

## 2 European Spaces – Schengen Borders?

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### 2.1 SHIFTING BORDERS

When speaking about borders in and around Europe, one often refers to the 1985 Schengen Agreement along with its 1990 Implementing Convention, its amendments, and development within the EU legal framework.<sup>1</sup> Schengen is the epitome of border policies in Europe.

The term Schengen stirs up associations of both the abolition and the proliferation of borders. This peculiar ambivalence, however, has been built into the Schengen Process from its beginning. When the “Agreement [...] on the gradual

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1 The Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders [hereafter cited as Schengen Agreement] was signed by representatives of the Benelux countries, France and West Germany on June 14, 1985. The Convention Implementing the Schengen Agreement [hereafter cited as Schengen Implementing Convention (SIC) or Schengen Convention] was signed on June 19, 1990. On September 1, 1993, it entered into force. The SIC only took practical effect on March 26, 1995 after different technical and legal prerequisites were in place. The Schengen Agreement and Convention are international agreements. Both were transferred into EU law in the form of Protocols to the Treaty of Amsterdam, i.e., the Treaty of the European Union [hereafter cited as TEU], which entered into force on May 1, 1999. Since then, the Schengen Agreement and Convention are published in the Official Journal of the EU (OJ L 239/1, September 22, 2000, p. 11-18 and 19-62). Elspeth Guild argues that it is however still justified to continue to refer to “Schengen rules” due to “the continuity of the *acquis* although technically it has been subsumed into the legal bases” of the EU (Guild 2001: 2, original emphasis). This corresponds to the general usage of the term “Schengen rules” or just “Schengen” which is also adopted in this work.

abolition of checks at their common borders” was signed by representatives of the Netherlands, Belgium, Luxembourg, France and West Germany on June 14, 1985, it was first and foremost thought of as a step toward peace, stability, and freedom in Europe. The five signatory states individually went ahead toward fulfilling Article 8 of the 1957 Treaty of Rome, which requested European states to work toward a common market.<sup>2</sup> The latter would essentially be based on four freedoms of movement: of goods, of capital, of services, and of persons. As the founding treaty of the European Economic Community (EEC) envisioned, Europe – as a peace project – would concretize along the practical, economic freedoms of market integration. In fact, while in the 18th and 19th century, territorial borders essentially and literally grounded the European construction (Febvre 1988; Branch 2011), Schengen (initially) proposed the reverse: it constructed Europe on de-bordering.

For such a border treaty to even be possible, something had to have changed fundamentally in the meaning and functioning of political borders. This change in the perception of political borders started evolving after the end of the Second World War. After 1945, reconciliation was no longer achieved by separating two countries, but by integrating their economies. This has been promoted by the 1948 Marshall plan, taken up by the Schuman Declaration, and institutionalized via the 1951 foundation of the European Coal and Steel Community (ECSC) (Kreis 2010: 90-93). Economic interdependency between European states was thought to peacefully integrate previously bellicose states; as such it was the functionalist answer to two World Wars. Borders related to the European construction were understood as an economic issue and problematized as barriers to the peaceful integration of states into a common market. The historian Georg Kreis commented that, in post-1945 Europe, “national borders are something negative and overcoming borders is something positive” (ibid: 86). In this “functionalist philosophy of peace” (Burgess 2009: 136) the free movement of individuals was of major importance to the European construction.

Even though the area constituted was termed “Schengen area” rather than “Europe,” passport-free travel translated a sense of freedom to the everyday life of the people of Europe. Likewise, the European Commission stressed in May

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2 The Treaty of Rome, officially called the Treaty Establishing the European Economic Community (TEEC), is the founding act of the European Economic Community (EEC). It was signed on March 25, 1957 and came into force on January 1, 1958. Art. 8 (1) TEEC states that “the common market shall be progressively established during a transitional period of twelve years.”

1992 that the free movement of individuals was essential to the idea of a people's Europe by rhetorically asking:

“What purpose would Article 8a serve if individuals were still to be subject to one or other of the current controls or formalities? How would they perceive the change if it were limited to the legal environment of firms?”<sup>3</sup>

In fact, freedom of movement of individuals was perceived as *the* citizen-friendly element in the European integration process. Similar to the later introduction of the Euro as a common currency, Schengen brought about changes which were directly visible (demolition of stationary border posts) and experienceable in everyday life (and during holidays) of European citizens (Siebold 2013: 12).<sup>4</sup> That way, freedom of movement translated into a benchmark of a peaceful Europe. At the same time, the abolition of borders, the “Europe without frontiers,” took shape as the “new mythology” (Raffestin 1992: 158).

### **2.1.1 The Twin Imperative of Freedom and Security**

The abolition of borders and the principle of free movement came, however, with the “twin imperative of Schengen” (Walters 2004: 683): that of greater security. Yet, this imperative did not so much act as a constitutive principle *per se*, but rather as *conditio sine qua non* to the realization of free movement. Concerns over the free movement of individuals had effectively impeded the goal of the common market among EEC member states. This is illustrated, for instance, by an inquiry conducted by the UK's House of Lords Select Committee on the Eu-

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3 Abolition of border controls, Communication from the Commission to the Council and the European Parliament. SEC(92) 877 final (May 8, 1992), [hereafter cited as Abolition of border controls, SEC(92) 877 final].

4 Angela Siebold's impressive study of the history of the Schengen process and its reception in French, Polish and German print media demonstrates the spirit of Schengen on the basis of comprehensive materials. Siebold provides a detailed insight into the political tensions as well as public expectations and fears that accompanied the Agreement. She examines the impact, which the fall of the Iron Curtain in 1989 had on the Schengen process, and its reception in the three countries. Her study is particularly valuable in tracing how, post-1989, external borders were increasingly charged as a security issue (Siebold 2013: 115-139) and in how migration became to be conceived of as “border crime” (*ibid*: 279-327).

ropean Communities into the completion of the internal market.<sup>5</sup> Elspeth Guild summarizes the Committee's report in the following way:

"It [the Committee] received evidence from various officials who made it clear that an internal market without frontiers was fully possible for goods, services and capital. The mechanism of the frontier for goods: customs controls were capable of abolition and replacement by random checks. However, border controls on persons could not safely be abolished. The reason: this would give rise to an increased security risk." (Guild 2001: 9)

While random checks on goods and services appeared feasible and without side-effects,<sup>6</sup> an easing of controls on persons provoked uncertainties together with the somewhat vague fear of relinquishing control over what is going on "inside" one's national territory. The citizen-friendly element was thus the most uncomfortable and worrying aspect for public administrations and security agencies. Moreover, in the light of vague risks, different national security authorities ranging from police to border guards to military were uncertain about their job description, their mandates and competences in the new context. Security agencies' concerns thus stemmed from reconfigurations of both the subject and the object of security. In other words: both threat conceptions and competences were readjusted. On the one side, the threat of migration as a *transnational* crime shaped up; on the other site, the fear of losing competences and control gained strength.

After signing the Schengen Agreement, signatory states took five years to ratify it in their national parliaments, and to formulate the 1990 Implementing Convention. The latter only took practical effect after another five years. On March 26, 1995, national borders fell to the five signatory states and the two new contractors, Italy and Spain. Passport control at the borders between those countries was no longer a standard procedure. Even though Schengen continued to function as a pan-European narrative of freedom and rapprochement after the 1989 fall of the Berlin Wall and the successive collapse of the Soviet Union, un-

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5 House of Lords Select Committee on the European Communities (1992): Border Controls on Persons, 22nd Report of Session 1989-1989 (HL paper 90), London: HMSO.

6 Checks on the movement of goods and services had successively been abandoned among EEC member states, custom policies were already harmonized in July 1968 (Hobbing 2006: 170). This is to say that in terms of customs regulations, EU countries share, in fact, a common external border. However, the fact that this does not foster the image of a common border stresses the dominance of person's mobility for the political integration of border policies in Europe.

certainties and notions of threat intensified with the construction of Europe no longer being reduced to its part west of the Iron Curtain. In French and German print media, the fear of an increase in criminal activities and an influx of “thieves and illegals” was initially portrayed as coming almost exclusively from the East (Siebold 2013: 273-275). However, in the course of the first ten years of the Schengen Process, the scenario of raids and incursions of criminal gangs from the East became discursively conflated with the theme of migration. In this course, the principle of free movement was related to the act of crossing external Schengen borders; at the same time, migratory endeavors of all kinds to Schengen states, including the search for asylum, were often summarized as “border crime” (ibid: 279). Different commentators witnessed a securitization of migration, that is, a political and societal framing of migration as a security issue.<sup>7</sup> Jef Huysmans, for instance, pinpointed that public debates were dominated by the projection of possible side effects: “one expected that the market would not only improve free movement of law-abiding agents, but would also facilitate illegal and criminal activities by terrorists, international criminal organizations, asylum-seekers and immigrants” (Huysmans 2000: 760).

In fact, while mobility became part of the self-conception on the part of Union citizens, the free movement of non-Europeans across Schengen borders – classified as Third Country Nationals since the 1990 Schengen Convention – was greeted with the suspicion of illegality. Moreover, the term “migration,” encompassing the doubt about its legality, was increasingly reserved for movement across Schengen external borders, while European citizens’ movement was framed as “mobility” and an expression of freedom (Benedikt 2004: 12). At the same time, Schengen border crossings were conceived of as a transnational phenomenon, “which is neither attributable to a classical military threat from the

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7 The diagnosis of a securitization of migration is “largely uncontested” (Ger.: *weitestgehend unbestritten*) in the literature on EU migration policies (Ratfisch/Scheel 2010: 90). However, the concept of securitization is not always applied and referred to in the social constructivist sense of the Copenhagen School, which focusses on speech acts (Buzan/Waever/Wilde 1998), but more frequently developed from a Foucaultian analysis of governmentality which has been developed in critical distinction by the so called Paris School around Didier Bigo (1996, 2002), Jef Huysmans (2000, 2008), and Thierry Balzacq (2005; 2008). Paradigmatic studies on the securitization of migration have been provided by Ceyhan/Tsoukala (2002); Aradau (2004); Şemşil (2008), Bourbeau (2011), and Basaran (2011). For a discussion on the concept of securitization cf. Roe (2012) and Balzacq et al. (2015).

outside, nor to domestic crime" (Kaufmann 2006: 38). The new transnational risks were embodied by different figures: the masses of illegal immigrants, criminals, the mafia, and terrorists. What unites them is the attestation of being transnationally organized, of operating in international networks, and of being difficult to locate or interdicted in their movements or purposes. Being transnational renders them "the central issue of internal security" (*ibid*). As a consequence, the completion of the common internal market brought along the operational field of internal security, which Didier Bigo has described and criticized as being based on a security continuum:

"[T]he issue was no longer, on the one hand, terrorism, drugs, crime, and on the other, rights of asylum and clandestine immigration, but they came to be treated together in the attempt to gain an overall view of the interrelation between these problems and the free movement of persons within Europe." (Bigo 1994: 164)

Bigo's central thesis is that the reconfiguration of the security field is not to be interpreted as a response to new threats, but as something that emerged from within the security field itself (Bigo 1996). He further claims that the securitization of migration is not the reason but the effect of a proliferation of control policies and technological infrastructure (Bigo 2002: 73). Bigo's thesis is supported by a 1988 Commission's report on the progress made with regard to Article 8 of the EEC treaty. The Commission reported a situation in which traditional border checks had lost their functional purpose between EEC member states and in which a common denominator for different policy fields and administrations was sought. Meanwhile, the free movement of persons was described as a cross-cutting theme touching upon different policy fields:

"For several years now, because of the complex nature of the issues involved, the many and varied aspects of the problems involved have been discussed in a number of different fora (the Schengen Group, the Trevi Group, the Immigration Group, Political Cooperation meetings, the Council of the Ministers and the Council of Europe). This review of the work being done in these somewhat disconnected bodies is intended both to clarify the rather confused picture and to refocus the strategy so as to keep the overall programme, and each individual part of it, on target."<sup>8</sup>

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8 European Commission (1988): Communication of the Commission on the abolition of controls of persons at intra-community borders, COM(88) 640 final (December 7, 1988), [hereafter cited as Abolition of controls of persons at intra-community borders,

The above passage shows that the national authorities and administrations behind these “somewhat disconnected bodies” which were used to operate *in parallel* at the same border, were now supposed to operate “elsewhere.”

In the territorial frame, the border is considered the locus of legitimate intervention by law enforcement authorities – intervention taking place in fields as diverse as immigration, transportation, and commodity exchange. At the border, these regulations occur in parallel and in combination. As the common locus of intervention is rescinded, a common program among the different authorities and administrations was felt necessary. That which was previously united geographically would now be merged by a common vision, an “overall programme.”<sup>9</sup>

In consequence, the gradual abolition of common borders among Schengen signatory states prompts the fear of suffering a loss of legitimate possibilities to intervene and to regulate access to one’s territory and welfare state. This sovereign anxiety prevailed even though present frontier controls were described as “largely ineffective” by the Commission.

“What we are looking for are better controls and we believe they exist. [...] the Commission has never said that frontier zones should be ‘no go’ areas for the enforcement agen-

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COM(88) 640 final]. For a contemporary legal opinion on the Schengen Agreement, cf. Erhard Stobbe (1989).

9 The “overall programme,” which was still in development in 1988, took shape in the creation of the Area of Freedom, Security and Justice (AFSJ) in the Treaty of Amsterdam 1999 and concretized in measurements in the Tampere (1999-2004), the Hague (2004-2009) and the Stockholm Programme (2009-2014). The format of detailed, multi-annual programs with concrete objectives has been abandoned after 2014. With the 2009 Treaty of Lisbon evening the pillar system, and thus the distinction between intergovernmental arrangements and communitarian policies, Justice and Home Affairs now subsume the “somewhat disconnected bodies” under the heading of internal security. In the Post-Stockholm Process the general (now European!) principles in Justice and Home Affairs are at issue. The Commission presented its strategic vision in its Communication “An open and secure Europe: making it happen” (COM(2014) 154 final). For documentation and analysis of this process, see particularly Jörg Monar’s annual analysis of Justice and Home Affairs, first published in 1999 in the *Journal of Common Market Studies*. In addition, Christian Kaunert and colleagues (2012) have discussed whether “European Homeland Security” offers a unifying program.

cies. If evidence or reasonable suspicion exists, of course an individual can be stopped or apprehended. But what must go is the routine, mindless interference with the great mass of ordinary innocent travellers going about their legitimate business.”<sup>10</sup>

On the one side, “innocent travellers carrying on their legitimate businesses” should not be molested by control procedures; at the same time “better controls” turn into a prerequisite to the seamless travel of “the great mass of ordinary innocent travellers”. In this logic, the seamless travel of *bona fide* passengers rests fundamentally on the effectiveness of migration and border control as well as the urgent prerequisite to sort out the *male fide* passenger.

To balance the loss of systematic control along national borders, compensatory measurements were established beyond the geographically mediated transformation of control. These compensatory control measures consisted of police cooperation, cooperation in dealing with criminal matters, judicial assistance, common visa procedures, and the establishment of the Schengen Information System (SIS)<sup>11</sup>, among other provisions. Further compensations, or rather redistribution of control and responsibilities, were fixed in the 1990 Dublin Convention and its subsequent amendments of 2003 and 2013.<sup>12</sup>

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10 European Commission (1988): “Halfway to 1992: The Commission takes stock,” press release from November 9, 1988.

11 For an analysis of the development process of SIS (and SIS II), the implementation of the SIS in France, Germany and the Netherlands, and a discussion about the remedies for third country national, see Evelien Brouwer (2008). For a critical discussion on the SIS II, see the Statewatch analysis by Ben Hayes (2005).

12 At the center of the Dublin system is the rule that asylum applications have to be processed by the EU member state in which the applicant first entered. From its beginning, the system has been criticized for unduly burdening countries at the outer limits of the union and “protecting” landlocked member states. Member states that are inland such as Germany and France receive a disproportionate number of applications. The system has been convicted of exacerbating the principle of non-refoulement (German Federal Constitutional Court, Order of the Second Senate of January 25, 2011 - 2 BvR 2015/09 -, para. 1-3) and continues to provoke a discussion about whether a fleeing person should be allowed to choose the country for his or her asylum application. For a thorough discussion of the latter argument, see Stephen Legomsky (2005). For a pointed critique of the Dublin system and a discussion of different cases against it, see Sílvia Morgades-Gil (2015). Since the summer of migration in 2015, controversies

As Ruben Zaiotti notes the compensatory measures acted as “litmus test” (Zaiotti 2011: 144) to the regime of free movement. In consequence, a repressive European migration and border control regime is sketched out as a prerequisite to the waiving of checks at internal borders. In sum, from its beginning, security concerns dominated the operationalization of the Schengen cooperation to an extent that commentators clearly saw “ministries of Interior, border guard, police and customs agencies in the driving seat” (Jeandesboz 2009).<sup>13</sup> Albeit successful as a Pan-European narrative of freedom and rapprochement, “Schengen” effectively became associated with a proliferation of control, with restrictive asylum and migration laws across Europe, and in parts also with a fortification of the European Union. For the first 15 years of the Schengen *acquis*, Mechthild Baumann even sees a paradigm shift from freedom to security in the operationalization of the Schengen Process and comments that “that which began as the thought of a Europe without border controls resulted in a highly institutionalized security union” (Baumann 2008: 29). Of the twin principles of Schengen, security turned out to be the parasitic twin. The parasitic twin affected the becoming and institutionalization of Europe’s borders as it *charged* the imaginary of the external border and its need for controls with the suggestion of a migration-induced security deficit.

### **2.1.2 If Not a Border, What Do the Schengen Rules Constitute?**

From the beginning, the notion of “external borders” evoked both twins: freedom and security. Even though the Schengen rules did not change the classic concept of statehood or the concept of frontiers in international public law (Müller-Graff 1998: 15), they did, however, contribute to the blurring of the classic distinction between internal and external security. The distinction between “internal frontier” and “external borders” introduced by the Schengen Implementing Convention modified the meaning and functioning as well as the quality and dimension of political borders in Europe.

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over the Dublin regulations, the distribution of refugees and migration within the EU have increased among EU member states.

13 Earlier accounts of this development include Monica den Boer and Laura Corrado’s (1999) analysis of the incorporation of the Schengen rules into the EU legal framework and Virginie Guiraudon’s (2003) account of the securitization of immigration policies in Europe.

According to the Schengen Implementing Convention (hereafter cited in the text) “internal borders” are “the common land borders of the [Schengen states], their airports for internal flights and their ports for regular ferry connections exclusively to and from other ports within the territories of the [Schengen states] and not calling at any ports outside these territories”. Complementing this, “external borders” were defined negatively as Schengen states’ “land and sea borders and their airports and sea ports, provided that they are not internal borders”. However, the attribute “external” was not meant to indicate the new locus of common (Schengen) control. As border controls were supposed to be waived between Schengen states, controls were meant to happen “elsewhere.” The introduction of a reference called “external border” was evasive rather than restructuring. Initially, the classification “external borders” was presented as rather formal and neutral, as it meant to “avoid the sensitive issue of who should be legally responsible for their management” (Zaiotti 2011: 71). In the context of the ECC, by contrast, “external borders” have been evoked as “community borders” and been offered as “symbols of a new collective European identity” (*ibid*: 81).<sup>14</sup>

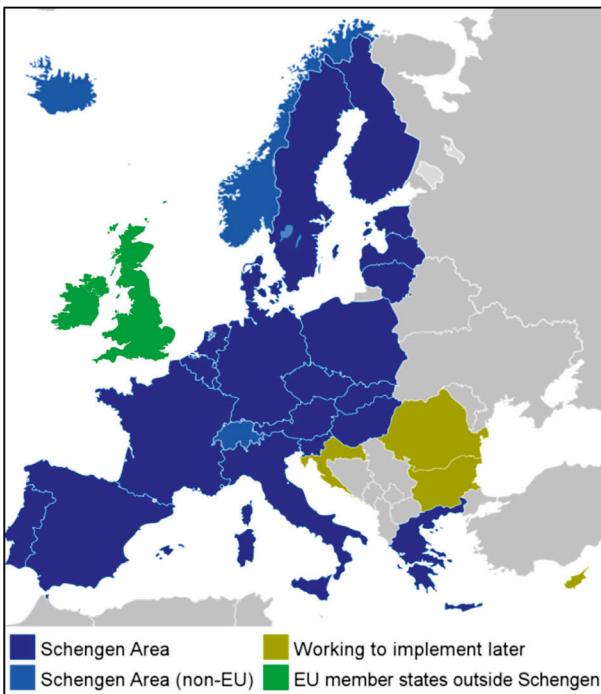
Nonetheless, in the Schengen context, the reference to “external borders” turned into a problematization of “security deficits” caused by the abolition of internal controls. The two questions of *Who would be in charge?* and *On what legal basis?* remained both sensitive and unresolved issues – and continue to be today. With regard to the question of “which actions should be taken at Community level and which should be left to intergovernmental cooperation,” the Commission recommended that “attention should be focused on practical effectiveness rather than on matters of legal doctrine.”<sup>15</sup> The legal document that wanted to dissolve and reorganize the borders in Europe led to a proliferation of security *practices* while putting on hold the common legal ground.

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14 The 1985 Adonnino Reports are considered historical evidence of the vision of “A People’s Europe.” The report of June 1985 contains a proposal for a Europe which would be more experienceable and visible to its citizens in everyday life. Many of its proposals, such as the European flag and anthem, European passport and driving license were taken up. The Committee for a People’s Europe was set up by the European Council meeting in Fontainebleau in June 1984. The reports were named after the committee’s chair Pietro Adonnino a former Italian Christian Democrat Member of the European Parliament (cf. Teasdale 2012).

15 Abolition of controls of persons at intra-community borders, COM(88) 640 final, para. 14.

Figure 1: The Schengen Area in July 2019



Source: Wikimedia Commons<sup>16</sup>

Even though it is cartographically representable, Schengen does not constitute a political entity *within* territorial frontiers; nor does it lay out a Europe *without* frontiers. The Schengen area is not even congruent with Europe, neither in its geographical nor institutional scope.

Geographically the Schengen area (not territory!) is constituted by its member states. Yet, EU membership and the application of the Schengen rules and privileges do not routinely correspond with each other, even though the Schengen *acquis* was transferred into EU Law with the 1997 Treaty of Amsterdam. Instead, different spaces of affiliation and cooperation exist within Europe. The application of the Schengen *acquis* and EU membership are still different

<sup>16</sup> Wikimedia Commons, at: [https://commons.wikimedia.org/wiki/File:Schengen\\_Area\\_Labelled\\_Map.svg](https://commons.wikimedia.org/wiki/File:Schengen_Area_Labelled_Map.svg) (accessed July 15, 2019). The work has been released into the public domain by its author, CrazyPhunk.

frameworks for cooperation. In July 2019, the Schengen area consists of 22 of the 28 EU member states, and is encircled by 7,721 km of land borders and 42,673 km of sea border.

The 1985 club of five has thus gradually expanded; Spain, Portugal and Italy already joined the Schengen states when the Schengen Implementing Convention was brought into force in 1993. They were thus among the first countries to implement the Schengen *acquis*. Even though Greece signed the *acquis* in 1992, its full application, and thus the removal of border controls with EU member states, was not realized until 2000.<sup>17</sup> In 1996, the Schengen *acquis* was to be applied in Sweden, Denmark, Finland, Norway and Iceland.<sup>18</sup> Sweden, Denmark and Finland abolished border controls in 2001. Norway and Iceland are not EU members, but are part of the Nordic Passport Union and have been officially classified as associates with the Schengen area and activities since 1999.<sup>19</sup> The other two non-EU countries to have negotiated their associative status, Switzerland and Liechtenstein in 2008<sup>20</sup> and in 2011<sup>21</sup> respectively, together with Norway and Iceland, are part of the European Free Trade Association (EFTA). Two EU member states, the UK and Ireland, have negotiated opt-outs from the Schengen *acquis* when the intergovernmental agreement was transferred into EU law with the Treaty of Amsterdam.<sup>22</sup> As a result, for every regulation concerning Justice and Home Affairs, individual negotiations need to be held with the UK

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- 17 Council Decision of December 13, 1999 on the full application of the Schengen *acquis* in Greece, in: OJ L 327 (December 9, 2000), p. 58.
- 18 Decision of the Executive Committee of 22 December 1994 on bringing into force the Convention implementing the Schengen Agreement of 19 June 1990, in OJ L 239, December 22, 1994, p. 130-132.
- 19 Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*, in: OJ L 176, July 10, 1999, p. 36.
- 20 Council Decision of November 27, 2008 on the full application of the provisions of the Schengen *acquis* in the Swiss Confederation, in: OJ L 327, December 5, 2008, p. 15.
- 21 Council Decision of December 13, 2011 on the full application of the provisions of the Schengen *acquis* in the Principality of Liechtenstein, in: OJ L 334, December 5, 2011, p. 37.
- 22 Council Decision of February 28, 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*, in: OJ L 64, March 7, 2002, p. 20.

and Ireland.<sup>23</sup> For newcomers to the EU, opt-outs are not possible. Instead, EU membership obliges to work toward the fulfillment of the Schengen *acquis*. Today, EU membership thus precedes the opportunity of free movement which is related to Schengen and the fulfillment of its requirements.

The first enlargement round in 2004 encompassed ten countries, namely Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Czech Republic, Hungary and Cyprus. In 2007, Bulgaria and Rumania joined in the so-called second round of eastern enlargement. The latest accession was Croatia in 2013. Bulgaria, Rumania, Cyprus and Croatia do not fully implement the Schengen *acquis*; internal borders with the EU are still controlled. Finally, the micro-states Monaco, San Marino and Vatican City do not participate in Schengen activities. However, they are *de facto* part of the Schengen area as free movement is possible with a Schengen visa. Schengen's geography is thus mediated by a complex set of rules and affiliations.

On the institutional level, the external borders represent two political entities: the national member state of the EU, and the supranational European Union. They are thus justifiably characterized as “double encoded” (Ger.: *doppelcodiert*)<sup>24</sup>. The political meaning of double encoded borders translates to a situation where shared responsibilities multiply and centralized competences are reduced. Exemplary of this new take – and also of the early confusion about it – is Friedrich Heckmann's 1996 circumscription of the new European policies he saw triggered by the Schengen rules:

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- 23 The negotiations on the “Brexit,” i.e., the terms and conditions of how the UK will leave the EU, are not controversial with regard to the control of persons. As both the UK and Ireland do not implement the Schengen *acquis*, a Brexit would not change the arrangement of identity checks along the border between the UK and Ireland. It would, however, require customs control.
- 24 The term “double encoded” (Ger.: *doppelcodiert*) has been termed by Andreas Müller in his doctoral thesis, which is quoted by Georg Vobruba (2012: 97, 99, 136). Maurizio Bach describes the border constellation as “institutional supercoding” which is characterized by “processes of superposition and asymmetrization” Bach (2010: 165–171). Stéphane Rosiere recognizes a three-leveled sovereignty between the regional, the national, and the community level, which is characterized “by a post-modern graduality, more than by classical isonomy” (Rosiere 2002: 52).

“Every state has *less* borders in the previous sense of the term. At the same time, however, each state has become co-responsible for *more* borders and must, for the sake of its own security [...], take an interest in the *different* borders [that are now relevant, S.E.]: the Oder-Neisse line has also become France’s new eastern border, Germany has to take interest in what happens of the Strait of Gibraltar, everyone is interested in Italy’s borders with the Schengen area, and also in what is going on between Italy and Albania.” (Heckmann 1996: 12, emphasis added)

Less borders within Europe means more common concerns. Cooperation in border enforcement is considered to be “in the interest of one’s own security” (Heckmann 1996: 12). This reciprocal understanding and arrangement of security is at the center of the Schengen *acquis*. Correspondingly, the Head of Research and Development at Frontex considers this proliferation of responsibility for external border security to be the “consequences of having Schengen”:

“It is not about how good you are at your part of the Schengen external border. The idea should be that we create a similar level of control and awareness at *all* parts of the border because only then it works. I mean, if you’re in Germany you have a very high standard, you check everything you have everything under control, but what does it mean if in France they don’t do it? Your backdoor is open.”<sup>25</sup>

To close the backdoor, Schengen rules are established as rules of cooperation among member states. The need for an increase in cooperation, however, is not caused by an increase in cross-border crime. It is implied in the agreement to leave the task of control to any member state at the outer edge of the Schengen area. Hence, Schengen creates, conceals and anchors the “stringent necessity to cooperate with regard to securing the common EU external border” (Vobruba 2012: 135). Or as Boldizsár Nagy puts it, Schengen “compelled [member states] to harmonize” (Nagy 2006: 105). Consequently, the Schengen rules – the *acquis communautaire* – do not fix an external border to the European Union. Rather, its external borders (note the plural) “mark the scope of the application of the European law as well as the extent of the European space of institutionalized intergovernmental cooperation” (Bach 2010: 171). Effectively, the Schengen rules do not constitute an EU border *per se*, but a “cascading interdependence” (Zielonka 2006: 3) which demands cooperation in different policy fields. More-

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25 Head of Research and Development at Frontex, personal interview (May 27, 2011).

over, an external EU border is not erected as a result of land surveying or demarcation, but rather from the required cooperation of institutions.

In sum, the transfer of control from internal to external borders clearly is more than a geographic shift. It triggered institutional transformation with regard to the meaning and functioning of borders in the EU, as it meant conducting a common mandate while being under national legislation and budget. But how does this work in practice? Would the mandate of border guards remain national while at the same time their ‘job description’ was communitarian? In fact, the Schengen constellation is constantly concerned with the tension between the national and the European level. This is a tension which became manifest, for instance, at the occasion of the Lampedusa tragedy of October 2013 described in the introduction to this study. Italy’s Deputy Prime minister Angelino Alfano stated that “the toll is unfortunately a tragic one” and declared the shipwreck “a European tragedy, not just an Italian one” (quoted in *The Telegraph* (N.N.) 2013). Declaring it a European tragedy calls for sharing the burden and for European solidarity. At the same time, it diverts responsibility as Lampedusa acts as the gate to Europe and not Italy alone. If, however, Lampedusa were officially considered a European and not an Italian island, this would not only affect any proclaimed responsibility but also budget, logistics and the distribution of arriving migrants and refugees.

What did and what do the Schengen rules thus constitute? The Schengen Agreement and Convention neither redraw any boundaries, nor do they fix a territory. The two legal papers, the Schengen Agreement and its Implementing Convention, did not bring about a legal authority for an external EU border and it did not create common border policies. What Schengen constitutes is the need for cooperation in border, migration and asylum policies. Unlike Latour’s description of a process of inscription, in which “paper always appears at the end” (Latour 1986: 17), these two papers thus mark the beginning (and not the concealment) of displacements and mobilizations of competences in security policies in the EU. John Torpey has worked out that the Weberian state which monopolizes the legitimate means of violence is being amplified by the monopoly of the legitimate means of movement (Torpey 1998, 2000: 5). Schengen set this dual monopoly at disposal. It requested that decision over the movement of people be mutually recognized between Schengen signatories.

The apparent geographic shift detached the competence to restrict the liberties of person without a reasonable suspicion from the locus of the geographic-administrative border. To a certain extent, the exceptional competence of the border was displaced to an “elsewhere” and mobilized to relativize the monopoly

on the legitimate means of movement the purpose of mutual recognition in this area. This demonopolization was expressed in two ways. First, national borders at the outer edge of the constituted area were no longer merely a subject of national, but of European concern. The mutual recognition of decisions at the external borders resulted in an urge to standardize migration, asylum and border control policies. Second, the legal borders of individual rights “as regards the position and crossing of borders now derives not only from the national law but also from European community law” (Guild 2001: 3). Both rights and competences are no longer commonly united on a territory and separated vis-à-vis other territories by a border. The incongruity between rights and competences is the central feature of postnational borders in Europe.

The discordance on which border control is based by way of the Schengen Agreement has been aptly described by Tugba Basaran’s distinction between the geography of territory as a basis of political mapping and the geography of law and the space of government (Basaran 2008: 341, 2011: 1-8, 44-48): the legal borders of rights are still territorial, as obligations vis-à-vis third country nationals are limited within a territory. The legal borders of policing, however, are mobilized in so far as competences no longer stop at the geographical border line as rights do. As the territorial congruence between the legal borders of rights and the legal borders of policing has been diffused by way of the Schengen arrangement, different forms of operational cooperation and practical assistance were mobilized without a new European institution or a common legal authority.

Effectively, the Schengen Process results from a transformed understanding of the meaning and functions of political borders and has in turn contributed to the reconfiguration and redefinition of how borders are understood and operationalized in Europe. This has further changed the way borders are theorized, imagined, experienced, and researched. It is hence no coincidence that the empirical example of Europe’s borders has left its mark on the epistemological and methodological premises in border studies. In the following, I will discuss prominent interpretations of Europe’s borders and the Schengen Process with regard to their contribution to the epistemological and methodological change they brought to the study of political borders in general. Étienne Balibar and Jan Zielonka provide early examples for a transformed understanding of borders, which triggered a shift in how and as what borders have become to be researched since the 1990s. As Georg Vobruba systematizes Zielonka’s take on borders, I also review his interpretation as a relatively recent analysis of the “postnational border constellation”. Although Giorgio Agamben’s work does not deal with a border conception, his *homo-sacer* trilogy has influenced both academic and activist takes on the effects of the EU’s border on refugees and their rights and thus

offers an ancillary analysis of its qualities. Last but not least, I examine the network analogy with regard to its contributions to border studies, particularly as it is advanced in the early studies of Didier Bigo. I have selected these authors because their contributions are classic examples of a transformed understanding of borders and, in consequence, have pioneered a transformed research design.

## **2.2 EUROPE AS BORDERLAND WITH POLYSEMIC, HETEROGENEOUS, AND OVERTDETERMINED BORDERS**

Étienne Balibar’s analysis of Europe’s borders has been particularly influential. His descriptions of the vacillating nature of borders have acquired a classic status (Balibar 1998). Moreover, his way of theorizing borders has altered the contemporary understanding of borders in general: borders are now studied as practices of control, exclusion, selection and subversion; they are studied “wherever the movement of information, people, and things is happening and is controlled” (Balibar 2002b: 71). Even though Balibar’s work has been more influential among continental scholars than Anglophone scholars, Chris Rumford sees him as the “leading theorist of Europe’s borders” (Rumford 2011: 37). In fact, the works of the French philosopher have affected contemporary understandings of borders beyond academia. The notion of ubiquitous borders (Balibar 2002b: 71) has been picked up by non-governmental organizations and activists alike to critique practices of social marginalization, racism and xenophobia – all matters of concern to Balibar – as daily occurrences in EU border policies.

Balibar’s conceptualization of the vacillating nature of borders has provoked a reassessment of the relation between borders and space. According to Balibar, borders can be considered the point of crystallization with regard to the constitution of political space. Subsequently, analyzing them has allowed Balibar to discuss the state of democracy, as well as the concepts of citizenship and identity in relation to Europe. Throughout Balibar’s works, the border appears as a “meta-institution,” which conditions all other institutions in a democracy and thus encompasses its antinomies (Celikates 2010: 70). Although Balibar’s thoughts on borders are part of his wider philosophical discussions of democracy, violence, universalism and citizenship, the following review restricts itself to those texts that explicitly deal with the borders of Europe. I will work closely with his texts in order to detail Balibar’s conception of borders beyond the mainstream reading of borders being “dispersed a little everywhere” (Balibar 2002b: 71).

Balibar's first piece on borders was a book contribution in 1998 entitled "The Borders of Europe". Therein Balibar elaborated on the vacillation of borders, explicitly breaking with the European consciousness of a single real identity and the border as "a supersensible 'thing' that should be or not be – here or there, a bit beyond (*jenseits*) and just short of (*diesseits*) its ideal 'position,' but always somewhere" (Balibar 1998: 216-217, original emphasis) With this contribution, Balibar clearly challenges the need to localize borders. In the lectures and texts that followed – the essay "World Borders, Political Borders" (Balibar 2002b)<sup>26</sup> and the monograph *Politics and the Other Scene* (Balibar 2002a)<sup>27</sup>, Balibar continuously reflects upon borders in relation to citizenship, identity, and democracy in Europe. His characterization of a border as overdetermined, polysemic, and heterogeneous (he uses the latter term as a synonym for vacillating) offers a systematic take toward a transformed understanding of borders, which diffuses notions of the geographic border-line.

The overall interest and political impetus of Balibar's oeuvre is the concept and the possibility of transnational citizenship and the attempt to "civilize the notion of cultural identity" (Balibar 2009: 202). He analyzes the functioning and enforcement of political borders with regard to these concepts. In its reception, his threefold characterization of political borders as overdetermined, polysemic, and heterogeneous, has seen a systematic bias for the latter two features. I shall thus deal with them in a first step, and then turn to the characteristic of overdetermination. Reviewing Balibar's characterization, I intend to trace why the two characteristics of polysemy and heterogeneity resonated more with EU border studies than the characteristic of overdetermination, which has been rather neglected.

### **2.2.1 Polysemy and Heterogeneity of Borders**

The polysemic character of borders captures the plain fact that borders are experienced differently by different people. Likewise, the crossing of borders requires different means from different people. While the latter notion points to the dif-

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- 26 The essay is a translation of a lecture which Balibar delivered in French on October 4, 1999 during his invitation to the "Institut Français de Thessalonique" and to the Department of Philosophy at the Aristotle University of Thessaloniki.
- 27 The monograph includes two chapters on borders ("What is a border" and "The Borders of Europe"), which have been reviewed broadly but seldom been contextualized into the frame of his political philosophy on political space and citizenship.

ferentiation of legal titles, the first aspect alludes to its phenomenological virtue. A person from a rich country not only benefits from citizenship in a welfare state, but is also by means of nationality allowed a “surplus of rights – in particular, a world right to circulate unhindered” (Balibar 2002a: 82). The experience is one of seamless travel, of freedom from inconveniences. For a poor person from a poor (Muslim) country, by contrast, traveling is a hassle, starting from the visa procedures and the guarantee to be documented, to the checks, looks and suspicions during movement. Pointing to the difference “between those who ‘circulate capital’ and those ‘whom capital circulates,’” Balibar sees borders as operators “of an international class differentiation” and as “instruments of discrimination and triage” (ibid). This is to say that social inequalities are not only reproduced and stabilized by means of borders, but that border policies function to privilege some while cutting off others (right to move). According to Balibar, this bears a “world *apartheid*, or a dual regime for the circulation of individuals” (ibid, original emphasis), as the privileged have the ability to not only travel but also have a monopolized definition of the legitimate means of movement.

Balibar sees the polysemic nature of borders resting on a fundamental ambivalence of the role of the border vis-à-vis the state. The differentiation executed by border personnel at the border supports “the notion of national citizen and, through that notion, a certain primacy of the public authority over social antagonisms” (Balibar 2002a: 82). Border guards thus not only enforce privileges, they represent them. Yet, with an increase in transnational traffic, public authority (generally, the state) is caught in the “contradictory position of having to both relativize *and* to reinforce the notion of identity and national belonging” (ibid, original emphasis). This double-bind illustrates that border work is a decision on whether movement is allowed or restricted. According to Balibar, the selection criteria converge not least with social inequality and racism. The differentiation or selection that borders operationalize has also been circumscribed by others. In fact, most authors identify political borders with the function of selection and the regulation of membership. Ulf Hedetoft, for instance, introduces the metaphor of the “asymmetric membrane” in order to evoke the image of borders being identified by their essential function “to protect against unwanted entrance [...] from the other side” (Hedetoft 2003: 152). In a more technical tone, different German sociologists have circumscribed political borders as “sorting machines” (Mau 2010) and “selection machines” (Kaufmann/Bröckling/Horn 2002: 7).

Effectively, border policies present themselves differently to different people, which results in a scattered application of rights. Furthermore, border policies play out their functions differently, not only to different people but also to “things” and ‘people’ – not to mention what is *neither thing nor person*: viruses,

information, ideas" (Balibar 2002a: 91, original emphasis). Balibar formulates the "empirico-transcendental question of *luggage*," which asks "whether people transport, send, and receive things, or whether things transport, send, and receive people" (ibid, original emphasis).

The figurative question of luggage is indeed an inspiring concept to differentiate power while at the same time sticking to the ambitions of symmetric anthropology: who moves – the airplane or the passenger?, who is moved – the migrant or the refugee?, who carries/is carried?, what carries/is carried – in the case of a boat: the water or the vehicle?, and what about carrier sanctions and the arrangement of luggage during return flights? I by no means intend to adopt a disrespectful tone when taking human beings for "luggage". Rather, I attempt to gauge a systematic concept by which the power dynamics around the legitimate means of movement and the rules of transportation can be explored further. For it is not only about the allowance to move – as was the case for Torpey's example of the passport – but also about the resources, capacities and vehicles to do so and to be transported *en route*. Determining whether politics are applied and rights guaranteed for the carrier or the luggage is an important distinction to characterize the mode of politics at work on this age of migration and mobility.

Let us go back to Balibar's characterization of political borders and his second characteristic: the heterogeneity of borders describes the changing nature of borders as a transformation from a localizable phenomenon to a vacillating one. According to Balibar, borders "are no longer localizable in an unequivocal fashion" (Balibar 2002a: 91). Without a localizable anchor to control practices, the term border "is profoundly changing in meaning" (Balibar 2002b: 71). Yet, counter to notions of a borderless world, Balibar opposes that rather than disappearing, "borders are being both multiplied and reduced in their localization and their function; they are being thinned out and doubled, becoming border zones, regions, or countries where one can reside and live" (Balibar 2002a: 92). This diagnosis of a vacillating appearance or apparition of borders as areas, points, or situations offers a conceptual departure from the borderline as the only imaginable spatial form of political borders. In this context, the following quotation has acquired an almost archetypal status.

"The borders of new politico-economic entities, in which an attempt is being made to preserve the functions of the sovereignty of the state, are no longer at all situated at the outer limit of territories: they are dispersed a little everywhere, wherever the movement of information, people, and things is happening and is controlled." (Balibar 2002b: 71)

The resulting proliferation of borders has been accepted and reproduced widely among border scholars. To a certain extent, Balibar has given an answer to Georg Kreis's (2010: 86) question of "what remains of borders once they have been suspended." What remains is practices of control, the sovereign competence to restrict the liberties of others. The difference is that the asymmetric power of policing which had been restricted before to the locus of the administrative border line is now extended to situations which are defined as border crossings. Balibar illustrates this "heterogeneity" or "vacillation" of borders by deploying spatial metaphors, some of which describe the new spatiality of borders by simply negating its "old" territorial state, but maintaining the need to localize them. Borders "are no longer at the border" (Balibar 1998: 217). At the same time, the heterogeneity of borders stems from a corresponding proliferation of control competences. Securing borders is equal to securing sovereignty – that is, borders are not marginal or peripheral "to the constitution of a public sphere but rather are at the center" (Balibar 2002b: 72). In terms of political space as public sphere, borders are a central institution. In terms of their locus and the locus of practices of inclusion and exclusion, borders are "dispersed a little everywhere, wherever the movement of information, people, and thing is happening and is controlled" (ibid: 71). Studying borders means researching control practices and the struggles they provoke. The focus is on encounters between enforcement authorities and deviants.

Additionally, the concept of the vacillating border does not localize the Other as a foe on the other side of the border. With his elaborations on "the other scene," Balibar remains consistent with his conceptualization of borders as well as in his construction of the alterity projected by vacillating borders. Drawing on the Freudian notion of the "other scene" as "the representation of the *essential heterogeneity* of psychic processes," Balibar (2002a: xii, original emphasis) evokes "the no less essential heterogeneity of political processes".

"[T]he *other scene of politics* is also *the scene of the other*, where the visible-incomprehensible victims and enemies are located at the level of fantasy. Secrecy, counter-information, and fantasmatic otherness must have some common root; at least they produce conjoint effects." (Balibar 2002a: xiii, original emphasis)

The primacy of imagination applies here as well. The other appears in imagining him or her, and not through contact or encounters.

Overall, the reception of Balibar's analysis has been dominated by dissolving the geographical-physical connotation of political borders and shifting it to an understanding of borders as social practices. The new ubiquity of borders has inspired new research agendas. Effectively, the characteristic of heterogeneity has

been read and researched as practices of social and racial discrimination. However, with an increasing number of practices being studied as border, it has been “obscured” (Johnson et al. 2011: 61) what a border actually is. Even though I share this critique, I doubt that it can at all be determined what a border actually is. This is due to the spectral character of any border, which will be further elaborated in section 3.1.

### **2.2.2 Overdetermination and the World-Configuring Function of Borders**

With the characteristic of overdetermination, Balibar emphasizes more than the mere acknowledgement of borders being cultural and historical products – a description he considers “commonplace of history textbooks” (Balibar 2002a: 79). Any border is overdetermined in so far as it is never “the mere boundary between two states” (ibid). A border incorporates an interrelation to an imagination of global order. Each individual border sanctions, reduplicates or relativizes the world ordering ideology, or “super-border” (Balibar 2009: 195).

Any given political border is legitimized and stabilized by echoing the super-border. As a consequence, it incorporates a “*double meaning*, local and global” (Balibar 2009: 201, original emphasis). The “‘partition’ or ‘distribution’ of the World space” enacted by means of operationalizing a border “reflects the regime of meaning and power under which the World is represented as a ‘unity’ of different ‘parts’” (ibid). For example, as a synecdoche for the separation of the world into East and West during the Cold War period, the Berlin Wall illustrates the idea of overdetermination almost as an ideal type. The confrontation between capitalism and socialism is the super-border for the individual borders between camps, blocs, and states. Balibar also mentions the example of the European colonial empires, which overdetermined political decompositions between the 1494 Treaty of Tordesillas and the Cold War period.<sup>28</sup> According to him, the durability of borders largely stems from their world-configuring function, and thus from the rationale and the imagination of order that is dominant in world politics. “Without the *world-configuring* function they perform, there would be no borders – or no lasting borders” (Balibar 2002a: 79, original emphasis). Accordingly, what stabilizes political borders is not to be found their material robustness or terrestrial grounding. They are stable rather because they have become internal-

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28 Carl Schmitt (2003 [1950]: 86-100) identified the modern overdetermination as global linear thinking.

ized as an “essential reference of [...] collective, communal sense” (ibid: 78) and are thus thought of as natural, good, necessary, or even existential.

Moreover, the philosopher emphasizes that a border’s overdetermination – that is, the fact that a border “is always *overdetermined*, and in that sense sanctioned, reduplicated and relativized by other geopolitical divisions [...] is by no means incidental or contingent; it is *intrinsic*” (Balibar 2002a: 79, original emphasis). Without a particular worldview, no border of this particular kind would emerge. The kind of border narrowly depends on political ideology and imagination of the world, which is intrinsic to border policies. According to Balibar, what happens at Europe’s external borders says more about how we look at the world than about what is happening in the world. He underlines the relation between an imaginary pattern of political space (worldview), and the concrete reality of border policies and the practices of border control.

While I have discussed Schengen borders from the perspective of negotiating the national and the European frame of border policies, the characteristic of overdetermination adds the question about distinguishing a rationality of order on a global scale. In the context of an emerging border to the EU, the question of world-configuration understood as the search for the super-border and an ideology that bestows the practical division of the globe with a sense of legitimate order is left indeterminate and un-ascertained. Balibar, however, sees competition with regard to bestowing rationality to the bordering process in Europe: competing frames formulate the super-border. In the Alexander von Humboldt lecture titled “Europe as borderland,” which Balibar gave at Nijmegen University in November 2004, he presented an analysis of different schemes of the spatial-political projections which are at work in the political organization of space and borders in Europe.<sup>29</sup> Balibar sees “four different (and conflicting) *schemes of projection* of the figure of Europe within the global world” (Balibar 2009: 190, original emphasis): the clash-of-civilizations pattern; the global network pattern; the center–periphery pattern; and the crossover pattern. These “*four conflicting patterns of ‘political spaces’*” (ibid: 194, original emphasis) differ both in their construction of Europe and their representation of borders. According to Balibar, different patterns are “associated with *opposite policies* concerning nationality and citizenship, residence and mobility, activity and security: in short, they are

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29 The lecture was published as an equally titled essay in *Environment and Planning D* in 2009. Quotations have been taken from the 2009 article rather than from the 2004 lecture.

opposite ways of ‘constituting’ Europe (or, possibly, resisting its constitution)” (ibid, original emphasis). The figure of the border is turned into the hallmark with regard to the concretization and manifestation of that concept. He argues that each pattern:

“is not only a way to figure a ‘political space,’ involving a different idea of the intrinsic relationship between politics and spatiality, it is also a different way to understand what a ‘border’ exactly means, how it works and how it is reproduced” (Balibar 2009: 201).

The first pattern of differentiation is *the clash-of-civilizations pattern* (Balibar 2009: 194-196). Operating on a civilizational super-border, this pattern deploys notions of Samuel Huntington’s “clash of civilizations” and Carl Schmitt’s “Grossräume,” and differentiates along an essentialist understanding of religion, culture, and belonging. The figure of the border might be phenomenologically fuzzy and dispersed, but its legal and political operationalization is sharp. The political border appears as guarantor of law and order and requires terrestrial grounding as a clear line of demarcation. Imagining political space and political border in terms of the second, *the global network pattern* means thinking politics in terms of connections, flows, and processes of circulation. As a result, the projection of the global network “embodies the idea of a limit of traditional representations of political spaces, the reaching of a point where the political space becomes hardly representable” (Balibar 2009: 196). Projecting *the center-periphery pattern* to the political space of Europe means sketching interdependencies and strategic alliances. In accordance with world system theory, the center-periphery pattern evokes the EU with border areas, zones, or marches arranged as concentric circles. Balibar sees these images being productive when EU enlargement and integration is discussed. This pattern also underpins the analysis of the European Neighborhood Policy (EPN). In this projection, political borders are instruments and institutions of political diplomacy and bargaining and express the reach of European integration. Fourth, *the crossover pattern* corresponds to Balibar’s vision of “Europe as a borderland”. Albeit critical about the state of Europe, the philosopher evokes the potential of Europe as a borderland, a “land” which constructively lives on the in-between status and radical democracy; with the heterogeneity of issues, religions, people and cultures of its place. A “land” of liminality which thus goes for radical democracy, rather than exceptional decisions. As a borderland, the construction of Europe has an integrative and civilizing potential. Because it offers a meeting point for the many, Europe is always becoming. In Balibar’s vision, the heterogeneity and differ-

ences of people, cultures, and religions in Europe will neither clash nor integrate, but demand an “unending process of translation” (Balibar 2009: 209).

“‘Borderland’ is the name of the place where the opposites flow into one another, where ‘strangers’ can be at the same time stigmatized and indiscernible from ‘ourselves,’ where the notion of citizenship, involving at the same time community and universality, once again confronts its intrinsic antinomies.” (Balibar 2009: 210)

Balibar’s own conception of “Europe as a borderland” – a notion he formulated as a vision and a conceptual basis for radical critique – resonates with the political will of an open Europe despite all odds.

In sum, a central aspect of Balibar’s border conception is his diagnosis that the authority to enforce borders is no longer located and thereby restricted to the territorial border as a geographically defined administrative place. Sovereignty has split, both with regards to its “targets” and with regard to its function, and allows for ubiquitous (border) control practices. This leads to a proliferation of control practices in kind and in location. Balibar thereby directs attention to those forms of sovereign control that “prevail” despite the Schengen induced abolishment of internal borders within Europe, and despite the announcement of a borderless world. With his emphasis on the vacillation and ubiquity of borders, Balibar stresses that borders are not abolished nor dissolved, but rather transformed and multiplied. However, the reception of ubiquitous and vacillating borders, as well as the diagnosed proliferation of borders has obscured what their political character actually is. The vague conflation (and sometimes suggestive inversion) of geography and polity, geographic-juridical borders and practices of security personnel (be it border guards, police, or civilians), led to a translation of spatial metaphors into the realm of political constitutionalism. Balibar approaches borders as practices of segregation, of subversion and control, of violent inequality. In doing so, he could show that bordering not only occurs along territorial lines. In addition, dissolving them doesn’t dissolve discrimination and violence. Yet, in turn, this wide understanding contributes to a conceptual uncertainty with regard to the political border, its field and object of research.

## **2.3 EUROPE AS EMPIRE WITH MEDIEVAL, COSMOPOLITAN OR POSTNATIONAL BORDERS**

Conceiving of Europe as an empire deviates strongly from Balibar’s notion of borderland, particularly with regard to the envisioned role of a political Europe in the world. While the notion of borderland embodies a sort of low threshold

dealing with alterity, the concept of empire works “to maintain the fiction of a ‘high point’” (Rumford 2011: 90). In a borderland, borders are the point in time and space where things can turn into their radical opposites. They demand radical democracy yet elicit a global apartheid. Under these premises, thinking and researching political borders means examining the struggles of daily practices of border enforcement and subversion. It can also mean encountering radical exclusion and discrimination; these “findings” are in turn related to the constitution of the border. By contrast, borders in an empire are fuzzy and soft. They are negotiated and negotiable *arrangements*, which can be examined by looking at institutional decision-making, legislation, and processes of regional integration.

The description of Europe as an empire has been deployed most influentially in two quite different works: first, in Jan Zielonka’s (2006) *Europe as Empire: The Nature of the Enlarged EU* and second in Ulrich Beck’s and Edgar Grande’s (2007) *Cosmopolitan Europe*. The deployment of the term empire is justified on opposite premises. In the case of Zielonka, it was a critique on the tone in EU enlargement policy in the case. In the case of Beck and Grande, it was as invocation of the “last politically effective utopia” (Beck/Grande 2007: 2).<sup>30</sup> While Zielonka describes the EU as neo-medieval empire with a scattered public sphere and scattered legal zones, Beck and Grande envision the EU as a cosmopolitan empire, which bears the potential of universal integration, but lacks its construction from below. Whereas Zielonka uses the term with the impetus of “a polemic response to the mainstream literature on European integration” (Zielonka 2006: 2), Beck and Grande affirmatively use the term to call for a cosmopolitan Europe.

According to Beck and Grande, statehood and sovereignty (Ger: *Herrschaft*) can be reconceptualized with regard to the political form of Europe, namely “through a new conception of empire freed from imperialistic and nationalistic connotations, one which must be opened up in a cosmopolitan fashion and reoriented toward consensus and law” (Beck/Grande 2007: 94). Zielonka, by contrast, deploys the term to precisely criticize the imperialistic behavior of the EU in its neighborhood policies (even more pronounced in Zielonka 2008, 2013a, 2013b). The efforts of the EU in its neighborhood are “truly imperial in the sense that the EU tries to impose domestic constraints on other actors through various forms of

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30 A thorough discussion comparing the two works and their different notions of empire has been provided by Chris Rumford. He concludes that “empire (in any formulation) is not a satisfactory framework within which to understand European transformations” as it cannot get rid of the hybris of the high point (Rumford 2011: 90-109, here 90).

economic and political domination” (Zielonka 2008: 471). The metaphor of the empire – once deployed to criticize and envision – is used to depart from the Westphalian model of state as the ideal of polity and as *the* analytical frame for the study of the political, cultural, economic, and legal transformations of an ‘ever closer’ Europe.

### **2.3.1 Thinking Beyond the Westphalian Model: Neo-Medieval or Cosmopolitan Polity?**

Despite their opposite inclinations, both perspectives depart from a perceived inadequacy of the Weberian state as a model to analyze contemporary EU polity. The role of borders comes into play when the empire defines its shape and limits, as well as in its relation to the environment. Zielonka presents the neo-medieval alternative while Beck and Grande’s advocated alternative is cosmopolitan. How do these different analyses of the construction of Europe relate first to the notion of Europe’s borders and second to the Schengen rules?

Generally, the works of Zielonka are less concerned with the nature of Europe’s borders as such. The appearance of borders is rather taken as symptom of EU polity, which Zielonka examines with regard to the Union’s enlargement process and its neighborhood policy in the East and the Mediterranean. As a consequence of the enlargement process, but also as general implication of the EU’s neighborhood policy, clear lines of demarcation are given up and the notion of “soft borders in flux” (Zielonka 2006: 2, 167) is adopted. Enlargement not only constantly sets European borders and thus the notion of a defined and stable political entity at disposal. Moreover, according to Zielonka, “enlargement renders the rise of the European state impossible” (*ibid*: 9).

Zielonka draws the conclusion that European polity should not be analyzed by superimposing a comparison with the Westphalian model of polity. He suggests the ‘neo-medieval empire’ as an alternative lens. By applying the medieval paradigm, three aspects gain visibility. First, a divergence in the different functions of borders from one geographical (territorial) border line to the overlap of different authorities. Second, a polycentric system of authority and multiple loyalties. And third, the imperial and “evangelizing” character of EU relations in its neighborhood (Zielonka 2013b: 5-6). By describing Europe’s borders in resemblance to a “medieval” setting, the taken for granted geographical or territorial connotation of borders is opened up for a way of thinking political borders beyond the Westphalian state.

“One of the advantages of the medieval paradigm is that it represents a perfect contrast to the dominant Westphalian paradigm. The Westphalian paradigm is about the concentration of power, sovereignty and distinct identities, while the medieval one is about overlapping authorities, divided sovereignty and multiple identities. The Westphalian paradigm is about fixed and relatively hard borderlines, while the medieval one is about soft border zones that undergo regular adjustments. The Westphalian paradigm is about military impositions and containment, while the medieval one is about the export of laws and modes of governance.” (Zielonka 2013b: 6)

In this perspective, borders are not part of foreign relations. They are part of neighborhood policy, for without the Westphalian state; there can be no such international system. Similarly, Beck and Grande strongly emphasize the need to strip off the “conceptual straightjacket of methodological nationalism” (Beck/Grande 2007: xii). And still, according to Beck and Grande, Europe as cosmopolitan empire<sup>31</sup> inevitably comes with five dilemmas: the universalistic dilemma, the integration dilemma, the insecurity dilemma, the boundary dilemma, and the peace dilemma. Embracing the notion of cosmopolitan borders would then mean to accept Europe’s “boundary dilemma,” that is, the dialectic “of opening and closing of borders” (ibid: 261-262) and of overcoming *and* preserving the national. It would mean accepting “shared uncertainties and shared dilemmas” (ibid: 263).

This identity-generating dedication and transfiguration to dilemmas, that is, to concepts and situations offering two options – none of which brings a satisfying result – is essential to Beck’s and Grande’s construction of Europe. This resilient dealing with antagonisms also underpins the notion of “borderland” put forward by Balibar. Balibar (2002a: 82), however, differentiates between the potential of a vision of European policies and the (what he terms) “double-bind” of contemporary EU border policies.

While Balibar cautions the anti-democratic condition of the border itself, independent of the political entity which operates it, Beck and Grande problema-

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31 Beck and Grande (2007: 60-71) identify ten features fundamental to the European Empire: 1) asymmetrical political order, 2) open and variable spatial structure with flexible and mobile borders, 3) multinational societal structure, 4) integration through law, consensus and cooperation, 5) welfare versus security, 6) horizontal and vertical institutional integration, 7) network power, 8) cosmopolitan sovereignty, 9) ambivalence of delimitation and delineation, and 10) emancipatory versus repressive cosmopolitanism.

tize whether a society “whose key features is the political variability of its geographical boundaries” still counts as one society (Beck/Grande 2007: 94).

Both Zielonka’s as well as Beck and Grande’s elaborations on Europe’s borders address the idea of the Union’s borders. Meanwhile, the Schengen Agreement and its rules for the operationalization of border control are put aside, either as an example of geographic differentiation in the case of Beck and Grande (2007: 247), or as an envisaged “hard border regime” of which “a growing body of evidence suggests that the system is unduly harsh, impractical, and at odds with the Union’s main foreign policy objectives” (Zielonka 2006: 3). In 2013, Zielonka repeated that “[i]n contemporary Europe borders are also remarkably fuzzy despite the Schengen system” (Zielonka 2013b: 5). In both conceptions, Schengen borders thus differ from the borders of the European Union. This is demonstrated when contextualizing the standard quotation used when referring to Zielonka’s portrayal of Europe’s border: “[i]n due time, [...] will probably be less territorial, less physical, and less visible” (Zielonka 2006: 4). However, this characterization is preceded by a discrimination between the idea of the European Union and the Schengen Process – “indeed, the Union is likely to end up with soft border zones in flux rather than with hard and fixed external borderlines as envisaged by Schengen” (*ibid*). While his assessment of Europe’s polity takes up the non-finality of the Union, and while the “soft borders in flux” stand for the possibility to negotiate and design foreign policies, Schengen, in Zielonka’s view, stands for the reverse impetus, that is, the search for clear and fixed external borderlines and for the notion of a fortress Europe. In his view, not a

“‘fortress Europe,’ but a ‘maze Europe’ is likely to emerge [...]. In such a ‘maze Europe’ different legal, economic, security, and cultural spaces are likely to be bound separately, cross-border multiple cooperation will flourish, and the inside/outside divide will be blurred. In due time, the EU’s borders will probably be less territorial, less physical, and less visible. They will not look like fortified lines on the ground, but like zones where people and their identities mingle. In this sense, they will resemble the borders of a neo-medieval Europe rather than the borders of a Westphalian Europe.” (Zielonka 2006: 4)

The construction of Europe and the Schengen system work on conflicting premises with regard to their respective constructions of Europe. Focusing on the Union’s polity under the condition of Eastern enlargement, Zielonka analyzes the institutional forms of a construction of Europe.

### 2.3.2 Europe and its Postnational (Border) Constellation

Georg Vobruba, whose research aims to sharpen the conception of political borders beyond the territorial and Westphalian frame (Vobruba 2010: 434-435), abstracts a large number of Zielonka's observations to formulate the conception of "the postnational border constellation."<sup>32</sup> Drawing on the works of Maurizio Bach and Rainer Lepsius, the sociologist advances an analysis of Europe's borders as object of negotiations in the process of European institutional integration.

From this perspective, borders are conceptualized as institutions. Vobruba gauges the characteristics of the postnational constellation by analysis of the transformation of political sovereignty and of political borders. In his exposition, the term "postnational" points to a political setup in which different spatial frames compete.<sup>33</sup> Thus, in the postnational constellation, this competition underpins and reconfigures the functioning and meaning of political sovereignty and political borders (Vobruba 2012: 5). In the case of the European postnational constellation, Vobruba notes that institutional integration is increasingly European, while social integration remains national in outlook. The institutional integration is thus further advanced than the integration of the people. The tension between the national frame and the European frame is amplified by two factors: First, Europe's integration-elite and the common European man or woman are not aligned by the direct representation of interests. It comes to a situation in which the elites are trying to convince the people that European integration would be beneficial to them. These attempts, however, elicit skepticism rather than trust, for their perception is that national sacrifices are requested for a common Europe. Second, the national elites refer to the European frame in a manner that helps them score in the national frame. According to Vobruba "political spaces are constituted by the mutual interrelation of institution building and social relations" (ibid: 3). The (political) space between an institutionally ever integrating Europe and the number of national actors reluctant to European social integration is full of tension.

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32 The postnational constellation has been described by Jürgen Habermas in an essay collection (2001 [1998]). At the center of Habermas's concern is the democratic organization of political representation and control following the congruent form of the nation-state. Vobruba does not take Habermas' normative stance; he is rather interested in the observation of institutional change by 'the people' (Ger.: *die Leute*).

33 In 1993 Hermann Schwengel already formulated that the competition of spatial frames will be central to European politics (Schwengel 1993).

“The sociology of Europe incorporates the different perspectives on these tensions in a differentiation between the national and European levels, and relates them to institution-building.” (Vobruba 2008: 34-35)

The tension between the national and the European level is thus an endogenous factor to the emergence of the EU’s external border as institution. Therefore, Vobruba argues that Europe’s borders are best analyzed from the perspective of a European sociology, which focusses on the competition between the national and the European policy level as a spatial frame for the fulfillment of needs. According to Vobruba, European sociology should be developed from the starting point of this tension – that is, from the “difference national/European” (Vobruba 2008: 34). The described tension can be seen more clearly under the premises of a transformed concept of political sovereignty, which Vobruba presents as “legitimized by output” (Vobruba 2012: 58). In brief, postnational sovereignty is based on the evaluation of the performance of governance. The national and the European political ‘caterer’ compete for acceptance and the public *attribution* of sovereignty.

Against this methodological background Vobruba (2010, 2012) presents a threefold characterization of the postnational border constellation: First, under the condition of the postnational border constellation, political borders no longer condense all functions of social closure, but are rather characterized by their dissociation. He argues that “processes of functional differentiation across space” alters the functioning of segmentary, political borders (Vobruba 2012: 111). Second, under the condition of a postnational border constellation, the operation of border is subject to negotiation. Borders are thus subject to and dependent on negotiations (Ger.: *verhandlungsabhängig*). Third, in the postnational constellation, the permeability of political borders is operated hand in hand with selectivity. In other words: Borders are characterized by a selective permeability. In 2010 Vobruba described the dissociation of different functions of social closure – once condensed in the political border of the nation-state – with reference to Maurizio Bach (2010: 159), who draws on Max Weber’s remarks on open and closed social relations (Weber 1972: 23-35). Vobruba sees that the

“functions of borders to define economic, cultural, linguistic and political spaces – and where applicable to close them – are no longer merged. It is rather the case that a complex pattern of overlapping, yet not coinciding, spaces is developing.” (Vobruba 2010: 443)

In certain respects, the dissociation of the different functions of social closure is not only a characteristic of the postnational border constellation, but brings it

about. The first is both impetus to the latter as well as its characteristic. In consequence, individuals and groups negotiate their access to privileges or rights, to economic relations or political participation, along different boundaries and affiliations. In the case of Europe's borders, this dissociation is partly triggered by the constituting four freedoms of the European Communities: the free movement of goods, persons, services and capital. These four freedoms have not only inspired the dissociation of labor and capital from national economies (Vobruba 2010: 439), they also render the responsibilities and competences of social and legal systems ambiguous, unclear and diffuse.

The description of overlapping spaces, which are also to be found to a certain degree in Balibar, Zielonka, Beck and Grande, describes *the new* neither in terms of form nor content but rather in terms of overlaps and simultaneity; according to Vobruba, however, this remains unsatisfactory.

He first observed that the functions of closure are no longer coinciding at borders, portraying the phenomenon, following Bach, as a characteristic of the postnational border constellation in 2010. He then spelled out this process in 2012 with the help of the theory of functional differentiation, asking for the requirements and qualitative changes that functional differentiation pose on segmentary, political borders. Vobruba suggests that "processes of functional differentiation spanning manifold spaces" (Vobruba 2012: 111) change the functioning of segmentary, political borders (that is, nation-state borders). For, as different institutions and actors observe functional differentiation and thus think in those terms, this kind of differentiation occurs in addition to the traditional differentiation whenever political borders are enforced. In the course of time, nation-state borders are not only reconsidered, but also given a new mandate.

The second attribute of the postnational border constellation consists in the empirical observation that border policies depend on negotiations and that their permeability is subject to bargaining agreements. Even though borders have always been subject to political bargaining, the issue concerns the routing and the geographic course of borders, which was seen as resistant to negotiation. The dependence on negotiations in the case of the postnational constellation is different: the negotiations do not revolve around the course of a given border which would require the acceptance of the two parties on both sides; they rather concern the *quality* and the *functions of social closure* (Vobruba 2012: 102, emphasis added). In this frame, the conditions attached to mobility across a given border are far more cumbersome and contested than the course of that border. Moreover, these conditions are part of political negotiations on development aid, trade agreements, readmission agreements, and the like. The right to move has turned into a traded resource that is particularly at stake in the EU neighborhood

policies. According to Vobruba, the essentially new characteristic in this constellation is that a core object of statist sovereignty has turned into a matter for negotiations and transnational cooperation (ibid: 102). At the same time, this also means that the monopoly on the legitimate means of movement (Torpey 1998) is challenged, in the sense that it is not only transferred to the European level but subject to international diplomacy.

The third attribute concerns the permeability of borders. Even though it is common ground that borders cannot be hermetically closed, their permeability both justifies border control and proves it inefficient. However, the characteristic of selective permeability (Ger.: *selektive Durchlässigkeit*) does not merely stress that access is regulated by the sovereign authority, access and mobility rights are rather negotiated between governments or administrations and their counterpart, in the sense of the second characteristic. In the postnational border constellation, the permeability of political borders thus entails an active selectivity. In the case of Europe's postnational border constellation, the question of who is allowed to move and cross Europe's borders is negotiated between European governments and their counterpart in third countries. The modern understanding of sovereignty is thereby contested, as the selection at the border is no longer undertaken by a state. The selection and its criteria are rather themselves negotiated between the parties on both sides of a border (Vobruba 2012: 106). As a result, the permeability of Europe's borders is exposed to political and diplomatic negotiations. In this context, the *Other* turns into a strategic partner.

Finally, institution building in European border policies is described as a process of "deficient institutionalization" (Ger.: *defizitäre Institutionalisierung*), a compromise based on the lowest common denominator. Deficits in the process of integration must constantly be fixed, thus spurring further integration. This incrementalism can either be evaluated as a muddling through or as a quite pragmatic approach to get things done.

Methodologically these different analyses entail that borders are analyzed as negotiated and negotiable *institutions*. To the researcher both the bargaining processes as well as the policy results are of concern when studying the development of the EU external border as institution. Under this methodological premise the focus departs from a given border being identified with the specific functions it fulfills, such as migration control, customs control or the protection of a community from foreign threats, and falls back on the border as an institutionalized process (rule) to legitimately claim authority (cf. Müller 2013).

### **2.3.3 Sovereign Europe, the Border as Exceptional Institution, and Bordering as Exceptional Practices**

Taking an approach that is in some ways diametrically opposed, the Italian philosopher Giorgio Agamben developed his argument not in terms of the reach of institutionalized common EU rules, but rather with regard to exceptions to the rule of law, and the observation that the exception is becoming the rule.

Agamben (1998, 2000, 2005) initiated an analysis of Europe's borders that foregrounds legal structures and sheds light on the relation between individual and power, which, he, in his *Homo-Sacer-series*, explores as the interrelation between sovereign power and bare life. His conceptions of "bare life," "homo sacer," "exception," "the camp," and "sovereign power" attracted explosive attention. Moreover, in this reading of Agamben's work, the refugee began to appear as the constitutive figure of the border itself, while, at the same time, the concept of the *homo sacer* offered to theorize what was empirically contested along Europe's borders. Through the lenses of Agamben's work, the border or rather its constitutive practices of selection are conceived of and analyzed as exception. In this way, the border is analyzed both as institution – when its exceptional power is spotted and as practices of subversion, struggle, and contestation – when rights are claimed in vain.

Elspeth Guild already argued in 2001 that "[t]he individual with rights accruing from the different levels is the catalyst for the redefinition of European borders" (Guild 2001: 3). Agamben successfully proposed concepts for studying these reconfigurations. Agamben's generalized exception has been reframed as the generalized biopolitical border by Nick Vaughan-Williams (2012) who locates the border "where exceptional measures, practices and characteristics formerly associated with borders between states in the conventional sense become routinised and dispersed throughout global juridical-political space." (ibid: 108) Although this has been widely debated (cf. Rajaram/Grundy-Warr 2004; Darling 2009), Agamben himself did not propose Europe-bound refugees or migrants as an example of homines sacri. He did, however, take on board Hannah Arendt's observation of rights being only applicable to those individuals who are still integrated in society and in the state-system: the citizens. Agamben argues that "the paradox is that precisely the figure that should have embodied human rights more than any other – namely the refugee – marked instead the radical crisis of the concept" (Agamben 2000: 18). Recently, however, his privileged position in EU border and migration studies has been subject to greater critical scrutiny (cf. Schindel 2017; Whitley 2017; Owens 2009).

## 2.4 NETWORK EUROPE AND NETWORKED (NON-)BORDERS

When it comes to unbundling the spatial imagination of the territorial container, and with it the notion of the Westphalian state, the metaphor of the network and the description of the network society have provided a widely accepted alternative. In fact, imaginations of networks “dissolve the classic images of the state as a machine, as an organism or as a territorial body” (Kaufmann 2007: 7). The graphical model by which the notion of network represents the ordering of political and social relations is “a flatly hierarchized, modularly arranged, and communicative tightly coupled matrix” (*ibid*). In the imagination, relations are based on communication, on flow, are themselves flow. Electronic communication technology unhitches the terrestrial ground as the basis and medium of sociation. While territorial spaces are characterized by the quality of being exclusive (Simmel), networks are non-exclusive, as individuals and groups can be part of different networks at the same time. The network metaphor is thus also deployed to evoke notions of individual freedom and of emancipation (not only from the local). It stresses possibilities and choices, rather than circumstances and exclusivity. Networks are essentially detached from territory or terrestrial obligations or restrictions. However, if political relations, if the state’s body is imagined as network, what happens to its borders? Where are the limits in the assignment and ordering of modules and communication hubs? Is there a place which political borders hold, in the fluid world of network?

In 1993, John Ruggie already described a “space of flow” as the “nonterritorial global economic region” which is “premised on [...] the ‘sovereign importance of movement,’ not of place” (Ruggie 1993: 172-173, quoting Latimore). This space of flow, which according to Castells (2008: 42) is the material basis of the network society, is “operating in real time, [and] [...] exists alongside the spaces-of-places that we call national economies” (Ruggie 1993: 172). When Ruggie and also Castells selected the term to describe a relation of flux and movement, their examples did not primarily refer to individuals and the free movement of persons, but were concerned with industrial production and the peculiar characteristics of global chains of production. Networks initially were thought to supersede national economies. Kenichi Ohmae’s (1990) borderless world is an interlinked global market; the political function of borders is obsolete in this scenario. What Ruggie, Castells but also other globalization theorists haunted during the 1990s, was the question whether global was an obstinate phenomenon, a space of its own, beyond territory or, as some framed it, deterri-

torialized. Worldwide economic interconnectivity seemed to suggest just that. Ruggie observes

“a remarkable growth in transnational microeconomic links over the past thirty years or so, comprising markets and production facilities that are designated by the awkward term ‘offshore’ – *as though they existed in some ethereal space* waiting to be reconceived by an economic equivalent of relativity theory. In this offshore area, sourcing, production, and marketing are organized within ‘global factories,’ in some instances ‘global offices,’ and most recently the ‘global lab’ – real-time transnational information flows being the raw material of all three.” (Ruggie 1993: 141, emphasis added)

To some extent, global in this formulation as offshore meant “elsewhere.” Elsewhere, where the tax system is more convenient, and where workers’ rights are less demanding for the employer. Elsewhere is beyond local or national obligations. Elsewhere is beyond the control of the public sphere. Global as non-territorial appears as the space without restrictions, neither of terrestrial gravity nor of national bureaucracies or legal systems.

With regard to the network’s applicability to political spatial forms, Balibar notes that “the global network also embodies the idea of a limit of traditional representations of political spaces, the reaching of a point where the political space becomes hardly representable” (Balibar 2009: 196). However, this is not the case for political relations which can be imagined as networked or imagined to function in a network-centric way. This is at the bottom of Bigo’s analysis of Europe and its borders. In 1996 Bigo saw that the practices of control and surveillance that the police enacted with individuals in Europe were reconfigured toward networked policing and remote control (Bigo 1996: 13). This transformation is based on and expressed by multiple changes: changes with regard to the objectives of surveillance and control, with regard to technology, with regard to the legitimate location of surveillance and control, and with regard to the conception of security. In his analysis, Bigo relates the rise of the new field of internal security, which he traced in the Schengen Agreement, the Trevi Group and the Europol, to the organizational reconfiguration of security agencies in Europe. His central question has been, whether the ‘new’ network centric approach can be interpreted as a response to the emergence of transnational criminal networks and the perceived necessity of prosecution across borders, or second, as an effect of increasing Europeanization or third, whether the reasons are to be found within the security domain itself (ibid: 15). His answer: the restructuring of police work across Europe does not respond to new threats, but endogenously invents a new field of operation. This field is sketched as transnational, erratic and itself

unpoliced, and thus requires new forms of policing. Both the notion of internal security and of transnational risks mutually strain each other. Bigo describes this scenario which is at the bottom of the security field as a security continuum. Bigo's central argument which he continues to develop until today, is the increasing self-sufficiency of the security field as a (transnational) network (see particularly Bigo 1996, 2000, 2006, 2014).

The image as well as the functioning of a political border change in this perspective: "Rather than the edge or the wall, the border becomes a strategic node within a transnational network of control" (Walters 2004: 682). Walters describes Bigo's border conception as "the rise of the networked (non)border [...]" in which networks of control come to substitute for the functions that were previously physically concentrated at the border" (ibid: 679-680). According to Walters, Bigo sketches a "networked (non)border" which is constituted by "a joint responsibility and the locus of a new practice of police cooperation" (ibid: 682) rather than a dividing line. Stefan Kaufmann, who also draws on Bigo's concept of securitization when analyzing the reconfiguration of EU borders, emphasizes, in addition to changes in organization and justification, consequences for the topography of political borders. Unlike others who saw control practices de-territorializing, Kaufmann (2006) identifies three characteristics of the new border regime which follow from the *locus* of specific control practices: first, a forward displacement (Ger.: *Vorverlagerung*) of the border which is realized by policies and military forces who exceed and redefine their area of author and field of operation; second, a tightening (Ger.: *Verdichtung*): of the border, in which border control "has been transformed from the control of border crossing points to a permanent surveillance of the entire line" (ibid: 37) and third, an in-folding (Ger.: *Einstülpung*) of the border: control and surveillance, formerly executed by the border police, is appearing within the public sphere, albeit strategically dislocated. Facilitated by technological and information networks, which could be operated privately or by police forces, border control penetrates the inside of a nation-state. Balibar's ubiquity of borders is 'tamed' by this border topography.

The border is either organized as a network or it is overcome by networks. Doris Schweitzer's analysis of Manuel Castells's concept of a network-society shows that the topography of a networked society allows for a radicalization of bordering processes. In the context of border studies, the term "assemblages" (Ong/Collier 2005; Marcus/Saka 2006) refers to the distribution of bordering practices and institutions across geographical space, on different political scales, and through technologies. Ultimately, the term network is as dazzling as it is omnipresent. The thing that shall be described by the term network seems how-

ever, “imprecise, contradictory and indefinite” (Kaufmann 2007: 8). In this regard, the net appears, similar to the sea, as opposite of the land (Schweitzer 2011: 57). As part of a network, even law enforcement might occur elsewhere. And elsewhere implies beyond the line.

With regard to the European construction, the network metaphor also goes beyond the notion of a homogenous space. European is rather an attribute to the cities and hubs within a global connection. However, with regard to the invocation of threats and risks, the notion of network has provided the basis for a reconfigured notion of security and, in turn, different legitimate locations to the authority and competences of border polices.

## **2.5 EUROPE'S BORDER(S): NOVEL POLICIES, NEW PERSPECTIVES, CHALLENGED METHODOLOGIES**

In modern politics, the concept of political borders is inextricably linked to the figure of the line on the one hand, and to the concept of territory on the other. A line of demarcation – be it as cartographic abstraction or military installation – indicates the scope and reach of sovereign power. Political borders thus define a spatial mandate and mark the limits of a particular order. It is this mandate that distinguishes them from other markers of social stratification and functional differentiation. And it is this mandate which prevails, while modern concepts of political organization and political space are deconstructed, reassessed and reconfigured both in the social sciences and in politics.

From the 1970s onwards, the notion of a border being grounded or located, has drained away from its compression in the symbolic and graphical form of a territorial border-line. And since the 1990s, analyzing borders does not work without at least verbally departing from the model of the Westphalian state in its Weberian description. Often this is succeeded by evoking a transformed spatiality of political borders and by describing a detachment of ‘the border’ from ‘territory.’ Now, that borders are no longer where there used to be, researchers are requested to *relocate the research field*. Where to conduct research on the external border of the EU? And what to choose as object of investigation? Is a political border – if not territorial – a disembodied research object?

Throughout the analyses reviewed in the above sections 2.2 to 2.5, the way in which spatial metaphors and imaginaries serve to unbundle the notion of the territorial border and the ideal of the Weberian state have been examined. However, the examinations have also shown that the locus of the physical border is not of central concern to the different authors they are concerned with the state of de-

mocracy (Balibar) the quality of Europe's internal polity (Zielonka, Beck/Grande), or the general tension between the European and the national level (Vobruba). Other analyses have focussed on the discrepancy between the vision of Europe as a lawful project and the discriminatory access to individual rights (Agamben). Moreover, the network metaphor has proven to be concerned with the self-sufficiency of the network itself which does not provide a vision of Europe.

Overall, the works reviewed above have proceeded to analyze political borders *as something*: *as institution*, *as practices of selection and exclusion*, *as exception to the rule of law*, *as organized network or apparatus*. They all come with the impetus to deessentialize and denaturalize political border, thereby ultimately describing what substitutes the territorial border. Schengen provoked the opportunity and the necessity to conceptualize borders without territory in breaking with the equation of geographical borders marking political authority. With regard to the novelty the Schengen rules mark, “the new” can be identified by two parallel reconfigurations:

- The authority over the legitimate means of violence is no longer monopolized, but organized in a polycentric fashion, which is to say that enforcement personnel, surveillance tools and patrolling strategies are no longer allocated in or at the expanses of a national territory (code: geography), but according to communitarian needs (code: occurrences or migratory pressure). This demonopolization results in an incongruity, if not discrepancy, between the border police mandate – that is, legal border of policing, and the legal borders of individual rights.
- At the same time, another monopoly manifests itself: the authority over the legitimate means of movement appears with the institutional necessity (that of Schengen) to pool the resources at the supranational level. Thereby an emphasis on migration and mobility policies accumulates. However, the authority over the legitimate means of movement – the latter being framed and expressed as rights of the individual(!) – is highly contested both with regard to its application, distribution and enforcement practices.
- Analyzing the interplay of these monopolies is gauging a new mode of politics, which goes beyond territorial and bio-political characteristics. The emergence of viapolitics has been sketched by William Walters (2011, 2014, 2015), and will be further assessed in the two empirical chapters of this work.

In so doing, this study of the emergence of an external EU border does not look for a substitute of the territorial border; nor will I trace its novel spatial distributedness but rather explore two construction sites of the EU external border. I will not analyze the history of these sites as breaking with the border itself; instead, I will analyze how these sites mediate that which is socially effective as the EU external border. For every site crafts the kind and quality of the border in a particular way. Empirically speaking, how does this new EU border under construction acquire acceptance, stability and validity? Methodologically speaking: how is it possible to get a graspe of political borders? Setting forth the argument that the spectral character of any border requires a methodology that focuses on the processes and results of mediation, the following chapter expounds the methodological premise of this work.