

The Institutional Interweaving of Internal and External Security in Europe

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Abstract: The term “security” has historically developed and differentiated itself with the Peace of Westphalia and the constituting of the modern nation-state. Security became a responsibility of the state. As of this time, a distinction of responsibility between internal and external security has been considered to be one of the characteristics of the nation-state. In the field of external security, international law has been established, whereas the internal security is based on the respective national legal and constitutional norms. Nevertheless, ambitions to link internal and external security more strongly have risen since the terror attacks of 9/11. Against the background of this controversy, current tendencies towards an increased interweaving of internal and external security in Europe will be surveyed and subjected to a critical analysis.

Keywords: Internal security, external security, military, police, paramilitary units
Innere Sicherheit, äußere Sicherheit, Militär, Polizei, paramilitärische Einheiten

1. Introduction

The end of the East-West conflict has produced new threats and risks. Transnational terrorism is considered to be one of the most significant challenges. Since the attacks of September 11, 2001, it has been perceived as the greatest potential threat to security by the Western world. This does not only apply to the USA. European states have become targets of violent acts of terror too. This development has compelled many Western states to rethink their overall concept of security, to announce structural changes, and to enact legislative reforms. This involves – contrary to historical

developments and to political governance theory constructs of a functional differentiation of security – discussions of the prospect of a closer interlocking of the internal and external components. In some cases, this has already been made a goal, in particular in the USA and the European Union. The argument is being made that in the face of the challenges currently being confronted, the internal and external dimensions of security can no longer be considered separate from each other (Denkowski 2008: 147). But this view is controversial and holds threats for the democracy in the sense of the balance between freedom and security.

Different lines of argument can be distinguished in the literature: On the one hand, the *type of threat* can be the central focus, whereby the distinction between war and criminality is

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blurred, in light of the asymmetric character of the new wars (Ahlf 2005). Authors such as Bigo (2000: 171) have focused on the *origin of the threat*, in which “external security agencies (the army, the secret service) are looking inside the borders in search of an enemy from outside” and “internal security agencies (national police forces, police with military status, border guards, customs) are looking to find their internal enemies beyond the borders”. Others, in turn, tend to emphasise the *means required to defend against the threat*. This means that armed forces operating abroad are increasingly confronted with tasks which would traditionally have been allocated to a police force, while threats of a non-military nature, which can only be partially – if at all – countered by police methods are increasing in the country’s interior (Kaestner/Kessler 2008).

Against the background of the aforementioned controversy about the functional differentiation between security on the one hand, and the arguments outlined here on the other hand, current tendencies towards an increased interweaving of internal and external security in Europe will be surveyed and subjected to a critical analysis.

2. The concept of security in political governance theory

The term “security” has historically developed and differentiated itself with the rise of the princely state during the Early Modern Era in Europe, the Peace of Westphalia, and the constituting of the modern nation-state. Modern theories of the state link the state’s sovereignty and its purpose of maintaining security (Middel 2007; Conze 1984: 845ff.). Thomas Hobbes (1651) can be seen as one of the key proponents of this argument. In “Leviathan”, he extensively describes his imaginary construct of the natural state of humanity, in which “man is a wolf to man” (“homo homini lupus”), and everyone must live in fear of the loss of life and limb, possessions and property: in short, in a permanent state of violence. In such a state, rationality would necessitate agreement on a social contract, which would stipulate non-violence among humans. Compliance with this contract would have to be monitored by an entity – the Leviathan. Security thus became a responsibility of the state and a central reason for the state’s existence, while the monopoly on legitimate force became a definitive criterion of statehood.

Building on Hobbes, John Locke posited an inextricable and ambivalent relation between security and freedom, which remains a prominent feature of the constitutional state. Developing this further, security does not only refer to protecting citizens from each other, but also to protecting citizens from encroachment by the state. This necessitated the limitation of the state’s power. Locke (1690: § 143) posited a division of the state’s power among various institutions, in a system of “checks and balances”.

With the creation of a world of states in Europe, security became not only the state’s responsibility, but a distinction was made between internal and external security. As early as 1600, the Munich Jesuit Adam Contzen differentiated between the internal and the external sphere (Conze 1984: 842). With

the Peace of Westphalia, a differentiation occurred between the concept of internal and external security. For instance, the royal Prussian “Landesschluss” of 1648 distinguished between “Sicherheit der Provinz” (“security of the province”, translation by the author) and “domestica securitate” (“private security”, translation by the author) (Conze 1984: 842). Both components can also be found in Thomas Hobbes (1651: 155): the protection of citizens from external enemies and the maintenance of internal peace.

This division of responsibility between external and internal security is considered to be one of the characteristics of the nation-state. This established the state’s monopoly on the external exercise of force: war became a state matter, standing armies were established, and the principle that only the legitimate authority had the right to wage war gradually became established. In addition, external security was established and strengthened in international law through alliances and mutual assistance pacts, as well as treaties with third parties (Reinhard 1999: 351ff.; Conze 1984: 842; Krause 2007: 6ff.). A clear division between the internal and external monopolies on force held by the state followed. This can be traced back historically to the “policey”: The modern police force which came into being in the 18th and 19th centuries was not an offshoot of the armed forces, but from the political sphere of the “policey”, which, in its role as the expression of a well-organised administration, had its origins in the domestic concern for the well-being of the community. The policey-legislation – like the later police force – was based on the principle of prevention, and was thus clearly distinct from the military, which essentially operated on the principle of reaction (Reinhard 1999: 363f.; Conze 1984: 848; Krause 2007: 6ff.).

This division between internal and external security continues in democratic regimes. External security, on the one hand, has to repel attacks upon the state’s sovereign territory by other states, or communities thereof, by diplomatic means – and, if necessary, by using armed forces – on the basis of international law, as well as bilateral or multilateral treaties. Internal security, on the other hand, comprises the public security of the country, as well as the protection of individuals from threats which might be posed by others such as the protection of life and limb, freedom, and property. In democracies, the legal basis of this protection is formed by the principle of the constitutional state and the respective national constitutional norms (Glaeßner 2003: 145f.).

3. The interweaving of police and military structures

Against this background, the relevant provisions made by EU states – that is, those which emphasise an interweaving of internal and external security – shall be examined. Methodically, the most similar systems design will be used. Therefore, only EU states are considered due to their similar security challenges. The focus of interest will be on those tendencies of interlocking police and military structures. Therefore, the study focuses on the use of armed forces within a country, the use of national police forces outside the country, and paramilitary units as “hybrid” units.

3.1 The use of armed forces within the state

The use of armed forces within a country is allowed by all EU member states, to a certain degree, and usually comprises humanitarian aid missions, natural disasters, or internal states of emergency. Seen as a whole, three categories may be discerned (Schmidt-Radefeldt 2004: 83ff.):

Firstly, the use of armed forces within a country can be subject to a specific legal constraint. Germany and Spain are part of this group. There, the constitutionally limited uses of the armed forces led to intense political controversies with regard to certain types of mission, due to the countries' historical backgrounds. In Germany, the circumstances under which the armed forces can operate are explicitly limited by constitutional law, and, within the state, are limited to defence, disaster relief, and national emergencies. However there are currently attempts underway to expand the contents of these articles of the constitution. According to the 2006 white paper, the Bundeswehr (Germany's federal defence force) should be in a position to "exercise its capabilities within the country, in support of the safety and protection of our citizens". Explicitly, this refers to a use of the Bundeswehr, which exceeds its scope as laid down in the current constitutional framework (BMVg 2006: 76). For instance, there were attempts of the ministry of defence to enable the Bundeswehr to shoot hijacked aircraft. The Federal Constitutional Court vetoed such intentions. In Spain, there were controversies which were particularly focused on the interpretation of the internal role of the armed forces. According to Article 8 of the constitution, they are tasked with "guaranteeing Spain's sovereignty and territorial independence, and the defence of its constitutional order". In light of the historical impact of the Franco dictatorship, there is a perceived danger in some quarters that this clause could be seen as a general authorisation for the military to intervene in the internal workings of the state. The current interpretation allows assistance missions (disaster relief, national emergency), though without the use of military force (Cotino Hueso 2003: 726ff.).

The majority of the EU states fall into the second category. This allows the armed forces to operate according to the subsidiary principal, meaning *ius necessitates* in the sense that they may only be deployed if the police force is not sufficient. Substantially, this use is usually limited to the three areas noted above, but it can also be formulated more generally, in the sense of securing public order, such as in Belgium.

Thirdly, an explicit empowerment for the use of the armed forces within a country – although against a different constitutional background – can be present. This includes countries such as France, Great Britain, or also Austria, for example. In Austria, the empowerment of the armed forces is regulated at a constitutional level, and allows military missions which explicitly exceed instances of national defence to be carried out within the country. Thus, according to article 79 paragraph 2 of the Austrian constitution, the Bundesheer (the Austrian armed forces) can be used for the protection of the constitutional institutions and democratic freedoms of its citizens, to maintain order and safety within the country, and to provide assistance in case of elementary events. This can

include the shooting down of a hijacked aircraft, according to § 26 of the military authorisation law. An explicit authorisation for the use of the armed forces within the country is also contained in France's provisions, which are only determined by government acts. In addition, the French counter-terrorism plan *Vigipirate* was set up in 1978, and last revised in 2004. This plan, which goes beyond the common use of armed forces in Europe, contains different danger and colour codes (yellow, orange, red, and scarlet). Since the attacks in London the "red" level has been in force, which provides for a permanent military presence at railway stations and other nerve centres, amongst other provisions.

In summary, it can be seen that regulations governing the use of the armed forces within European states is highly heterogeneous. On the one hand, there are countries who forgo specific constitutional provisions regulating the use of the armed forces, and who "trust in the appropriate functioning of the general constitutional regulations" (Nolte/Krieger 2002: 20) (categories 2 and 3). Other countries – often post-authoritarian states – attach a higher significance to the use of the armed forces, based on their historic experiences, and critically scrutinise their use (category 1).

Furthermore, an increasing use of armed forces within a country can be observed in view of the threat of terrorism. Recent legislation has also enabled pre-emptive operations such as the deployment of 16,000 Greek troops to support the police during the Olympics in Athens 2004 or the deployment of 450 British soldiers at London's Heathrow airport in response to intelligence concerns about potential surface-to-air missile attacks against aircraft (Born/Wills 2007).

An additional option for the use of armed forces within a country results from the Lisbon treaty: The solidarity clause contained therein provides for common and united action, if a member state becomes the target of an act of terrorism, or the victim of a natural or man-made catastrophe. This allows EU member states to explicitly provide military support to an affected state, upon request. With the coming into force of the treaty, this regulation necessitates changes to the relevant constitutional and legal provisions in some countries (Schmidt-Radefeldt 2004: 90). Thus, a general effort to intensify the possibilities of using armed forces within countries in the face of terrorist threats is evident.¹

3.2 The use of police forces in military conflicts

Humanitarian intervention has resulted not only in an increasing constabularisation of the military, and a diversification of the functions of the armed forces, from *peace-keeping* to *peace-enforcement* to *peace-building*. Additionally, police forces are increasingly being used in the context of military conflict (Kümmel 2005: 63). This includes the entire spectrum of international missions such as UN, OSCE, as well as EU missions. Thus, 13 of the current 19 missions being carried out by the UN include police participation (table 1).

¹ A terror attack does not have to be a case of defence. Regarding the international law, this assumption has been controversially discussed (Heintze 2008: 71). Therefore, the Lisbon treaty goes beyond article 5 of NATO.

Table 1: Military and police presence in UN missions in July 2009

Mission	Total	Military	Police	Observer
MONUC	18,739	16,960	1,076	703
UNAMID	16,961	13,502	3,261	198
UNIFIL	12,130	12,130	-	-
UNMIL	11,511	10,052	1,324	135
UNMIS	9,644	8,472	662	510
MINUSTAH	9,158	7,106	2,052	-
UNOCI	8,394	7,024	1,172	198
MINURCAT	2,623	2,352	250	21
UNMIT	1,615	-	1,582	33
UNDOF	1,045	1,045	-	-
UNFICYP	924	855	69	-
MINURSO	235	27	6	202
UNAMI	233	221	-	12
UNTSO	150	-	-	150
UNMIN	68	-	-	68
UNMOGIP	41	-	-	41
UNAMA	23	-	8	15
BINUB	19	-	12	7
UNMIK	17	-	8	9
Total	93,530	79,746	11,482	2,302

Source: Compiled by the author, data from the monthly report of 31.07.2009, in: <http://www.un.org> (retrieved: 14.08.2009).

In this way, the police presence rises, both absolutely – in terms of volume – and also relatively – compared to the total deployment of the armed forces in each mission. In the meantime, the proportion of police forces involved in UN missions is over 12 per cent (table 2).

Table 2: Military and police presence in UN missions

	2005	2006	2007	2008	2009
Military	59,329	63,115	71,428	74,535	79,746
Police	5,991	7,302	9,602	11,517	11,482
Observer	2,148	2,591	2,753	2,582	2,302
Total	67,468	73,008	83,783	88,634	93,530

Source: Compiled by the author, data referring to July of the respective year, in: <http://www.un.org> (retrieved: 14.08.2009).

A parallel development can also be seen in EU military missions. Currently, six EU missions include police participation (table 3).

Table 3: EU missions with police presence in 2009

Mission	EULEX Kosovo	EUPM	EU-POL Afghanistan	EU-POL RD Congo	EU-POL COPPS	EU BAM Rafah
Police	1,245	160	123	30	23	13

Source: Compiled by the author, data from SIPRI (retrieved: 14.08.2009).

The mandates of the international missions generally contain a wide set of tasks for the dispatched troops and police. These primarily include the observation and monitoring of the implementation of ceasefires, the monitoring of arms embargoes, disarmament, demobilisation, and reintegration of the traditional security actors (DDR programmes), the return and reintegration of refugees, the support of humanitarian aid organisations, providing assistance and protection of human rights, helping to prepare and carry out open and free elections, including voter registration, supporting the restoration of political and legal institutions, including a state military and a civil police force (including reform of the security sector), as well as the expansion and strengthening of democratic structures.

International missions are no longer solely concerned with the task of ending military conflicts, but are also particularly concerned with post-conflict and consolidation tasks. On the one hand, this leads to a further constabularisation of the military, and on the other hand, to the use of police forces in areas which lie far outside their usual sphere of action.

3.3 Paramilitary units

Paramilitary units – usually gendarmeries and border guards – are examples of complementary military components. Besides voluntary militias such as the Scandinavian or Baltic home guards, and mercenaries and mercenary-like units such as the French foreign legion, or the British Gurkha battalions, they contribute to the varied nature of the European defence apparatus. Their primary duties are policing and border protection. The circumstances of their subordination vary: it is possible for both ministries – the defence and the interior ministries – to have authority over these units, differing regulations may exist in peace and wartime, or they may be permanently under the authority of the interior ministry (Werkner 2006: 22f.). In light of their structure, which lies between police and military forces, paramilitary units are particularly affected by the debate around the interweaving of internal and external security.

Historically, these units spread across Europe under Napoleonic rule. The French *Gendarmerie Nationale* – the model for Europe – was created in 1791. While the larger French cities possessed a central reaction force of citizen soldiers and police constables, the militarily organised gendarmerie was responsible for ensuring order and safety in rural areas. A similar dual police system was created in Italy in 1814, with the *Carabinieri* as well as in Spain with the *Guardia Civil*, created in 1844 (Reinhard 1999: 367).

Today, most EU states possess paramilitary units (IISS 2009). These primarily include gendarmeries and border guards. The gendarmeries of France, Italy, and Spain have strengths of 103,400, 108,000, and 73,400, respectively, and are among the largest paramilitary units in Europe. The French gendarmerie is a police force which is subordinated to the ministry of the interior. The *Carabinieri* are an independent branch of the Italian army, but also a police force with judicial competencies.

As a military unit, they carry out the tasks of a military police force, and are responsible for security-related tasks in support of troops, both at home and abroad. As a national police unit, they are responsible for maintaining public order, investigating crimes, as well as combating organised crime and terrorism. The Spanish *Guardia Civil* also have both military and civil functions, and are subordinate to both ministries. While they were an instrument of repression during Franco's time, and involved in the 1981 military putsch, the *Guardia Civil's* role today – in addition to their duties as a military police force – is primarily the maintenance of public safety and order – in rural areas in particular – as well as combating terrorism. In addition, Portugal possesses the *Guarda Nacional Republicana* (47,700 strong), a gendarmerie which is subordinated to both ministries in peacetime, and solely to the ministry of defence in wartime. The Netherlands' gendarmerie, the *Koninklijke Marechaussee* (6,000 strong) also has the function of a national police force, as an independent branch of the Netherlands military. Part of these duties also includes the guarding of state borders, police duties at airports, and providing security during state visits. The Romanian gendarmerie, the *Jandarmeria Română* (79,900 strong), is a military special forces unit under the authority of the interior ministry, and is tasked with the protection of public order and safety, the protection of the rights and freedoms of citizens, the protection of public and private property, as well as combating crime and terrorism. Furthermore, states such as Bulgaria, Luxembourg, and Poland also possess gendarmeries. Border Guards generally possess military equipment, and are subordinated to the national ministries of the interior.

In view of the risks and threats defined by the new security policy, the existence of these units can be seen – according to Didier Bigo (2000: 169) – as an opportunity since established and recognised forces at the interface between the two executive organs are already available. On the one hand, paramilitary forces are specially trained to maintain public safety and order, and on the other hand, in the military defence against threats. They could accomplish a broad spectrum of tasks which are currently required. Paramilitary forces can be present in areas which the police would not risk going to (for the restoration of order in conflict areas), or where the military cannot find suitable means to intervene (situations in which it is necessary to control the enemy, as opposed to killing him, for example). In this context, Bigo (2000: 189) even discusses their role as “soldiers of the law” and “well adapted to low intensity conflicts”.

Two aspects speak in favour of Bigo's thesis above: Firstly, the extent of the paramilitary units – compared to that of the armed forces, which has been reduced in the majority of EU states – has remained constant (IISS 2001, 2005, 2009). In this sense, Bigo argues, with regard to the *Gendarmerie Nationale* that “while all areas of the French defence budget are shrinking, the gendarmerie – which had already been written off, incidentally – is the only institution with a budget which remained not just untouched, but which was actually increased” (1998: 191, translation by the author).

Secondly, there are early signs that these European paramilitary units are being bundled, in order to make them useful for the purposes of managing international crises. For instance, a

European gendarmerie troop, the European Gendarmerie Force (EGF), was set up in 2004.² It is based on an initiative of five EU member states: France, Italy, Spain, Portugal, and the Netherlands. Since 2008, Romania also belongs to this group, as the sixth full member. Poland is an EGF partner. The EGF is headquartered in Vicenza, in north-eastern Italy. The goal of this EGF is to make an active contribution to international crisis management, and to be available for international missions – in particular, those of the EU. To that end, the EGF can be mobilised within 30 days, with a strength of up to 800 gendarmes. Compared to the EU police missions, the EGF is capable of carrying out more robust police actions, under more difficult conditions, and under military command. It is available for a broad spectrum of mandates, can replace or strengthen international police missions and can be integrated into military units. The EGF thus consciously relies upon its structure as a paramilitary unit at the interface between the police and the military, when emphasising its capabilities and its “added value”. The European Gendarmerie Force is already active. For instance, in December 2009, the European Gendarmerie Force started its operational commitment within the NATO Training Mission in Afghanistan. EGF contributes to the development of the Afghan National Police. The mission in Afghanistan is a new operational commitment for EGF assets, already engaged in the EUFOR integrated Police Unit within the framework of the EU Operation Althea in Bosnia Herzegovina (Ibid.).

4. Discussion and conclusion

It has been shown that in Europe – both at a state and at the EU level – an increased interweaving between internal and external security is becoming apparent. This development was strongly pushed by the perception of threat in view of the rise of transnational terrorism by the EU member states.

One of the causes of the current tendency to want to link internal and external security ever more closely can be distinguished in the unclear determination of what constitutes terrorism. The debates around the new wars and Herfried Münkler's thesis (2008: 37), “the strategy of transnational terrorism as a war tactic” have contributed to this. In practical political terms, the terrorist acts of the 11th of September 2001 triggered a change in the perception of terrorism from that of a crime which had to be investigated, to an act which had to be defended against, coupled with a mixing of different systems of action (Rotter 2003: 76ff.).

Firstly, this implies dangers discussed in the context of political governance theory. The relationship between security and freedom, with a division of the state's capability to use force among different institutions, based on the theory of states defined by Locke and Hobbes, thus threatens to become unbalanced. The principle of checks and balances can only be maintained by a division of force. An interweaving of internal and external security contains the possibility that through a partial removal of the differentiation of the state monopoly

2 <http://www.eurogendfor.org> (retrieved: 16.08.2009).

between internal and external – for instance, by no longer limiting the use of its armed forces within the country to emergencies – the state exceeds the necessary constraints for the exertion of its monopoly on force, and thus its status as a state governed by the rule of law.

Secondly, this development undermines the principle of the Westphalian peace, which is based on sovereignty, with its differentiation between internal and external security, “its state authority focused inward, and its armament focused outward” (Darnstädt 2009:101, translation by the author). Humanitarian interventions, but also international police missions can certainly be critically evaluated against this background. They indicate an inadequate attempt to transform a political system according to Western standards. This can also be seen as an attempt to transfer and globalise regional legal relationships. In addition, these contexts contain competing attempts – those of the UN and the USA, for example – to engage in “global domestic politics”, despite the fact that a functional institutional framework is not currently available (Ibid.: 46).

Thirdly, there is a further aspect, possibly related to the context above. According to Bigo (1998: 188) the end of the bipolar distinction between internal and external in the face of the loss of meaning of the military has resulted in a change of strategy:

“Today, strategists consider domestic wars as completely new objects, despite their earlier refusals to include them in their definition of war. In a new development, the armed forces no longer consider the sole categories of conflicts between states, or between blocs. As a result of the political developments, they were forced to keep a lookout for new tasks and responsibilities: anti-guerilla strategies, fighting terrorism, international police actions (renamed as peacekeeping), rescuing their fellow countrymen, or humanitarian operations.”

In this sense, the attacks of the 11th of September 2001 should have resulted in new functions for the armed forces, following the adoption of the Petersberg tasks.³ Thus, the fight against transnational terrorism, but also the dissolution of boundaries where threats such as organised crime were concerned, should have led to a takeover of tasks relating to internal security, which is not affected by this loss of function. (Rotter 2003: 80).

Lastly, it is the responsibility of the political decision-makers to decide which changes will be made to the architecture of the security policy. The arguments discussed above are very much in favour of allocating current risks and threats – such as transnational terrorism or organised crime – more strongly to the domain of internal security. Europeanising tendencies should be made use of, particularly in the context of the EU, though this should be done while maintaining the extensive systemic division between internal and external security. Thus, the use of the military within the country should be limited to narrowly defined exceptions, and the use of the police should remain limited to state territory. Provided a functional legal framework, this could also be extended to supranational

institutions such as the EU. On the other hand, there may be a specific role for supranational paramilitary units in the future. In light of their structure, they would be better suited to the demands of international missions than conventional military or police units. The necessary global domestic policy framework to accomplish this is still missing, however.

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³ The Petersberg tasks comprise humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.

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