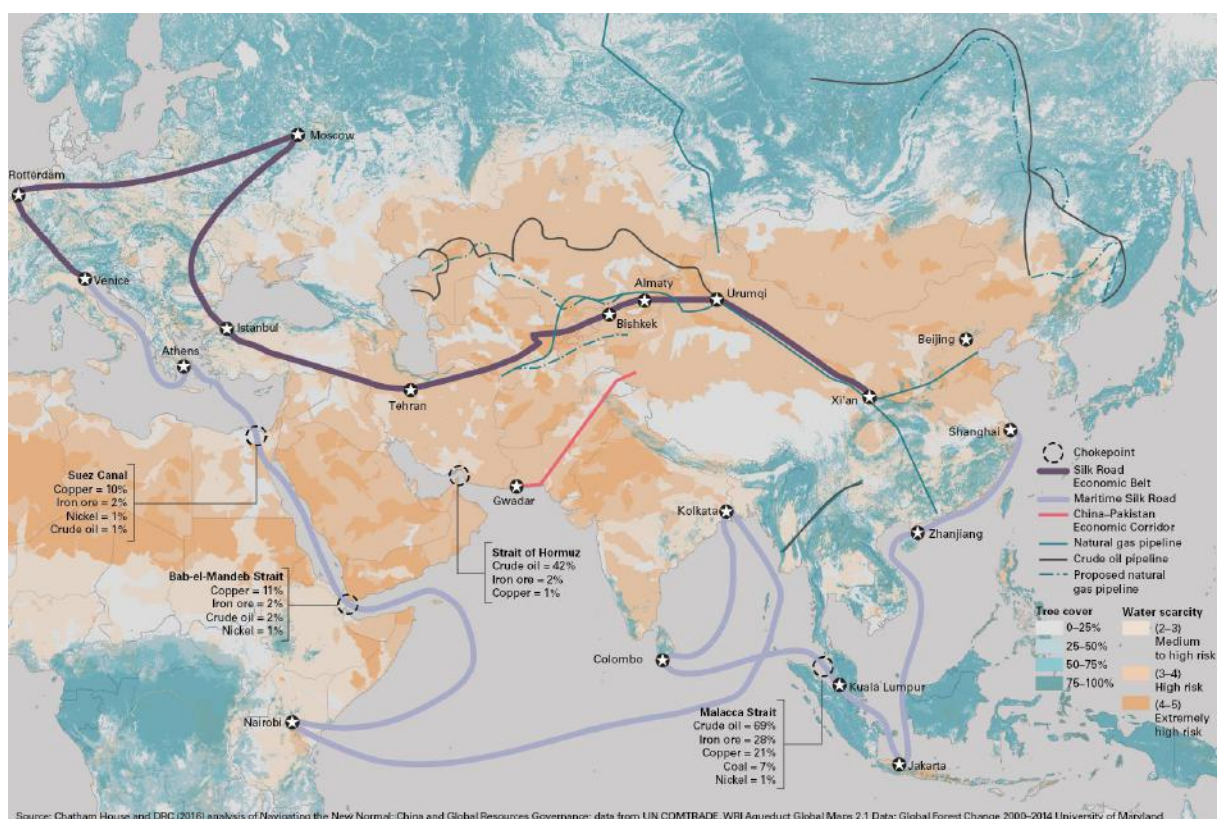
5. Figure: Pakistan risk assessment

Source: The Economist Intelligence Unit: One Belt, One Road: an economic roadmap. March 2016, p.72.

Appendices

1. Appendix: Mapping Silk Road Initiative

Source: Geall, S. 2016. *China can curb environmental impact of 'New Silk Roads': report.* 19/02/2016 [online] Available at: <<https://www.chinadialogue.net/blog/8642-China-can-curb-environmental-impact-of-New-Silk-Roads-report/en>> [Accessed on 19 June 2017]



2. Appendix: Infrastructure projects

Source: Shen, L. and Ding, S., 2016. *China – Significant headway on ‘One Belt, One Road’*. Standard Chartered, 17 October 2016, p.4.

As of end-June 2016, infrastructure projects in OBOR initiative

Type of infrastructure	Project	Start time
Railways	China-Laos railway	December 2015
	China-Kyrgyzstan-Uzbekistan railway	Restarted in January 2016
	High-speed railway in Iran	February 2016
Highways	Highway in Pakistan (China-Pakistan Economic Corridor)	May 2016
Ports	Port city project in Sri Lanka	Restarted in March 2016
Waterways	international waterway project in Vietnam	April 2016
Nuclear power plants	Nuclear power plant in Pakistan	March 2016
Hydro-power stations	Hydropower station in Pakistan	January 2016
Electric power plants	Electric power plant in Mongolia	May 2016
Airports	International airport in Maldives	April 2016
	International airport in Nepal	April 2016

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