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Middle East Peace Process
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Central European Journal of International and Security Studies
C/o Metropolitan University Prague
Dubečská 900/10, 100 31, Prague, Czech Republic
Tel.: +420 724 587 171, Fax: +420 274 817 190, info@cejiss.org

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Iran

The Other Islamic State

Mitchell Belfer

Many in the US are jostling to enter Iran's marketplace as though acquiescence to international demands for nuclear transparency equated to political and economic reform. It did not. The Islamic Republic of Iran remains an Islamic state and a danger to regional stability. Caution is enjoined in any transaction with the country.

Ayatollah means the 'sign of God,' *Hezbollah* the 'party of God,' and *Hokumat-e eslami* means 'Islamic government.' These are not rhetorical devices in the parlance of ISIS and neither are they features of Saudi Arabia's political landscape. These are examples of the pillars the Islamic Republic of Iran is built on and no amount of engagement or rehabilitation, investment or peace declarations can change the fact that Iran is, fundamentally, an Islamic state. Its goals are no less zealous, no less lofty than ISIS; seeking to usurp the Sunni sect as the custodians of Islam's holiest shrines and construct an idealised political entity with a system that reflects the values, legitimacy and power of Iran as the vanguard Shia-theocracy. Where ISIS has its *caliphate*, Iran has its *imamate* and while they may conflict over doctrine and influence both are revolutionary states that marry radical Islam to state structures.

Yet many in the US and Europe are ready to gloss over Iran's pragmatic fundamentalism – which has ensured that the Arabian Gulf and wider Middle East remains in a state of international and sectarian conflict – for reasons that are elusive, but somehow gravitate around



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energy security and the war against ISIS. With a clipboard of (ostensibly) shared interests, Iran is being rehabilitated. Unfortunately, there is no harmony of interests and Iranian rhetoric does not match its intentions. Instead, Iran is seeking strategic hegemony; it wants unfettered access to the Mediterranean Sea, dominance over the Arabian Gulf and Yemen and raw territorial gains in Iraq and Syria. To do so, Iran has had to limit the US and Europe's presence in the region, which after failing to do so by force has managed through diplomacy. So, with a reduced Western presence Iran can start focusing on consolidating its other goals—with more money (thanks to sanctions relief) and an invigorated Revolutionary Guard Corp.

Hindsight, they say, is 20/20. In this case, so is foresight. Iran is an Islamic state and is driven by a logic that solders Shia fundamentalism to geopolitics. Cracking the code of Iranian thinking means looking beyond Iran's smoke-screens; President Rouhani, Foreign Minister Zarif and Iran's Majlis (parliament), and peering into the closed-circuit paradigm of Ayatollah Khamenei, the Guardianship Council and the Revolutionary Guards. These are the country's real powerbrokers. That they have endorsed the nuclear deal has nothing to do with re-joining the international community and everything to do with increasing Iran's ability to achieve its other goals. Less sanctions means more money and more money means more weapons, more clandestine operations, more instability and greater projection. Iran does not have an open economic system; its ports and infrastructure are controlled by the Revolutionary Guards who are subordinate to the Ayatollah. There should be no ambiguity as to who will gain most with the coming economic surge and what they will do with their newfound wealth.

Take out the crystal ball for 2016 and the wars in Syria and Iraq end with Assad in place in the former and Shia militias in the latter. Iran's naval presence in Syria will heighten tensions with Israel, Turkey and Egypt and the next round of Israel-Hezbollah violence only needs a trigger. Europe's migration crisis will peak as Syria's Alawites and Iraqi Shia take out their frustrations over ISIS on what's left of those countries' civilian populations. Bahrain, Kuwait and Saudi Arabia will probably see a return of sectarian violence as Iran supplies embedded terror cells with money bags, weapons and inciting clerics. Yemen will keep inching towards national destruction. All this as Western money pours into the coffers of an Islamic Republic that is not in the throes of reform, but is hunkering down for the long-game.

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But there is some good news, however cryptic it may sound. The Iranian economic floodgates will, eventually, slam shut. We have seen it all before. In the 1990's, a different moderate President, Khatami, also promised a new and fresh Iran. He was silenced, shackled and suppressed by the Ayatollah and his at-the-ready foot-soldiers. Now as then a lot of Americans and Europeans are going to lose a lot of money on this next Iran rehabilitation project. Court cases will abound, and pressure will be mounted on congresses and parliaments as Iran retracts back into its revolutionary shell and nationalises everything in its path. Those that risked and lost because they trusted the Islamic Republic will cry foul—they always do.

But the saga of Iran is not, and must not, be about the short-term financial gains for a privileged few. It is about the original Islamic state and its regional designs. It is about tying sanctions relief to Iranian behaviour: its ballistic missile programme, its exportation of terrorism, continued occupation of Abu Musa, Upper and Lower Tunb, its instigation in Bahrain and, crucially, its callous stifling of its own people. Sanctions relief for the Islamic Republic is a regional, not a national issue!

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Inconsistencies between Libya and Syria?

Pragmatic Revisionism and the Responsibility to Protect

Šárka Kolmašová

The on-going debate on the Responsibility to Protect (R2P) concept revolves around its problematic and inconsistent implementation, particularly while comparing the military intervention to protect civilians in Libya (2011) and the inadequate response to the Syrian crisis. The article traces the development of the R2P discourse in the context of key cases, which fundamentally shaped the interpretation of legitimate conditions for humanitarian military intervention. In contrast to the liberal universalist approach, which would understand the R2P as an emerging norm indicating progressive support of liberal values, the analytical framework is based on pragmatic global ethics. In this perspective, the changing perception of normative concepts according to practical politics results inevitably in discursive shifts regarding the R2P operationalisation and implementation. Therefore, hesitations over Syria do not reflect the failure of R2P; the crisis rather demonstrates continuous pragmatic revisionism of its normative foundations.

Keywords: R2P, humanitarian intervention, pragmatism, Libya, Syria

Introduction

The concept of the Responsibility to Protect (R2P) has been widely criticised for the gap between words and deeds, mainly due to the in-



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adequate international response to the crisis in Syria.¹ Does this failure mean the end of R2P and, more importantly, the emergence of a post-liberal global order? In contrast to mainstream debates, the article argues that the Syria crisis did not bring any fundamental change, but reflects a pragmatic revisionism that characterises the whole time period since the R2P concept was introduced in 2001.² Therefore, the inconsistent implementation in Libya and Syria corresponds with the compromised nature of R2P and also with the pragmatic global order, which accommodates moral principles according to practical politics rather than on their own merit.

The debate on humanitarian intervention, which started in the 1990s, can be summed up as a clash of liberal universalism and realist power politics.³ However, it did not result in the victory of liberal ideals, as the conception of R2P might indicate. The conflicting norms – universal protection of fundamental human rights and inviolable state sovereignty – framed the post-Cold War debate between proponents and critics of humanitarian interventionism. The debate was precipitated by a series of crisis situations, which, without exception, invoked controversial reactions. Two were particularly important—the 1994 non-action in Rwanda and the 1999 NATO operation in Kosovo. As a result, in 2001, the International Commission on Intervention and State Sovereignty (ICISS) drafted a conception of R2P in order to start a debate on the question of insufficient political will (the model of Rwanda) and the absence of consensus in the UNSC (the model of Kosovo).

Obviously the concept was constituted by the political practice and the need to find a legitimate framework, which would reconcile the existing UN Charter-based regime and the changing global political order. In other words, R2P was not constituted because of abstract liberal principles, but rather as a response to new crisis situations that were emerging in the 90s. Rather than facing a gradual support of active/interventionist liberalism, the lessons learned resulted in revisionism. R2P takes a pragmatic approach that gives primacy to the state, yet stresses its legitimacy based on its capacity to provide security to one's own citizens. Although it allows for military intervention, there is nothing in the conception about a non-selective and universal obligation to use it. Rather than expressing a clear moral imperative, it provides a compromise fitting to contemporary politics.

The first section introduces the theoretical-methodological framework based on the pragmatic revisionist approach to emerging inter-

national norms. In contrast to the static and linear liberal universalism, the progressive development of the R2P concept will be traced through the lessons learned in the key crisis situations of Rwanda and Kosovo and their pragmatic reflection within the framework. Finally, the two puzzling cases – intervention in Libya and non-involvement in Syria – will be analysed through the pragmatic interpretation of global norms. This case-oriented analysis of R2P will demonstrate the mutually constitutive relationship between practical politics and changing international standards.

Pragmatic Revisionism in Global Ethics

The essential building block of pragmatism is the primacy of practice in any theoretical or conceptual reflection.⁴ In contrast to positivism, pragmatism does not attempt to reveal the objective truth through causal relations, but to reconstruct the theory pursuant to the dynamics of practical experience. Therefore, pragmatist philosophy is in its very nature *revisionist*.⁵ Moral norms are not understood as deontological or transcendental, but rather constituted by social practices in the same way as any other social habits. Most importantly, pragmatism vigorously rejects Cartesian logic due to its detachment from practical phenomena and the unproductiveness of constant scepticism.⁶ Instead of generating and testing universal laws, social science must always prioritise understanding of practical phenomena. In result, there is no objective truth which would encompass both historical and contemporary political events, any knowledge is just temporary and must be open to perpetual redefinition.⁷ The emphasis put on social practice reveals the un-sustainability of existing theories and their falsely universalist nature.

The analytical framework is further shaped by the principle of the hermeneutical cycle, which favours seeking deeper understanding and interpretation over mere explanation. This is based on the pragmatic assumption of inter-subjective reality constituted by shared and institutionalised standards of behaviour. The key objective is thus to reveal the meanings of social events in the context of existing theoretical concepts and at the same time to consider their reassessment in light of the changing practice. Theoretical knowledge and social practice

are in mutually constitutive relation; to assume practice would be determined by transcendental human nature or a fixed structural order would be simply misleading.

The article focuses on the concept of R2P, particularly on the narrow component of humanitarian military intervention. The aim is to trace the implications of R2P and, respectively, humanitarian intervention, through concrete incidents which lead to its revisions both within the debates (discourse) and implementation policies (practice). Although controversy over military protection of civilians in third countries is as old as the history of mankind, the article focuses on the 1990s onwards. The post-Cold War period signified the triumph of liberal principles, including universal human rights protection and humanitarian assistance. Yet, the enforcement of these standards through military intervention remained a contested concept, even though it was formally recognised through R2P conception. More detailed analysis of the past two and half decades will show (1) why R2P replaced the narrower concept of H1 (2) to what extent the R2P concept changed over time and (3) how significant crisis situations constituted the very existence of R2P, as well as its progressive revisions. The development will be indicated by changing official discourse and inconsistent implementation in practical situations. In the framework of pragmatic revisionism, both are understandable and inevitable parts of the world politics.

Two particular events of the 1990s triggered intensive contestation over the legitimacy of international response, revealing the major dilemmas resulting from political practice rather than philosophical debate: the insufficient reaction to the genocide in Rwanda in 1994 and the 1999 intervention in Kosovo.

*Šárka
Kolmašová*

Interventionism in the Context of Rwanda and Kosovo

The 1994 genocide in Rwanda was the manifest failure of the entire international community, including world media, NGOs and the responsive organs of the UN and states.⁸ It was a breakdown of all existing mechanisms responsible for preventing genocide; there was the obvious lack of political will among powerful states to get involved. In addition, rhetoric was strong and emotional, highlighting the extreme nature and scale of committed violence. In the Millennium Report

published one year later, Kofi Annan addressed the issue of military intervention in a document of crucial importance, making clear reference to the Rwandan crisis:

If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity? (...) no legal principle—not even sovereignty—can ever shield crimes against humanity. Where such crimes occur and peaceful attempts to halt them have been exhausted, the Security Council has a moral duty to act on behalf of the international community.⁹

The UN Secretary General became an active proponent of the idea that state sovereignty must be redefined as a responsibility (1) to provide security to a state's own citizens and (2) to comply to the international commitments in the field of human rights protection.¹⁰

In general, military officials, journalists and NGO workers with direct experience in Rwanda were extremely frustrated by the lack of political will to act and viewed the fiasco as a lesson learned for the future.¹¹ Although the concept of HI remained highly contested both among experts and most political representatives, the post-Rwanda reflection focused more on scepticism over implementation, rather than principled rejection based on the existing norms of sovereignty and non-intervention. In other words, the major dilemma was no longer whether it would be legitimate to use force in the case of serious human rights violations, but rather how to respond when there is no political will among key decision-makers.

The second key crisis – ethnic cleansing in Kosovo in 1999 – shifted the discourse to the question of UNSC authorisation as the exclusive source of legality and legitimacy for the use of military force. In contrast to the scenario in Rwanda, there was sufficient political will among the NATO states to intervene. States were motivated by humanitarian principles, maintaining their own role as global players or both. The problem, however, was a lack of consensus in the UNSC to approve the 'all necessary means' formula, thus preventing action in accordance with the UN Charter rules. More striking was the fact that the post-intervention reflection was rather mixed and not conclusively negative in the sense of condemning NATO for the breach of existing international norms.

The investigation of the Independent International Commission on Kosovo concluded that the intervention had been illegal but legitimate.¹² Although it had not been approved by the UNSC, it was allegedly justified because all diplomatic measures had been exhausted and the intervention released the majority of the Kosovo population from a long period of governmental oppression. Major academic debate was related to the issue of authority. The challenges surrounding the motivations and effects of the intervention were simply overshadowed by the principled question of whether it was permissible to intervene without UNSC approval—not whether humanitarian intervention had been justified.¹³

Experts of international law were divided over the possibility of derogation from the general restrictions on the use of force without the authorisation by the UN. The restrictionist line was followed by scholars, who agreed that unilateral intervention based on humanitarian claims was clearly illegal.¹⁴ On the other hand, a large number of experts defended the intervention as legitimate due to historical precedents of unilateral interventions,¹⁵ the inadequate state of existing legal norms¹⁶ and the primacy of moral duties over legal standards.¹⁷ Though the breach of international law was indisputable, advocates highlighted international responsibility in extreme cases of human rights violations, which constitute an exception.

The debate over Kosovo revealed the gap between legal norms and moral principles, which was reflected even by normative propositions. The UN Secretary General appealed to the international community, namely on the Security Council, to seek consensus over the responsibility to intervene in the face of serious human rights violations. In cases where the use of force was deemed necessary, the Security Council would have to act in accordance with the principle of humanity and do the best to find consensus. Underscoring his point, he used the authorised intervention in East Timor as a positive lesson learned and the Kosovo case as a failure.

Constitutive Effects of Rwanda and Kosovo and the Emergence of R2P

In 2001, the two dilemmas – insufficient political will (Rwanda) and insufficient political consensus (Kosovo) – were addressed in a detailed proposal of the International Commission on Intervention and State

Sovereignty (ICISS) entitled Responsibility to Protect (R2P). Despite the obstinate reluctance of R2P proponents to conflate the two concepts humanitarian intervention and its future was the key issue as the report explicitly maintained in the introductory part: "The report is about the so called right of humanitarian intervention: the question of when, if ever, it is appropriate for states to take coercive – and particularly military – action, against another state for the purpose of protecting people at risk in that other state."¹⁸ Paradoxically, with the shift to R2P conception, the discussion moved far away from its original purpose, for the sake of a widely acceptable compromise that sacrificed any hope of introducing an innovative framework for international response.

The mission of R2P conception clearly overlaps with the purpose of humanitarian intervention. Both aim to stop human suffering and protect civilians from widespread systematic violence. Hence, the R2P conception referred to specific situations constituting a universal moral responsibility to act—namely the Rwanda genocide and ethnic cleansing in Kosovo and Bosnia. While using existing cases of non-action, it provided legitimacy to the use of force in cases where the nature and scale of violence reach unusual proportions. In legal terms, the concept elaborated on the 1948 genocide convention and established a universal duty to halt and punish the crime of genocide. In contrast, it extended the applicability of such a principle to any systematic violence not necessarily qualified as genocide. Most importantly, the R2P report supposedly shifted the debate from the right to intervene to the duty to act, while introducing three levels of responsibility.

As the primary responsibility remains on the shoulders of each state, international action is only subsidiary, confined to situations in which the state is clearly not providing protection to its citizens. This is the first mechanism limiting any use of forcible measures within the R2P framework. Quite paradoxically, the lessons learned from Kosovo prevented any diversion from the UN-Charter based regime and led to a confirmation of the existing legal restrictions. The scenario of Kosovo was presented as a warning to the UNSC to act more effectively in future, otherwise it would be risking a loss of credibility. Orford argued in similar fashion that the concept did not impose any new obligations upon states or upon the UN, but rather distributed authority within the international system while guaranteeing executive power to the

UN institutions, particularly to the Security Council and the Secretary General.¹⁹

Finally, the packaging of military response to a more complex system of prevention-reaction-reconstruction resulted in a breakdown of the fundamental questions in the wide list of adequate measures that would be preferable to military intervention. The three pillars of protection make perfect sense in the context of current conflict resolution theories. Yet, altogether they constitute a much too flexible and all-inclusive approach, which relies on political deliberation when it comes to the selection of appropriate response. In the context of the debates on the crises in Rwanda and Kosovo, this was a pragmatic compromise. On one hand, it reflects the consensus regarding the protection of civilians, who became the prominent victims of post-Cold War violent conflicts. On the other hand, controversy over the means of protection, the sovereignty of the state and exclusive authority of the UNSC to approve any enforcement action remained deliberately vague.

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	<i>Model Situation</i>	<i>Lessons Learned</i>	<i>Constitutive Effects within R2P</i>
<i>Rwanda</i>	Illegitimate inaction	<i>Protection from widespread and systematic violence must be universal and more effective</i>	→ Human security → Responsibility to act → Universalism
<i>Kosovo</i>	action with contested legitimacy	Interventions should be <i>exceptional, multilateral, authorised, and last resort</i>	→ Restrictions on the use of force → UNSC authority maintained

Therefore, it would be misleading to argue that the R2P report was a victory of liberal universalism. Rather, it was the result of the pragmatic synthesis of competing norms (protection of civilians vs. state sovereignty), which have been contested since the early 1990s. The R2P concept accomplished reconciliation through a discursive shift from the *right to intervene* to the *duty to act* and a concept of conditional sovereignty, which might be substituted through international protection. The protectionist discourse that emphasises the mission of the concept disguises both its conceptual and operational shortcomings. For example: what mechanism should be used to decide which among the

Table 1.
Constitutive
Effects of
Rwanda and
Kosovo

three pillars of responsibility would be adequate? What is the tipping point for shifting authority from the state to the international level?

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Pragmatic Interpretation of R2P

The conceptual vagueness only grew worse once R2P was debated on the inter-governmental level during the 2005 World Summit. On one hand, the just cause threshold was specified to four explicitly defined situations: *genocide, ethnic cleansing, war crimes and crimes against humanity*. However, the most problematic issue—operationalisation of the three-level concept of responsibility—was only partial and rather ambiguous. The Outcome of the Summit proposed the condition of a ‘manifest failure,’ which refers to the situation when a state is unable or unwilling to protect its population from one or more of the four defined crimes.²⁰ In practical terms, it means that the activation of the third pillar (external intervention) depends on the interpretation of a concrete situation as a genocide/ethnic cleansing/war crime/crime against humanity and at the same time occurring *in a failed state*. Thus, the implementation of the concept rests on the authoritative assessment provided almost exclusively by Western academics, media, NGOs and their platforms. In addition, the limitation of the international duty to act to the cases of failed states enhanced the power of a sovereign state.

As a follow up to the recognition of R2P by the World Summit, there are several institutional mechanisms how the concept remains present in the UN debates. The UN Secretary General in cooperation with the Special Advisor on the Prevention of Genocide and the Special Advisor on R2P publishes an annual report dealing with specific issue of the R2P debate. In 2009, Ban Ki-Moon introduced the most important report thus far, entitled ‘Implementing the Responsibility to Protect,’ which explained the different levels of responsibility and the role of particular actors.²¹

The Report of the Secretary General aimed to mitigate tensions over the interpretation of the 2005 World Summit Outcome and to bring a compromise proposal, which would be acceptable even for sceptical states. Thus, it emphasised the first and the second pillar while outlining a set of restrictions with regard to the third. However, the follow-up debate during the 63rd General Assembly showed prevailing dis-

crepancy among the member states. Although the general principles of the R2P have been endorsed by all UN member states, the third pillar covering intervention was far from being universally supported.²² Major concerns were expressed with regard to the working methods of the Security Council being in the exclusive position of decision-makers. The double standards, hypocrisy and selectivity of the permanent members were the most common points of criticism. The outcome of the debate was a very brief and general resolution 'taking note' of the Secretary General Report and deciding to continue in the deliberations.²³ If the aim of the Secretary General and other R2P advocates was to progress from the World Summit Outcome to more explicit recognition of complex principles within the R2P concept, the resolution reflects rather hesitation among states.

The recent popularity of R2P is not based on gradual institutionalisation within UN structures, but rather on non-governmental discourse. According to Gregor Hofman, there is a tendency to exaggerate the level of R2P acceptance, especially within the epistemic community of its adherents.²⁴ Hofman argues that a powerful mechanism to legitimise the concept is by making reference to adopted UN resolutions and related debates, as if the solemn presence of R2P in the discourse would automatically assume its gradual support. In addition to emphasising the relevance of R2P in the official discourse, R2P proponents also use the complex and rather vague nature of the concept to camouflage its most problematic aspects, as addressed during the previous debates on humanitarian intervention.

There are two key platforms assembling R2P advocates, both located in New York but operating worldwide. One is the Global Centre for the Responsibility to Protect (GCR2P), which was established in 2008 by the Ralph Bunche Institute for International Studies. The Centre aims to pressure governments to affirm and implement the R2P concept, mainly through multilateral organisations. In past years, the executive director Simon Adams and the members of the Advisory Board (Gareth Evans, Francis M. Deng, Edward C. Luck, Thomas G. Weiss) lobbied for greater R2P support in the UN and urged for more action in particular crisis situations.²⁵ The second most influential organisation is the International Coalition for the Responsibility to Protect (ICR2P) was founded in 2009.²⁶ The mission statement is practically the same as the one declared by GCR2P, yet it works as a network of various NGOs

including Human Rights Watch, International Crisis Group, Oxfam International and tens of others.²⁷ Since the platform brings together members of civil society, not states, the representativeness of participants is logically greater.

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Both GCR2P and ICR2P use the same techniques aimed to simply keep R2P on the world agenda. They gather the 'core documents on R2P' demonstrating its progressive internationalisation, while focusing on the general principles, which are less problematic than their operationalisation and application in practice. Urging for more action in specific crisis situations sounds less conflicting than calling for military intervention. The effect is immense, as the core staff members are incredibly active, combining activism with scholarly work, thus legitimising their campaigns through a large number of their own publications. A very important part of the strategy is networking among individuals and NGOs, which spills over to UN structures. This is most visible in the UN Secretariat and the consistent support of R2P by both Kofi Annan and Ban Ki-Moon. The UN Secretary General has the power to bring R2P to UNGA debates, as well to UNSC meetings in particular crisis situations. Finally, before the diplomats of the permanent missions by the UN come to the negotiation table, they are regularly contacted by R2P advocates.

The final section of the article reviews the implementation of humanitarian intervention within the R2P framework, using as examples two crisis situations that attracted enormous attention: the 2011 intervention in Libya and the continuing humanitarian disaster in Syria. The impact of both crises on the R2P concept will be also discussed.

Implementation of R2P in Libya and Syria

Since the deterioration of the situation in Libya in February 2011, the newly appointed authorities within the UN showed deep commitment and immediately took action. The joint office of the Special Advisors for Prevention of Genocide and for Responsibility to Protect released a press statement, where they qualified the violence perpetrated by the regime as crimes against humanity.²⁸ The UN Secretary General participated at the UNSC meeting three days later, where he appealed on the members to immediately stop violence, while referring to the

2005 World Summit Outcome.²⁹ The repressive campaign of Gaddafi's loyalists was further condemned by the UN Human Rights Council as well as by the UN High Commissioner for Human Rights. All UN officials unanimously labelled violence in the country as systematic, widespread and probably reaching the level of war crimes and crimes against humanity.

*Šárka
Kolmašová*

The pressure for international response was strengthened by the activism of NGOs, especially those aligned with the ICRTOP and GCR2P. By the end of February, Human Rights Watch alone had published about twenty reports criticising Gaddafi's violent campaign.³⁰ Some reports included explicit calls for decisive international action including sanctions, an arms embargo and the creation of a no-fly zone.³¹ In March, The ICRTOP published a letter addressed to the UNSC arguing that '[...] in line with the 2005 World Summit the Security Council must be ready for a decisive collective action.'³² Compared to the crises that emerged in previous years, most notably the situation in Darfur, NGOs very effectively accomplished a rapid discursive shift, from the first two pillars to the third and to hard measures on the wide scale of possible international responses.

The reply of the UNSC was unprecedentedly firm due to a unique combination of factors. A series of hateful threats by Gaddafi addressed to his opponents, and to Libyan civilians in general, swiftly got the attention of the media and put the leader on the edge of the international community. Western countries could easily use this situation to demonstrate their own commitment to democratic principles, the protection of human rights in particular. As neither China nor Russia had any special interest in Libya, they both adopted the pragmatic position not to block international sanctions. Finally, the absence of regional allies made forceful measures passable, even within the two key regional organisations. The League of Arab States adopted a resolution appealing to state authorities to comply with international humanitarian law and stop crimes against civilians.³³ Moreover, it requested the UNSC to act in accordance with its responsibility in light of the worsening situation, while suggesting a no-fly zone to protect Libyan citizens. The African Union was more restrained regarding any external intervention; nonetheless, it strictly condemned violence against peaceful protesters.³⁴ Although it may sound simplified, Gaddafi had

practically no friends backing his regime and started the violent campaign at the time when the spirit of the Arab Spring was receiving great international support.

The UNSC Resolutions 1970 and 1973 both referred to the R2P concept; thus the following operations were interpreted as the first implementation of the third pillar. Resolution 1970 was adopted as early as 25 February 2011. Although it rather emphasised the first pillar – calling on state authorities to fulfil their responsibility and protect their own citizens – it included a set of sanctions in response to the manifest failure to do so.³⁵ It referred the case to the ICC for investigation, imposed an arms embargo on the entire territory and targeted sanctions against high-profile political representatives. The resolution was adopted unanimously, which reflected a wider consensus with the R2P general purpose of protecting civilians from systematic and widespread violence. The discourse on R2P was present in the text of the resolution, as well as in the speeches made by representatives during the debate before the voting.³⁶ Most notably, France, Great Britain and the US combined R2P principles with the right of citizens to build democracy, freedom and justice, which was a quite fundamental reinterpretation of the concept. However, as the resolution did not include any direct involvement of third states to the conflict, it was adopted without reservations.

Resolution 1973 was more problematic, as it went a step further and authorised all necessary means to protect Libyan people.³⁷ In line with the Chapters VII and VIII of the UN Charter, it asked any states or regional organisations to act in cooperation with the UN Secretary General to provide protective measures. This time, the UNSC was more divided, yet none of the PM used the veto to block the resolution.³⁸ The camp of supporters was dominated by France and Great Britain, which again used the R2P imperative and the political rights of Libyans to support a democratic transition. Lebanon, Colombia, Bosnia and Herzegovina, Nigeria and the South African Republic agreed with the protection of civilians, but strictly avoided any backing of the democratisation process. Five members of the UNSC abstained from voting and their motivations were also divergent. Whereas the abstention of China and Russia can be interpreted as an implicit ‘yes’ to possible intervention, the position of Germany indicated restraint and a careful ‘no’ to military involvement. This was part of the tendency to limit the engagement of Bundeswehr to avoid another ‘Afghanistan scenario.’

Both India and Brazil argued that the resolution was too vague regarding concrete implementation of enforcement measures, while potentially exceeding the option of a no-fly zone, which was supported by regional actors.

Resolution 1973 became the most important source of legitimacy for deployment of the NATO military operation aptly called 'Unified Protector.' Strong international opposition to the Gaddafi regime, and his oppressive campaign against civilians, made space for implementation of the third R2P pillar. However, extending the mandate from the protection of civilians to the open support of rebellion and, finally, overthrow of the regime triggered great controversy. China, Russia, Brazil, India and the AU opposed NATO's interpretation of Resolution 1973 and fundamentally disagreed with the political motivations beyond humanitarian principles.

Taking into account the non-critical endorsement of the R2P conception by its advocates, it is not surprising that there were enthusiastic reactions presenting Libya as a role model for the future.³⁹ Thakur and Weiss published op-eds celebrating the decisive international response.⁴⁰ Even the UN Secretary General welcomed the implementation of the third pillar without any reservations about the actual NATO operation. In response to Libya, there was a debate in the UN which, for the first time, shifted the focus to the criteria of legitimate conduct of war (in legal terms, principles of *ius in bello*). Since the justification of NATO operation was limited to the authorisation through the Resolution 1973, non-Western states in particular supported proposals to review whether international response within the third pillar was undertaken according to some predefined criteria.⁴¹

As an alternative, Brazil introduced a concept of "Responsibility while Protecting" (RWP), which was debated in the General Assembly interactive dialogue on R2P in 2012.⁴² The discussion was obviously shaped by the positions on the previous crisis in Libya. Intervening states defended the appropriateness and timing of military action, referring to the principle of last resort, which was emphasised by Brazil in its own initiative. China, Russia, India and South Africa used the RWP framework to criticise the alleged misuse of the UN Resolution to legitimise regime change in Libya.⁴³ In addition, China introduced a similar concept entitled 'Responsible Protection,' which also implied more accountability of intervening actors.⁴⁴ Although these ideas did not succeed in replacing the concept of R2P, they indicated lack of

*Pragmatic
Revisionism
and the Re-
sponsibility
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consensus over the implementation of military measures within the third pillar, while, at the same time, pushed for a review of effective protection in the post-intervention phase.

The crisis in Syria pushed the debate to revisit the scenarios of Rwanda and Darfur—only with more complicated political circumstances making any forceful protection of civilians practically impossible. In spite of strong pressure from the UN Secretary General, his Special Advisors, the UN High Commissioner for Human Rights and the network of R2P advocates, no decisive action was taken by the UNSC. The GCR2P regularly put Syria on the top of the list of serious crises requiring immediate international response. In the last Occasional Paper from March 2015, *Failure to Protect: Syria and the UN Security Council*, Adams argues that the ‘failure to end atrocities and protect civilians in Syria is not a failure of R2P but of the imperfect actors and institutions charged with its implementation.’⁴⁵

The UNSC responded to the crisis for the first time in August 2011 through the statement of its president, who condemned ‘widespread violations of human rights and the use of force against civilians.’⁴⁶ In October, the first resolution that would officially hold Syrian authorities accountable for violence against civilians was debated, yet was vetoed by Russia and China.⁴⁷ This was one in a series of UNSC Draft Resolutions blocked by the tandem of the P2. Any draft resolution that included sanctions imposed on the Assad regime was opposed even before the UNSC had progressed to debate and voting.⁴⁸ On the other hand, several resolutions were approved, as they referred to the first pillar of R2P while emphasising the primary responsibility of Syrian authorities to protect their people.⁴⁹ This was obviously absurd in the context of the growing number of interdependent reports bringing both quantitative and qualitative evidence of mass atrocities perpetrated by the government forces. The lack of consensus with regard to enforcement measures was “balanced” by diplomatic negotiations. As a result, the political dimension of the crisis vanquished the humanitarian one; the civil war between the government and opposition groups put aside the one-sided violence against civilians being perpetrated by both sides.

This trend was reflected in the so-called ‘Annan Plan’ supported by UNSC Resolution 2043, which established a 90-day UN Supervision Mission (UNSMIS) aimed at monitoring its implementation.⁵⁰ The mission was an obvious failure, seeing as the mandate, rules of engage-

ment and material capacities were totally disproportional to the continuing violence.⁵¹ The second attempt to find a negotiated solution to the crisis was a round of Geneva meetings starting at the end of June 2012. The foreign ministers of China, France, Russia, the UK, the US and Turkey collectively met with the UN Secretary General, representatives of the League of Arab States and the European Union High Representative for Foreign and Security Policy to establish an 'Action Group' to renew negotiations after the dead Annan proposal.⁵²

The international dimension of the Syrian crisis has been crucial since the very beginning. On one hand, the Western states led by France, the UK and the US condemned the regime and pushed for harder measures ranging from economic sanctions to an arms embargo to indictment of the ICC. On the other hand, the Syrian government was consistently supported by Russia and Iran due to strategic economic (arms trade) and regional interests. The peak of the crisis was the chemical weapons attack on Syrian civilians in August 2013 that resulted in 1400 casualties, including many children. In the words of the Obama administration, this was supposed to be the 'crossing of the red line' leading to military intervention.⁵³ However, no firm action was taken by the UNSC, NATO or any of the states that condemned the violent campaign of the regime.

In September 2013, the UNSC unanimously adopted Resolution 2118 which noted that the council was 'deeply outraged by the use of chemical weapons' and endorsed the decision of the Organization for Prohibition of Chemical Weapons (OPCW) requesting the Executive Council to destroy the Syrian chemical weapons program.⁵⁴ Resolution 2118 did not include any sanctions, which was a result of hard negotiations among the P5. The representative of Russian Federation, Sergey Lavrov, praised the diplomatic settlement of the conflict and only referred to the containment of weapons of mass destruction. Generally speaking, debate during the voting on the resolution was confined to the issue of chemical weapons, which prevented a more complex response to the indiscriminate killing of civilians.⁵⁵

Since mid-2014, the Syrian crisis has escalated further with the rise and military advancement of the Islamic State in Iraq and the Levant (ISIL) and Al-Nusra Front (ANF). The focus has shifted from the protection of civilians to the fight against terrorism, as ISIL clearly represented a common enemy for states engaged in the conflict. In August 2014, the UNSC adopted another Resolution on Syria, which reaffirmed

that ‘terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security’. The Resolution condemned violence against civilians perpetrated by various terrorist organisations, while not mentioning any violent actions perpetrated by state authorities. The reinterpretation of the conflict was a pragmatic move out of the stalemate regarding any measures taken against the regime. In 2015, an additional set of resolutions was adopted—either against terrorism in the Middle East or, generally, on the protection of civilians in armed conflicts, which dealt with violence against civilians in Syria but did not invoke R2P, let alone the third pillar.⁵⁶

The contemporary situation is, logically, criticised by literally all R2P supporters. By January 2016, the crisis was ranked as the top concern of the GCR2P, ICR2P, Human Rights Watch, International Crisis Group, UNHCHR, UN Secretary General, UN Human Rights Council and other institutions.⁵⁷ The unsatisfactory development resulting from political stalemate, which was triumphantly misused by Syrian authorities and their foreign allies, triggered a debate on the failure of R2P and its future.⁵⁸

In the context of its deficient implementation in the Syrian crisis, R2P proponents continued their strategy of presenting the concept as progressively (1) relevant, (2) supported and (3) institutionalised within the UN and other international organisations.⁵⁹ Regarding the lack of consensus in the UNSC, the GCR2P started an intensive campaign entitled ‘responsibility not to veto,’ which aims to convince UN member states to accede the (thus far ineffective) reform of UNSC working methods.⁶⁰ In parallel with the Syrian crisis, Simon Adams and other representatives of GCR2P lobbied by the permanent missions of states by the UN to put pressure on the P5 to voluntarily refrain from using its veto in cases of massive and systematic violence against civilians—in practicality, those where R2P would be applicable. Since 2013, during the regular sessions of the General Assembly, several state representatives called for the veto restraint. France, for example, proposed a code of conduct, which would include this mechanism using *self-restraint*.⁶¹ The idea was also supported by the UNHCHR and representatives of HRW and Amnesty International (GCR2P 2015).⁶² The proposal is not completely new since the debate on the reform had already started in the 1990s. However, the crisis in Syria gave the idea a sense of urgency.

The following table sums up the impact of the two recent crisis situations on the debate of military intervention within the R2P and the major revisions of the concept in line with the lessons learned from Libya and Syria.

	<i>Model Situation</i>	<i>Lessons Learned</i>	<i>Constitutive Effects within R2P</i>
<i>Libya</i>	action with contested legitimacy	R2P does not cover <i>regime change</i> . Legitimacy of the <i>conduct of intervention</i> should be reviewed. Military intervention should be <i>an exception</i> (x rule)	→ Proposal on Responsibility while Protecting (RWP) → Lack of consensus on implementation of the 3rd pillar
<i>Syria</i>	Illegitimate inaction	<i>Politics in the UNSC</i> fundamental for R2P implementation. <i>Selectivity</i> based on <i>prospects for success</i>	→ Emphasis on the 1st and 2nd R2P pillar → Proposal on Veto Restraint in the UNSC

Conclusion

The R2P conception is under constant revision, based on the practical politics of international crisis resolution. Libya was first celebrated as a triumph of R2P. This interpretation was later challenged due to dubious outcomes and the misuse of R2P discourse for regime change policy. Among humanitarian activists, it resulted in sceptical opposition to military operations in response to human rights violations and careful reconsideration in the UN of the criteria for any use of force. Blaming Libya for the insufficient response to the Syrian crisis would be oversimplifying. Yet, the effect of the harsh military campaign was rather a restraint on the use of force. Although UNSC authorisation may legitimise the intervention, it is not the only pre-condition for general acceptance. The Libya scenario has proven to be an exception, as, since 2012, there have been only very limited prospects for R2P intervention.

Returning to the original question posed in the introduction, the rise and fall of the third pillar corresponds with the pragmatic approach

*Table 2.
Constitutive
Effects of Lib-
ya and Syria*

towards the entire R2P concept. Representatives of the civil society, who managed to change the discourse in line with the R2P framework, used both crises to strengthen its cause. During and (especially) after the escalation of violence in Libya, it celebrated the international response as the final move from words to deeds. In the context of Syria, it pushed for more consistent implementation of the third pillar and used the case as a pressure point to urge for more political will to act. In contrast, individual states were calling for a cautious case-by-case approach in response to the situation in Libya, arguing that the conditions were exceptional. Although the scale of violence in Syria far exceeded Gaddafi's repressions, the interpretation is in favour of pillars I and II, meaning there are no prospects for enforcement in the near future. Why does this inconsistency not stop enthusiasts from lauding the R2P as the international standard? It is because the R2P concept is meant to be flexible to suit different situations.

With regard to the Syrian crisis, any comparison with Libya must be a great disillusionment to R2P advocates who supported the emergence of R2P as a norm. However, they lay blame exclusively on the Security Council for its lack of political will in activating the third pillar, although in official discourse support for it was fundamentally shaken, precisely due to the lessons learned in 2011. The R2P concept as a whole was falsely interpreted as a universally supported standard. The way NATO implemented the third pillar did not strengthen its legitimacy; rather, it deepened the gap between supporters and sceptical opponents (both among states and in the civil society). Ultimately, the lack of political will to provide capacities to a crisis where little strategic interests are at stake is no longer the problem; however, the post-Libya lack of consensus over what constitutes an adequate response, and limited prospects for a successful outcome, have prevented international response to humanitarian crises.



ŠÁRKA KOLMAŠOVÁ is affiliated to the Department of International Relations and European Studies at Metropolitan University Prague, where she sits as Deputy Head of Department. She may be reached at: sarka.kolmasova@mup.cz

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Notes:

- 1 See, for example Simon Adams (2015), *Failure to Protect: Syria and the UN Security Council*, Global Centre for the Responsibility to Protect; Kathryn Kersavage (2014), 'The "Responsibility to Protect" our Answer to "Never Again"? Libya, Syria and a Critical Analysis of R2P,' *International Affairs Forum* 5, no. 1, pp. 23-41 and Robert W. Murray and Alasdair McKay (2014), *Into the Eleventh Hour: R2P, Syria and Humanitarianism in Crisis*, Bristol: E-International Relations.
- 2 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Ottawa: International Development Research Centre, 2001.
- 3 In contrast to R2P, humanitarian intervention was quite clearly defined as: 'A threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.' See J L Holzgrefe, and Robert O Keohane (2003), *Humanitarian Intervention Ethical, Legal, and Political Dilemmas*, Cambridge UP, p. 18.
- 4 The origins of pragmatism date back to the American philosophers of the Metaphysical club, in the first place Charles S. Pierce, William James and John Dewey. Pragmatism in social sciences was revived by social constructivists and their search for complex constitutive relations among theory and social practice. See Peter M. Haas and Ernst B. Haas (2002), 'Pragmatic Constructivism and the Study of International Institutions,' *Millennium - Journal of International Studies* 31, no. 3, pp. 573-601.
- 5 Todd Lekan (2003), *Making Morality: Pragmatist Reconstruction in Ethical Theory*, Vanderbilt UP.
- 6 Jörg Friedrichs and Friedrich Kratochwil (2009), 'On Acting and Knowing: How Pragmatism Can Advance International Relations Research and Methodology,' *International Organization* 63:04, p. 701.
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- 8 There is an entire project on the critical self-reflection among UN officials, Security Council member state representatives, NGOs and journalists involved in the 1994 crisis. See *Ghosts of Rwanda* by Frontline; the Interviews: <<http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/interviews/>>
- 9 UN. Doc. A/54/2000, *We the Peoples: The Role of the United Nations in the 21st Century, Report of the Secretary General*, 2000, p. 45.

- 10 He reaffirmed this principle in the final report prepared by the High Level Panel on Threats, Challenges and Change, while referring to Rwanda or Bosnia and Herzegovina. UN Doc. A/59/565, *A More Secure World: Our Shared Responsibility. Report of the High Level Panel on Threats, Challenges and Change*, 2004, p. 4.
- 11 One of the most active and prominent supporters of the *never again to genocide* was General Roméo Dallaire having personal experience from the UNAMIR mission. Since 1994, he actively disseminated information to prevent similar scenario in the future and also initiated a project funded by the Montreal Institute for the Study of Genocide and Human Rights – *Mobilizing the Will to Intervene*. For more information see Will 2 Intervene, Online: <<http://migs.concordia.ca/W21/home.htm>>.
- 12 Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned*, Oxford UP, 2000.
- 13 David N. Gibbs (2009), *First Do No Harm: Humanitarian Intervention and the Destruction of Yugoslavia*, Vanderbilt UP.
- 14 See, for example, Simon Chesterman and Michael Byers (1999), 'Has us Power Destroyed the UN?', *London Review of Books* 21:9, pp. 27-30 and Thomas M. Franck (1999), 'Lessons of Kosovo,' *The American Journal of International Law* 93:4, p. 857.
- 15 Alan Boyle (2000), 'Kosovo: House of Commons Foreign Affairs Committee 4th Report, June 2000,' *International and Comparative Law Quarterly* 49:4, pp. 876-77; Christopher Greenwood (2000), 'International Law and the NATO Intervention in Kosovo,' *International and Comparative Law Quarterly* 49:4, pp. 926-934.
- 16 Bruno Simma (1999), 'NATO, the UN and the Use of Force: Legal Aspects,' *European Journal of International Law* 10:1.
- 17 Fernando Tesón (1999), 'Kosovo: A Powerful Precedent for the Doctrine Humanitarian Intervention,' *Amsterdam Law Forum* 2:1; Christine M. Chinkin (1999), 'Kosovo: A "Good" or "Bad" War?,' *The American Journal of International Law* 93:4, p. 841 and Louis Henkin (1999), 'Kosovo and the Law of "Humanitarian Intervention,"' *The American Journal of International Law* 93:4, pp. 824-828.
- 18 ICISS 2001, p. vii.
- 19 Anne Orford (2011), *International Authority and the Responsibility to Protect*, Cambridge UP.
- 20 UN Doc. A/60/1, *World Summit Outcome*, 2005.
- 21 UN Doc. A/63/677, *Implementing the Responsibility to Protect: Report of the Secretary General*, 2009.
- 22 *Interactive Thematic Dialogue of the United Nations General Assembly on the Responsibility to Protect*, Online: <<http://www.un.org/ga/president/63/interactive/responsibilitytoprotect.shtml>>.
- 23 Ibid.
- 24 Gregor Peter Hofmann (2015), 'R2P Ten Years on: Unresolved Justice Conflicts and Contestation,' *Global Responsibility to Protect* 7, no. 3-4, pp. 275-299.
- 25 The key to progressing implementation is the publication of regular moni-

- toring reports on (i) current crisis where urgent action is needed, (ii) imminent risk where effective preventive action must be taken and (iii) serious concern, where atrocity crimes might occur in foreseeable future if effective action is not taken. See GCR2P online: <<http://www.globalr2p.org/>>
- 26 The institutionalisation of the Coalition was a follow up to the Responsibility to Protect-Engaging Civil Society (R2PCS) project ran in 2003-2009 by the World Federalist Movement-Institute for Global Policy (WFM-IGP) in New York.
 - 27 'International Coalition for the Responsibility to Protect (ICRtoP),' available at <<http://www.responsibilitytoprotect.org/>>.
 - 28 UN Press Release, *UN Secretary-General Special Adviser on the Prevention of Genocide, Francis Deng, and Special Adviser on the Responsibility to Protect, Edward Luck, on the Situation in Libya*, 2011.
 - 29 UN Doc. S/PV.6490, *Security Council, 6490th Meeting*, 2011.
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 - 31 See HRW, *Libya: Commanders Should Face Justice For Killings*, 2011; HRW, *Libya: Governments Should Demand End to Unlawful Killings*, 2011; ICG, *Immediate International Steps Needed to Stop Atrocities in Libya*, 2011 and *Genocide Intervention Network*, *Mass Atrocities in Libya*, 2011.
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 - 36 S/PV.6491, *Peace and Security in Africa - Libya*, 2011.
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- 49 UN Doc. S/RES/2043, *Security Council Resolution 2043*, 2012; UN Doc. S/RES/2118, *Security Council Resolution 2118*, 2013.
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- 54 UN Doc. S/RES/2178, *Security Council Resolution 2178*, 2014.
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- 56 For example UN Doc. S/RES/2199 from 12 February 2015 on *Threats to international peace and security caused by terrorist acts*; or UN Doc. S/RES/2222 from 27 May 2015 on *Protection of civilians in armed conflict*.
- 57 *Timeline of International Response to the Situation in Syria*, GCR2P, Online: <<http://www.globalr2p.org/publications/135>>.
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- 59 Hofman (2015).
- 60 The GCR2P includes a section on the veto restraint campaign, while referring to associated NGOs, government representatives in the UN and events indicating support to the idea. See GCR2P, *UN Security Council Veto Restraint*. Online at: <http://www.globalr2p.org/our_work/un_security_council_veto_restraint>.
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Urban Counterterrorist Sieges

The 2008 Mumbai Attack and Police (In)capacity

Prem Mahadevan

The Mumbai terrorist attack of 2008 exposed key vulnerabilities in India's defences against urban terrorism. Not only did it reflect an unprecedented degree of sophistication on the part of jihadist planners, but the attack also demonstrated that the Indian policing system was woefully inadequate for the task of combating suicidal assaults. This work will provide an analysis of the tactical and operational aspects of the Indian security response, with a view towards identifying lessons which might be valuable for the international security community. Its findings are expected to be particularly relevant in light of similar attacks carried out in Europe, Africa and North America from 2013-2016. The work describes the actual conduct of security operations on the ground in Mumbai, during the period 26-29 November 2008. It studies the response of the Indian police, army, navy and National Security Guard and demonstrates that inter-force cooperation was severely lacking. Besides clear protocols for communicating situational updates and pooling crisis intelligence, counterterrorism in India lacked a coherent public relations doctrine. Together, these shortcomings contributed to the spread of panic and multiplied the disruption caused by the attack. The work concludes by offering suggestions for improving police responses to future urban terrorist sieges.

Keywords: Terrorism, Intelligence, SWAT, India, Pakistan, Lashkar-e-Taiba

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Introduction

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Following the 13 November 2015 shooting rampage by 'Islamic State' militants in Paris, Western security agencies are paying close attention to the threat of 'active shooters.' Unlike regular hostage-takers, active shooters are gunmen who randomly kill anyone they see and do not stop until cornered and either arrested or shot by security forces. Europe and the United States have hitherto been insulated by geography and strict external border controls from such threats, which have a long and bloody history in the Middle East, North Africa and South Asia. But with the ongoing migrant crisis, as well as recurrent warnings from intelligence services that more 'Paris-style' active shooter attacks are being planned, there is a need to study such attacks in greater operational detail. The template that security forces across the world are concerned about however is not Paris, but the Mumbai attack of 2008, known as '26/11.'¹

There are two typical types of security crisis: that which is small-scale and appears suddenly, and that which is large-scale and appears slowly. There is also a third, rarer, category: the large-scale security crisis that appears suddenly and confounds decision-makers. Certain terrorist attacks, like the jihadist assault on Mumbai, the commercial capital of India, fall into this category. Such attacks are highly destructive because they feature the use of innovative techniques by terrorists, making their impact more harmful compared to other incidents that unfold along previously witnessed, predictable lines.² They do not fit neatly into one academic category or another. They partly represent urban warfare between individual guerrilla-type fighters and the security forces of established states, with elements of gangland-style killing conducted at close quarters. These individual fighters have a rage-filled desire to experience 'power' by deliberately targeting unarmed civilians who are incapable of self-defence or retaliation.

This work shall describe how and why the Indian security forces responded on 26/11 in a manner that received considerable criticism, both in India and abroad. It shall demonstrate that at the level of security practice, defence measures remained static amidst a worsening threat environment. Little effort was made to prepare Indian cities to cope with the kind of shooting rampage that had always been thought possible but unlikely. Because the attack did not fit any of the previously recognised patterns of jihadist activity, and thus defied easy

identification, it posed a unique challenge that required an improvisational response (one that ultimately proved to be sub-optimal). The operational study of Indian counterterrorism is likely to be instructive for Western governments that face homeland security threats from radicalised members of immigrant populations, and well as returning foreign fighters from the so-called 'Islamic State.'

*Prem
Mahadevan*

What Happened?

On the night of Wednesday 26 November 2008, ten Pakistani gunmen from the jihadist group Lashkar-e-Taiba (LeT) landed on the Mumbai shoreline in a rubber dinghy. Splitting into five 'buddy pairs' they dispersed across the city. A short while later, they attacked simultaneously at five different locations, randomly shooting passersby while also planting time bombs in public places. Indian security forces took a full 60 hours to eliminate the last of the terrorists and bring the attack to a close. When the fighting was over, 166 civilians had been killed, including 25 foreign tourists. The bulk of the deaths occurred within the first two hours. The security response must be evaluated according to three criteria:

1. The number of dead
2. The length of time needed to re-establish control of the situation
3. The number of potential victims evacuated from affected sites while under imminent threat

Under these criteria, public and academic criticism of the Indian security response may only be partially justified. While there is little doubt that the attack represented a failure of preventive security, there are grounds for suggesting that security forces reacted promptly and professionally. Where they went wrong was in succumbing to collective paralysis caused by a failure of leadership, and relying on a top-heavy command system which denied police first responders the freedom to carry out their jobs.

Why did the Attack Happen?

26/11 was a state-sponsored attack, masterminded by the Pakistani Inter Services Intelligence (ISI).³ The actual planning was handled by at least 20 mid-level ISI officials. Final approval came from a former

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ISI chief, who was then commanding an army corps.⁴ Preparation was coordinated by a LeT operative named Sajid Majeed, who served as No. 2 in the LeT's external operations division. Majeed was also a liaison officer between the ISI and LeT and wanted to strike at a prestige target in India. His aim was to fulfil a long-standing ISI wish to damage the Indian economy, which was roaring at this time (2006-2008). He accordingly dispatched a Pakistani-American named Dawood Gilani to reconnoitre possible economic targets in Mumbai, including the Taj Palace Hotel. According to US court documents, funding for the reconnaissance was provided by a serving ISI officer, holding the rank of army major. Of the \$29,500 USD paid to Gilani, only \$1000 came from Sajid Majeed.⁵ The remainder came from the major. Gilani himself had been introduced to the LeT by another serving ISI officer. For all intents and purposes, LeT and the ISI cooperated so closely in planning and preparing for the Mumbai attack that any distinction between them disappeared.



Sajid Majeed, coordinator of the Mumbai attack and liaison man between Pakistan's ISI and Lashkar-e-Taiba (Source: Press Information Bureau of India)⁶

When India partially liberalised its economy in 1991, the ISI became focused on scaring away foreign investors through 'false-flag' or misattributed operations.⁷ The idea was to conduct cross-border terrorist attacks, which could then plausibly be blamed on indigenous Indian

militants. There was to be no provable link to Pakistan. Through carrying out a number of such attacks, the ISI hoped to convince the international business community that India was a politically unstable state, riven by ethnic and religious conflict and thus offering few long-term commercial prospects.

In March 1993, the ISI conducted a spectacular false-flag operation when it co-opted the Indian drug-lord Dawood Ibrahim to simultaneously bomb 13 locations in Mumbai. The death toll was 257—to date, the bloodiest terror attack in Indian history.⁸ However, the operation was not a complete success, as only its first phase (the bombings) was executed. Phase II had envisaged armed assaults on multiple targets across Mumbai. For this purpose, the Pakistani agency had shipped several tons of military-grade explosives and assault rifles to Dawood Ibrahim's gang. Unnerved by the chaos that the bombings caused, the would-be shooters decided to abort the second phase of the operation. Indian investigators later discovered the arms and several explosives caches intact. Forensic analysis established that this ordnance came from Pakistani government stores.⁹ Naturally, the ISI denied any involvement. It was helped by the unwillingness of the United States to condemn a former Cold War ally. Pakistan thus escaped any punishment for having sponsored an act of mass-casualty terrorism.

Encouraged by this impunity, the ISI continued to plan urban bombings in India throughout the 1990s. But the domestic instability which wracked Pakistan after 9/11 raised the stakes dramatically. The Pakistani army and ISI had become increasingly unpopular among their own public for aiding the US 'War on Terror' against Al-Qaeda. Following a series of jihadist attacks against the Pakistani military, the ISI began searching for instruments to drive a wedge in the jihadist movement. One such instrument was Lashkar-e-Taiba ('Army of the Pure'). As a group that espoused the fringe *Ahle Hadith* school of puritanical Islam, it did not have a mass support base in Pakistan. This meant it would be too weak to challenge the Pakistani army politically and would remain dependent on state protection, in the event that the international community targeted its assets for involvement in cross-border terrorism.

LeT was chosen as the medium through which the ISI would deflect domestic militancy abroad, in the direction of India. The Pakistani group set up a fictitious network called 'Indian Mujahideen' which consisted of Indian jihadists, many of whom had been taught

bomb-making.¹⁰ These jihadists were controlled by a rival of Sajid Majeed, named Abdur Rehman Pasha. Indian investigators believe that a secondary motive for 26/11 was that Majeed wanted to upstage the older Pasha, by carrying out a single high-visibility terrorist operation that would kill, in a single blow, as many victims as Pasha's men were killing through their constant small-scale attritional bombings in India.¹¹ The primary motive, however, was to refocus the energies of Pakistani jihadist cadres towards a foreign target. Disheartened by years of operational inactivity and falling increasingly susceptible to anti-government rhetoric, many low-level LeT operatives needed to be reminded who their 'real' enemy was—not the Pakistani army, which protected and funded them even as it collaborated with the hated Americans for tactical reasons, but their 'eternal enemy', India. A major strike on the Indian financial capital, Mumbai, seemed the best answer to LeT's morale problem, and would also please the ISI.¹²

Why Was the Attack Unexpected?

It has been reported that between 2006 and 2008, at least 26 warnings were passed by Indian intelligence agencies to the Mumbai police about a possible LeT attack.¹³ Three of these warnings mentioned the use of 'fidayeen'—suicidal gunmen—while eleven spoke of simultaneous incidents at multiple sites. Most importantly, six intelligence reports suggested that the method of infiltration would be via the Arabian Sea. From the specificity of some reports that came from the US Central Intelligence Agency, it was clear to Mumbai police that the Americans had a high-level human source within LeT.¹⁴ Only much later would it emerge that the source was Dawood Gilani, Sajid Majeed's reconnaissance agent in India. The CIA had known about the 26/11 conspiracy in detail for some time, but either due to incompetent tradecraft or, more likely, a cynical readiness to risk Indian lives for the sake of protecting its prized spy, only passed incomplete information to Indian security agencies.

According to a senior Indian intelligence officer, the Americans learnt about the scale of the Mumbai attack plan and were worried that it would lead to an India-Pakistan war. So they forwarded a sanitised stream of reports to New Delhi which could later be cited as 'proof' that the Indians had been complacent despite being forewarned. This same officer said that the strategic surprise on 26/11 came from

the sea-borne method of infiltration and the operational flexibility it gave the terrorists.¹⁵ Previously, arms and explosives had been shipped to India by the ISI via maritime smuggling networks. But none of these led to the immediate execution of a commando-style raid. In November 2008, it seemed highly unlikely that a motley group of semi-literate youth from the landlocked interior of Pakistani Punjab (most LeT cadres tend to be ethnic Punjabis) would become proficient in seamanship within a short span of time, without significant preparatory activity that would be detected by intelligence assets.

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Even the aborted Phase II of the ISI's 1993 operation in Mumbai had involved shipping arms to India with the help of *locally-recruited* smugglers and stashing the weapons for several days before they were to be used. Never before had a group of *foreign* terrorists landed on Indian shores, entered a city whose streets they were unfamiliar with, navigated to their targets precisely (thanks to GPS coordinates provided by LeT operative Dawood Gilani) and started shooting immediately. The reaction time thus available to the entire Indian security bureaucracy was compressed from weeks and days, into minutes, but the intelligence agencies were unaware of the changed paradigm at the time.

An Irrelevant Model for Predictive Analysis

Past attacks by suicidal gunmen from Pakistan had followed a set pattern: Terrorists would infiltrate via a land border (through either the states of Jammu or Kashmir, or via Nepal/Bangladesh). They would hide in safe houses prepared by LeT sleeper operatives in India. Usually, Indian police would pick up information about their presence thanks to human and technical sources, and neutralise them before their operation could be launched. On rare occasions, such as the 2001 assault on India's parliament, the gunmen would succeed in conducting an assault, though the level of casualties would be low due to good protective security measures. However, they enjoyed better success in Kashmir, where the time lag between their infiltration and the actual moment of deployment would be kept as short as possible, leaving security forces with a narrow time window to prevent casualties or to detect the attackers' presence in a locality. LeT planners recognised this pattern, and resolved to send a group of terrorists directly from Pakistan to India via a ship owned by the terrorist organisation. En route, the gunmen hijacked an Indian fishing boat and massacred the

crew, so as to steer into Indian territorial waters undetected by the coast guard. The final approach to Mumbai's shoreline was made on a rubber dingy launched from the fishing boat. The boat itself was abandoned (the terrorists had been ordered to sink it, but failed to do so) and continued to drift at sea until intercepted by Indian authorities some days later.

Despite the intelligence warnings delivered to the Mumbai police, it is hard not to sympathise with them. They were operating in a political climate where terrorism was perceived as a problem of border provinces in the north and east of India. Maharashtra, the province of which Mumbai was the capital, was further to the south and suffered mainly from Maoist terrorism, which was a rural phenomenon. Furthermore, the Maoists were restrained in their attacks and avoided mass-casualty operations which would lose them support among the Indian middle classes. Pakistani jihadists had no such compunctions, but were erroneously thought to be such a geographically distant threat that they were discounted, except to the extent they might carry out bomb attacks using the 'Indian Mujahideen.'

What Was the Initial Response?

When the first reports of shooting at Mumbai's main railway station and at a popular tourist café arrived, senior police officials believed that a gang war between drug trafficking syndicates had erupted. Shoot-outs were rare in the city, but when they did happen, their motives were criminal and the victims were usually mixed up with local mafias, either willingly or as victims. However, there was something different about these attacks—there was just too many of them. New reports arrived of gunmen having stormed into two luxury hotel complexes, the Taj Mahal Palace and Tower hotel and the Oberoi Trident hotel. Each of these hotels consisted of two separate buildings and, potentially, several thousand hotel guests were at risk from the attackers. It soon became clear that the killings were random and opportunistic—what the US security community terms 'active shooter' events. Like the crazed gunmen who occasionally barge into American schools and massacre teachers and students until they themselves are either killed or commit suicide, the LeT terrorists were only interested in chalking up a high death toll. They did not want to negotiate, only to kill and die—that was what their trainers had brainwashed them to do.

So much commentary has been made about the poor quality of firepower and weapons training available to Mumbai's policemen on that fateful night that it need not be repeated here.¹⁶ Suffice to say that at the railway station, policemen on duty were gunned down, in some cases because their poorly-maintained and antiquated firearms jammed after a few missed shots. In contrast, the two terrorists who opened fire on them were no amateurs—they fired controlled bursts, killing 58 people almost immediately. Elsewhere, in the two hotel complexes, their comrades met with even less resistance. With no one to intervene, they calmly walked through the luxurious interiors, shooting anyone they saw. Because most guests and staff in the hotel did not immediately recognise that what was happening was a terrorist strike, they initially ran towards the sound of the shots before fleeing, panic-stricken, in the opposite direction.

Urban Counterterrorist Sieges



Dispersed active shooter incidents in Mumbai, 26 November 2008.

Cama Hospital was attacked by the same pair of shooters who had previously opened fire at the nearby railway terminus.

The initial reports of shooting at five different locations came literally within minutes of each other. The first arrived at 21:48 hours and the last at 22:02 hours. There seemed no clear pattern—a tourist café, a train station, two hotels and a Jewish cultural centre. What the 19th century Prussian military philosopher Carl von Clausewitz called the ‘fog of war’ truly descended on the operational vision of the Mumbai police. Within one hour of the opening shots being fired, at 22:40, the police leadership recognised that the crisis was too big for them to handle alone. They needed the help of the Indian Army and the National Security Guard (NSG), the country’s premier counterterrorist force, which was based over a thousand kilometers away in the national capital, Delhi. In the interim, policemen on the ground struggled to understand what was happening and contain the potential for further escalation. It goes to their lasting credit that one of them, at the loss of his own life, grappled with a Kalashnikov-wielding Pakistani terrorist for long enough for the latter to be overpowered and arrested. This arrest and the subsequent interrogation, conducted both by Indian and American officials, exposed the cross-border nature of the conspiracy and dealt a serious blow to the ISI’s effort to maintain total deniability.

The Quick Response Teams (QRTs) of the Mumbai Police were best-suited to deal with the crisis, having been trained in commando operations by the Army. But they were caught in traffic seven miles to the north of the attack zone, which was concentrated in the prosperous southern tip of Mumbai. When they finally reached the affected locations, the shooters had moved indoors through the labyrinthine hotels and the Jewish cultural center. Hesitant about losing more men—the force had already lost three experienced officers to a terrorist ambush early in the crisis—the city police chief ordered his subordinates not to engage the terrorists. Clearly, his decision was in part motivated by a legitimate concern for their safety. But it also seems to have been driven by a sense of personal helplessness at the enormity of the crisis and the suddenness with which it appeared¹⁷ His individual feeling of being overwhelmed with a responsibility that was too heavy for him to bear, was transmitted down the chain of command in the form of oral orders to ‘do nothing’ until the NSG’s specialist counterterrorist hostage rescue teams arrived from Delhi.¹⁸ Police QRTs were left to do nothing more than crowd control, which they failed at for want of adequate numbers—there were only 56 men in all the QRTs

combined. A full two hours after the first pair of terrorists opened fire at the Taj Palace, only six policemen had entered the building. As they stumbled through its unfamiliar layout, which most of them normally would never visit on their meagre salaries, they radioed for reinforcements. Their horror and bewilderment in the following hours can only be imagined, as they were left to engage four heavily armed terrorists while carrying only a few pistols and carbine rounds themselves. Reinforcements did not arrive, as they had deferred to the police chief's order to stay clear until the NSG took over the situation. Running desperately low on ammunition, the six policemen were soon themselves being hunted down and had to focus on ensuring their own survival first.

*Prem
Mahadevan*

Improvising with the Navy

So wide is the gulf between civilian and military expertise in the Indian government that it was only by coincidence that the Maharashtra authorities learnt of the Indian Navy's commando capability. As the headquarters of India's powerful Western Fleet, Mumbai hosted a marine commando base. A civil servant recalled one of his social contacts in the Navy mentioning this unit and its sophisticated fighting skills, and as the crisis developed, he thought to ask for its assistance. Given the complicated bureaucratic procedure under which military force can be used in aid of civil authority in India—a backhanded compliment to the strength of its democracy—it was not until 02:00 that the first marine commandos arrived at the attack sites. Numbering just 16 men, they split into two teams and entered the Taj Palace and Tower and the Oberoi Trident. At the latter location, they were only able to block passageways connecting the two hotel wings (the Oberoi and the Trident) and isolate the terrorists in the former. At the Taj Palace however, their colleagues' intervention proved crucial.

When the first shots rang out in the Taj Palace, hotel staff alerted as many guests as possible to stay in their rooms and barricade themselves until rescued. Other guests were herded to safety in an isolated part of the hotel complex known as 'the chambers.' Eventually, roughly 200 civilians were gathered there, including several political and business leaders from Mumbai. Believing that their VIP status entitled them to priority evacuation, many telephoned news channels on their

mobile phones. In live interviews, they revealed their identities the location of their hiding place, taking care to emphasize their own importance so that rescuers would be instructed to save them first.. Unbeknownst to them, hundreds of miles away in the Pakistani port city of Karachi, their every word was being heard by Sajid Majeed and other attack masterminds from the ISI and LeT. Clustered in a control room equipped with satellite phones, television screens and four laptops, the attack planners listened to Indian newscasts, then relayed operational information in real-time to the terrorist gunmen in Mumbai. It was through media channels for instance, that they learnt about the paralysis of the Mumbai police and the lack of any proper hostage rescue capability in the city. It was also through the media that they learnt of the arrival of the marine commandos at the Taj Palace.

Like their civilian police counterparts, the marine commandos were unfamiliar of the topography of the hotel complexes. At the Taj, a small-scale floor plan was provided to the team leader by a hotel staffer. Unable to make any sense of the details, he stuffed the plan into his pocket and instead proceeded instinctively towards the sound of gunfire.¹⁹ The aim at that moment was not to devise an elaborate counter-assault plan, but instead to save as many lives as possible in what was a fluid situation where the terrorists were roaming freely and still held the upper-hand. The commandos had arrived at a decisive moment in the crisis. Alerted by their long-distance handlers in Karachi about the hundreds of civilians hiding in the chambers, the four terrorists at the Taj were hunting for them. Had they succeeded, they would have been able to commit yet another massacre on an even larger scale. The determined intervention of the marine commandos surprised them and they fell back into the depths of the building after a brief but vicious firefight. Thus were the civilians rescued.

It is important to note that the marine commandos were few in number, operating night-blind in unfamiliar surroundings. They fired at the muzzle flashes of the terrorists in what was otherwise a dark maze of corridors and rooms. Yet, due to their weaponry, advanced combat training and personal motivation, they regained tactical control of a rapidly deteriorating situation. Had a similar set of attributes been available to the policemen who had been ordered to remain outside the hotels, the 26/11 attack might have been terminated earlier. However, such systemic preparedness did not exist because the dominant institutional and political mindset had failed to anticipate that a condition similar to urban warfare could erupt on Mumbai's streets.

The marine commandos were military professionals trained for high-risk assaults, but policemen could not have been asked to deliver a comparable performance without the requisite infrastructure for psychological and physical hardening and weapons-handling.

Urban Counterterrorist Sieges

Waiting for the NSG

One of the much-hyped points of criticism regarding the Indian security response on 26/11 was the apparently 'slow' deployment time of the NSG. Based in the town of Manesar, outside Delhi, the force took over nine hours to reach Mumbai. This was not however, for want of preparedness on its part. On the contrary, the NSG had mobilised its Counterterrorist Task Force 1 (CTTF-1), a 100-man assault team which remains on constant 30-minute standby, within a mere 22 minutes of the first shots being fired. Whatever delays ensured thereafter were no fault of the unit, but rather, a result of Clausewitzian 'friction' as civilian bureaucrats scrambled to understand what was happening and work out the correct procedures for federal government intervention. Being a federal force, the NSG could not on its own initiative fly to Mumbai without a formal request from the provincial authorities in Maharashtra. Under the Indian constitution, the maintenance of public law and order was a provincial responsibility. The federal government could only intervene in the event of a grave threat to national security. Although, in hindsight, it is clear that 26/11 was certainly such a threat, at the time no one could definitively say so. It must be remembered that the Mumbai police had initially dismissed the first reports of shooting as signs of a gang war that would not affect civilian bystanders.

Besides the actual flying time from Delhi to Mumbai, the nine-hour travel time was due to lack of a suitable aircraft to ferry the rescue team and to traffic congestion on the national highway connecting the NSG's base at Manesar with Delhi airport. Although an aircraft was provided by the Indian intelligence service, the loading of equipment and personnel took a full hour. Some additional time was wasted when a cabinet minister insisted on travelling to Mumbai with the rescue team, holding up its departure. But beyond this, it is hard to see just how CTTF-1 could have reached the crisis area any faster. Readers would do well to remember that during the 1980 Iranian embassy siege in London, the British Special Air Service took much longer to deploy an assault team from Hereford. Fortunately for the SAS, it escaped criticism

because terrorists of that bygone era were inclined to carry out ‘conventional’ hostage-taking which featured prolonged negotiation, thus buying time for police and military units to react in an organised and pre-planned manner. No such luxury was available to the NSG in 2008.

After the 26/11 attack was investigated and analysed by experts, what became painfully evident was that LeT had identified a crucial weakness in international hostage rescue procedures: the vital importance of negotiation as a method to stall for time and ensure that hostages remained unharmed until a swift and surgical assault could be mounted. According to the established rulebook for dealing with hostage situations, expert negotiators would keep the terrorists busy with meaningless dialogue while commandos arrived and gathered preparatory intelligence. Ideally, the negotiations would continue right up to the very last minute so that the terrorists would be distracted when the rescue team made its forcible entry into the building/room where hostages were being held. This maximised the chances of killing the terrorists before they could kill any hostages.

Unfortunately, among the ranks of LeT trainers were several veterans of the Pakistani Army Special Forces. These men came from Zarrar Company, the army’s counterterrorist team.²⁰ They had been dispatched by the ISI to ensure that LeT battle tactics stayed one step ahead of Indian security forces, especially regarding attacks involving hostage-taking. Owing to their advice, the LeT ensured that its attack plan for Mumbai would do as much damage as possible, and kill as many people as possible, before the Indian government had a chance to begin negotiations. If negotiations were to commence, they would only be used to propagate a false impression that 26/11 was the work of militants originating from within India. LeT gunmen were instructed to tell Indian news-channels that they had no connection with Pakistan and were fighting ‘oppressive policies’ of the Indian government. Any hostages that might be taken would only be used as human shields to prolong the media spectacle—eventually they were all to be killed, execution-style, and the gunmen themselves would die fighting Indian troops.

Even as the NSG was air-dashing to Mumbai, two points became clear during the on-flight briefing: 1) that the terrorists had attacked multiple sites simultaneously precisely because they had realised that this would overwhelm the NSG’s finite resources; and 2) that they had already murdered civilians because this would deprive the Indian gov-

ernment of an opportunity to hold credible negotiations. No state can offer amnesty to hostage-takers who have already perpetrated a massacre—the best that the LeT hoped for was to take foreign tourists in India captive, so that their governments would force New Delhi to slow down its response operations and further prolong the attack's duration. As electronic intercepts of the terrorists' conversations later revealed, the idea all along was to kill foreign nationals so as to spoil the international the Indian government's international reputation, for failing to save them.²¹

*Prem
Mahadevan*

Topography of Terror

Having discussed the sequence of events, it is now necessary to look at the physical constraints that the NSG had to operate with once it reached Mumbai. The force engaged with the terrorists for 48 of the 60 hours that the 26/11 attack lasted (80 per cent of the total time) but the worst damage had already been done in the 12 hours before it took over operational control from the police and navy. During those 12 hours, the police had been frozen by shock, the navy heroically but blindly struggled to probe the situation with a small number of marine commandos and the Indian Army limited its role to cordoning off the attack sites. Being untrained in close-quarters battle for urban environments, the average Indian infantryman was unsuited to the task of hostage rescue, which required precision shooting skills and specialised equipment. Final responsibility fell to the NSG alone.

From the moment the NSG commander arrived at the Taj Palace and Tower, the scale of the rescue mission became frightfully clear. He had to divide up his force, sending men to both the Oberoi Trident hotel complex and the Jewish cultural centre, where several foreigners were being held captive by two of the terrorists. This meant that for room clearance operations at the Taj hotel itself, he would have just 40 of the 100 officers and men who constituted CTF-1. Although there were another 50 personnel who could serve in support roles, the NSG detachment in Mumbai was badly over-stretched.²² The Taj Palace had roughly 80 per cent occupancy on the night of the attack. This meant that around 3,000 people had been in the building. Although a large number extricated themselves once it became clear that a terrorist assault was underway, several hundreds were still trapped in their hotel suites, awaiting rescue. It would take an average of four to five minutes

to clear a single room, assuming there was no resistance from the terrorists or from the frightened guests themselves.²³ In total, sanitising the entire hotel complex and neutralising the terrorists would take days. And still there were other two sieges to consider.

The NSG troopers had been trained to anticipate panic among hostages and communicate calmly and clearly with them, in order to avoid any accidental deaths. Even so, officers would have to personally lead the room clearance operations to make sure that minimal force was used against uncooperative civilians. There was also the possibility that the terrorists might abandon their weapons and try to escape by masquerading as hotel staff or guests. Based on the manpower available, the NSG commander decided that each hotel floor must be cleared completely before proceeding to the next. There simply was not enough personnel to guard the areas that had already been secured. Initial efforts to get policemen to act as blocking forces foundered because they had received oral orders from their chief not to take any risks.²⁴ They remained in parts of the hotel which were relatively safe, and dealt with the task of evacuating civilians who had been rescued by the NSG. This meant that the NSG troopers risked being ambushed as they went from one floor to the next, still not knowing their way around the complicated floor plan. In fact, one of the NSG's finest officers was killed in just such an ambush.

At the Oberoi Trident hotel, on the other side of south Mumbai, things went better. After massacring whoever they had seen during the first hours of their rampage, the two terrorists in the hotel complex had barricaded themselves in a guest room which was relatively isolated but difficult to storm. Incessant gunfire and grenade-throwing over several hours eventually accounted for both of them. Because the Oberoi had fewer guests than the Taj, room clearances went faster. However, the open plan of large parts of the complex impeded unobserved movement, which meant that the NSG had to enter cautiously in order to avoid being ambushed from the upper floors. Also, the force lacked night-vision equipment which would work without any ambient light—lengthy corridors and isolated storage rooms in many parts of both hotel complexes (the Taj and the Oberoi Trident) required that clearances be conducted in daylight in areas where the electricity had failed. Knowing that the Indian security forces would use CCTV footage to track the gunmen's movements, the ISI/LeT terrorist handlers in Karachi had advised that whole floors be set ablaze to short the wiring

system. This meant that localised power failure added to the operational difficulties of the NSG.

The biggest challenge, in a tactical sense, came at the Jewish cultural centre. For many hours, the NSG held off storming the building out of concern for the safety of foreign nationals held captive by the two terrorists there. Only once Indian intelligence confirmed, based on electronic intercepts, that all the captives had already been killed upon personal instructions from Sajid Majeed in Pakistan, did the assault begin. Live media coverage led to death of one NSG trooper, who was shot by the terrorists as he tried to enter their stronghold. With no way of approaching unobserved, the NSG wore down the terrorists by a combination of sniper fire and room assaults. A final push led to both attackers being killed. During the operation, the NSG had to contend with large number of spectators on the ground, many of whom were literally a stone's throw from the cultural centre. Without any prospect of evacuating the densely populated surrounding area (only the local police had authority to do), the NSG was forced to operate in the public spotlight. This later led to facetious comments about lack of professionalism of the force's personnel made by ill-informed Western commentators. From their far-away perch of safety, they went by what they saw on television screens, rather than the facts on the ground. The death of those taken hostage by the terrorists was initially blamed on the NSG, until it emerged during the post-attack investigation that they had in fact been executed much before the building was stormed.

Lessons for the Future?

At the start of this work, three criteria were identified for assessing the performance of Indian security forces on 26/11:

1. The number of dead
2. The length of time needed to re-establish control of the situation
3. The number of potential victims evacuated from affected sites while under imminent threat

From what is known about the timeline of events, it appears that two-thirds of those killed (around 100 of the 166 fatalities) died in the opening stages of the attacks. Blaming the Mumbai police, the Indian Army and Navy, or the NSG for failing to prevent these murders is nonsensical. If any culpability is to be attributed for these deaths, it would lie with Indian intelligence agencies. However, they too were badly un-

der-resourced for the task of combating cross-border terrorism. Even five years after the 26/11 attack, the Intelligence Bureau (India's premier security agency) had just 30 analysts and field personnel on its operations directorate.²⁵ Counterterrorism teams set up shortly before 26/11 had been disbanded due to lack of funding. So 'intelligence failure'—the favourite excuse of decision-makers when caught unawares—seems more like a structural problem than anything else. Furthermore, in both previous and subsequent cross-border attacks by Pakistani jihadists, the Indian intelligence community did an excellent job of anticipating the assaults and alerting local security forces. But Indian intelligence did not possess the manpower, strength or equipment to stop the attacks from being launched. Since India-Pakistan relations were very cordial at the time, the Indian political establishment was itself complacent about Pakistan's readiness to trigger a confrontation. And besides, at a purely functional level, it seems as though suicidal operations—*fidayeen* raids—constitute a tactic which will assuredly cause some level of casualties no matter how well-funded intelligence agencies are, or how competent are police and military response units.

Regarding the second criterion, the drawn-out process of terminating the Mumbai attack was due to manpower shortages and the very large size of the two hotel complexes, which gave the terrorists plenty of room to manoeuvre and hide. Both the NSG and the marine commandos were critically undermanned for the scale of the crisis that they were confronted with. Both forces were operating in a situation different from what they had trained for. The NSG was an intervention force meant to rescue hostages according to a well-rehearsed assault plan that had been adequately shaped by intelligence reports. The marine commandos were experts in undersea warfare and demolition, who were only drafted into the counterterrorist response on 26/11 because of their superior combat skills. Both forces did the best that they could, but, in retrospect, it is clear that they would have needed much greater numbers if they were to conduct both missions—evacuate civilians and hunt down the terrorists—simultaneously. Also, it must not be forgotten that they had to do all this in an information vacuum. They did not even know the layout of the buildings they were operating in, much less the terrorists' exact location.

Finally, the Navy and NSG together evacuated roughly a thousand civilians who had been trapped in the two hotel complexes. The Navy in particular, deserves credit for rescuing at least 200 civilians who

were at imminent risk of death in the chambers area of the Taj Palace. Western tourists later informed their countries' intelligence agencies that the Indian security forces had behaved professionally and courteously during the evacuation.²⁶ During the entire 60-hour terrorist attack, only one civilian was confirmed killed as a result of cross-firing between the terrorists and security forces. All other civilian deaths had been cold-blooded executions, often consisting of a gunshot to the head.

*Prem
Mahadevan*

Using these criteria, one could say that the Indian security forces produced a flawed, but valiant, effort on 26/11. The flaws were due to systemic weaknesses relating to lack of funds for specialised equipment and trained manpower, but these cannot be assumed to have led to a higher loss of life. Instead, they may have stretched out the attack, by slowing down the speed of evacuation and room clearance operations. The Mumbai police did a bad job, but largely due to a lack of nerve on the part of their top leaders as well as poor command and control. Having never 'wargamed' such a crisis, the police were psychologically ill-suited to dealing with its numbing effect. In the years since, Mumbai has raised a Special Weapons and Tactics (SWAT) squad named Force One, which has been rated as quite professional by NSG experts. Whether this capability would be a real improvement over the QRTS is another question, as Mumbai has a history of experimenting with 'special' police units, only to disband them after a few years or divert their personnel to other duties.

There have been at least eight major terrorist attacks since 26/11 bearing a strong resemblance to the carnage that was wreaked upon Mumbai. These are: the massacre of children at a summer camp in Norway (2011); the attack on expatriate workers at a gas facility in Algeria (2013); the Westgate Mall attack in Kenya (2013); the massacre of schoolchildren in Peshawar, Pakistan (2014); the Garissa University attack in Kenya (2015); the Paris Massacres of January and November 2015; and the Orlando nightclub shooting in the United States (2016). The number of killers varied in these incidents, as did their motives and the duration of the attacks. In each case, however, several civilians were killed before security forces intervened effectively. The massacre in Norway was perpetrated by a 'lone-wolf terrorist' armed only with semiautomatic weapons; still, he managed to kill 77 children before surrendering to the authorities. Western policymakers should keep in mind two facts about the risk of 26/11 style attacks: 1) Rich societies

are as vulnerable to terrorism as developing societies; and 2) having better-equipped police forces does not necessarily translate into more public security when an incident actually occurs. Case-specific preparation is required. Just because resource-starved Indian security forces were slower to respond in Mumbai than their Western counterparts might have been, this does not imply that the West can terminate 'active shooter' incidents without incurring similarly high levels of casualties.

One lesson that can be drawn from Mumbai is that government communication during a crisis is vital. The Indian public relations effort was shambolic, with military and civilian authorities rushing to brief the media without coordinating with each other. Sensitive information was leaked by talkative ministers unaware of its operational ramifications. Briefings were ad hoc, feeding the international media with the impression of a multi-headed and bombastic security leadership. In future attacks, it is necessary that the media should be 'managed' in order to keep them away from areas where security operations are underway, and, if that is impossible, to keep them from broadcasting operations in real-time. It is also necessary to identify a storyline early enough which can be weaved into post-incident commentary by sympathetic journalists who can shape the public impression in a manner that favours the government. After 26/11, the Indian media had a field day criticising the political leadership, inadvertently giving ammunition to India's enemies, including Pakistan—in short, they were blaming the victim (India). In the process, what was conveniently obfuscated was the fact that 26/11 was an exceptional attack because it was state-sponsored. Only recently (in summer 2016) has the Indian media woken up to the fact that the Pakistani government actively interfered with the security response to 26/11. A few hours before the attack, Islamabad had ensured that officers of the Indian home ministry's internal security division (who were visiting Pakistan as part of a bilateral dialogue aimed at improving relations) were sequestered in a remote area beyond mobile phone coverage.²⁷ Once the attack began, their panicky subordinates tried to ring for orders, only to find that their supervisors were inaccessible. On reflection, it seems that Pakistan had a better understanding of how to carry out a coordinated 'whole-of-government' terrorist operation than India had of conducting a coordinated response.

Another lesson is that multiple crisis intelligence centres should be set up to pool information from any and all sources, regarding the

current situation in a terrorist-hit zone. Because so many incidents were reported across Mumbai in the early hours of the attack, the police were overwhelmed by panicked callers. It became difficult to sift fact from fiction. The same problem will arise in the future — a localised command and control structure needs to be put in place to deal with the threat of information overload. Situating of fusion centres and allocation of crisis-management responsibilities would depend on which areas intelligence agencies identify as ‘high-risk.’ Usually, there is some warning of a terrorist group’s general intention to strike a locality. Unfortunately, the security practice in India has been to act on such warnings piecemeal, not to introduce systemic changes that ensure an entire urban zone can be ‘hardened’ against terrorist attack. By liaising with business owners and holding regular drills to assess the speed of counterterrorist responses, police forces can minimise the damage done in the opening stages of an attack. It is worth noting that at both the Taj Palace and the Oberoi Trident, it was the professionalism of the hotel staff which saved many lives. Thinking on their feet, staffers ensured that guests were herded into safe areas, kept calm and evacuated at the first opportunity. If employees at public buildings and major multinational companies could be routinely sensitised about emergency protocols to be followed in event of a terrorist attack, it would make the job of security forces much easier.

Finally, the most important lesson of 26/11 is that fighting defensively is a foolish policy. Planners of mass murder take a voyeuristic thrill in watching death hundreds of miles away, knowing that modern technology allows them to ratchet up the level of destruction by a phone call to their cadres on the ground. Ordinary methods of criminal justice do not work against such individuals. India has long tried to get the Pakistani state to implement its own laws against terrorist groups who target Indian citizens. This approach has failed. The masterminds of 26/11 still roam freely under ISI protection.²⁸ Although there are grounds for restraint in the targeting of high-profile LeT and ISI leaders, no hesitation is needed in the case of mid-rank cadres. Individuals such as Sajid Majeed can and should be physically liquidated at the earliest opportunity. Islamabad claims that Majeed—the main link between the ISI and LeT in the 26/11 case—does not exist, even though he has been designated a global terrorist by the United States.²⁹ By Pakistani logic, the Indian government would not be violating any law if it quietly vaporises a ‘non-existent’ person together with his ‘non-existent’ ISI bodyguards. Since Islamabad insists that it is committed

to combating terrorism, it can hardly object if international terrorist fugitives are killed within its jurisdiction. As the United States killed Osama bin Laden, so too must India neutralise LeT operatives in Pakistan through a campaign of assassination.

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Conclusion

It is worth remembering that during and immediately after the 26/11 attack, both domestic and foreign commentators with little operational insight lambasted Indian intelligence agencies and security forces. Condescending statements about lack of professionalism were made by armchair Western analysts, secure in the knowledge that their own countries did not face a large-scale and state-sponsored terrorist threat from any adjacent territory. Such insouciance has disappeared after the November 2015 Paris attack. Europe is now worried about more shooting rampages that could convert its touristic old town squares and city centres into jihadist death traps. There is a greater sense of appreciation that stopping multiple active shooters, who have reconnoitred their targets beforehand and possess tactical skills, is an immensely complex task. Blood will be spilt. This work is intended to educate counterterrorism practitioners about some of the challenges faced in 2008 by the Indian security establishment, as well as highlight the growing relevance of these same challenges for the West.



PREM MAHADEVAN is a Swiss-based researcher on security affairs. This article was written while he was Senior Lecturer at the Department of International Relations and European Studies (IRES), Metropolitan University Prague. He may be reached at: info@cejiss.org

Notes

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- 12 *Interrogation Report of David Coleman Headley*, compiled by the Indian National Investigation Agency, 2010, p. 61.
- 13 This claim has been disputed by some Indian intelligence officials. They insist that the actual number of warnings was lower, and that Western intelligence agencies proved reluctant to share information that could compromise Pakistan for being a state-sponsor of terrorism. Allegedly, this reluctance continues to this day, with British and American intelligence agencies unwilling to share electronic intercepts obtained during the period 26-29 November 2008, which would demonstrate real-time supervision of the attack by the ISI. See Praveen Swami, '26/11: 7 years on, India waits for West intelligence on 'ISI links'', *The Hindu*, 19 February 2016, accessed online at <http://indianexpress.com/article/india/india-news-india/david-headley-mumbai-attack-2611-7-years-on-india-waits-for-west-intelligence-on-isi-links/>, on 17 June 2016.
- 14 Adrian Levy and Cathy Scott-Clark (2013), *The Siege: The Attack on the Taj*

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Mahadevan

- (New Delhi: Penguin), pp. 25-26.
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Dynamics of Middle East Peace Process in the Era of US Hegemony

1950-2000

Samer Bakkour

This article begins with the observation that the us has over the course of the 20th century, exerted an unrivalled influence on international affairs. In exerting this influence, which is manifested within various dimensions (military, economic and technological), successive American administrations were able to pursue and consolidate their own interests at the international level of governance. In this respect, it is telling that both advocates and critics of American power agree upon the extent and ultimate goal of American power. In this work, I will further elaborate on this theme of American hegemony, with specific reference to the Arab-Israeli conflict. I argue that American power permeates nearly every aspect of the established peace processes.

Keywords: Arab-Israel Peace Process, us hegemony, us influence Middle East

Introduction and Background

The us's role in the Middle East has substantially increased in recent years. This is reflected in a number of ways, particularly in the role the us has played in establishing the basis for the Arab-Israeli peace process. In this instance, us hegemony appears almost as the underpinning foundation or grounding principle. Although it is important



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to recognise the limitations of us power,¹ in the Middle East it appears almost as a form of galvanisation, a coat that protects domestic or regional units of government from the harsh abrasions of contemporary Middle Eastern politics. The us military is currently based in six Middle Eastern states, including Saudi Arabia (the wealthiest), Egypt (the most populous) and Israel (the most powerful militarily). Given the sheer scope of its influence, it is unsurprising that the us government has dedicated so much time and effort to the resolution of the Arab-Israeli conflict.²

While the exertion of us power may produce a number of common benefits, it is clear that this power is not disinterested and that, to a substantial extent, it protects and furthers America's regional interests. Yet, even this power has its limits; peace is not currently on the agenda in the Middle East. The best prospect at present is the management or temporary suspension of violent hostilities. In addition, popular distrust of American motives and intentions continues to present a substantial obstacle to American goals and objectives in the region.³

Although my predominant emphasis is on American power, I will also examine the Cold War struggle between the us and the Soviet Union. This confrontation was particularly important for the Middle East, primarily because the superpowers heavily influenced this region. These external powers both created political realities and sought to co-opt local realities for their own ends and purposes. Political interactions tended to closely resemble patron-client relationships.

During the Cold War, successive American administrations retained a close and abiding interest Middle East affairs—American oil interests being the paramount consideration and priority. Various American presidents, such as Eisenhower, explicitly voiced the concern that political turbulence in the region would adversely impact the American economy, whether in the form of higher oil prices or supply disruptions. Oil would subsequently emerge as a major priority and determinant of us regional policy.

In the contemporary era, it is clear that the us has had an unrivalled opportunity to impose its own strategic and political priorities on the region.⁴ This control has not conformed to the practices and structures of an empire, but has instead utilized subtler mechanisms and techniques. This cannot be said to be a purely military form of power, but also a political and economic one; to an equivalent extent, it cannot be said to correspond to direct domination or control. us power in

the region is hinged upon the understanding that force cannot provide a sufficient justification in and of itself; force, in other words, provides an insufficient basis upon which US power can be legitimised.⁵

Over the course of the 20th century, various US-sponsored peace initiatives (Camp David, Oslo I, and Oslo II),⁶ inextricably linked American interests to a frequently elusive 'peace.' From my perspective, the most interesting element of this is not the success (or lack thereof) of these efforts, but rather the American superpower's frequently evidenced ability to switch between different peace initiatives. Repeated failure has led to neither disengagement nor disinterest, but rather renewed impetus and momentum.⁷

The Effect of Economics on the Peace Process

In order to comprehend the various ways in which US power has influenced the Middle Eastern peace process, it is first necessary to examine the world order, which was in place during the Cold War. Broadly speaking, and with the partial exception of the nonaligned movement,⁸ this order could be categorised as bipolar. This arrangement originated with the Yalta Conference of 1945, which established a pattern of political relations that would last for the next 45 years. While this stalemate did not establish peaceful relations, it did provide the basis for relative and partial stability.

The reason this stability was only partial was that it forestalled direct hostilities between the two superpowers; it did not prevent—in fact, it actively encouraged—a state of affairs in which these mutual hostilities were projected onto the Third World. In various contexts across the globe, indirect superpower competition assumed ideological,⁹ cultural, economic and military dimensions. The developing world appeared almost as small pegs, trapped within the small gap that divided the two encompassing world-views. In subsequently pursuing their respective ideological and geopolitical ends, the US and the Soviet Union reconfigured regional alignments of power and fought proxy wars.

As a country that had positioned itself in direct opposition to colonialism, the US was well placed to benefit from the collapse of European empires in the aftermath of WW2. Former colonial powers became dependent on US support and assistance, a development that the Marshall Plan (1948) vividly underlined. After WW2, the international liberal order became inextricably intertwined with, and indeed inseparable from, the Cold War.

arable from, us power. This power assumed a number of dimensions: political, economic and ideological. In this last respect, the us utilised human rights and democratic discourse in order to present itself as the defender of the free world. This freedom was not articulated within the vernacular of national struggle and independence, but rather presented itself in the form of capitalism and open economic systems. In a very specific and particular sense, the us therefore emerged as the defender of the free world.¹⁰

Observers inevitably drew attention to the fact that this 'freedom' was inextricably interwoven with the interests and priorities of the American state. The difference between the former colonial masters and their American successor was essentially a difference of degree rather than of kind; the Americans could be said to be taking over from where their predecessors left off.¹¹ In further underlining this point, Thompson observes that the 'liberation' of independent states served as a means through which American power was consolidated. To put it slightly differently, 'containment' of the Soviet threat furthered America's thinly concealed desire for political and economic hegemony.

For historical and political reasons, Americans have tried to keep their influence in the region from appearing colonial; consequently, it must present peace and the spread of democratic ideals as its intention. In this understanding, long-term Middle East stability and the resolution of the Israeli-Palestinian conflict are inextricably linked.¹² However, it is understood that the two are far from co-terminus. One analyst suggests that 'stability' is merely a code word, attuned to the ears of foreign investors and global managers.

The Middle East holds particular importance by virtue of its oil resources, which are both economically and politically significant. It is not merely that American influence over these resources is an integral component of American power; rather, it is that this influence simultaneously prevents challenges to American hegemony from emerging and consolidating. In the post-ww2 era, us policymakers viewed the Middle East both as a source of power and as a material prize. Economists have observed that the largest consumer of a collective must take the lead in organising production, or it is unlikely others will make any attempt to produce goods. By extended analogy, if the us wishes to attain global access, it must maintain political peace, especially in the Middle East, since a significant portion of the world's wealth is found there. However, while the us is the most powerful military state and

can police political agreements, this interference is liable to damage its domestic economy.¹³

In the decades after ww2, the interrelation of the economic and political aspects of America's geopolitical strategy would become still more pronounced.¹⁴ Paul Kennedy stressed this essential interrelation—in his view, military power must be supported by wealth and established wealthy interests require power in order to obtain and secure wealth. This necessitates a parsimonious balancing of possession and means, as an imbalance in favour of the latter will conceivably diminish the former (the military-industrial complex serves as a clear example). Systemic imperatives necessitate that state planners must remain alert to the dangers of over-extension and the need to manage critical resources, which lie beyond immediate territorial borders.¹⁵ Noam Chomsky has consistently emphasised the role which elite economic interests play within America's foreign policy. In his view, the congruence of interest between America's political and economic elite established the basis for a world order which would further their shared interests and priorities.¹⁶

The contradiction between liberal ideology and the imperatives of a rapacious economic system would be starkly evidenced in the years following ww2. The spread of us hegemony clashed openly with the political and economic priorities of newly independent states. In other respects, as revisionist accounts of the Cold War so clearly convey, liberal ideology became a powerful tool through which the us promoted its own economic and political interests. The Cold War was an essential accompaniment to, and even condition for, the spread of American power and influence.¹⁷ This hegemonic liberalism essentially corresponds to the set of political and economic arrangements that emerged in the aftermath of ww2. The us assumed the role of guarantor of political and economic stability, upon the understanding that it would be accorded a certain unquestioned privilege.

The Intertwining of Peace and Trade

The us's status as a superpower was reinforced by the collapse of the USSR. Its hegemony over the Middle East can be traced to the reluctance of other international powers to directly challenge its pre-eminence. us pre-eminence may also be attributed to a set of tacit under-

standings between different international actors –in some cases, the us will demur to Chinese or Russian interests.

In taking the lead in Arab-Israeli negotiations, the American government has historically promoted the principle of 'land for peace'. The 1979 peace agreement between Israel and Egypt was understood to enshrine this principle and to provide a basis for a consensus among moderate Arab states. Nevertheless, critical American observers have argued that existing peace agreements ultimately militate against the prospect of a more comprehensive settlement.¹⁸

In the absence of political agreement, the us has established a range of economic and trade relations with pro-us Middle Eastern states. The establishment of these relations can be traced back to the broadly neo-liberal premise that heightened levels of economic interdependence and interaction will establish the basis for a more lasting peace in the Middle East. Trade brings about cultural exchange, political dialogue and diplomatic exchange.¹⁹

The us trade representative has openly stated that trade and economic liberalisation at every level is the ultimate aim of the us government. This viewpoint enjoys broad support among the political elite of many Middle Eastern states, although there is a clear concern with regard to American hegemony. Among the general Arab public, the promotion of neo-liberalism is liable to be viewed as culturally incompatible and a front for us interests. Under us plans, the 'New Middle East' (in reality the Gulf Co-operation Council (GCC) countries) will become a competitive economic power.²⁰ Over the past four decades, us commercial interests in the Middle East have steadily grown.

The United States is among the top five trading partners of each GCC country. More than 700 us-affiliated companies operate in the region and employ more than 16,000 Americans.²¹ Private sector investments by us companies in these countries account for half of the total world investments in the region. Oil-producing nations, which require capital items for ambitious development strategies, also import from the us.²²

At the crossroads between Europe, Asia and Africa, the Middle East is rapidly becoming a mega market, with the potential to embrace more than one billion people. Middle Eastern countries have provided substantial investment capital to both the private and the public sectors of the us and other industrial economies for almost twenty years.

The gcc has played a key role in supporting the us dollar. In addition, it has also invested billions of dollars in us treasury securities; this has facilitated a low and stable us interest rate.

The use of trade in the service of the Israeli-Palestinian peace process has been conspicuously less successful. In 1995, President Clinton sought to bring about heightened levels of economic interaction between each of the key protagonists. He proposed to expand the existing Free Trade Agreement between the United States and Israel, and to expand the agreement to include the Palestinian territories, Jordan and Egypt. Clinton's attempts to coerce the respective partners and Congress into agreeing to this proposal ultimately proved to be unsuccessful. Clinton enjoyed more success in bringing about the Qualifying Industrial Zones, which were introduced in 1996.²³

Oil in Peace Process Mobilisation: The Role of the US

The 1859 discovery that oil could function as an energy source marked the beginning of a new era, both in America (where the discovery was made) and worldwide. The exploitation of oil soon became a prerequisite for large-scale industrialisation and modernisation. In the contemporary world, oil from the Persian Gulf provides a large market for various crucial sectors of industrialised economies, including construction, engineering and military equipment sales. The use of oil has opened up hitherto unknown dimensions of strategy on the ground, in the air and under the sea. Therefore, oil shortages have become threats to national or international security and countries with oil production capabilities assume pre-eminent economic, political and strategic importance.²⁴

In the aftermath of ww1, the British and the French governments divided the Middle East in accordance with their own interests. During the interwar period, the British and American governments frequently found themselves in direct competition for petroleum resources²⁵—strenuous efforts were made to secure key oil resources, contain Soviet influence and ensure the free flow of oil.²⁶ By the beginning of ww2, the us government had gained concession from its British counterpart on petroleum interests in Kuwait, Saudi Arabia, Bahrain and Iraq. The release of Saudi oil was the most important of these concessions. The first agreement between the American firms, which were subsequently to become known as ARAMCO, (Arabian-American Oil Company), and

Saudi Arabia occurred between 1933 and 1935. An American official in the region was quick to acknowledge the potential strategic significance of this concession.²⁷

After 1948, the surge of petroleum supplies would, in the imagination of American policy planners, take second place to Israel's security needs. The essential reasoning behind this prioritisation was not difficult to grasp—petroleum shortages have the potential to undermine both international and domestic security.²⁸ It was during this same period that the oil reserves of the Gulf states contributed to a political re-evaluation. The political implications reverberate to this day in Cantore's observation that: 'Gulf oil, as well as the security of allied states are the focal point of United States policy.'²⁹

The post-ww2 reconstruction of Europe placed substantial demands upon Middle Eastern oil reserves. In the aftermath of ww2, us strategy in the region became increasingly focused upon threats to this supply. This was clearly illustrated in 1953, when the CIA executed a plan to remove Mohammad Mossadegh, the Iranian nationalist leader. The us attempt to balance Arab political opinion and the needs of its Israeli client state became increasingly difficult following the Suez Canal Crisis of 1956, when the Arab nationalist movement became a pronounced obstacle to us control over regional oil resources.³⁰

The post-ww2 reconstruction of Europe placed substantial demands on Middle Eastern oil reserves, and further underlined the level of us dependence on foreign oil supplies. By the time of the 1973 oil crisis, imports made up more than one-third of domestic requirements (35 per cent). At the same time, internal oil production was nearing peak capacity.³¹ Within two weeks of the outbreak of the 1973 Yom Kippur war, the Saudi government imposed an embargo on oil supplies to the Netherlands and the us, an action that was taken in protest against continued us support for Israel. This initial action was followed, in September of the same year, by a 25 per cent reduction of the pre-war production rate. Arab members of OPEC made it clear that the embargo would be removed when Israel withdrew from occupied territories.³²

The oil shortage focused attention on the vulnerability of supply and played a key role in transforming oil supply into a key American interest.³³ After the crisis, oil also assumed a heightened political significance for the Saudis. Prior to 1973, King Faisal, the Saudi monarch, had been reluctant to utilise oil in this manner. However, the policy immediately bore fruit, with Kissinger's shuttle diplomacy resulting in

*Samer
Bakkour*

a disengagement agreement between Israel and Syria. President Carter's attempt to establish peace between Egypt and Israel was also a response to the oil threat (although it should be noted that the Camp David Accords were far from unanimously accepted by most Arab states).³⁴ In obvious contrast, the Nixon administration considered the direct seizure of key oil fields.

The result of the following embargo and shortages was a significant rise in prices, which created a lengthy recession in the West. It was also the end of the Saudi practice of distinguishing between oil decisions and political issues. Perhaps perversely, the 1973 crisis ultimately proved to be beneficial to national interest: Foreign exchange reserves or 'petrodollars' were subsequently invested in the us economy. As a consequence of foreign investment, oil producers acquired a vested interest in ensuring the integrity of the major industrial economies.³⁵ The Saudis and other major oil producers came to realise that artificially elevated prices injure the long-term competitiveness of oil as an energy resource. This point is further reiterated by the fact that the Saudis increased oil production in the summer of 1979 (in response to decreases in Iranian output), the autumn of 1980 (in response to the outbreak of the Iran-Iraq war) and in 1991 (in response to the first Gulf War).

The integrity of Persian Gulf oil supplies would subsequently re-emerge as a key strategic priority for the us. This was epitomised by the Carter Doctrine of 1980, which explicitly declared America's willingness to use force in defence of its regional interests³⁶ (something, which the 1991 Gulf War would well-illustrate). Carter emphasised this commitment by establishing a rapid deployment force. The subsequent development of CENTCOM (The United States Central Command) enabled the us to further consolidate its existing ties. These ties were to be particularly useful in the management of regional hostilities (such as the 'Tanker Wars') and external subversion (whether Russian or Iranian).

During this period, Joseph L Lieberman, the prominent us senator, explained that the us had multiple reasons for ensuring regional stability—and economic motivation was at the forefront.³⁷ The major challenge for the us in this respect is that key regional goals (free access to oil and the commitment to Israel's security) are frequently opposed; it is not difficult to identify instances in which the two directly

contradict each other. This is the inevitable conclusion of the perpetual failure of the peace process.

The Influence of Oil on Political Decision-Making

*Dynamics of
Middle East
Peace Process*

Political and social unrest in the region continues to exert a negative impact on international energy markets and oil prices. A number of the world's largest oil and gas facilities (both production and export) are currently based in the Middle East. Approximately 40 per cent of oil trades and 20 per cent of natural gas exports come from the region.

In the Arab oil monarchies, such as Bahrain and Saudi Arabia, state formation took place under Western patronage in small and immobilised tribal societies. The main contemporary threat to these regimes comes from the emergent middle classes. Historically, the political vulnerability of these regimes has been contained by traditional (patriarchal and Islamic) sources of legitimacy. By the mid-1970s a further stage in the state-building process, which penetrated all levels of society, had occurred: the establishment of bureaucratic structures, modern forms of communication and forms of political association (including political parties). The impetus had been the threat of war, the explosion in oil revenues and superpower support. More recently, the broad distribution of oil-financed benefits and the instrumental adaptation of local identity³⁸ have played an essential role in co-opting the middle classes and preventing the emergence of oppositional mass movements. At the regional level of governance, Western power and influence has played an essential role in maintaining state security.

The subsequent over-development of the Gulf state, epitomised by the funnelling of economic resources into unproductive military expenditure, imposed further economic constraints and impediments. These domestic ripples were further exacerbated by US intrusion during the post-Gulf War era. This exemplifies the subtle interplay between internal and external influences, an interplay that local actors must continually take into account and adapt to the same extent; it helps to explain why the "domestic" security of states such as Saudi Arabia has become so reliant upon external actors and agencies.³⁹

As a major source of oil and natural gas production, the Middle East is vital to global energy markets. Current regional unrest has shut down some energy production and raised uncertainties about future supply

from the region. Some regional producers are seeking to reassure global energy markets, amid fears that unrest could spread to major producers or disrupt regional commerce. A disruption in any one part of the market affects oil prices everywhere, regardless of its production or consumption site. Although natural gas markets are similarly affected, they are not as significant as oil markets. At present, Europe is being impacted to the greatest extent by events in the Middle East.⁴⁰

It is frequently argued that the us should be more forceful in imposing a solution and that its main constraint in this respect is its special relationship with Israel. Other factors include the autonomy of local agents and the fact that low intensity conflict does not, in the absence of an escalation to regional conflict, present a clear or obvious threat to us national interests. In this respect, the us does not have an obvious preference with regard to the final settlement of the Israeli-Palestinian conflict. Borders, identity and the refugee issue are only pressing priorities for those who inhabit the region. For this reason, there is an obvious difference in the factors that will feature in the cost-benefit analyses of local and external agents.⁴¹

Conclusion

This article has shown the political implications that derive from us hegemony. The us is, in the absence of countervailing challengers, firmly entrenched as the predominant international power. In the aftermath of ww2, the us was able to make pronounced changes and adjustments to its own economic, political and strategic priorities. In the course of this essay, I have shown oil to be a political resource as well as an economic one. The hegemonic position of the us has allowed the nation to further extend its influence through the inauguration of various peace initiatives. The Israeli-Arab and Israeli-Palestinian peace processes can be seen as sub-sets of this established hegemonic system.

The exertion of American power within the region has frequently given rise to countervailing political responses, which seek to limit or curtail American influence (any analysis of the emergence and development of political Islam must take one example, first acknowledge the spread of American cultural and economic values). A further set of complications and tensions clearly derive from America's two main strategic regional priorities – namely the support of Israel and unhindered oil supplies.

However it is also clear that a regional peace settlement can only be achieved through American influence - this explains why both regional and international actors look to America to take the initiative on this front. Far from fulfilling this expectation, internal tensions and contradictions within American strategy more frequently rise to a clear paradox: peace as war; war as peace. As I have sought to illustrate, if we are to begin to engage with this paradox in its full significance, then we must first acknowledge the unique character of the US-Israel relationship; a relationship which has almost no contemporary or historical analogies, save perhaps that of Sparta being cast in the service of Rome.

Samer
Bakkour



SAMER BAKKOUR is affiliated to Justus Liebig University, Historical and Educational Institute. He can be contacted at *Samer_zain@hotmail.com*

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*Dynamics of
Middle East
Peace Process*

The Concept of Border Security in the Schengen Area

Radko Hokovský

This article contributes to the discussion about border security in the Schengen Area, particularly regarding the dramatic increase of illegal immigration since 2013. It first outlines the competency of the European Union regarding protection of Schengen's external borders and identifies the objectives of EU policies. The article goes on to critically analyse the concept of 'EU Integrated Border Management,' showing that it is hardly applicable to strategic policy making. There is no official, comprehensive and up-to-date definition of the concept; moreover, it is used inconsistently across EU political and legal documents. Therefore, the article argues that the concept of a border security system should be adopted as both a framework for analysis and a conceptual structure for EU policymaking. The final section of the article defines the functions of a border security system as follows. In the area of prevention there are functions of (1) deterrence of the potential flow and (2) prevention of the attempted flow; in the area of interdiction there is the located function of (3) interdiction of the immediate attempted flow at the borders, either at border crossing points or in between them; lastly, in the area of removal, there are functions of (4) apprehension of the illegal flow and (5) apprehension of the illegal population for the purpose of (6) removal of these unauthorised immigrants or residents from the protected territory.

*Keywords: European Union, Schengen Area, border security
illegal immigration*



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The Schengen Agreement is based on the principle that member states give up one of their core state powers—the authority to control their own national borders—in exchange for common protection of the external borders of the Schengen Area. However, since 2013, when the number of illegal border crossings into the Schengen zone started to rise considerably, and again after the 2015 upsurge to 1,822,337 illegal entries (in contrast to 282,962 in 2014, 107,365 in 2013 and 73,437 in 2012),¹ questions have arisen about whether the Schengen Border Security System is able to effectively combat illegal immigration and whether some core functions of border security have not been lost in delegating these national competences to the EU level. It is difficult to analyse the functionality of the Schengen system as there is no generally accepted concept of border security in the EU which could serve as both a framework for analysis and a conceptual structure for strategic policy making.

EU Competences in Border Security

In order to determine the legal basis for EU competences in the area of border security, the following section will look into the founding treaties of the EU. Within the Treaty on the Functioning of the European Union, the most relevant is Title V: Area of Freedom, Security and Justice, in which the EU attempted to frame a common policy on external border control in order to ensure the absence of internal border controls of persons, regardless of their nationality.² Chapter Two of this title further stipulates that the EU should develop and gradually introduce ‘an integrated management system for external borders’—in other words, a border security system that would ensure border checks on persons and monitoring of border crossings³. Furthermore, the EU should seek to develop measures to combat illegal immigration and unauthorised residence, including actions such as removal and repatriation of persons residing without authorisation.⁴

The Treaty on European Union introduces the concept of an EU internal security system with the phrase ‘area of freedom, security and justice,’ placing border security as its primary policy aim over other policy areas such as internal markets, economic and monetary union, and external relations.⁵ The absence of internal frontiers was seen as the main benefit of the EU internal security system, of which the main

components are supposed to be policies regarding external border controls, asylum, immigration and the prevention and combating of crime.

Since the implementation of the Amsterdam Treaty, respective policies and measures in the area of internal security and border security have been based on multi-annual programmes known as the Tampere Programme (adopted by the European Council in 1999),⁶ the Hague Programme (2004)⁷ and the Stockholm Programme (2009).⁸ The current period is not covered by such a document, but only by strategic guidelines for legislative and operational planning that were adopted as part of the European Council conclusions of 26 and 27 June 2014.⁹ These guidelines refer to a 'borders policy' which should enable 'tackling irregular migration resolutely and managing the EU's external borders efficiently.'¹⁰ In order to ensure strong protection of the Schengen Area, it calls for modernisation of Integrated Border Management, including a smart border system, reinforcement and increase of Frontex activity and the possibility of setting up a European system of border guards.¹¹

Following the June 2014 European Council request to review and update the Internal Security Strategy,¹² the Commission presented its communication entitled 'The European Agenda on Security',¹³ which, however, deals with border security only marginally. It focuses on three main priorities for EU internal security: terrorism, organised crime and cybercrime. Border security is covered by the European Agenda on Migration,¹⁴ which aims for better migration management through 'reducing the incentives for irregular migration' and 'border management—saving lives and securing external borders.'¹⁵ In neither of these documents is the term 'border security' explicitly stated. The European Agenda on Security refers only to 'border management' as essential for the prevention of cross-border crime and terrorism.¹⁶

Two pieces of EU secondary law constitute the major building blocks of the Schengen Border Security System: the Schengen Borders Code and Frontex Regulation. The Schengen Borders Code was adopted in 2006 as an EC regulation 'establishing a Community Code on the rules governing the movement of persons across borders.'¹⁷ Since then it has been amended several times; the current version was adopted in November 2013. Although it also deals with the internal frontiers of mem-

ber states, this article will focus only on its role in external Schengen border security.

Border control is supposed to be in the interest not only of front-line member states, but of all states that have abolished controls at their internal borders. The purpose of the controls is to combat illegal immigration and human trafficking and to prevent 'any threat to the Member States' internal security, public policy, public health and international relations.'¹⁸ According to the code, border control comprises: checks on persons at border crossing points; surveillance between these border crossing points; analysis of the risks for internal security; and analysis of the threats that may affect the security of external borders.¹⁹ Interestingly, neither 'border security,' nor 'protection' of borders is ever used in the text of the code.

National border and coast guard authorities, supported by Frontex, are responsible for the execution of border control. Frontex was born from a 2004 EC regulation for 'establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.' It was last amended in June 2014.²⁰ According to the Frontex Regulation, the general aim of EU integrated border management is to contribute to the free movement of persons and internal security within the EU, while its specific objective is to ensure 'a uniform and high level of control and surveillance' at Schengen borders based on common rules.²¹ Efficient implementation requires 'increased coordination of the operational cooperation between the Member States.'²²

The main objective of the regulation is to create 'an integrated management of operational cooperation at the external borders of the Member States of the European Union.'²³ While responsibility for the control and surveillance of external borders lies with the member states, Frontex should facilitate their coordination.²⁴ Specific functions of Schengen border management include border checks, border surveillance and the return of unauthorised third-country nationals.²⁵ To this end, the agency is tasked with: providing risk analyses; training national instructors and officers; conducting research and education; compiling lists of material resources; preparing for crisis situations; providing assistance for return operations; and cooperating with other parties.²⁶ Frontex, nevertheless, is explicitly exempted from the devel-

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opment of policies and legislation on external border control and surveillance, a task which resides mainly with the EC.²⁷

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EU Integrated Border Management

While EU documents do not explicitly use the term ‘border security system,’ they often refer to ‘integrated border management.’ However, the concept of integrated border management is neither precisely defined nor coherently used and no official strategic document outlining the development of this policy exists. That is why it is not viable to use this concept when identifying and analysing EU border security functions.

Ferreira analysed the discursive or terminological shift in official EU documents from ‘border control’ to ‘border security’ after the 9/11 terrorist attacks in the US.²⁸ However, the Laeken European Council conclusions demonstrate that, already in 2001, the heads of states and governments had asked the council and the commission to develop a new integrated system of border management, which should help to ‘fight against terrorism, illegal immigration networks and the traffic in human beings.’²⁹ The new concept of EU integrated border management is useful in analysing both the present border security situation and a number of proposed measures and actions to be implemented at the EU level.³⁰ These conclusions also provided the first definition of ‘management of external borders,’ which comprises activities carried out by public authorities of the member states in order to execute checks and surveillance at external borders; gather, analyse and exchange any specific intelligence or general information posing a risk to EU internal security; analyse and propose response to threats to border and internal security; and anticipate capacity needs regarding staff and equipment at the external borders.³¹

Following the EC’s communication, the Justice and Home Affairs Council adopted a plan which included five main components of EU Integrated Border Management (IBM): (1) a common operational co-operation and co-ordination mechanism, (2) common integrated risk analysis, (3) personnel and inter-operational equipment, (4) a common corpus of legislation and (5) burden-sharing between member states and the Union.³² Formulations based on these initial definitions can be found in the Hague Programme of 2004,³³ the Global Approach

to Migration of 2005³⁴ and the EC conclusions of October 2006 on reinforcing the southern external maritime borders.³⁵ A detailed account of IBM terminology, the origins of the concept, a broader context and its early evolution is provided by Hobbing.³⁶

Although no EU IBM strategy has been officially adopted, one was drafted by the Finland Council Presidency on the basis of discussions in the Strategic Committee on Immigration, Frontiers and Asylum on 09 November 2006 and in the informal experts meeting on 15 November 2006. This draft strategy defines the overall aim of IBM as ensuring that entry into and exit from the territory of member states is made in a 'regulated and orderly fashion,' while the guiding principles should be 'solidarity, mutual trust and co-responsibility among member states' as well as 'full respect for human rights in both its actions and procedures.'³⁷

The general aims of IBM, according to the draft document, are: (1) contributing to EU's immigration strategy in coordination with other policies, (2) easing of traffic movement and controls, (3) avoiding risks to the health and life of irregular immigrants, (4) preventing offences related to irregular immigration, (5) anticipating, preventing and facilitating prosecution of organised crime related to irregular immigration, (6) cooperating with third countries to prevent irregular immigrants from leaving their countries of origin or transit, (7) fostering cooperation with third countries on identification and return of irregular immigrants, (8) preventing entry of irregular immigrants, (9) detecting persons attempting irregular entry, (10) facilitating identification, location and expulsion of unauthorised persons and (11) contributing to the fight against terrorism and organised cross-border crime.³⁸

The draft strategy was not adopted as a whole, yet in its December 2006 conclusions the JHA Council incorporated a definition of the IBM concept that consists of the following dimensions: (1) border control, including checks and surveillance (as defined in the Schengen Borders Code), as well as relevant risk analysis and crime intelligence, (2) detection and investigation of cross-border crime in coordination with all competent law enforcement authorities, (3) the four-tier access control model, including (a) measures in third countries, (b) cooperation with neighbouring countries, (c) border control, and (d) control measures within the area of free movement, together with return operations, (4) inter-agency cooperation for border management, including border

guards, customs, police, national security and other relevant authorities and (5) coordination and coherence of the activities of member states and institutions and other bodies of the community and the EU.³⁹

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The EC's 2008 communication on the next steps in EU border management have not mitigated the fragmentation of the IBM concept. It nevertheless lists some of the problems with the Schengen external border system that were present at that time.⁴⁰ On the basis of identified problems regarding cross-border travel of third country nationals, the commission proposed as 'possible new tools for the future development of an integrated border management strategy': facilitation of border crossing for bona fide travellers; the introduction of entry/exit registration; and introduction of an Electronic System of Travel Authorisation (ESTA).⁴¹

Following the Stockholm Programme in March 2010, the council adopted in its Draft Internal Security Strategy in which it defines a European security model, which integrates actions on law enforcement, judicial cooperation, border management and civil protection.⁴² Although it lists integrated border management among its ten strategic guidelines, it does not provide any clear and coherent definition of the concept and rather mentions topical initiatives including those referred to in commission's 2008 communication. The European Commission presented a more detailed version of the Internal Security Strategy in November 2010. Among its 'five steps,' or 'strategic objectives for internal security' is 'strengthening security through border management.'⁴³

Although the document refers to 'integrated border management strategy,' it does not provide its definition. However, it introduces 'migration management' and the 'fight against crime' as twin objectives of the strategy and further denotes three strategic strands: (1) an enhanced use of new technology for border checks (the second generation of the Schengen Information System, the Visa Information System, the entry/exit system and the registered traveller programme), (2) new technology for border surveillance (the European Border Surveillance System, EUROSUR) with the support of Global Monitoring for Environment and Security services, and the gradual creation of a common information sharing environment for the EU maritime domain and (3) increased coordination of member states through Frontex.⁴⁴ The border management objective of the Internal Security Strategy

should be achieved through four actions: (1) exploitation of the full potential of EUROSUR, (2) enhancement of the contribution of Frontex at the external borders, (3) common risk management for movement of goods across external borders and (4) improvement of interagency cooperation at the national level.⁴⁵

Strategic guidelines for the Area of Freedom, Security and Justice adopted by the European Council in its June 2014 conclusions call for modernisation of IBM in a cost-efficient way to ensure smart border management with an entry-exit system and a registered travellers programme, supported by the new Agency for Large Scale IT Systems.⁴⁶ The most recent political documents giving direction to the EU internal and border security policy are the commission's communications on security and migration. It is noteworthy that migration and border management have been separated from other internal security issues. The European Agenda on Migration never mentions 'integrated border management' and, despite declaring that 'rules on border control are in place,' openly acknowledges that 'border management today varies' and is 'based on a patchwork of sectorial documents and instruments.'⁴⁷ The commission then states that it will commit itself to consolidating this patchwork into a 'Union standard for border management' covering all aspects of the EU's external border management.

Although the concept of IBM has been used in official political (for example, in the Stockholm Programme of 2009) and legal documents (the Treaty on the Functioning of the European Union), as well as in academic⁴⁸ and analytical⁴⁹ literature, there does not exist any comprehensive IBM strategy or overall conceptual document. It should be noted that the IBM concept is very well developed in the EU's external policy, but is substantially different from the notion of IBM from the EU internal perspective.⁵⁰ An expert conference co-organised by Frontex concluded that '[a] major obstacle to the realisation of the potential of full cooperation lies in the absence of an up-to-date concept of integrated border management (IBM).'⁵¹ In this light it is rather bizarre that the council, in a document on the legacy of Schengen written 15 years after its adoption, presents the IBM concept as one of its 'most valuable achievements' as part of 'soft acquis' in the form of the Schengen Catalogues of recommendations and best practices.⁵²

It can be concluded that the EU's concept of IBM suffers from two deficiencies: (1) there is no official, comprehensive and up-to-date definition of the notion and (2) it is defined differently in different EU

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political and legal documents. Consequently, the concept can serve neither as a framework for analysis, nor as a conceptual structure for EU policymaking.

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Border Security

Regardless of how frequently the term ‘border security’ is used in academic literature, no substantial discussion on defining the concept is provided.⁵³ It is a rather inconvenient situation, as border security can mean various things for different authors. However, more policy-oriented analytical reports, especially from the US, where border security continues to be a heated subject of public and legislative debate, can be of some help. Since the 9/11 attacks committed by foreign terrorists in 2001, controversies over both the meaning and the interpretation of border security as a policy goal and policy system have been reoccurring with intensity in the US. The terrorists’ multiple entries into the country were not prevented by US border security system, which was considered a failure.

The terrorist threat as a challenge to border security has not been the only subject of debate. Illegal immigration from across the US-Mexican border, and its implications for both the labour market and for crime, was at the centre of public concern in the mid-2000s. Later, the escalation of the Mexican drug war and its potential to increase violence in the US became a top concern.⁵⁴ Since 2013, and heading to the 2016 presidential elections, a major issue has been the prevention of unauthorised border crossings from Mexico. As copious financial and human resources have already been invested into the US border security system, devising a way to measure the effectiveness of the system has become a major focus of debate among policy experts.

Georgiev⁵⁵ (2010) attempted to analyse the EU’s border security system on the basis of a ‘comprehensive policy framework’ which he derived from Wasem et al., who, however, focused only on one aspect of border security—inspections of the people and material going through border checks. Wasem et al. found that, according to US law, the purpose of inspections at official ports of entry is primarily threefold: (1) immigration inspection—determining the admissibility of individual alien travellers seeking to enter the US, (2) customs inspection—preventing the entry of illegitimate goods or people into the US, chiefly terrorists and their weapons, illegal drugs and other smuggled con-

traband, and (3) animal and plant health inspection—preventing the entry of exotic plant and animal pests and diseases, especially those that might be used as bioterrorism or agro-terrorism agents.⁵⁶

Aside from inspections at the actual physical border, US courts have given ‘border’ a more flexible interpretation; the law recognizes two legal constructs that allow border searches to be conducted beyond the geographical frontier. The first is the functional equivalent of a border, which is generally the first practical detention point after a border crossing or the final port of entry in the country interior (for example, international airports within the US or ports within US territorial waters.) Secondly, a warrantless ‘extended border search’ can be conducted beyond the border or its functional equivalent if government officials have reasonable certainty that a border was crossed, no change in the object of the search has occurred and they have ‘reasonable suspicion’ that criminal activity was occurring.⁵⁷ All in all, the analytical framework offered by Wasem et al. is too narrowly focused on border checks to provide assistance in determining a more general concept of border security.

A much more comprehensive conceptual model of border security was developed by Willis et al. as the foundation for measurement of security delivery. They define border security as ‘an effort to control cross-border movement, with the ultimate goal of reducing illegal flows and not (unduly) limiting legal flows.’⁵⁸ Whereas ‘cross-border’ flow is defined as the movement of people or material across the frontier, ‘illegal flow’ means the inbound movement of illegal drugs, illegal migrants and terrorist threat-posing individuals, materials or weapons as it is described in the core missions of the US Department of Homeland Security.

Willis et al. differentiate between different flows of illegal cross-border movements. The decision to cross a border illegally is influenced by many different factors including situations, motivations, perceptions and preconditions of both the crossing individuals and the smugglers. These factors are exogenous to border-security efforts and determine the ‘potential flow’—the number of people or amount of material intending to cross the border illegally. This number can be changed by border-security efforts focussed on deterrence. If a potential migrant, drug smuggler or terrorist perceives the passage as too costly or too dangerous they might change their intention. The corresponding reduction of cross-border movement is called ‘deterred flow’; individuals

and material that make it to the border are conceptualised as ‘attempted flow.’⁵⁹

The objective of different border security operations conducted by various law enforcement agencies and supported by other public, private and international actors is to intercept the attempted flow. These interception operations can take place before the borders (for example, in international waters), at the border (at border-crossing points or between them), or after the border (such as traffic checkpoints.) Those people and material that are intercepted by these actions are called ‘interdicted flow’ and those that successfully avoid apprehension constitute ‘illegal flow.’ Willis et al. identify three core functions of border security activities: interdiction, deterrence, and exploitation of networked intelligence. These operations take various forms when applied to different mission such as the fight against illegal immigration, human trafficking, drug smuggling or counter-terrorism. Each of these border security operations contribute to broader internal security policy strategies.⁶⁰

In general, the term ‘border security’ has two distinct meanings. The first meaning refers to a policy field—an area of public policy framework and activities including border controls, checks and surveillance. The second meaning refers to a policy objective which aims to achieve a certain level of security through border activities—in other words, to eliminate security threats that might arise due to lack of, or deficiencies in, a border security system. What precise activities, procedures and actions border security policy constitute, and how the exact level of security is defined and measured, is a matter of different interpretations in respective documents and political entities.

Defining a border security system by its functions

On the basis of the brief conceptual review above, this article defines ‘border security system’ as an institutional framework designed to implement public policy with the objective of providing border security as a contribution to internal security of a country or territory. It is defined by its (a) objectives, (b) functions and (c) instruments. In order to analyse real life border security systems, all three aspects have to be determined.

The most general objective of any border security system is to control cross-border flow.⁶¹ This control involves the prevention of the

entry of illegal immigrants and illicit materials, as well as detection of crossing of individuals or objects of interest, while allowing for facilitation of legitimate cross-border movement. In the next lines, precise definitions of these terms are provided. 'Flow' is defined as the movement of human individuals or physical objects. 'Illegal migrants' are persons without authorisation to enter or stay in a given territory; such an authorisation can be a valid visa or a residence permit, or a valid travel document, in the case of nationals exempted from visa requirements.

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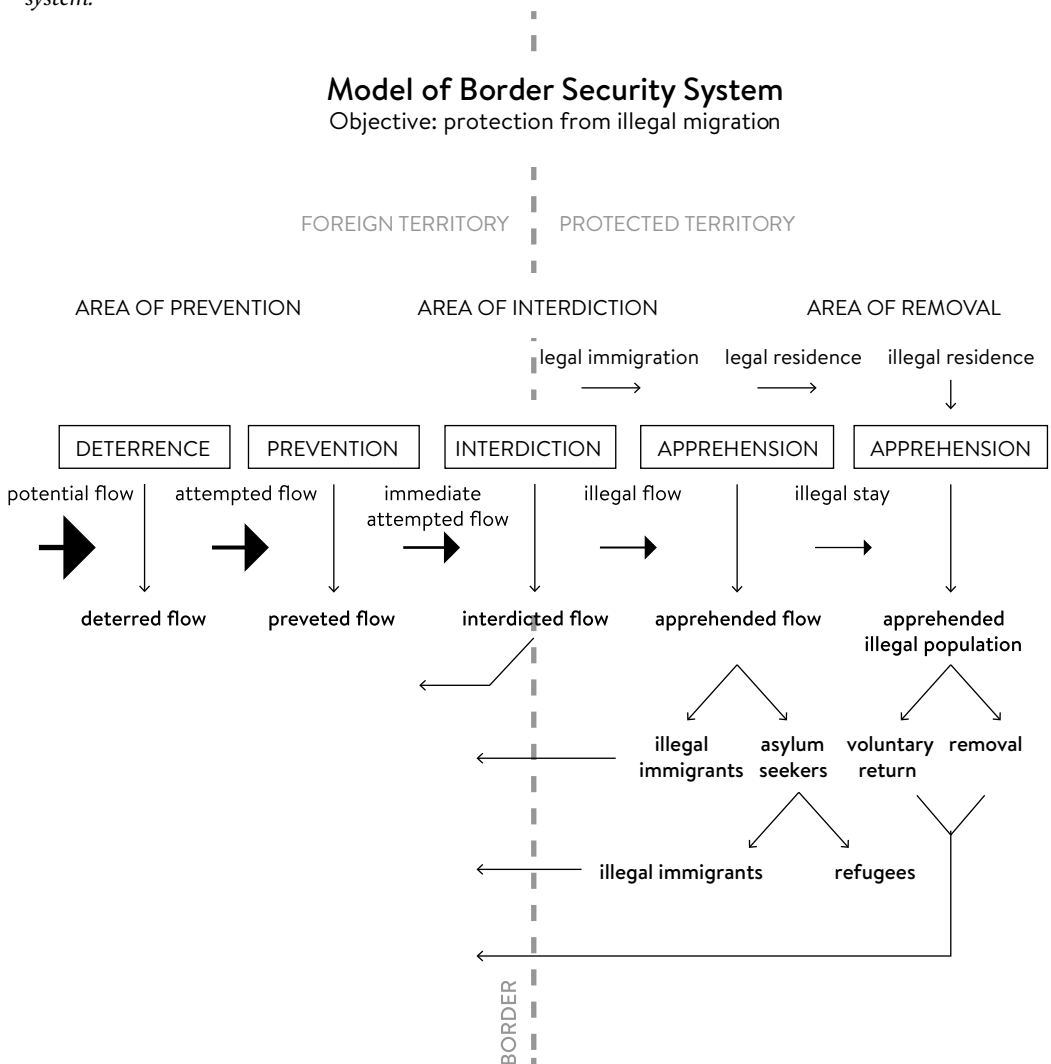
The term 'illegal migrants' has been criticised by some authors and organisations that work with migrants, who prefer the expression 'irregular migrants,' because 'illegal' supposedly 'carries a criminal connotation and is seen as denying migrants' humanity.'⁶² However, 'illegal immigration' is commonly used in official legal documents of the EU, including the Schengen Borders Code, and it does not criminalise the migrating person, it only reflects the fact that the individual is acting contrary to the valid law and legal requirements. Moreover, 'illegal migrants' and 'illegal population' are used as technical terms in the fields of economics,⁶³ migration studies and demography.⁶⁴ Therefore, this article uses these terms with the awareness that they are considered controversial and still assumes human beings to have fundamental rights and liberties.

'Illicit materials' are any goods or objects that are forbidden by law to be moved across a border without proper authorisation—the most important examples are illegal drugs, weapons, nuclear material and forbidden plants and animals. A special category of these materials comprise goods which have not been properly declared to customs. The term 'individuals or objects of interest' refers to people or goods which are not prevented by any legal reason from crossing the border, however, they might be on alert lists of security services and their movement across the border check has to be reported. Such individuals may be citizens of the state they are attempting to enter. These can be suspicious persons secretly monitored by the police forces. In the case of objects of interest, we might consider secretly monitored vehicles or other goods.

'Prevention of entry' simply means stopping illegal migrants or illicit goods before they enter the protected territory. This can be realised at a border crossing point, which is usually the only place where the border can be legally crossed, or at any other point on the border. This is

why frontiers are patrolled in their entirety by border and coast guards. Restricting border security to activities conducted by border forces at the actual borders would be too limiting. Real life border security systems, including those of the US, Australia and the UK, conceive of border security more broadly.⁶⁵ Building mainly on the border security conceptualisation of Willis et al., which was developed for the US, the following section introduces a general model of border security system defined by its functions.

Model of border security system.



The model is based on the assumption that is impossible to stop every illegal immigrant or every piece of illicit material at the border, just as it is impossible to eradicate every illegal behaviour. Theoretically, it is conceivable to adopt measures at borders that would bring the likelihood for successful illegal crossing close to zero; however, this would come at a tremendous cost of both finances and human resources and would hamper all legitimate movement across the border. Societies of liberal democratic political systems are evidently unwilling to pay such a price. Yet, they are also unwilling to accept illegal immigration and imports or threats to internal security such as terrorism and organised crime.

With the intention of simplifying the model, the focus is on the concept of illegal flow and stay, primarily in regards to illegal immigrants, but also to illicit goods and to individuals and objects of interest. ‘Protected territory’ refers to the state or area of a common external border, such as the Schengen Area, which is the jurisdiction of a given border security system. In order to raise the level of effectiveness in the prevention of illegal flow or subsequent unauthorised stay, it is necessary to expand the reach of the border security system beyond the borders, both outside and inside the protected territory. This extends the concept of border security so that it consists of three major objectives: to prevent, stop and remove the illegal flow. Preventive activities take place outside the territory, stopping is conducted at the border and removal is executed from within the protected space. This brings about three distinct areas of border protection: the area of prevention, the area of interdiction and the area of removal. If we expanded the border security system to this level of complexity, it is obvious that no single security agency could be responsible for managing the entire system.

In the area of prevention—whether in the territory of immediately neighbouring countries, in more distant countries or in international waters—two distinct objectives of border security can be realised: (1) deterrence of the potential flow and (2) prevention of the attempted flow. ‘Potential flow’ constitutes all individuals who are considering finding an illegal way into the protected territory and all illegal material that is waiting to be transported. The decision to illegally cross a border is based on many factors including the perceived conditions in the place of origin, transit conditions and desired final destination. ‘If a migrant, drug smuggler, or terrorist believes that the effectiveness of border-security efforts make it too difficult or costly to cross the

border, he or she may be deterred from doing so.⁶⁶ Deterrence activities, including information campaigns conducted by consulates of the protected territory and in cooperation with the local authorities, can reduce the number of individuals who attempt illegal crossings. These deterrence methods are not considered actual border protection measures, but can be an important component in reducing the number of attempted illegal border crossings. Those people who change their intent due to such methods constitute the 'deterred flow.' The 'potential flow' minus the 'deterred flow' equals the 'attempted flow.'

However, individuals who have decided to cross over a border illegally can still be prevented from doing so, even before they reach the border. This can be realised by authorities of the neighbouring countries working in close cooperation with the border security services of the protected territory. Neighbouring countries—or even more remote ones—thus contribute to the border security of the protected territory. This can be carried out in the form of advanced security checks on roadways or coastlines and by actively fighting organised networks of illegal migrant traffickers and smugglers. An important role is also played by the consulates and visa procedures of the protected territory. People who have attempted to illegally cross a border but were prevented from doing so are referred to as 'prevented flow.' It should be mentioned that activities that attempt to interdict suspected illegal migrants before an actual border are questionable from both the legal and human rights points of view.

The second phase of a border security system or an area of border protection (area of interdiction) is about the interdiction of the immediate attempted flow—in other words, people (or material) who are actually trying to cross the border illegally. In order to interdict this flow, border security agencies perform border control functions, either at border crossing points or their equivalents, or between the ports of entry in the form of border surveillance. Patrol of the frontier can be realised by members of the border and coast guards, but also using technological devices and equipment such as cameras, sensors or drones. Physical barriers and fences constituted a special category of interdiction. People (or material) who are attempting enter illegally into the protected territory and are successfully stopped compose the 'interdicted flow.'

Search and rescue operations realised at sea are not an intrinsic function of the border security system, although they are very close-

ly linked to the reception of asylum seekers and the apprehension of illegal immigrants is usually conducted by coast guard forces. For example, the US Coast Guard, which carries out search and rescue operations, explicitly contributes to the US border security system, while the UK Maritime and Coastguard Agency, also responsible for the safety of sea vessels, is not considered part of border security.⁶⁷ In general, we could say that search and rescue is rather a function of the maritime safety system based on international law, rather than an essential component of border security.

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The third phase of border security is realised in the ‘area of removal,’ or within the space of free movement, and is concerned with the detection, apprehension and return of illegal individuals, or with the confiscation or destruction of illicit goods. Those individuals (and objects) that successfully make it across the frontier and enter the protected territory make up the ‘illegal flow.’

It is debatable to what extent law enforcement activities within the interior of the territory that is focused on the apprehension of people without valid stay permission can be considered a phase of the border security system. However, there are two good reasons supporting the inclusion of these functions. First, we know empirically that responsibility for coordinating return operations is entrusted to border security agencies, be it US Immigrations and Customs Enforcement, the Australian Border Force or Frontex. The second reason is conceptual: Since it is established that it is impossible to entirely eliminate irregular immigration and transport and there will always be a certain level of illegal flow, it is necessary that the border security system extend its activities to inside the protected territory. Moreover, a high level of detection, apprehension and removal of illegal immigrants has a tremendous deterrent effect on potential unauthorised migrants, if communicated properly. This also applies to the category of people known as ‘over-stayers,’ people who immigrated legally, but whose visa or residence permits have expired. Their knowledge of the effectiveness of immigration rules enforcement has an impact on their motivation and behaviour. It is therefore reasonable to consider enforcement activities within the territory as part of the border security system.

The activities of a border security system’s agencies in the area of removal is more complex. When individuals who are part of the illegal flow are detected and apprehended, there are different procedures for those applying for asylum versus those that aren’t. If an asylum appli-

cation is found admissible, the seeker is treated according to procedures consistent with the valid law, which differs by country, though it is based on the Geneva Convention. If an asylum application is rejected or found inadmissible, the seeker is subject to return or deportation, the same as illegal immigrants. Therefore, the apprehended flow consists of illegal immigrants and asylum seekers, who are then divided between successful applicants, who are granted some kind of international protection, and rejected applicants, who are subject to removal.

A distinction should also be made between those who arrive to the protected territory without prior authorisation ('illegal flow') and those who become part of the illegal population after their visa or residence permit expires, even though they arrived legally and were never part of the illegal flow. Conceptually, illegal immigrants who manage to stay in the territory longer than three months and those whose asylum applications were rejected and yet remain in the territory become part of the illegal population. The number of individuals who reside in the territory illegally and are detected and caught constitute the 'apprehended illegal population.'

To sum up, there are six distinct primary functions of a border security system. First, in the area of prevention, there is (1) deterrence of the potential flow and (2) prevention of the attempted flow. Second, in the area of interdiction there is (3) interdiction of the immediate attempted flow at the borders, either at border crossing points or in between them. Finally, in the area of removal, there is (4) apprehension of the illegal flow and (5) apprehension of the illegal population for the purpose of (6) removal of these unauthorised immigrants or residents outside the protected territory. There are also secondary functions of the border security system, such as notifying security services about individuals and objects of interest, receiving asylum seekers, facilitating legitimate movement and trade across the border and providing intelligence based on the execution of the primary functions.

Conclusion

The dramatic upsurge of illegal immigration to the European Union is a test of the functionality of the Schengen Border Security System. The question remains how to analyse, measure and subsequently improve this functionality. For that, it is necessary to devise an applicable framework for analysis as well as a conceptual structure for EU poli-

cymaking. Neither of these can be provided by the concept of EU Integrated Border Management. Therefore, this article argues that the concept of a border security system defined by its functions—which can be analysed, measured and improved—should be adopted by the EU.



RADKO HOKOVSKÝ is affiliated to the Department of International Relations, Institute of Political Studies, Faculty of Social Sciences, Charles University in Prague. He can be reached at radko.hokovsky@fsv.cuni.cz

Notes

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