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Introduction

In this issue of the Basel Papers, we are proud to present to you three outstanding examples of research conducted by recent graduates of the Institute as part of their MA theses. Their work showcases the thematic and methodological interdisciplinarity at play in the teaching and research of the Institute, and engages with subjects as diverse as transitional justice, global health policy, and democratic peace theory.

Sarah Farhatiar studies the impact of the World Health Organization's COVID-19 pandemic response on the securitization of global health policy. Her argument applies the literature on securitization to the rhetoric employed by the organization's Director General and examines the policy output in a prospective pandemic treaty.

Michael Honegger explores fundamental questions of peace and stability in his extensive quantitative analysis of interstate conflicts. Working to disentangle democratic and territorial peace theories, his findings highlight the importance of civil society in strengthening the peaceful relationships between adjacent democracies. The paper also suggests that the pacific effects of democracy apply only to relations between two democratic states but not to relationships with non-democratic polities.

Finally, *Angela Zollinger* analyses the confluence of Brexit and powerful sentiments like Empire nostalgia and English nationalism in the making of the 2023 Northern Ireland Legacy Act by drawing on parliamentary records and stakeholder interviews. Her study explores the law's expected adverse effects on the Northern Irish transitional justice process and points to persistent and potentially damaging policy impacts of Brexit.

What ties these works together is their engagement with some of the fundamental challenges of the early 21st century. War, border disputes, and epidemics have once again become frightening realities in Europe and cannot be ignored. Any attempt to understand and address them must rely on careful scholarly investigation, bringing together expertise from across disciplinary boundaries. The papers in this issue hope to make a contribution to this endeavor.

Prof. Corey Ross   Director of the Institute for European Global Studies
Paul Blickle   Editor

Sarah Farhatiar

The World Health Organization in Crisis
A Collective Securitization of the COVID-19 Pandemic

Abstract: The paper examines the World Health Organization's (WHO) response to the COVID 19 pandemic through the lens of securitization theory, specifically the concept of collective securitization. It explores how the WHO, led by Director-General Tedros Adhanom Ghebreyesus, framed the pandemic as a global security threat, thereby justifying the need for expanded authority and the development of a new international health law instrument, the 'pandemic treaty'. Utilizing an interdisciplinary approach that combines political science and legal analysis, the study analyzes speeches, policy documents, and the WHO's evolving role in global health governance. The findings reveal that the COVID-19 pandemic acted as a significant driver for institutional reform within the WHO, as evidenced by the proposed 'pandemic treaty', which aims to strengthen global health security. The research contributes to the understanding of how international organizations like the WHO adapt and expand their authority in response to global crises.

After completing her MA in European Global Studies, **Sarah Farhatiar** worked as Afghanistan Lead at the *Centre for Feminist Foreign Policy* (CFFP), where she managed projects focused on feminist development cooperation and human rights advocacy. In April 2024, she began working as a Consultant and Strategic Partnership Advisor, conducting gender analyses to support development cooperation in Afghanistan for the German Federal Ministry for Economic Cooperation and Development.

Introduction

The COVID-19 pandemic, declared by the World Health Organization (WHO) on March 11, 2020, has intensified discussions about health securitization and crisis-driven institutional change. The securitization of infectious diseases is not a new phenomenon and has been evident in the revision of the International Health Regulations (IHR) in 2005.[1] This pandemic highlighted the securitization of health issues, a concept according to which health crises are framed as security threats requiring urgent and extraordinary measures. Crises often lead to change in societies and international organizations (IOs). It has been repeatedly argued that the COVID-19 pandemic was a major crisis, leading to radical changes in many spheres of social life, institutions, and organizations, as well as competencies of global governance.[2] The pandemic raised important questions about the role of the WHO in responding to global health threats, and the need for coordinated, global action to address these types of crises in the future.

This paper seeks to provide insights into how IOs adapt their authority in response to global health emergencies, exploring the interplay between crisis framing, institutional change, and the development of new international health law instruments like the 'pandemic treaty'. It examines how the pandemic has influenced the WHO's evolving normative authority, with a particular focus on the proposed 'pandemic treaty'. By analyzing speeches and documents from WHO, particularly those by Director-General (DG) Tedros Adhanom Ghebreyesus, this paper examines how the pandemic has been framed as a security threat and the subsequent policy changes proposed, such as the new 'Pandemic Treaty'. The central research question guiding this study is: To what extent has the COVID-19 pandemic been a reform driver for global health law within the WHO? The paper employs an interdisciplinary approach combining political science analysis with a descriptive legal framework. The research hypothesizes that the WHO has long engaged in the collective securitization of infectious diseases, a trend that became particularly evident during the COVID-19 pandemic, with the aim of further expanding its authority, as demonstrated by the proposed 'pandemic treaty'. The analysis focuses on rhetoric in World Health Assembly (WHA) meetings and the ongoing negotiations surrounding the 'pandemic treaty'.

This paper is structured to explore and analyze the WHO's role during the COVID-19 pandemic, particularly how the organization used the pandemic to strengthen its global authority through what is known as collective securitization. Beginning with the **Introduction**, the paper sets the

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1   Tine Hanrieder and Christian Kreuder-Sonnen, "Souverän durch die Krise: Überforderte Staaten und die (Selbst-) Ermächtigung der WHO," in *Verunsicherte Gesellschaft - überforderter Staat*, ed. Christopher Daase, Stefan Engert, and Julian Junk (Frankfurt: Campus Verlag, 2013), 177.
2   Olga Ulybina, Laia P. Ferrer, and Pertti Alasuutari, "Intergovernmental Organizations in the Face of the Covid-19 Pandemic: Organizational Behaviour in Crises and under Uncertainty," *International Sociology* 37, no. 4 (2022): 416.

stage by outlining the central research question and its significance. The **Literature Review** follows, situating the research within existing scholarship on health securitization, with a focus on the WHO's evolving role. The Literature Review elaborates on the existing research on health securitization and the WHO's historical role, highlighting a gap in the current scholarship regarding the WHO's actions during COVID-19. In the **Methodology** section, the paper details the approach used to analyze the WHO's actions, focusing on framing analysis combined with collective securitization. The **Political Analysis** delves into the **status quo** prior to the pandemic, examines the COVID-19 pandemic as a **precipitating event**, and analyzes the **WHO's collective securitizing move and the response of its member states**. The paper then shifts to a detailed examination of the **Policy Output**, focusing on the proposed 'pandemic treaty' as a critical outcome of the WHO's securitization strategy. Finally, the **Conclusion** synthesizes the findings and considers the broader implications of the WHO's expanded role in global health governance in the wake of the COVID-19 pandemic.

Literature Review

Recent scholarship has extensively explored the securitization of health issues, particularly in relation to infectious diseases and the role of the WHO. Balzacq et al. note a proliferation of work on securitization, with significant attention being given to health-related issues. Within this body of research, scholars have examined both the advantages and ethical dilemmas of health securitization.[3] Elbe (2006, 2010) and Youde (2008) highlight that while securitization can lead to increased resource allocation for health crises, it also risks infringing on civil liberties and may shift focus towards traditional security measures rather than public health approaches.[4]

The role of the WHO as a securitizing actor has been a focal point in the literature.[5] Jin & Karackattu (2011) and Davies (2008) argue that the WHO actively securitizes infectious diseases to enhance its global power. Davies (2008) specifically examines the WHO's role in constructing the discourse of infectious disease securitization, using the 2003 SARS (Severe acute respiratory syndrome) pandemic as a case study. This research suggests that the WHO's securitization efforts

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3   Thierry Balzacq, Sarah Léonard, and Jan Ruzicka, "Securitization" Revisited: Theory and Cases, *International Relations* 30, no. 4 (2016): 507, https://doi.org/10.1177/0047711815596590.
4   Jeremy Youde, "Who's Afraid of a Chicken? Securitization and Avian Flu," *Democracy and Security* 4, no. 2 (2008): 149–161; Stefan Elbe, "Should HIV/AIDS Be Securitized? The Ethical Dilemmas of Linking HIV/AIDS and Security," *International Studies Quarterly* 50, no. 1 (2006): 119.
5   Jiyong Jin and Joe Thomas Karackattu, "Infectious Diseases and Securitization: WHO's Dilemma," *Biosecurity and Bioterrorism: Biodefense Strategy, Practice, and Science* 9, no. 2 (2011): 182, doi:10.1089/bsp.2010.0045; Sara E. Davies, "Securitizing Infectious Disease," *International Affairs* 84, no. 2 (2008): 295–6, doi:10.1111/j.1468-2346.2008.00704.x.

have led to the development of global health mechanisms that prioritize disease surveillance over treatment, often favoring Western nations' interests.[6]

Hanrieder and Kreuder-Sonnen (2014) provide valuable insights into the concept of emergency governance in global health. They analyze how the WHO's exceptional response to health crises can lead to the institutionalization of emergency powers, contributing to the securitization of subsequent outbreaks. This perspective is crucial for understanding the long-term implications of crisis responses on institutional frameworks.[7]

The centrality of the revised IHR in the WHO's promotion of global health security is emphasized by scholars such as Rushton (2011) and Kelle (2007).[8] Kelle highlights the WHO's multiple roles in the securitization process, serving as an object of securitization, a discursive space for debating global health security, and a securitizing actor in its own right.

While extensive research exists on the securitization of health issues and the WHO's role, there remains a gap in examining the collective securitization by the WHO during the recent COVID-19 pandemic. Specifically, there is a need for research focusing on the framing used by the WHO DG and the resulting policy outcomes or reform processes. This study aims to address this gap by analyzing the extent to which the WHO securitized the COVID-19 pandemic through the application of framing analysis and collective securitization theory, as well as examining the consequent policy outcomes and reform processes. The majority of research on the securitization of health issues by the WHO was conducted during a period when the organization was relatively obscure outside of academic and specialized circles. This relative obscurity adds a compelling dimension to the analysis of the WHO's role in promoting Global Health Security, as it operated below the radar of public awareness while significantly influencing global health policies.

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6   Sara E. Davies, "Securitizing Infectious Disease," *International Affairs* 84, no. 2 (2008): 295–309, doi:10.1111/j.1468-2346.2008.00704.x.

7   Tine Hanrieder and Christian Kreuder-Sonnen, "WHO Decides on the Exception? Securitization and Emergency Governance in Global Health," *Security Dialogue* 45, no. 4 (2014): 331–3.

8   Simon Rushton, "Global Health Security: Security for Whom? Security from What?," *Political Studies* 59, no. 4 (2011): 787; Alexander Kelle, "Securitization of International Public Health: Implications for Global Health Governance and the Biological Weapons Prohibition Regime," *Global Governance* 13, no. 2 (2007): 229–30.

Theoretical Framework

This paper employs a nuanced approach to securitization theory, building upon the foundational work of the Copenhagen School while addressing its limitations in the context of IOs. According to Buzan, Wæver, and de Wilde (1998), securitization occurs through speech acts where an issue is framed as an existential threat, necessitating extraordinary measures that go beyond normal political processes. This process involves three core elements: the securitizing actor, the existential threat, and the referent object that is being threatened.[9] The Copenhagen School posits that security is socially constructed through speech acts, but its state-centric focus proves inadequate for analyzing securitization processes within IOs.

To overcome this, the research draws on Sperling and Webber's (2018) concept of collective securitization, which extends the Copenhagen School's framework to IOs, recognizing their potential autonomy as securitizing actors and emphasizing the recursive interaction between IOs, like the WHO, and their member states in the securitization process.[10] Collective securitization, as defined by Sperling and Webber, involves an IO like the WHO acting as securitizing actors on behalf of their member states.[11] Crucially, collective securitization emphasizes the role of the audience (member states) as active participants in shaping security discourse through "recursive interaction".[12]

Another difference of collective securitization from the Copenhagen School framework is its view of the importance of extraordinary measures. In the Copenhagen School's approach, successful securitization that has been accepted by an audience is then followed by a state of exception in which "normal policy" is replaced by enabling emergency measures.[13] As Sperling and Webber (2018) argue, to signify securitization, the state of emergency move may not be necessary in collective securitization. They draw from Hanrieder and Kreuder-Sonnen's (2014) argument that threat construction can be accepted and institutionalized through policies, practices, and logic which eventually become part of a new normal. IOs may thus be empowered to take emergency action as part of their normal politics, rather than as an exception to it.[14] Sperling & Webber suggest, to follow Rita Floyd's (2016) argument, that for a successful securitizing move, a change in the policy actions is evidence enough, and does not need to be of an emergency nature. Floyd

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9   Barry Buzan, Ole Wæver, and Jaap de Wilde, *Security: A New Framework for Analysis* (Boulder, Colo.: Lynne Rienner Pub., 1998), 23.
10   James Sperling and Mark Webber, "The European Union: Security Governance and Collective Securitisation," *West European Politics* 42, no. 2 (2018): 236–7, doi:10.1080/01402382.2018.1510193.
11   Ibid., 236–237.
12   Ibid., 243.
13   Buzan, Wæver, and Wilde, *Security*, 24–7.
14   Tine Hanrieder and Christian Kreuder-Sonnen, "WHO Decides on the Exception? Securitization and Emergency Governance in Global Health," *Security Dialogue* 45, no. 4 (2014): 331–48; Sperling and Webber, "The European Union," 244.

further elaborates that IOs can securitize even when there is disagreement about the means or necessity of securitization.[15]

According to Sperling and Webber, collective securitization involves several stages: the status quo, a precipitating event (or a set of cascading events), the securitizing move, audience response, the formulation and execution of policies to address the securitized threat, and the routinization and establishment of a new status quo.[16] This framework will be used to structure the analysis of how these stages unfolded during the COVID-19 pandemic.

Central to the analytical approach is Dagmar Rychnovská's (2014) 'Framework for situated discourse analysis of securitization'. Rychnovská further refines the concept of securitization by integrating threat framing analysis, offering a more sophisticated lens for examining threat construction in powerful, discursively-oriented social environments such as IOs.[17] The framework consists of two key components: framing analysis and frame resonance. The framing analysis examines how threat frames are negotiated between the securitizing actor (IO) and the audience (member states), dissecting the process into *diagnostic* (problem identification and assignment of responsibility/or blame), *prognostic* (formulating a solution to the problem), and *motivational* (calling for collective action) aspects.[18] For example, in her paper 'Securitization and the Power of Threat Framing,' Rychnovská applied the concepts of diagnostic, prognostic, and motivational framing to analyze how the United Nations Security Council framed its response to 9/11. She illustrated how terrorism was identified as a global threat (diagnostic), proposed international sanctions as a solution (prognostic), and called for urgent collective action (motivational).[19] The frame resonance component then analyzes how this framing process is embedded within broader social contexts, examining compatibility with established master frames and alignment with prior security frames.[20]
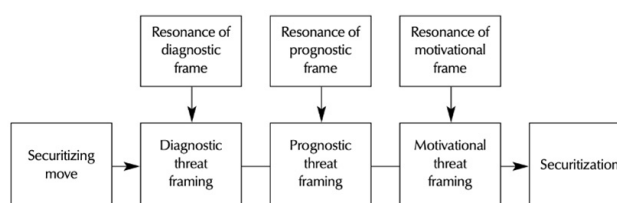
Figure 1 Framework for situated discourse analysis of securitization (Rychnovská 2014: 18)

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15   Rita Floyd, "Extraordinary or Ordinary Emergency Measures: What, and Who, Defines the 'Success' of Securitization?," *Cambridge Review of International Affairs* 29, no. 2 (2016): 679; Sperling and Webber, "The European Union," 244.
16   Sperling and Webber, "The European Union," 245–7.
17   Dagmar Rychnovská, "Securitization and the Power of Threat Framing," *Perspectives* 22, no. 2 (2014): 9–10.
18   Rychnovska based on Benford and Snow 2000: 611–7. Ibid., 16–18.
19   Rychnovská, "Securitization and the Power of Threat Framing," 16–25.
20   Ibid., 17–18.

Methodology

This research employs a combination of framing analysis and collective securitization theory to examine the WHO's response to the COVID-19 pandemic. Framing analysis, as defined by Entman, involves selecting aspects of perceived reality and making them more salient to promote particular problem definitions, causal interpretations, moral evaluations, and treatment recommendations. This method allows for a nuanced approach to analyzing securitization attempts.[21]

The research adopts a qualitative methodology for framing analysis, following Linström and Marais' approach of examining texts holistically to discover themes, key words, and metaphors.[22] To mitigate subjective bias, Alozie's technique is employed, involving multiple readings of the material and in-depth interpretation.[23]

The research combines Sperling and Webber's six-stage model of collective securitization with Rychnovská's Framework for Situated Discourse Analysis of Securitization. This integrated approach allows for a comprehensive examination of the securitization process within the WHO context, because it enables a nuanced analysis of both the collective securitization dynamics and the specific discourse between the WHO DG and the World Health Assembly, focusing on diagnostic, prognostic, and motivational threat framing.[24] The resulting framework consists of five stages: (1) status quo, (2) precipitating event, (3) securitizing move and audience response, (4) policy outputs, and (5) routinization and new status quo.
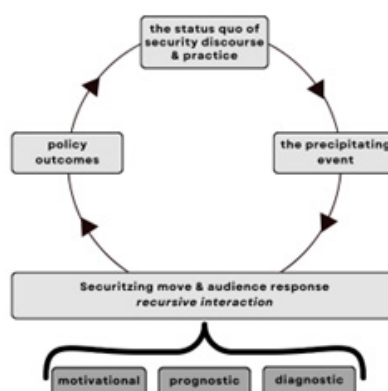
Figure 2 Resulting Framework (own design based on Sperling & Webber and Dagmar Rychnovská)

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21   Robert M. Entman, "Framing: Toward Clarification of a Fractured Paradigm," *Journal of Communication* 43, no. 4 (1993): 51–58; Julia Grauvogel and Thomas Diez, "Framing und Versicherheitlichung: Die diskursive Konstruktion des Klimawandels," *ZeFKo Zeitschrift für Friedens- und Konfliktforschung* 3, no. 2 (2014): 207–234.
22   Margaret Linström and Willemien Marais, "Qualitative News Frame Analysis: A Methodology," *Communitas* 17 (2012): 21–38.
23   Emmanuel Alozie, "Sudan and South Africa - a Framing Analysis of Mail & Guardian Online's Coverage of Darfur," *Ecquid Novi: African Journalism Studies* 26, no. 1 (2005): 63–84.
24   Sperling and Webber, "The European Union," 228–260; Rychnovská, "Securitization and the Power of Threat Framing," 9–32.

The primary empirical material consists of speeches by WHO DG Tedros Adhanom Ghebreyesus at WHA sessions and responses from WHA member states from May 2020 to December 2021. These speeches are analyzed using framing analysis, coding speech sequences according to prognostic, diagnostic, and motivational framing categories. Additional context is provided by secondary sources, including scientific articles, WHA resolutions and legal texts, including the WHO Constitution and International Health Regulations.

This methodology allows for a nuanced analysis of the discourse between the WHO DG and WHA member states, emphasizing the recursive interaction central to collective securitization theory. By applying this framework, the study aims to identify patterns in the complex interplay between the WHO leadership and its member states, revealing how the COVID-19 pandemic was framed to justify potential expansions of WHO authority.

Although this study faces limitations, such as its focus on a specific time frame and the inherent difficulties of analyzing complex political environments – particularly since some aspects of securitization within institutional settings may transpire behind closed doors – it provides valuable theoretical insights. The research enhances our understanding of how IOs like the WHO interpret and frame threats, thereby shaping and influencing the global health security discourse.[25]

Political Analysis

The WHO response to the COVID-19 pandemic represents a critical juncture in global health governance. This analysis explores the extent of collective securitization employed by the WHO and examines how the organization framed the pandemic to potentially justify expanding its authority. Building on the theoretical framework as outlined before, the research focuses on two key questions: Firstly, to what extent has the WHO engaged in collective securitization of COVID-19? And secondly, how has the pandemic been framed to potentially justify expanding the WHO's authority?

The analysis begins with a brief overview of the pre-COVID-19 status quo, followed by an analysis of discourse in three WHAs (WHA 73, WHA 74, and the second WHA Special Session) using Rychnovská's framing approach.

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25   Andrew W. Neal, "Securitization and Risk at the EU Border: The Origins of FRONTEX," *JCMS: Journal of Common Market Studies* 47, no. 2 (2009): 336; Rychnovská, "Securitization and the Power of Threat Framing," 11–12.

The **status quo of the WHO's discourse and policies regarding infectious diseases, as premised up until 31 December 2019**, reflects a significant evolution of global health law and in its approach since the organization's inception in 1948. Initially constrained by limited authority, under what were originally known as the International Sanitary Regulations, the IHR were first adopted in 1948 and renamed in 1969.[26] However, the turning point came after the 2002–2003 SARS outbreak, which highlighted the need for more robust global health governance. This led to a major revision of the IHR in 2005, expanding the WHO's mandate to address emerging infectious diseases more effectively.[27] These revisions not only aimed to prevent, protect against, and control the international spread of disease while minimizing interference with international traffic and trade, but also marked a shift in the organization's role from a primarily health-focused entity to one deeply embedded in global security concerns. The updated IHR granted the WHO Secretariat new powers, including the critical ability to declare Public Health Emergencies of International Concern (PHEIC), significantly enhancing the organization's authority and influence in global health governance.[28] This shift was catalyzed by the broader global context of the time, heavily influenced by the aftermath of the War on Terror and the heightened focus on asymmetric threats, such as bioterrorism.[29] Hanrieder and Kreuder-Sonnen interpret this as a move towards a post-Westphalian order in public health, with the concept of global health security gaining prominence and the WHO actively promoting it.[30] The 2009 swine flu (H1N1) outbreak provided the first opportunity for the WHO to exercise its new competencies by declaring a PHEIC.[31]

The emergence of COVID-19 in late 2019 served as a **significant precipitating event** for the world and the WHO. While the securitization of health threats was not a novel concept for the WHO, the scale and rapidity of the COVID-19 outbreak presented unprecedented challenges to global health governance.

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26   David P. Fidler, "From International Sanitary Conventions to Global Health Security: The New International Health Regulations," *Chinese Journal of International Law* 4, no. 2 (2005): 334–36.

27   Hanrieder and Kreuder-Sonnen, "Souverän durch die Krise: Überforderte Staaten und die (Selbst-) Ermächtigung der WHO," 176–77; Lawrence O. Gostin, Mary C. DeBartolo, and Rebecca Katz, "The Global Health Law Trilogy: Towards a Safer, Healthier, and Fairer World," *The Lancet* 390, no. 10105 (2017): 1920.

28   Adam Kamradt-Scott, "WHO's to Blame? The World Health Organization and the 2014 Ebola Outbreak in West Africa," *Third World Quarterly* 37, no. 3 (2016): 403; World Health Organization, *International Health Regulations* (2005), 3rd ed (Geneva: World Health Organization), 1–9, accessed September 16, 2024, https://iris.who.int/handle/10665/246107.

29   Jiyong Jin and Joe Thomas Karackattu, "Infectious Diseases and Securitization: WHO's Dilemma," *Biosecurity and Bioterrorism: Biodefense Strategy, Practice, and Science* 9, no. 2 (June 2011): 182–85, doi:10.1089/bsp.2010.0045.

30   Hanrieder and Kreuder-Sonnen, "WHO Decides on the Exception?," 2; Hanrieder and Kreuder-Sonnen, "Souverän durch die Krise: Überforderte Staaten und die (Selbst-) Ermächtigung der WHO," 176–77; Fidler, "From International Sanitary Conventions to Global Health Security: The New International Health Regulations," 347–48.

31   Hanrieder and Kreuder-Sonnen, "Souverän durch die Krise: Überforderte Staaten und die (Selbst-) Ermächtigung der WHO," 180.

The initial reports of an atypical pneumonia cluster in Wuhan, China, on 31 December 2019 marked the beginning of a rapidly unfolding global health crisis.[32] By 7 January 2020, Chinese authorities had identified a novel coronavirus as the causative agent, and human-to-human transmission was confirmed shortly thereafter.[33] The WHO's declaration of a PHEIC on 30 January 2020 signaled the gravity of the situation, culminating in the characterization of COVID-19 as a pandemic on 11 March 2020.[34]

The WHO DG Tedros Adhanom Ghebreyesus's statement on 11 March 2020 encapsulated the organization's framing of the crisis: "This is not just a public health crisis, it is a crisis that will touch every sector – so every sector and every individual must be involved in the fight".[35] This rhetoric exemplified the WHO's attempt to elevate the pandemic beyond the realm of public health, invoking a sense of urgency and collective responsibility.

The global response to COVID-19 was marked by extraordinary measures implemented by governments worldwide, including widespread lockdowns, substantial economic interventions, and stringent border controls. These actions, unprecedented in their scale during peacetime, reflected the successful securitization of the pandemic at national levels.[36]

However, the crisis also exposed vulnerabilities in global health governance and sparked political tensions. Notably, the United States' criticism of the WHO's handling of the pandemic, alleging a "China-centric" approach, led to the suspension of U.S. funding and eventual withdrawal from the organization.[37] This development highlighted the complex interplay between global health securitization and geopolitical dynamics.

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32   World Health Organization, "Pneumonia of Unknown Cause – China," January 5, 2020, https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON229.
33   World Health Organization, "Novel Coronavirus – China," January 12, 2020, https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON233.
34   World Health Organization, "WHO Director-General's Opening Remarks at the Media Briefing on COVID-19," 2020, https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020; World Health Organization, "IHR Emergency Committee on Novel Coronavirus," January 30, 2020, https://www.who.int/director-general/speeches/detail/who-director-general-s-statement-on-ihr-emergency-committee-on-novel-coronavirus-(2019-ncov).
35   World Health Organization, "WHO Director-General's Opening Remarks at the Media Briefing on COVID-19," 2020.
36   Stephane J. Baele and Elise Rousseau, "At War or Saving Lives? On the Securitizing Semantic Repertoires of Covid-19," *International Relations* 37, no. 2 (2022), 201–227.
37   Hai Yang, "Contesting Legitimacy of Global Governance Institutions: The Case of the World Health Organization During the Coronavirus Pandemic," *International Studies Review* 23, no. 4 (2021): 1815.

The COVID-19 pandemic thus emerged as a critical juncture in the WHO's already ongoing efforts to securitize infectious diseases. It not only intensified existing securitization processes but also exposed the limitations of current global health governance structures, setting the stage for potential reforms and a reevaluation of the WHO's mandate and authority in managing global health crises.

Prior to the COVID-19 pandemic, the WHO had already been engaging in securitization processes, particularly in response to threats such as SARS and H1N1 (as mentioned before). These earlier efforts were significant in their own right, focusing on enhancing global surveillance and response mechanisms. However, the COVID-19 pandemic acted as a pivotal trigger, prompting a more extensive and urgent wave of securitization measures. Unlike previous instances, the pandemic's global scale and impact necessitated a broader and more intensive approach, leading the WHO not only to escalate its existing measures but also to implement new strategies aimed at addressing the unprecedented nature of the crisis. This shift represents an expansion of the WHO's securitization efforts, with the pandemic serving as a catalyst for a more comprehensive approach to global health security.

As a triggering event, the pandemic not only intensified these efforts but also initiated specific securitization measures in the form of speech acts that pose an existential threat to a reference object (e.g., international security) and to the inherent attributes that support it (e.g., global health security architecture). This section analyzes the recursive interaction between the WHO DG and member states at the WHA using diagnostic, prognostic, and motivational framing analysis.
At WHA 73 in 2020, the WHO DG framed COVID-19 as "the defining health crisis of our time," highlighting its global spread, high infection rates, and severe impact on health systems, economies, and livelihoods.[38] This diagnostic framing portrays COVID-19 as a universal threat requiring global action. Within the DG's prognostic frame, the DG proposed three solutions: an impartial evaluation to improve pandemic preparedness, a comprehensive framework for epidemic and pandemic preparedness, and strengthening the WHO. The motivational frame emphasized the need for investment in strengthening global health security, particularly the IHR.[39]

Political tensions, particularly between the U.S. and China, marked WHA 73. The U.S. criticized the WHO's handling of the pandemic, while other stakeholders like the European Union called

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38   World Health Organization, "WHO Director-General's Opening Remarks at the World Health Assembly - 18 May 2020," May 18, 2020, https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-world-health-assembly.
39   Ibid.

for strengthened multilateralism and support for the WHO.[40] The assembly adopted a "COVID-19 resolution" endorsed by 140 member states, recognizing the WHO's leadership role, calling for a vaccine as a global public good and for WHO's DG to conduct an evaluation of the implementation of the IHR and, in particular, the WHO's response.[41] Additionally various member states called for the WHO reform.[42]

WHA 74 in May 2021 saw momentum growing towards a 'pandemic treaty'. The WHO DG, in his prognostic frame, emphasized the insufficiency of the IHR and the need for a binding commitment for better health governance and cooperation. Key areas identified included better governance, financing, systems for outbreak response, and a strengthened the WHO. The DG's motivational frame called for bold actions and leadership to address future pandemics:[43]

> "We have come to a fork in the road. If we go on the same old way, we will get the same old result: a world that is unprepared, unsafe and unfair. Make no mistake: this will not be the last time the world faces the threat of a pandemic. It is an evolutionary certainty that there will be another virus with the potential to be more transmissible and more deadly than this one. [...] This is the moment for bold ideas, bold commitment and bold leadership; for doing things that have never been done before. [...] In fact, the only choice we have is between cooperation and insecurity."[44]

Member states' responses varied, with France supporting negotiations for a 'pandemic treaty', while Russia preferred sticking to the IHR.[45] Germany and 59 other countries endorsed the idea

40   Andrew Jacobs, Michael D. Shear, and Edward Wong, "U.S.-China Feud Over Coronavirus Erupts at World Health Assembly," *The New York Times,* May 18, 2020; Pedro Villarreal, "Pandemic Intrigue in Geneva: COVID-19 and the 73rd World Health Assembly," May 22, 2020, https://www.ejiltalk.org/pandemic-intrigue-in-geneva-covid-19-and-the-73rd-world-health-assembly/.

41   Villarreal, "Pandemic Intrigue in Geneva: COVID-19 and the 73rd World Health Assembly"; European Union, "WHO - 73rd World Health Assembly - EU Statement: Item 3 - Report by the Director- General," *EEAS Website*, May 18, 2020, https://www.eeas.europa.eu/delegations/un-geneva/who-73rd-world-health-assembly-eu-statement-item-3-report-director-general_en; World Health Assembly, "COVID-19 Response," *Resolution WHA73.1,* Seventy-Third World Health Assembly, May 19, 2020.

42   Elvira Pollina, Andreas Rinke, and Francesco Guarascio, "Exclusive: Germany and France Quit WHO Reform Talks amid Tension with Washington - Sources," *Reuters*, August 7, 2020; Reuters, "China Wants to Take Active Role in WHO Reform Process: Foreign Ministry," *Reuters*, October 22, 2020.

43   World Health Organization, "COVID-19 Shows Why United Action Is Needed for More Robust International Health Architecture," March 30, 2021, https://www.who.int/news-room/commentaries/detail/op-ed---covid-19-shows-why-united-action-is-needed-for-more-robust-international-health-architecture.

44   Ibid.

45   Emmanuel Macron, "Message from French President Emmanuel Macron of the 74th World Health Assembly," *Elysee.Fr*, May 24, 2021, https://www.elysee.fr/en/emmanuel-macron/2021/05/24/message-from-french-president-emmanuel-macron-of-the-74th-world-health-assembly; Kerry Cullinan, "Pandemic Treaty Discussion Deferred With Appeals For High-Level Political Commitment To Fix WHO" *Health Policy Watch*, May 25, 2021.

of a special session to discuss the treaty further.[46] The WHA adopted a resolution to establish a working group to develop a WHO convention on pandemic preparedness and response.[47]

The WHA convened a special session from 29 November to 1 December 2021, marking only the second such session in the history of the WHO. Special sessions of the WHA are rare and are convened only in response to urgent or particularly significant issues requiring immediate and focused attention by Member States. This particular session was initiated through decision WHA74.16, adopted during the 74th WHA, reflecting the heightened urgency in the wake of the COVID-19 pandemic.[48] The primary focus of the session was for Member States to consider "the benefits of developing a WHO convention, agreement, or other international instrument on pandemic preparedness and response," with the goal of establishing an intergovernmental process to draft and negotiate such a framework.[49] The WHO DG started his opening speech with the diagnostic frame describing the ongoing COVID-19 pandemic as "the most acute health crisis in a century," holding the world in its grip. At this point, COVID-19 had "killed more than 5 million people"; "Health systems continue to be overwhelmed"; "Millions of people have lost their jobs, or been plunged into poverty"; "The global economy is still clawing its way out of recession"; and "Political divisions have deepened, nationally and globally".[50] This rhetoric underscores the interconnectedness of global health with broader political and economic stability, as the pandemic was not just a public health crisis but a crisis with far-reaching consequences across multiple sectors, requiring a coordinated and comprehensive global response.

As COVID-19 exposed the fundamental weaknesses of global health security, the WHO DG proposed through his prognostic frame a legally binding agreement between nations, similar to the 2005 WHO Framework Convention on Tobacco Control (FCTC), to strengthen global health security. Presenting the 'pandemic treaty' as a solution, the WHO DG outlined four key areas that

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46   Cullinan, "Pandemic Treaty Discussion Deferred With Appeals For High-Level Political Commitment To Fix WHO"; World Health Assembly, "Special Session of the World Health Assembly to Consider Developing a WHO Convention, Agreement or Other International Instrument on Pandemic Preparedness and Response," *A74/A/CONF./7,* 2021.
47   World Health Assembly, "Resolution WHA74/2021/REC/1," 2021, https://apps.who.int/gb/ebwha/pdf_files/WHA74-REC1/A74_REC1-en.pdf#page=27.
48   Ibid.
49   World Health Organization, "Proposed Method of Work and Terms of Reference - A/WGPR/1/3," *A/WGPR/1/3,* 2021; World Health Assembly, "Resolution WHA74/2021/REC/1," 2021.
50   World Health Organization, "WHO Director-General's Opening Remarks at the Special Session of the World Health Assembly," November 29, 2021, https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-special-session-of-the-world-health-assembly---29-november-2021.

would benefit from enhanced global health security: better governance, financing, systems for outbreak response, and a strengthened the WHO.[51]

In his motivational frame, he compares the pandemic with

> "the aftermath of the Second World War, [where] our forebears rose above themselves to found the United Nations and this World Health Organization. Now is our moment to rise above this pandemic; […] To build on the legacy from which we have all benefited, and to leave a new legacy for the generations who will follow".[52]

Member states' responses were mixed, with varying views on the new legal instrument's role alongside the IHR. Despite criticisms, there was consensus on the IHR's weaknesses and the need for a stronger framework.[53] The session concluded with an agreement to draft and negotiate a convention, agreement, or other international instrument under the Constitution of the WHO to strengthen pandemic prevention, preparedness and response, to be considered by WHA 77 in 2024.[54]

The analysis of the WHO's securitization of infectious diseases, particularly during the COVID-19 pandemic, reveals the extent to which collective securitization has influenced global health governance. Through the application of collective securitization and framing theory, it was determined that the COVID-19 pandemic prompted significant policy actions, including the push for a 'pandemic treaty.' The WHO DG's framing of the pandemic through diagnostic, prognostic, and motivational lenses was widely adopted and led to concrete outcomes, such as the WHA's decision to pursue a legally binding global instrument for pandemic preparedness. This process highlights the successful securitization of the pandemic, as evidenced by the policy changes and international cooperation efforts that emerged from this global health crisis.

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51   Ibid.
52   World Health Organization, "WHO Director-General's Opening Remarks at the Special Session of the World Health Assembly," November 29, 2021, https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-special-session-of-the-world-health-assembly---29-november-2021.
53   Elaine R. Fletcher, "World Health Assembly Appears Set To Move Ahead On Pandemic Treaty Negotiations - With Very Different Views About Outcomes" Health Policy Watch, November 29, 2021, https://healthpolicy-watch.news/world-health-assembly-set-to-move-ahead-on-pandemic-treaty-negotiations-although-with-diverse-visions-of-what-that-means/.
54   World Health Assembly, "World Health Assembly Second Special Session 29 November," 2021c). WHASS2/ /REC 2021.

The Policy Output: 'Pandemic Treaty'

The COVID-19 pandemic was a significant test for the international community, particularly for the WHO and global health security. The Report of the Review Committee on the Functioning of the International Health Regulations found failures in early alert, notification and response, compliance, financing, and political commitment during the COVID-19 response[55]. Renewed calls for a WHO reform highlight the need for a robust global health security framework, underscoring the WHO's and WHA's desire for stronger global health security and the use of normative powers for new binding agreements.[56]

The WHO and WHA have employed securitizing frames (diagnostic, prognostic, motivational) to drive collective securitization, leading to the decision to establish an intergovernmental negotiating body to draft a 'pandemic treaty'. The following part addresses the legal options for adopting such a treaty in the aftermath of the COVID-19 pandemic, focusing on the WHO's legal mechanisms, the proposed 'pandemic treaty', and its interaction with the IHR.

WHO's Legal Options for the Development of Global Health Law
The WHO Constitution empowers the organization to adopt two binding legal instruments: Article 19, "Conventions" and Article 21, "Regulations."

Under Article 19, the WHA can adopt "conventions or agreements" with a two-thirds majority (this can be challenging if powerful states oppose). Member States must implement these conventions according to their constitutional provisions.[57] The treaty is managed by an independent secretariat. The thematic scope is broad, as outlined in Article 2 of the WHO Constitution, but not unlimited.[58]

Article 21 allows the WHO to adopt regulations on various health topics. This provision covers sanitation, quarantine, disease nomenclatures, and standards for pharmaceuticals.[59] As such, its provisions are rather limited compared to Article 19. Regulations adopted under Article 21 do not

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55   World Health Organization, "Proposed Method of Work and Terms of Reference - A/WGPR/1/3," 9; World Health Organization, "Report of the Review Committee on the Functioning of the International Health Regulations (2005) during the COVID-19 Response," 2021, 10.

56   Benjamin M. Meier, "The World Health Organization in Global Health Law," *The Journal of Law, Medicine & Ethics* 48, no. 4 (2020): 796.

57   World Health Organization, "Constitution of the World Health Organization," 1948 Art. 19.

58   Pedro Villarreal, "Beware of Procedural Perils: Towards a Treaty on Pandemic Preparedness and Response," *Völkerrechtsblog*, 2021, doi:10.17176/20210414-172845-0.

59   World Health Organization, "Constitution of the World Health Organization," 1948, Art. 21.

require ratification, and become automatically binding unless a member state opts out within a specified timeframe - making them easier to implement.[60]

Historically, the WHA has adopted only two regulations under Article 21: the International Classification of Diseases and the IHR. The sole convention adopted under Article 19 is the WHO FCTC.[61] While the WHO's treaty-making powers are extraordinary, international health law remains limited, with only three major treaties having been adopted in its history.[62] Despite the preference for non-legally binding instruments, binding norms can increase awareness, debate, and action.[63]

The Proposed 'Pandemic Treaty'

Proposals for a 'pandemic treaty' emerged due to gaps in the IHR, particularly regarding access to necessary equipment, medicines, and vaccines. The WHA decided in November 2021 to draft a new binding treaty under Article 19 of the WHO Constitution.[64] Article 1 of the WHO Constitution aims for the highest possible level of health for all people, granting the WHO broad normative powers to fulfill this mandate.[65]

The intergovernmental negotiating body (INB) was established to draft the treaty, with state meetings, public hearings, and regional consultations planned. The INB follows the model of the FCTC and decided in July 2022 that the treaty should be under Article 19, which offers a broader scope than Article 21.[66] While some member states advocated for the adoption of a legally binding instrument under Article 19, which allows the WHO a broader mandate, others, such as the United States, preferred to adhere to Article 21, and Russia expressed a preference for Article 23[67].[68]

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60   David P. Fidler, "The Future of the World Health Organization: What Role for International Law?," *Vanderbilt Journal of Transnational Law* 31, no. 5 (1998): 1088.

61   Lawrence O. Gostin and Devi Sridhar, "Global Health and the Law," *The New England Journal of Medicine* 370 (2014): 1733.

62   Lawrence .O. Gostin, Devi Sridhar, and D. Hougendobler, "The Normative Authority of the World Health Organization," *Public Health (Forthcoming),* Open-Access Article 129, no. 7 (2015): 3.

63   Egle Granziera and Steven A. Solomon, "The World Health Organization," in *Conceptual and Contextual Perspectives on the Modern Law of Treaties,* ed. Dino Kritsiotis and Michael J. Bowman (Cambridge: Cambridge University Press, 2018), 900–2.

64   World Health Assembly, "World Health Assembly Second Special Session 29 November," 2021, 6.

65   World Health Organization, "Constitution of the World Health Organization," 1948, Art. 2.

66   Nasiya Daminova and Shisong Jiang, "The First Working Draft of the WHO's 'Pandemic Treaty': Attempting to Cover Normative Gaps Indicated by the COVID-19 Pandemic" EJIL: Talk!, October 13, 2022), https://www.ejiltalk.org/the-first-working-draft-of-the-whos-pandemic-treaty-attempting-to-cover-normative-gaps-indicated-by-the-covid-19-pandemic/.

67   Article 23 of the WHO Constitution (1984) provides non-binding recommendations to member states with standards to promote public health.

68   Jenny Lei Ravelo, "Majority of WHO Member States Want Legally Binding Pandemic Instrument," *Devex*, July 21, 2022, https://www.devex.com/news/sponsored/majority-of-who-member-states-want-legally-binding-pandemic-instrument-103669.

Topics proposed for the treaty include access to medical equipment, capacity-building, cooperation in research, a 'one health' approach, data-sharing, and reform of the WHO's emergency mechanisms. Issues beyond health, such as trade, supply chains, and international travel, are also considered.[69]

According to the WHO DG, the treaty would offer three primary advantages: fostering a more equitable global response, protecting national health systems, and improving cooperation among member states during pandemics.[70]

The WHO's Member States initiated the Intergovernmental Negotiating Body (INB) meetings on 24 February 2022, convening nine times until 24 May 2024. The INB has facilitated engagement from diverse stakeholders through various channels. Member States and relevant parties have provided written and oral input during the iterative drafting process. Regional consultations have enabled dialogue, while targeted expert-led discussions have delved into specific contentious issues. Public hearings have allowed interested groups to voice perspectives, and briefings provided continuous updates throughout the process.[71]

The INB was initially tasked with submitting its final outcome to the WHA 77 in May 2024, with the intention to adopt the treaty at the WHA 77.[72] However, the Health Assembly decided to extend the INB's mandate to further work on remaining elements. The final outcome is now expected to be submitted for consideration by WHA 78 in May 2025, and will depend on the domestic politics of member states and their ratification processes.[73]

The latest draft of the treaty (March 2024), aims to enhance global mechanisms for prevention, preparedness, and response to pandemics. Key elements under negotiation encompass definitions, guiding principles, targets for improving readiness, supply chain logistics, communication protocols, and oversight frameworks. Contentious aspects include financing structures, access to and distribution of pathogens, intellectual property rights, technology transfer, and research and

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69   Clare Wenham, Mark Eccleston-Turner, and Maike Voss, "The Futility of the Pandemic Treaty: Caught between Globalism and Statism," *International Affairs* 98, no. 3 (2022): 842–43.
70   World Health Organization, "WHO Director-General's Opening Remarks at the Media Briefing – 21 February 2024," February 21, 2024, https://www.who.int/director-general/speeches/detail/remarks-at-the-media-briefing-21-february-2024.
71   World Health Organization, "Pandemic Prevention, Preparedness and Response Accord," June 10, 2024, https://www.who.int/news-room/questions-and-answers/item/pandemic-prevention--preparedness-and-response-accord.
72   Pedro Villarreal, "WHO-Initiativen: reformierte internationale Gesundheitsvorschriften und ein Pandemievertrag," *Stiftung Wissenschaft und Politik* (SWP) 77 (2022): 6.
73   World Health Organization, "Pandemic Prevention, Preparedness and Response Accord," June 10, 2024, https://www.who.int/news-room/questions-and-answers/item/pandemic-prevention--preparedness-and-response-accord.

development for pandemic products.[74] Additionally, the concept of common but differentiated responsibilities is debated, proposing that wealthier nations should bear more obligations to ensure equity in pandemic responses.[75]

Interaction of the 'Pandemic Treaty' with the IHR

The IHR, adopted under Article 21, will play a fundamental role in any new agreement, as they are the most widely accepted international health instrument. A new treaty must be compatible with Article 57 of the IHR, which ensures consistency with other international agreements. The aim is to harmonize potential conflicting legal instruments and strengthen the WHO's position in global health governance.[76]

U.S. proposals to amend the IHR were partially accepted at the 75th WHA in May 2022. The changes shorten the period for rejection of amendments and the time before amendments come into force, while other proposals require further discussion.[77]

The WHO can adopt binding legal instruments under Article 19 and Article 21 of its Constitution. Article 19 allows a broader thematic scope, while Article 21 is more limited but easier to implement. The INB has opted for Article 19 to ensure comprehensive pandemic governance.

The INB is negotiating a 'pandemic treaty' with a broad scope, aiming for adoption at WHA 78 in May 2025. This treaty must be compatible with the IHR to maintain a cohesive international health legal framework. The ongoing negotiations and member states' domestic ratification processes will determine the treaty's success.

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74   Josh Michaud, Jennifer Kates, and Anna Rouw, "The 'Pandemic Agreement': What It Is, What It Isn't, and What It Could Mean for the U.S.," KFF, April 1, 2024, https://www.kff.org/global-health-policy/issue-brief/the-pandemic-agreement-what-it-is-what-it-isnt-and-what-it-could-mean-for-the-u-s/.

75   Ibid.; Priti Patnaik, "Common but Differentiated Responsibilities: The Equity Principle Guiding Climate Change, and the Reforms for Pandemic Prevention, Preparedness & Response [Guest Essay]," *Geneva Health Files* (Substack newsletter), (August 9, 2023), https://genevahealthfiles.substack.com/p/common-but-differentiated-responsibilities.

76   World Health Organization, *International Health Regulations (2005)* Art. 57; Wenham, Eccleston-Turner, and Voss, "The Futility of the Pandemic Treaty: Caught between Globalism and Statism," 845–46.

77   Villarreal, "WHO-Initiativen: reformierte internationale Gesundheitsvorschriften und ein Pandemievertrag," 5; World Health Assembly, "Strengthening WHO Preparedness for and Response to Health Emergencies - Proposal for Amendments to the International Health Regulations," 2022; World Health Assembly, "Amendments to the International Health Regulations," 2022.

Conclusion

This paper analyzed the extent of collective securitization of the COVID-19 pandemic and future pandemics by the WHO by focusing on the framing by the WHO DG and the WHA as the powerful audience. The paper analyses the extent to which the pandemic served as a reform driver for global health law within the WHO. The analysis revealed that the COVID-19 pandemic was securitized with significant effect by the WHO DG and WHA, utilizing clear patterns of diagnostic, prognostic, and motivational framing. The WHO DG's speeches presented COVID-19 as a significant threat, proposed comprehensive solutions, and issued calls for action directed at member states. This framing led to the proposal of a 'pandemic treaty' aimed at strengthening global health governance. The recursive interaction between the WHO DG and member states indicated a collective securitization process that could result in a new status quo at WHA 77 in 2024.

This research contributes to the academic debate on securitization theory by demonstrating how the WHO functions as a securitizing actor with member states as the audience. It highlights the crucial role of framing in driving significant policy changes, such as the proposed 'pandemic treaty', and underscores the importance of global health security in the context of international law. The research emphasizes that the COVID-19 pandemic revealed the limitations of the WHO's existing competencies and introduced a pressing need to reevaluate and potentially expand its normative authority to better manage global health crises.

The research was limited to the analysis of speeches and interactions at the WHA sessions in 2020 and 2021. This narrow focus may have excluded other relevant data and perspectives. Additionally, the study primarily relied on publicly available speeches and documents, which may not capture all aspects of the securitization process.

Future research could explore the workings of the International Negotiating Body established to draft the 'pandemic treaty' and examine whether securitizing framing continues to influence the treaty's content. Additionally, further studies could investigate the implementation and impact of the proposed treaty post-2024, assessing how it shapes global health governance and preparedness for future pandemics.

In conclusion, the COVID-19 pandemic was successfully securitized by the WHO, with the pandemic framed as a significant global threat necessitating enhanced international cooperation and legal frameworks. As Rita Floyd (2016) emphasized, successful securitization occurs when a securitizing move resonates sufficiently to legitimize a change in political action with reference to the threat. In other words, contrary to the Copenhagen School's focus on extraordinary emergency measures, political change in the context of securitization does not necessarily require a formally declared state of emergency. Instead, it is sufficient when a logic of securitization exists when the actions taken or policy outcomes are justified by the securitizing

actor with reference to a widely recognized and serious threat, as was the case with COVID-19.[78] The basis of the 'pandemic treaty' can be directly linked to the securitization of the pandemic. The magnitude and severity of COVID-19 was used by both the WHO as securitizing actor and the member states as a powerful audience in the securitizing moves to improve and expand normative competencies of the WHO in pandemics. Therefore, it can be concluded that the COVID-19 pandemic contributed to further securitization by the WHO and has thus been a reform driver for global health law within the WHO, highlighting the organization's pivotal role in global health security.

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78   Floyd, "Extraordinary or Ordinary Emergency Measures: What, and Who, Defines the 'Success' of Securitization?," 679.

Bibliographie

Alozie, Emmanuel. "Sudan and South Africa - a Framing Analysis of Mail & Guardian Online's Coverage of Darfur." *Ecquid Novi: African Journalism Studies* 26, no. 1 (2005): 63–85.

Baele, Stephane J., and Elise Rousseau. "At War or Saving Lives? On the Securitizing Semantic Repertoires of Covid-19," *International Relations* 37, no. 2 (2023): 201-227. https://doi.org/10.1177/00471178221122957.

Balzacq, Thierry, Sarah Léonard, and Jan Ruzicka. "Securitization" Revisited: Theory and Cases. *International Relations* 30, no. 4 (2016): 494–531. https://doi.org/10.1177/0047117815596590.

Buzan, Barry, Ole Wæver, and Jaap de Wilde. *Security: A New Framework for Analysis.* Boulder, CO: Lynne Rienner Publishers, 1998.

Cullinan, Kerry. "Pandemic Treaty Discussion Deferred With Appeals For High-Level Political Commitment To Fix WHO." *Health Policy Watch*, May 25, 2021.

Daminova, Nasiya, and Shisong Jiang. "The First Working Draft of the WHO's 'Pandemic Treaty': Attempting to Cover Normative Gaps Indicated by the COVID-19 Pandemic" *EJIL: Talk!,* October 13, 2022. https://www.ejiltalk.org/the-first-working-draft-of-the-whos-pandemic-treaty-attempting-to-cover-normative-gaps-indicated-by-the-covid-19-pandemic/.

Davies, Sara E. "Securitizing Infectious Disease." *International Affairs* 84, no. 2 (2008): 295–313. doi:10.1111/j.1468-2346.2008.00704.x.

Elbe, Stefan. "Should HIV/AIDS Be Securitized? The Ethical Dilemmas of Linking HIV/AIDS and Security." *International Studies Quarterly* 50, no. 1 (2006): 119–44.

Entman, Robert M. "Framing: Toward Clarification of a Fractured Paradigm." *Journal of Communication* 43, no. 4 (1993): 51–58.

European Union. "WHO - 73rd World Health Assembly - EU Statement: Item 3 - Report by the Director- General." *EEAS Website*, May 18, 2020. https://www.eeas.europa.eu/delegations/un-geneva/who-73rd-world-health-assembly-eu-statement-item-3-report-director-general_en.

Fidler, David P. "From International Sanitary Conventions to Global Health Security: The New International Health Regulations." *Chinese Journal of International Law* 4, no. 2 (2005): 325–92.

——. "The Future of the World Health Organization: What Role for International Law?" *Vanderbilt Journal of Transnational Law* 31, no. 5 (1998): 1079.

Fletcher, Elaine R. "World Health Assembly Appears Set To Move Ahead On Pandemic Treaty Negotiations - With Very Different Views About Outcomes" *Health Policy Watch*, November 29, 2021. https://healthpolicy-watch.news/world-health-assembly-set-to-move-ahead-on-pandemic-treaty-negotiations-although-with-diverse-visions-of-what-that-means/.

Floyd, Rita. "Extraordinary or Ordinary Emergency Measures: What, and Who, Defines the 'Success' of Securitization?" *Cambridge Review of International Affairs* 29, no. 2 (2016): 677–94.

Gostin, Lawrence O., Mary C. DeBartolo, and Rebecca Katz. "The Global Health Law Trilogy: Towards a Safer, Healthier, and Fairer World." *The Lancet* 390, no. 10105 (2017): 1918–26.

Gostin, Lawrence O., and Devi Sridhar. "Global Health and the Law." *The New England Journal of Medicine* 370 (2014): 1732–40.

Gostin, Lawrence .O., Devi Sridhar, and D. Hougendobler. "The Normative Authority of the World Health Organization." *Public Health (Forthcoming)*, Open-Access Article 129, no. 7 (2015): 1–10.

Granziera, Egle, and Steven A. Solomon. "The World Health Organization." In *Conceptual and Contextual Perspectives on the Modern Law of Treaties,* edited by Dino Kritsiotis and Michael .J. Bowman, 881–906. Cambridge: Cambridge University Press, 2018.

Grauvogel, Julia, and Thomas Diez. "Framing und Versicherheitlichung: Die diskursive Konstruktion des Klimawandels." *ZeFKo Zeitschrift für Friedens- und Konfliktforschung* 3, no. 2 (2014): 203–32.

Hanrieder, Tine, and Christian Kreuder-Sonnen. "Souverän durch die Krise: Überforderte Staaten und die (Selbst-) Ermächtigung der WHO" In *Verunsicherte Gesellschaft - überforderter Staat*, ed. Christopher Daase, Stefan Engert, and Julian Junk, 169–86. Frankfurt: Campus Verlag, 2013.

———. "WHO Decides on the Exception? Securitization and Emergency Governance in Global Health." *Security Dialogue* 45, no. 4 (2014): 331–48.

Jacobs, Andrew, Michael D. Shear, and Edward Wong. "U.S.-China Feud Over Coronavirus Erupts at World Health Assembly." *The New York Times*, May 18, 2020.

Jin, Jiyong, and Joe Thomas Karackattu. "Infectious Diseases and Securitization: WHO's Dilemma." *Biosecurity and Bioterrorism: Biodefense Strategy, Practice, and Science* 9, no. 2 (June 2011): 181–87. doi:10.1089/bsp.2010.0045.

Kamradt-Scott, Adam. "WHO's to Blame? The World Health Organization and the 2014 Ebola Outbreak in West Africa." *Third World Quarterly* 37, no. 3 (2016): 401–18.

Kelle, Alexander. "Securitization of International Public Health: Implications for Global Health Governance and the Biological Weapons Prohibition Regime." *Global Governance* 13, no. 2 (2007): 217–35.

Linström, Margaret, and Willemien Marais. "Qualitative News Frame Analysis: A Methodology." *Communitas* 17 (2012): 21–38.

Macron, Emmanuel. "Message from French President Emmanuel Macron of the 74th World Health Assembly." *Elysee.Fr,* May 24, 2021. https://www.elysee.fr/en/emmanuel-macron/2021/05/24/message-from-french-president-emmanuel-macron-of-the-74th-world-health-assembly.

Meier, Benjamin M. "The World Health Organization in Global Health Law." *The Journal of Law, Medicine & Ethics* 48, no. 4 (2020): 796–99.

Michaud, Josh, Jennifer Kates, and Anna Rouw. "The 'Pandemic Agreement': What It Is, What It Isn't, and What It Could Mean for the U.S." *KFF*, April 1, 2024. https://www.kff.org/global-health-policy/issue-brief/the-pandemic-agreement-what-it-is-what-it-isnt-and-what-it-could-mean-for-the-u-s/.

Neal, Andrew W. "Securitization and Risk at the EU Border: The Origins of FRONTEX." *JCMS: Journal of Common Market Studies* 47, no. 2 (2009): 333–56.

Patnaik, Priti. "Common but Differentiated Responsibilities: The Equity Principle Guiding Climate Change, and the Reforms for Pandemic Prevention, Preparedness & Response [Guest Essay]." *Geneva Health Files* (Substack newsletter), August 9, 2023. https://genevahealthfiles.substack.com/p/common-but-differentiated-responsibilities.

Pollina, Elvira, Andreas Rinke, and Francesco Guarascio. "Exclusive: Germany and France Quit WHO Reform Talks amid Tension with Washington - Sources." *Reuters*, August 7, 2020.

Ravelo, Jenny Lei. "Majority of WHO Member States Want Legally Binding Pandemic Instrument." *Devex*, July 21, 2022. https://www.devex.com/news/sponsored/majority-of-who-member-states-want-legally-binding-pandemic-instrument-103669.

Reuters. "China Wants to Take Active Role in WHO Reform Process: Foreign Ministry." *Reuters*, October 22, 2020. https://www.reuters.com/article/world/china-wants-to-take-active-role-in-who-reform-process-foreign-ministry-idUSKBN277114/

Rushton, Simon. "Global Health Security: Security for Whom? Security from What?" *Political Studies* 59, no. 4 (2011): 779–96.

Rychnovská, Dagmar. "Securitization and the Power of Threat Framing." *Perspectives* 22, no. 2 (2014): 9–31.

Sperling, James, and Mark Webber. "The European Union: Security Governance and Collective Securitisation." *West European Politics* 42, no. 2 (2018): 228–60. doi:10.1080/01402382.2018.1510193.

Ulybina, Olga, Laia P. Ferrer, and Pertti Alasuutari. "Intergovernmental Organizations in the Face of the Covid-19 Pandemic: Organizational Behaviour in Crises and under Uncertainty." *International Sociology* 37, no. 4 (2022): 415–38.

Villarreal, Pedro. "Beware of Procedural Perils: Towards a Treaty on Pandemic Preparedness and Response." *Völkerrechtsblog*, 2021. doi:10.17176/20210414-172845-0.

——. "Pandemic Intrigue in Geneva: COVID-19 and the 73rd World Health Assembly," May 22, 2020. https://www.ejiltalk.org/pandemic-intrigue-in-geneva-covid-19-and-the-73rd-world-health-assembly/.

——. "WHO-Initiativen: reformierte internationale Gesundheitsvorschriften und ein Pandemievertrag." *Stiftung Wissenschaft und Politik* SWP)(77 (2022): 8.

Wenham, Clare, Mark Eccleston-Turner, and Maike Voss. "The Futility of the Pandemic Treaty: Caught between Globalism and Statism." *International Affairs* 98, no. 3 (2022): 837–52.

World Health Assembly. "Amendments to the International Health Regulations," 2022.

——. "Resolution WHA74/2021/REC/1," 2021. https://apps.who.int/gb/ebwha/pdf_files/WHA74-REC1/A74_REC1-en.pdf#page=27.

——. "Special Session of the World Health Assembly to Consider Developing a WHO Convention, Agreement or Other International Instrument on Pandemic Preparedness and Response." *A74/A/CONF./7,* 2021.

——. "Strengthening WHO Preparedness for and Response to Health Emergencies - Proposal for Amendments to the International Health Regulations," 2022.

——. "COVID-19 Response." *Resolution WHA73.1,* Seventy-Third World Health Assembly, May 19, 2020.

——. "World Health Assembly Second Special Session 29 November," 2021c). WHASS2/ /REC 2021.

World Health Organization. "Constitution of the World Health Organization," 1948.

——. "COVID-19 Shows Why United Action Is Needed for More Robust International Health Architecture," March 30, 2021. https://www.who.int/news-room/commentaries/detail/op-ed--covid-19-shows-why-united-action-is-needed-for-more-robust-international-health-architecture.

——. "IHR Emergency Committee on Novel Coronavirus," January 30, 2020. https://www.who.int/director-general/speeches/detail/who-director-general-s-statement-on-ihr-emergency-committee-on-novel-coronavirus-(2019-ncov).

——. *International Health Regulations* (2005). 3rd ed. Geneva: World Health Organization. Accessed September 16, 2024. https://iris.who.int/handle/10665/246107.

——. "Novel Coronavirus – China," January 12, 2020. https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON233.

——. "Pandemic Prevention, Preparedness and Response Accord," June 10, 2024. https://www.who.int/news-room/questions-and-answers/item/pandemic-prevention--preparedness-and-response-accord.

——. "Pneumonia of Unknown Cause – China," January 5, 2020. https://www.who.int/emergencies/disease-outbreak-news/item/2020-DON229.

——. "Proposed Method of Work and Terms of Reference - A/WGPR/1/3." *A/WGPR/1/3,* 2021.

——. "Report of the Review Committee on the Functioning of the International Health Regulations (2005) during the COVID-19 Response," 2021.

——. "WHO Director-General's Opening Remarks at the Media Briefing – 21 February 2024," February 21, 2024. https://www.who.int/director-general/speeches/detail/remarks-at-the-media-briefing-21-february-2024.

———. "WHO Director-General's Opening Remarks at the Media Briefing on COVID-19," 2020. https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

———. "WHO Director-General's Opening Remarks at the Special Session of the World Health Assembly," November 29, 2021. https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-special-session-of-the-world-health-assembly---29-november-2021.

———. "WHO Director-General's Opening Remarks at the World Health Assembly - 18 May 2020," May 18, 2020. https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-world-health-assembly.

Yang, Hai. "Contesting Legitimacy of Global Governance Institutions: The Case of the World Health Organization During the Coronavirus Pandemic." *International Studies Review* 23, no. 4 (2021): 1813–34.

Youde, Jeremy. "Who's Afraid of a Chicken? Securitization and Avian Flu." *Democracy and Security* 4, no. 2 (2008): 148–69.

Michael Honegger

A Differentiated View on the Interplay Between Democratic and Territorial Peace Theory

Abstract: Democratic peace theory has strongly influenced peace research and Western foreign policy but is strongly contested by territorial peace theory. The current literature underestimates the role of civil society when assessing the effects of political systems on conflict behavior. The work presented here claims that the democratic peace holds when the civic component of democracy is taken into account, even when controlling for border settlement. Furthermore, it is argued that the relationship between horizontal checks and balances within the political system and peace is confounded. The hypotheses are tested, applying a quantitative approach assessing data on militarized interstate disputes (MID) from 1816 to 2001. The different models estimated suggest that a well-established democratic civil society has an appeasing impact on the relations between democracies which is not confounded. However, the results do not support the claim that the relationship between horizontal checks and peace is spurious.

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Introduction

"Ultimately, the best strategy to ensure our security and to build a durable peace is to support the advance of democracy elsewhere. Democracies don't attack each other."[1] This quote from Bill Clinton's 1994 State of the Union Address exemplifies the role the promotion of democracy took in Western foreign policy over the last decades. The belief that democracies are more peaceful – at least vis-a-vis other democracies – has shaped the West's foreign policy agenda and has been one of the main explanations for interventions in foreign countries.[2] This policy was strongly influenced by the academic discussion on so-called democratic peace theory.

However, democratic peace theory is far from uncontested. Scholars have suggested that the relationship between democracy and peace is spurious and driven by an omitted variable.[3] Possibly, the most convincing of these arguments is Giblers's territorial peace theory. According to this, both peace and democracy are promoted by settled borders.[4]

The thesis presented here argues that neither perspective goes far enough and adds a differentiated view on the interplay between democratic and territorial peace theory. The current literature suggests that controlling for border settlement indeed annuls the relationship between state institutions and conflict behavior. The work presented here proposes that the democratic peace is not confounded by territorial threats when the civil society component of democracy is considered.

The hypotheses are tested by applying a quantitative approach using data on militarized interstate disputes (MID) from 1816 to 2001. Various logistic regression models are estimated including different specifications. The results suggest that the democratic peace holds when the effects of civil society are considered. The impact is especially pronounced in the models using the normal weak link specification. The models applying a second specification introduced by Hegre, Bernhard and Teorell[5] have more ambiguous results. The effect of democracy does not vanish but becomes partially insignificant once the model controls for settled borders. Furthermore, the

1   William Clinton, "1994 State of the Union Address" (Washington DC, January 25, 1994), https://www.washingtonpost.com/wp-srv/politics/special/states/docs/sou94.htm.
2   Babak Bahador, Jeremy Moses, and William Lafi Youmans, "Rhetoric and Recollection: Recounting the George W. Bush Administration's Case for War in Iraq," *Presidential Studies Quarterly* 48, no. 1 (2017): 4–26, https://doi.org/10.1111/psq.12412.
3   Michael Mousseau, "The Social Market Roots of Democratic Peace," *International Security* 33, no. 4 (April 2009): 52–86, https://doi.org/10.1162/isec.2009.33.4.52.
4   Douglas M. Gibler, "Bordering on Peace: Democracy, Territorial Issues, and Conflict," *International Studies Quarterly* 51, no. 3 (2007): 509–32, https://doi.org/10.1111/j.1468-2478.2007.00462.x.
5   Håvard Hegre, Michael Bernhard, and Jan Teorell, "Civil Society and the Democratic Peace," *Journal of Conflict Resolution* 64, no. 1 (January 2020): 32–62, https://doi.org/10.1177/0022002719850620.

dyadic nature of the democratic peace is clearly underpinned. Only the combination of two democratic states is less conflict-prone than other dyads. The effects of the horizontal checks between the political powers become irrelevant as soon as the social accountability variable is included in the model. Hence, the main hypothesis that the democratic peace holds when a country has a well-established civil society is supported. Nevertheless, the estimates also confirm that border settlement is an important factor for peace.

The following provides a theoretical overview of democratic peace theory and its critiques. On this basis, the hypotheses are developed. The dataset and the models applied are described in part four. Finally, the results and the conclusion are presented in the subsequent sections.

Democratic Peace Theory and Its Critiques

Democracies rarely, if ever, go to war with each other. Since the introduction of the Westphalian state system, two democracies have never fought a major war against each other. The exceptions mentioned by scholars can be counted on the fingers of one hand and may all be contested.[6] This empirical connection of a state's domestic political institutions and its war-proneness is known as the democratic peace and has become one of the most highly regarded results of the study of international relations. The correlation has been confirmed in countless articles and proved to be very robust in a wide range of models controlling for various other influences on interstate conflict.[7] In his groundbreaking article Stuart Bremer showed that domestic political institutions not only have a statistically significant effect on peace, but are also among the most relevant factors.[8] The further empiric assessment of the conflict behavior of democracies has revealed the scope of the correlation. While democracies virtually never go to war with each other, they act no more peacefully towards non-democratic states. It seems that democratic institutions cannot exert their pacifying effect in mixed dyads.[9]

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6   Bruce M. Russett and John R. Oneal, *Triangulating Peace: Democracy, Interdependence, and International Organizations,* The Norton Series in World Politics (New York: W.W. Norton, 2001).

7   Russett and Oneal; Stuart A. Bremer, "Dangerous Dyads: Conditions Affecting the Likelihood of Interstate War, 1816-1965," *Journal of Conflict Resolution* 36, no. 2 (June 1992): 309–41, https://doi.org/10.1177/0022002792036002005; Zeev Maoz and Bruce Russett, "Normative and Structural Causes of Democratic Peace, 1946-1986," *The American Political Science Review* 87, no. 3 (1993): 624–38, https://doi.org/10.2307/2938740.

8   Bremer, "Dangerous Dyads."

9   Maoz and Russett, "Normative and Structural Causes of Democratic Peace, 1946-1986"; Russett and Oneal, *Triangulating Peace.*

Nevertheless, the strong performance of the democratic peace in general helped generate a broad body of theoretical literature claiming that the democratic peace is not merely a correlation – a statistic artefact – but a causal relationship. Most of the various explanations for the democratic peace focus on the norms developed within democracies or the structures of democratic institutions.

The normative explanation assumes that the norms established within a polity are externalized and shape a state's actions in the international realm, too. In democracies, politicians compete for power without resorting to violence and policies are the results of compromises. According to this explanation, democratic governments apply the same principles in the international sphere and seek to resolve conflicts peacefully. In non-democracies, on the other hand, political decision-making is often shaped by coercion and violence. When an autocracy triggers a conflict with a democratic state the latter is forced to answer to the threat. If necessary, the government needs to abandon its democratic norms and resort to military violence to ensure the state's bare survival. When a jointly democratic dyad faces a dispute, a violent settlement mechanism is excluded in advance, the democratic norms remain in place and the conflict will not escalate. Thus, this reasoning explains not only why democracies do not fight each other but also why conflicts between democracies and autocracies are not particularly rare.[10]

The structural argument already described by Kant assumes that the citizens, as the democratic sovereign, would never decide in favor of war since they have to bear the costs of war themselves.[11] In representative systems, present in most modern democracies, citizens do not directly vote upon going to war or not but choose leaders who decide. When the elected officials take unpopular decisions, they may not get reelected for the next term: democratic leaders face high audience costs. In autocracies leaders must worry far less about such audience costs.[12]

However, the difference in audience costs alone cannot explain the democratic peace. Democracies are not less war-prone when their adversaries are non-democratic states. Maoz and Russett add a decisive piece to the structural argument that accounts for this.[13] They state that every political leader needs the support of the group that legitimizes him for going to war. This group is much

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10   Maoz and Russett, "Normative and Structural Causes of Democratic Peace, 1946-1986."
11   Wolfgang Kersting, "5 *Die Bürgerliche Verfassung in Jedem Staate Soll Republikanisch Sein*" In *Immanuel Kant: Zum ewigen Fireden,* ed. O. Höffe (Berlin, Boston: De Gruyter, 2024), https://doi.org/10.1515/9783110782462-007.
12   Bruce Bueno de Mesquita and David Lalman, *War and Reason: Domestic and International Imperatives* (New Haven: Yale University Press, 1992), 154.
13   Maoz and Russett, "Normative and Structural Causes of Democratic Peace, 1946-1986."

larger in democratic societies. There are very few goals that enough people consider legitimate reasons for war. Even if such reasonable goals are present, it takes considerable time for an elected leader to gather the necessary support. When two democracies face each other, both leaders must find backing. This, in turn, creates a time slot for diplomats to settle the conflict without military force. Autocrats need less time to rally their legitimizing groups behind them and need to pay little attention to public opinion. Hence, they are prepared to wage war more quickly. When autocrats threaten democratic societies, as described above, elected leaders manage to receive support faster. Thus, in mixed dyads, war-proneness of the relevant groups is more easily achieved than in jointly democratic dyads.

Maoz and Russett empirically assess the normative and the structural model.[14] Their findings provide support for both explanations. The effect of democratic institutions, however, proves to be less robust than the impact of norms. The theories, however, are not mutually exclusive but very interactive. Thus, they certainly both influence one another.

Hegre, Bernhard and Teorell aim for a deeper understanding of the mechanism behind the democratic peace.[15] The authors focus on the accountability of leaders and thereby apply a more complex concept of democracy. They assess three independent mechanisms of democratic accountability: electoral, horizontal, and social accountability. The existing literature emphasizes the electoral mechanism. The structural argument reviewed above is essentially based on the possibility that unpopular leaders are removed from office through elections. The second mechanism is guaranteed by the horizontal separation of powers and the institutionalized checks and balances between them. The control of the executive power by the parliament and the courts is key to establishing horizontal accountability. Although present in the literature, this argument is less prominent.

The differentiated view on democracy – in particular, the introduction of social accountability into the model – is the main contribution of the authors' work. Social accountability is established through the engagement of civil society. A powerful civil society can effectively influence leaders between elections. Hegre, Bernhard, and Teorell describe the non-electoral means available to civil society organizations (CSO) to control the government: First, they can organize protests. These have the ability to set the political agenda and draw attention to unpopular decisions. Turmoil alone can force leaders to give in. In a democracy, however, civil society

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14   Maoz and Russett.
15   Hegre, Bernhard, and Teorell, "Civil Society and the Democratic Peace."

actions also support electoral accountability, as ignoring or even suppressing protests seriously endangers reelection. Secondly, CSOs can also monitor institutions and create transparency and awareness for discrepancies. Lastly, civil society can also directly pressure the ruling elite, be it via petitions, litigation, or engagement with the institutions. All these means restrict leaders by placing audience costs on the government between elections.

The authors assess the impact of the three forms of accountability on the conflict behavior of states. Tested individually, all three mechanisms perform well and support the democratic peace argument. As the authors put all three forms of accountability together in one model and analyze their relative effects, they find that the influence of electoral checks is not significant anymore. The effects of horizontal and social accountability, on the other hand, are still different from zero. Hence, the democratic peace appears to be mainly influenced by horizontal checks within the political system and the engagement of civil society. Accordingly, the existing literature seems to overemphasize the importance of elections, while substantially undervaluing the impact of civil society.[16]

Democratic peace theory has been the subject of numerous criticisms. Scholars have argued that this relationship is not based on a causality, but is driven by an omitted variable that influences both democracy and conflict behavior. The most important criticism to democratic peace theory is presented by Douglas Gibler.[17] In various articles he develops the territorial peace argument and provides notable empiric support for his idea. The theory suggests that the stability of a country's borders is the omitted variable that creates the seemingly spurious relationship between democracy and peace. Hence, border stability influences both conflicts and domestic political institutions, according to Gibler.

If the borders of a state are not stable, its territory is potentially in danger. The relationship between territory and conflict is straightforward. Territorial threats are extraordinarily salient and threaten peace. They escalate into war more often than other conflicts, have higher fatality rates, and are responsible for more than 50 percent of all wars in some datasets.[18] The link between

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16   Monty G. Marshall, "Polity5: Users' Political Regime Characteristics and Transitions, 1800-2018" (Center for Systemic Peace, 2020), www.systemicpeace.org.

17   Gibler, "Bordering on Peace"; Douglas M. Gibler, "Outside-In: The Effects of External Threat on State Centralization," *Journal of Conflict Resolution* 54, no. 4 (August 2010): 519–42, https://doi.org/10.1177/0022002710370135; Douglas M. Gibler and Marc L. Hutchison, "Territorial Issues, Audience Costs, and the Democratic Peace: The Importance of Issue Salience," The Journal of Politics *75, no. 4 (October 2013): 879–93, https://doi.org/10.1017/S0022381613000923.*

18   See eg. Senese, 1996 and Hensel, 1996, as cited in (Gibler, "Outside-In")

border stability and democracy is less obvious. Gibler's argument is mainly based on the "rally around the leader" effect. According to this, a territorial threat to a country provokes a rise in patriotism and an uncritical approval of the government among the electorate. Leaders can take advantage of this and limit the democratic control of their power. This process leads to an autocratization of the political system. Intuitively, the "rally around the leader" argument seems very plausible. The empiric results of the theory, however, are mixed at best.[19] Many scholars have shown that rally effects are less important than expected. They seem to be small and non-durable under most conditions.[20]

Gibler addresses the empiric inconsistency of the rally effect by proposing a different rally mechanism.[21] He claims that in both democracies and autocracies, it is not the public that unites behind their leader, but the political elites. The author furthermore provides empiric support for the rally among elites. Using a rather crude measurement for party polarization, he shows that party systems are more centralized when a territorial conflict threatens the country. Consequently, it can be argued that the opposition provides the government with more discretionary room. The latter can then take advantage of this, generating a de-democratizing effect.

Territorial peace theory receives impressive support from many empiric studies. Early studies employing rather simple operationalizations and models as well as more sophisticated works confirm the effect of stable borders. Moreover, the effect of democratic institutions is no longer significant in most of these estimations.[22]

A Differentiated View on Democratic and Territorial Peace Theory

The locus of the rally effect as described in territorial peace theory and the conventional operationalizations of democracy open up new research prospects. Hegre, Bernhard and Teorell introduced the V-Dem dataset to the body of peace research literature, providing an understanding of

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19   William D. Baker and John R. Oneal, "Patriotism or Opinion Leadership?: The Nature and Origins of the 'Rally 'Round the Flag' Effect," *Journal of Conflict Resolution* 45, no. 5 (October 2001): 661–87, https://doi.org/10.1177/0022002701 045005006.

20   Baker and Oneal.

21   Gibler, "Outside-In," 523 ff.

22   Gibler, "Bordering on Peace"; Andrew P. Owsiak, "Foundations for Integrating the Democratic and Territorial Peace Arguments," Conflict Management and Peace Science 36, no. 1 (January 2019): 63–87, https://doi.org/10.1177/0738894216650635.

how different forms of democratic accountability promote peace. As described above, horizontal checks and an active civil society are the most significant factors for the democratic peace. Electoral accountability, on the other hand, is less important but has been the main focus of democratic peace scholars.[23]

The literature on rallies has shown that citizens do not blindly follow their leaders in war. However, the elite does rally behind the government. Horizontal checks on leaders thus become less restrictive and centralization of power and de-democratization are more likely. Hence, within the political elite, border disputes have exactly the negative effect on democracy that territorial peace theory suggests. According to Hegre, Bernhard and Teorell's findings, a crucial mechanism of the democratic peace is thereby lost. This is shown by the dashed line that horizontal accountability has in Figure 1.

Nevertheless, the rally literature provides no evidence that social accountability becomes significantly smaller when a country is at war. Accordingly, the constraints a leader faces due to an active civil society remain and a democratic backsliding is at least partially prevented. This is indicated by the solid line in Figure 1. The second key mechanism of the democratic peace is still in place regardless of the border situation. The latter effect might be overlooked in the democratic and territorial peace literature, as the commonly used democracy indices do not provide a differentiated picture of a state's democratic institutions.[24] This leads to the following research questions and the corresponding hypotheses: Does democratic peace theory hold in models controlling for territorial peace variables when the democracy measurement includes social accountability? And is the relationship between horizontal checks and balances and peace indeed spurious?

Hypothesis 1. *Dyads with jointly higher social accountability are less conflict-prone than dyads with jointly lower social accountability even when the degree of border settlement is considered in the model.*

Hypothesis 2. *The effect of horizontal accountability is confounded by border settlement.*

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23   Hegre, Bernhard, and Teorell, "Civil Society and the Democratic Peace."
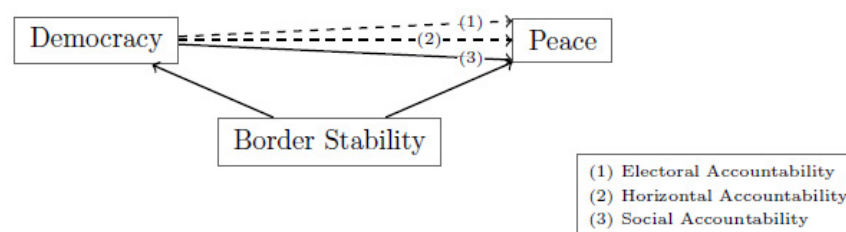24   Hegre, Bernhard, and Teorell.

Figure 1: The three ways of democratic accountability and the territorial peace argument

Data and Model

The presented work aims for a better understanding of interstate war. Hence, the data used only considers conflicts between countries and no intrastate wars. Since Bremer introduced the approach, the dyad-year has established itself as the standard unit-of-analysis in the peace research field. According to this approach, each entry in the dataset comprises a pair of states – a dyad – in a given year.[25] A corresponding non-directed dyad-year dataset based on the data of the Correlates of War (COW) project has been established. The set encompasses 200 years – from 1816 to 2016 –, 243 countries that existed during this time period, and 20,622 different dyads. The number of active dyads per year grows almost constantly, with its increase being especially big during the period of decolonization and after the collapse of the Soviet Union. Altogether, the complete set consists of 956,171 entries.

Dependent Variable: The Onset of MIDs

The dependent variable in the estimated models is the onset of militarized interstate disputes (MID). According to the COW's definition a MID is composed of militarized interstate incidences (MII). An incident happens when at least one state threatens, displays or uses force against one or more target states. [26] Even if the ultimate goal of the literature is to explain interstate wars, wars are rarely used as dependent variables. As wars are very rare events, focusing on MIDs – situations short of war that have the potential to escalate – helps to get enough variance on the

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25   Nathaniel Beck, Jonathan N. Katz, and Richard Tucker, "Taking Time Seriously: Time-Series-Cross-Section Analysis with a Binary Dependent Variable," *American Journal of Political Science* 42, no. 4 (1998): 1260–88, https://doi.org/10.2307/2991857.

26   Palmer et al., 2015, as cited in (Zeev Maoz et al., "The Dyadic Militarized Interstate Disputes (MIDs) Dataset Version 3.0: Logic, Characteristics, and Comparisons to Alternative Datasets," *Journal of Conflict Resolution* 63, no. 3 (March 2019): 811–35, https://doi.org/10.1177/0022002718784158)

dependent variable.[27] This work uses Maoz' dyadic conflict dataset that is based on the MID documentation of the COW.[28]

Only the onset of MIDs are assessed. In practice this means that for longer lasting conflicts, only the first year of the dispute will be considered. The subsequent years are set to missing and hence dropped from the inquiry. This is one of the standard solutions for dealing with the independence problem inherent in the data structure.[29] In the considered period of time from 1816 to 2014, 3,290 disputes were initiated.

Main Explanatory Variables

The testing of the hypotheses presented above requires a very fine-grained measurement of democracy as provided by the Varieties of Democracy (V-Dem) dataset. Furthermore, the set covers the full time span of the COW project. Hence, it has some crucial advantages compared to the standard measures of democracy used in the peace research literature such as the Polity dataset. Accordingly, the V-Dem dataset was included in the data.[30]

The work presented here closely follows Hegre, Berhard and Teorell's use of the data. In particular, the indices for social and horizontal accountability, used as democracy indicators in the following analyses, are coded as in their article. Considering their results, no variable measuring the electoral accountability is included in the models.

The horizontal accountability index measures the checks between the different powers of the state. A higher horizontal accountability is equal to more constraints on the government and a more democratic system. The variable is the average of two indices provided by V-Dem: the judicial and the legislative constraints on the executive indices. The judicial constraints data is based on measures of the independence of different courts and the compliance with court rulings and the constitution. The legislative checks index, on the other hand, consists of information on the legislative's performance in questioning, overseeing and investigating the government as well as on the role of opposing parties. The measured values for the horizontal accountability index range from 0.021 to 0.988 and have a mean of 0.52.

27   Daniel M. Jones, Stuart A. Bremer, and J. David Singer, "Militarized Interstate Disputes, 1816–1992: Rationale, Coding Rules, and Empirical Patterns," *Conflict Management and Peace Science* 15, no. 2 (September 1996): 163–213, https://doi.org/10.1177/073889429601500203.
28   Maoz et al., "The Dyadic Militarized Interstate Disputes (MIDs) Dataset Version 3.0."
29   Beck, Katz, and Tucker, "Taking Time Seriously."
30   Michael Coppedge et al., "V-Dem Methodology V12," 2022.

Social accountability is operationalized by the unaltered civil society participation index from V-Dem. This index indicates the activity of any kind of civil society organisations (CSO). In the dataset its values range from 0.014 to 0.99 with a mean of 0.52. The indices for social and horizontal accountability measure two different layers of one political system – democracy. With a Pearson correlation coefficient of 0.8, the indices are quite strongly correlated. Thus, there is some multicollinearity that needs to be considered in the interpretation of the results.

Controls

Border stability is the essential control variable for the forthcoming analyses. As described above, the territorial peace argument is based on the claim that controlling for border stability eliminates the allegedly spurious relationship between democracy and peace. The operationalization of border stability is provided by the International Border Agreements Dataset (IBAD) by Andrew P Owsiak, Allison K Cuttner, and Brent Buck[31]. The compilation includes dyadic data on border settlements from 1816 to 2001. Hence, data from the last two decades are missing, which significantly limits the temporal scope of the analyses presented.

The authors correctly note that border settlement is an imperfect operationalization of border stability respectively territorial threat. There are cases in which borders are de facto unstable or contested even if they are de jure settled. However, a de jure border agreement removes the latent territorial threat that an unsettled border poses.

The presence of a major power within the dyad, military alliance treaties and power parity are used as further controls.[32] This selection was made because minor and major powers behave differently in the international sphere.[33] Through the inclusion of military alliances operationalized by the presence of a defense pact, the model controls for the common interests of democracies respectively autocracies.[34] Furthermore, the realist literature suggests that states provoke con-

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31   "The International Border Agreements Dataset," *Conflict Management and Peace Science* 35, no. 5 (2018): 559–76, https://doi.org/10.1177/0738894216646978.
32   The COW defines the following as major powers: United States (1898-2016), United Kingdom (1816-2016), France (1816-1940, 1945-2016), Germany (1816-1918, 1925-1945, 1991-2016), Austria-Hungary (1816-1918), Italy (1860-1943), Russia (1816-1917, 1922-2016), China (1950-2016) and Japan (1895-1945, 1991-2016). The data on military alliances is provided by the COW Project. Power parity is measured as the ratio between the two state's Composite Indicator of National Capability (CINC) figures. The Master's Thesis presented here further offers robustness checks including the Gross Domestic Product (GDP), the trade volume between the countries and peace years within the dyad to address the dependence problem.
33   Susan G. Sample, "The Outcomes of Military Buildups: Minor States Vs. Major Powers," *Journal of Peace Research* 39, no. 6 (2002): 669–91, https://doi.org/10.1177/0022343302039006002.
34   Brett Ashley Leeds, "Alliances and the Expansion and Escalation of Militarized Interstate Disputes," in *New Directions for International Relations: Confronting the Method-of-Analysis Problem*, ed. Alex Mintz and Bruce Russett (Lanham: Lexington Books, 2005).

flicts when they have the opportunity to alter the status quo in their interest. This is the case when potential adversaries are equally powerful.[35]

Base Sample

Given the described scopes of the different datasets used, the base sample covers the period from 1816 to 2001. As territorial peace theory only applies to neighboring countries, only directly contiguous dyads are considered. This significantly diminishes the number of observations. Observation with missing values are dropped. The base sample encompasses 16,662 observations. Amongst these, 1,120 MIDs were initiated.

Models

In the following, a series of logistic regression models are calculated. This specification accounts for the binary nature of the dependent variable and is widely used in the literature [36] It is important to acknowledge that the assumption that all observations used are independent and identically distributed (i.i.d.) is violated in the data. It is very unlikely that the behavior of a dyad in one year is completely independent from past events within the same dyad. In such a situation, normal standard errors are no longer valid. Hence, clustered standard errors with the dyads, defined as "clusters", are used here. However, this does not solve the problem that observations from different clusters are most likely not i.i.d. A war-prone state will affect all its dyads, and major events might influence all countries in a region. One solution to this problem would be the inclusion of fixed effects. Given the very low variance of the dependent variable, this would leave the model with too little information for a decent estimation of effects. Hence, fixed effects have not become established in the peace research literature. Following the majority of the scholars, the following models use clustered standard errors, but no fixed effects.

The first two models in Table 1 each include one of the components of democracy – horizontal or social accountability. These models employ the widely used weak link specification of the explanatory variable.[37] In accordance with democratic peace theory, this method assumes that the less democratic state is less restricted when it comes to conflict. Hence, it is the weakest link and relevant for the conflict behavior of the dyad. Accordingly, the effect of the democracy score of

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35   William Reed, "A Unified Statistical Model of Conflict Onset and Escalation," *American Journal of Political Science* 44, no. 1 (2000): 84–93, https://doi.org/10.2307/2669294.

36   See e.g. (Owsiak, "Foundations for Integrating the Democratic and Territorial Peace Arguments"; Maoz and Russett, "Normative and Structural Causes of Democratic Peace, 1946-1986")

37   William J. Dixon, "Democracy and the Management of International Conflict," *Journal of Conflict Resolution* 37, no. 1 (March 1993): 42–68, https://doi.org/10.1177/0022002793037001002.

the less democratic state is thereby estimated. In the third model both democracy variables are included. Finally, in the last model the settled border variable is added.

Following Hegre, Bernhard and Teorell, a different weak link procedure is used in Table 2. According to the authors, the least constrained country is the militarily stronger state. Furthermore, they not only estimate the effect of the democracy score of the stronger country, but also the effect of the weaker state's democracy and the impact of the interaction of the two. The models following this approach are reported in Table 2.

Results

The results of the weak link models are displayed in Table 1. For the sake of simplicity, the average marginal effects of the explanatory variables are reported instead of the estimated betas.[38]

As assumed, the effects of both democracy variables are negative and highly significant when tested individually in the first two models. Beyond that, both effects have a notable size, which makes their impact relevant for reality. These results are in line with classical democratic peace theory.

In model three, when both democracy components are included, the effect of social accountability stays negative and significant. Even its size barely changes. The appeasing impact of horizontal checks, on the other hand, is less stable than expected: The effect is now slightly positive, very close to zero and no longer significant at the usual levels. The considerable degree of multicollinearity may account for the sizes of the effects.

When the border stability control is added in the last model, the effect of a well-established civil society is still significant and remains negative. The impact of horizontal checks and balances remains irrelevant. The results do clearly support the claim that the civil component of democracy has a non-spurious effect on interstate dispute. Its effect is not only negative and significant as

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38   There is a debate in the literature on whether to report marginal effects for an average case or average marginal effects. In the former case, the marginal effects are estimated for a virtual observation with average values for all explanatory variables. The latter approach first calculates the marginal effects of all explanatory variables for all observations and then takes the average of these effects. Taking an average case seems an intuitive and simpler way to illustrate the results of a logit model. However, there is no guarantee that this is a typical or representative case. The average marginal effects, on the other hand, are based on the estimated effects found in the sample. Hence, they are a better representation of the real effects. (Michael J. Hanmer and Kerem Ozan Kalkan, "Behind the Curve: Clarifying the Best Approach to Calculating Predicted Probabilities and Marginal Effects from Limited Dependent Variable Models," *American Journal of Political Science* 57, no. 1 (2013): 263–77, https://doi.org/10.1111/j.1540-5907.2012.00602.x)

expected, but also relevant for reality. A change in the social accountability score by two standard deviations (roughly equal to 0.6), reduces the probability of a MID onset by 5 percentage points on average. Such an improvement of democracy is not improbable and was, for example, achieved in Tunisia between 2009 and 2012. The predicted reduction of the risk for a dispute seems not huge. However, given the already small probability for a conflict onset across the whole base sample of 6.7 percent, this effect is highly relevant. On the other hand, the obtained results do not support the argument that checks and balances between the state powers restrict leaders in waging war. The relationship seen in the first model is not robust and depends on the exclusion of social accountability and border stability.

Average Marginal Effects of Horizontal and Social Accountability and MID Onset (Weak Link Specification)

Dependant Variable: MID Onset	(1)	(2)	(3)	(4)
Horizontal Accountability (Weak link)	-0.076***		0.007	-0.005
	(0.022)		(0.040)	(0.038)
Social Accountability (Weak link)		-0.107***	-0.113***	-0.084**
		(0.021)	(0.038)	(0.036)
Defense Pact	-0.032***	-0.026^**	-0.025^**	-0.016
	(0.011)	(0.011)	(0.011)	(0.011)
Capacity Ratio	0.049**	0.049**	0.049**	0.045***
	(0.020)	(0.020)	(0.020)	(0.017)
Major Power	-0.005	-0.006	-0.006	-0.006
	(0.015)	(0.015)	(0.015)	(0.012)
Settled Borders				-0.054***
				(0.011)
Observations	16,662	16,662	16,662	16,662

Note: Average marginal effects of logistic regression models, with standard errors clustered on dyad in parentheses. Including 305 dyads. *** p0.01, ** p0.05, * p 0.1

The estimates in model four also show the importance of border stability and territorial threat, respectively. The effect is negative, highly significant and large. When a dyad settles its entire common border, the probability of a MID onset decreases by 5.4 percentage points on average. According to the model, this is the most effective individual measure a dyad can take to secure peace. Hence, it is indisputable that border settlement has an independent appeasing impact on a dyad. However, it does not confound the effect of a state's political institutions when a differentiated perspective on democracy is applied. The other controls' results are mostly in line with the theory.

As explained above, Table 2 reports the models following Hegre, Bernhard and Teorell's approach which takes into account both states' democracy scores and their interaction. Again, the average marginal effects are reported.[39] Considered separately, as in the first two models, both countries' horizontal and social accountability values have a negative impact on the onset of disputes. The effects are, however, small and not significant. When tested together in model 3, the effects remain rather small and insignificant. Adding to this, the horizontal accountability of the state with greater military strength now influences the probability of conflict positively. This does not change when the border settlement control is added in model four. The effects tend to become even smaller and a further estimate turns positive. The settlement of borders, in turn, still has a significant negative impact. Its size – settled borders make the probability of a MID onset 5.8 percentage points smaller – is clearly relevant, too.

These results obviously pose a challenge to democratic peace theory. Even when the model does not control for the stability of borders, the impact of democracy is not significant and less relevant than in the previous results. This outcome might be driven by two factors: Firstly, the correlation between the two democracy parameters reported for each country is very high. This causes the effect to be split between the two variables. Nevertheless, the first two models show that the impacts are also small when only the effects of one layer of democracy are estimated. Hence, the results cannot solely be caused by multicollinearity. The second reason is a bit more technical: The models in Table 2 include an interaction term. All individual effects are positive. The interaction effects, on the other hand, are all negative. This means that an increase of one state's democracy score leads to a higher probability of conflict in the dyad when the second state's democracy figure is low. If the second state has a well-established democratic system, the democratization of the first country has an appeasing effect. Hence, the net impact of greater accountability can be negative or positive. When averaging, some of the effects cancel each other out and bring the average close to zero.

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39   Conceptually, it is not possible to change the values of the interaction term without altering the values of the individual effects, too. Hence, Stata does not allow the calculation of the marginal effect of the interaction only. One could calculate the interaction term manually and report its average marginal effect. Nevertheless, this does not change the logical implications.

Average Marginal Effects of Horizontal and Social Accountability and MID Onset (Hegre, Bernhard and Teorell Specification)

Dependent Variable: MID Onset	(1)	(2)	(3)	(4)
Horizontal Accountability (Stronger)	-0.007		0.017	0.008
	(0.018)		(0.028)	(0.028)
Horizontal Accountability (Weaker)	-0.025		-0.004	-0.015
	(0.020)		(0.030)	(0.027)
Social Accountability (Stronger)		-0.011	-0.024	-0.007
		(0.019)	(0.029)	(0.028)
Social Accountability (Weaker)		-0.025	-0.022	0.003
		(0.019)	(0.026)	(0.024)
Defense Pact	-0.028***	-0.022**	-0.022**	-0.012
	(0.010)	(0.010)	(0.011)	(0.010)
Capacity Ratio	0.049**	0.049**	0.049**	0.046***
	(0.020)	(0.020)	(0.020)	(0.017)
Major Power	-0.001	-0.004	-0.002	-0.001
	(0.016)	(0.015)	(0.016)	(0.012)
Settled Borders				-0.058***
				(0.012)
Observations	16,662	16,662	16,662	16,662

Note: Average marginal effects of logistic regression models, with standard errors clustered on dyad in parentheses. The model encompasses 305 dyads and includes interactions between both countries' social respectively horizontal accountability variables. These are not visible in the table, as the results are reported as average marginal effects. *** $p0.01$, ** $p0.05$, * $p\ 0.1$

The variation of the democracy variables' effects is shown in Figure 2. These graphs display point estimates for the probability of a MID onset for different levels of accountability in virtual dyads. The calculated likelihoods are based on model 3 without the border settlement control, and model 4 including border settlement. Panels a and b show the estimates with respect to the horizontal accountability in the states of the dyad. In both panels, the first prediction shows the probability for a MID onset if both countries have only few horizontal checks, corresponding to a horizontal accountability score of 0.1. The next two point estimates show the risk for the outbreak of a conflict when the accountability score is high (at 0.9) in one country while it is still low in the other state. Finally, the last prediction shows the situation when both countries have well-established horizontal checks and balances, corresponding to a score of 0.9. All other variables are either at their means or at their mode.

Panels a and b show a comparable picture: Starting with two countries with a low horizontal accountability figure, a unilateral democratization leads to an increased risk for conflict. The increase is especially pronounced when the stronger state's horizontal accountability score rises. When both countries experience democratization, the risk drops and is approximately back on the level of a jointly autocratic dyad. However, the 95 percent confidence intervals are large for all point estimates and thus the difference between the predicted probabilities is not statistically significant. Furthermore, the differences between the estimates are small and thus less relevant than in the weak link models. The biggest difference between the estimates is approx. 4 percentage points. As mentioned above, the pattern is very similar in both panels. As the appeasing effect of stable borders is not considered in graph a, the conflict probabilities tend to be higher. Beyond that, the differences between the panels are not relevant. This indicates that border settlement and territorial threat is not a decisive influence for the effect of horizontal checks on peace.
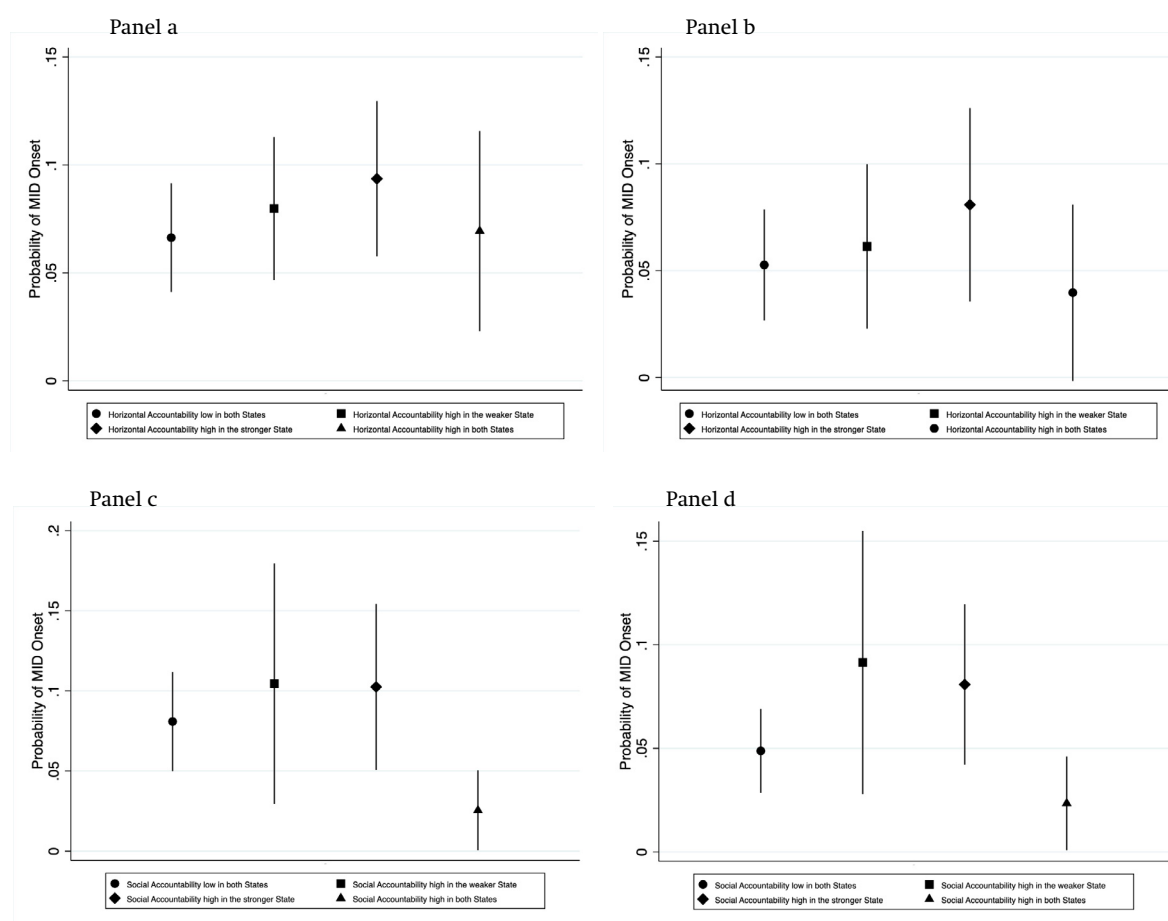

Figure 2: Predicted probabilities in relation to different levels of accountability (low: 0.1, high: 0.9) with 95 percent confidence intervals. The point estimates are based on Table 2, models 3 and 4, and are made for a dyad of non-major countries without a defense pact, settled borders, and average values for their capacity ratio and the respective other accountability score.

Panels c and d show similar estimates for low, unilaterally high and jointly high scores of the social accountability variables. Again, the first graph is based on model 3 that is estimated without the border settlement control. Panel d displays the results of the model, controlling for border settlement. Both reveal a comparable pattern to panels a and b: low social accountability in both countries leads to a rather low probability of dispute. A democratization of civil society in one country induces a higher risk of conflict. Active civilians in both countries, on the other hand, cause a sharp drop in the likelihood of a MID onset. Compared to panels a and b, the confidence intervals are small, especially for the jointly democratic or autocratic dyads. Furthermore, the differences between the estimates are notably bigger.

Even if the overall pattern does not change dramatically, regardless of whether the border settlement control is included or not, there are some differences between graphs c and d in Figure 2. Firstly, the overall risk of conflict is higher in panel c. This is driven by the pacifying effect of settled borders that comes into play in graph d. Furthermore, the risk of a conflict breaking out between two autocratic states is considerably higher in panel c. The border settlement control thus has a large influence on jointly autocratic dyads. As the likelihood changes less for the entirely democratic dyad, the effect of social accountability becomes somewhat smaller when the model controls for border settlement. In panel c, the difference between the first and the fourth estimate is statistically significant and relevant. The risk is lower by around 70 percent in the latter case. In panel d too, there is a notable difference between the jointly autocratic and the jointly democratic dyad. According to the test performed, this difference is not significant by a narrow margin. However, it is still of relevant size: The democratic dyad is less than half as likely to start a MID. The change from the mixed dyads to the democratic states is still significant and relevant in panel d.

Hence, an increase of the accountability figure in one country – no matter if horizontal or social – has different effects depending on the state of democracy in the other. This insight is obscured if only the average marginal effects are considered. When the different effects – sometimes negative, sometimes positive – are displayed, the presented results support democratic peace theory. However, Figure 2 clearly illustrates that democracy does not have a monadic appeasing effect. Democracies are not more peaceful when their potential opponent is autocratic. This is the case in both models – including and excluding border stability. Territorial peace theory also receives some support, as the effect of democracy is not significant when the border settlement control is included. Nevertheless, even when the model controls for border settlement, a jointly democratic dyad is still much more peaceful than an entirely autocratic one. This difference is not

significant by a narrow margin: The results strongly indicate that disputes often evolve between states with different systems.

The estimates also suggest that civil society has a major influence on the conflict behavior of a state. The effects of social accountability become smaller when the model controls for border stability. Nevertheless, they remain relevant and lead to significantly smaller risks of conflict across some dyads. Horizontal accountability, on the other hand, has a smaller effect and much bigger confidence intervals. Hence, it must be considered less important for the democratic peace. However, it seems that the effect is not influenced by the border settlement control, as there is little difference between the results in models 3 and 4.

The two models presented in Tables 1 and 2 as well as Figure 2 both support the main theoretical claim made in this work. Dyads comprising states with higher social accountability are less conflict-prone than states with lower values. This effect is not conditional on the stability of the dyad's border settlement, but it does reduce in size. The average marginal effects reported for the models including interaction terms suggest a zero effect at first glance. However, the discussion of the results has revealed that there are arguments for dyadic democratic peace theory. The relationship between democracy and peace is driven by social accountability. Given that civil society is often overlooked as a relevant building block of a well functioning democracy, its effects have not come into play in previous juxtapositions of democratic and territorial peace theory. This has led scholars to the exaggerated argument that border stability confounds the entire relationship between democracy and peace. As the effect of active civilians becomes smaller, the territorial peace also receives some support.

The claim of the second hypothesis is not fully supported by the data. Horizontal checks have an unambiguous negative effect on MID onset when they are assessed individually. In both specifications, their effect becomes disputable as soon as the social accountability variable is also included: The effect is not only mostly positive but also insignificant. The inclusion of the border stability control thereby plays a minor role. Hence, this provides only limited support for the claim that horizontal checks become less restrictive once a state faces a territorial threat.

Conclusion

This work provides the peace research literature with novel insights into the role of different layers of democracy. The results suggest that the relationship of social accountability and peace is not spurious. As civil society engagement is an indispensable component of democracy, this supports democratic peace theory. The impact is especially pronounced in the models using the traditional weak link specification. The effect of social accountability becomes smaller when the estimation includes the border settlement control, but the impact remains significant and relevant. The models applying Hegre, Bernhard and Teorell's specification have more ambiguous results. Jointly democratic dyads are less conflict-prone than any other country combination. The risk of a MID onset is 50% lower than in an entirely autocratic dyad, even if the model controls for settled borders. However, this difference between jointly democratic and jointly autocratic dyads is not significant. Furthermore, it has been shown that horizontal accountability plays a minor role in the democratic peace mechanism.

For future peace research, the presented results clearly indicate that the effect of civil society activity on the conflict behavior of states must not be ignored and deserves further study. A qualitative, longitudinal assessment of individual dyads that became more or less conflict-prone due to changes in the activity of their civil society would yield major insights into the mechanisms at work.

The foreign policy engagement of the global North should focus on the further development of civil society. Promoting civic engagement is difficult, but has the potential for major improvements. In addition, the stability of borders should also be promoted.

References

Bahador, Babak, Jeremy Moses, and William Lafi Youmans. "Rhetoric and Recollection: Recounting the George W. Bush Administration's Case for War in Iraq." *Presidential Studies Quarterly* 48, no. 1 (2017): 4–26. https://doi.org/10.1111/psq.12412.

Baker, William D., and John R. Oneal. "Patriotism or Opinion Leadership?: The Nature and Origins of the 'Rally 'Round the Flag' Effect." *Journal of Conflict Resolution* 45, no. 5 (October 2001): 661–87. https://doi.org/10.1177/0022002701045005006.

Beck, Nathaniel, Jonathan N. Katz, and Richard Tucker. "Taking Time Seriously: Time-Series-Cross-Section Analysis with a Binary Dependent Variable." *American Journal of Political Science* 42, no. 4 (1998): 1260–88. https://doi.org/10.2307/2991857.

Bremer, Stuart A. "Dangerous Dyads: Conditions Affecting the Likelihood of Interstate War, 1816-1965." *Journal of Conflict Resolution* 36, no. 2 (June 1992): 309–41. https://doi.org/10.1177/0022002792036002005.

Bueno de Mesquita, Bruce, and David Lalman. *War and Reason: Domestic and International Imperatives.* New Haven: Yale University Press, 1992.

Clinton, William. "1994 State of the Union Address." Washington DC, January 25, 1994. https://www.washingtonpost.com/wp-srv/politics/special/states/docs/sou94.htm.

Coppedge, Michael, John Gerring, Carl Henrik Knutsen, Staffan I. Lindberg, Jan Teorell, Kyle L. Marquardt, Juraj Medzihorsky, et al. "V-Dem Methodology V12" Varieties of Democracy (V-Dem) Project, 2022.

Dixon, William J. "Democracy and the Management of International Conflict." *Journal of Conflict Resolution* 37, no. 1 (March 1993): 42–68. https://doi.org/10.1177/0022002793037001002.

Gibler, Douglas M. "Bordering on Peace: Democracy, Territorial Issues, and Conflict." *International Studies Quarterly* 51, no. 3 (2007): 509–32. https://doi.org/10.1111/j.1468-2478.2007.00462.x.

———. "Outside-In: The Effects of External Threat on State Centralization." *Journal of Conflict Resolution* 54, no. 4 (August 2010): 519–42. https://doi.org/10.1177/0022002710370135.

Gibler, Douglas M., and Marc L. Hutchison. "Territorial Issues, Audience Costs, and the Democratic Peace: The Importance of Issue Salience." *The Journal of Politics* 75, no. 4 (October 2013): 879–93. https://doi.org/10.1017/S0022381613000923.

Hanmer, Michael J., and Kerem Ozan Kalkan. "Behind the Curve: Clarifying the Best Approach to Calculating Predicted Probabilities and Marginal Effects from Limited Dependent Variable Models." *American Journal of Political Science* 57, no. 1 (2013): 263–77. https://doi.org/10.1111/j.1540-5907.2012.00602.x.

Hegre, Håvard, Michael Bernhard, and Jan Teorell. "Civil Society and the Democratic Peace." *Journal of Conflict Resolution* 64, no. 1 (January 2020): 32–62. https://doi.org/10.1177/0022002719850620.

Jones, Daniel M., Stuart A. Bremer, and J. David Singer. "Militarized Interstate Disputes, 1816–1992: Rationale, Coding Rules, and Empirical Patterns." *Conflict Management and Peace Science* 15, no. 2 (September 1996): 163–213. https://doi.org/10.1177/073889429601500203.

Kersting, Wolfgang. "5 *Die Bürgerliche Verfassung in Jedem Staate Soll Republikanisch Sein*" In *Immanuel Kant: Zum ewigen Frieden* edited by Otfried Höffe, 63–78. Berlin, Boston: De Gruyter, 2024. https://doi.org/10.1515/9783110782462-007.

Leeds, Brett Ashley. "Alliances and the Expansion and Escalation of Militarized Interstate Disputes." In *New Directions for International Relations: Confronting the Method-of-Analysis Problem*, edited by Alex Mintz and Bruce Russett. Lanham: Lexington Books, 2005.

Maoz, Zeev, Paul L. Johnson, Jasper Kaplan, Fiona Ogunkoya, and Aaron P. Shreve. "The Dyadic Militarized Interstate Disputes (MIDs) Dataset Version 3.0: Logic, Characteristics, and Comparisons to Alternative Datasets." *Journal of Conflict Resolution* 63, no. 3 (March 2019): 811–35. https://doi.org/10.1177/0022002718784158.

Maoz, Zeev, and Bruce Russett. "Normative and Structural Causes of Democratic Peace, 1946-1986." *The American Political Science Review* 87, no. 3 (1993): 624–38. https://doi.org/10.2307/2938740.

Marshall, Monty G. "Polity5: Users' Political Regime Characteristics and Transitions, 1800-2018." Center for Systemic Peace, 2020. www.systemicpeace.org.

Mousseau, Michael. "The Social Market Roots of Democratic Peace." *International Security* 33, no. 4 (April 2009): 52–86. https://doi.org/10.1162/isec.2009.33.4.52.

Owsiak, Andrew P. "Foundations for Integrating the Democratic and Territorial Peace Arguments." *Conflict Management and Peace Science* 36, no. 1 (January 2019): 63–87. https://doi.org/10.1177/0738894216650635.

Owsiak, Andrew P, Allison K Cuttner, and Brent Buck. "The International Border Agreements Dataset." *Conflict Management and Peace Science* 35, no. 5 (2018): 559–76. https://doi.org/10.1177/0738894216646978.

Reed, William. "A Unified Statistical Model of Conflict Onset and Escalation." *American Journal of Political Science* 44, no. 1 (2000): 84–93. https://doi.org/10.2307/2669294.

Russett, Bruce M., and John R. Oneal. *Triangulating Peace: Democracy, Interdependence, and International Organizations.* The Norton Series in World Politics. New York: W.W. Norton, 2001.

Sample, Susan G. "The Outcomes of Military Buildups: Minor States Vs. Major Powers." *Journal of Peace Research* 39, no. 6 (2002): 669–91. https://doi.org/10.1177/0022343302039006002.

Angela Zollinger

Challenging Peace
The Impact of Brexit and the *Northern Ireland Troubles (Legacy and Reconciliation) Bill* on Northern Ireland's Transitional Justice Process

Abstract: Scholarship on how the United Kingdom's decision to leave the European Union destabilized Northern Ireland's fragile post-Troubles peace focuses predominantly on the border issue and Protocol negotiations. However, this article explores the possibility that Brexit and its contributing factors – Euroscepticism, English nationalism, sovereignty concerns and empire nostalgia – also impacted Northern Ireland's transitional justice processes by playing a role in the introduction of the widely criticized Northern Ireland Troubles (Legacy and Reconciliation) Bill in May 2022, which was passed into law in September 2023. That Bill foresaw the elimination of centralized judicial transitional justice mechanisms and concentrated power in the hands of the Secretary of State for Northern Ireland. Results from an analysis of UK parliamentary debates combined with evidence from two stakeholder interviews indicate that the Legacy Bill's timing, its contents, and the way in which its introduction was handled by the sponsoring Northern Ireland Office in the UK Government were likely impacted by Brexit and the influence of the hard-Brexit Conservative party faction characterized by its Euroscepticism, English nationalism, and commitment to British sovereignty.

Keywords: Brexit, Northern Ireland, reconciliation, transitional justice, Troubles.

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Introduction

The Northern Ireland conflict (1968–1998, also known as 'the Troubles') was caused by a dispute over the legitimacy of British rule in Northern Ireland (NI).[1] Since the end of the widespread violence, transitional justice (TJ) initiatives aimed at promoting post-conflict reconciliation in the deeply divided Northern Irish society have been plentiful. But peace remains fragile. And the United Kingdom's (UK) vote in 2016 to leave the European Union (EU), colloquially referred to as 'Brexit', poses new challenges due to its destabilizing effect on this fragile peace. "Brexit hit Northern Ireland like a meteor from space. No one really saw it coming – or really understood its implications", said Cochrane.[2] Today, a wide array of academic work discusses how the EU has shaped Northern Ireland's peace process and what the UK's exit means for regional peace.[3] The majority of these contributions focus on the reinvigoration of the Irish border issue and the Northern Ireland Protocol (hereafter 'Protocol') negotiations.[4] However, this predominant focus seems somewhat narrow and limited. This article explores the possibility that Brexit and its contributing factors – namely the increase of English nationalism, empire nostalgia, Euroscepticism and sovereignty concerns among the British political elite – are also having an impact on Northern Ireland's TJ mechanisms, and consequentially on reconciliation efforts. In May 2022, the UK Government introduced the Northern Ireland Troubles (Legacy and Reconciliation) Bill ('the Legacy Bill') into parliament.[5] It sparked a remarkable wave of criticism from a large variety of national and international stakeholders, raising questions about what the true motivations behind the policy shift it represents are. This article illustrates that the Legacy Bill's timing, its contents, and the way in which its introduction was handled by the sponsoring Government department, the Northern Ireland Office, were likely impacted by Brexit.

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1   Douglas Woodwell, "The 'Troubles' of Northern Ireland: Civil Conflict in an Economically Well-Developed State," *Understanding Civil War: Evidence and Analysis,* ed. Paul Collier and Nicholas Sambanis (The World Bank: 2005): 167–171.

2   Feargal Cochrane, *Breaking Peace. Brexit and Northern Ireland* (Manchester: Manchester University Press, 2020), 2.

3   See for example Katy Hayward and Mary Murphy, "The EU's Influence on the Peace Process and Agreement in Northern Ireland in Light of Brexit," *Ethnopolitics* 17, no. 3 (2018); 276–291; Kieran McEvoy, Anna Bryson and Amanda Kramer, "The Empire strikes back: Brexit, the Irish Peace Process, and the limitations of law" *Fordham International Law Journal* 43, no. 3 (2020): 609–668.

4   See for example John Garry et al. "The future of Northern Ireland: Border anxieties and support for Irish reunification under varieties of UKexit," *Regional Studies* 55, no. 9 (2021): 1517–1527; Christopher McCrudden, "Introduction," *The Law and Practice of the Ireland-Northern Ireland Protocol,* ed. Christopher McCrudden (Cambridge: Cambridge University Press, 2022), 1–18; Nikos Skoutaris, "Brexit and transitional justice: Brexit as a challenge to peacebuilding," *On Brexit. Law, Justices and Injustices*, ed. Tawhida Ahmed and Elaine Fahey (Cheltenham: Edward Elgar Publishing Limited, 2019): 205–221.

5   "Government" with an upper case is used specifically for the executive, whilst "government" with lower case may be used where this is not specified (e.g. citing other authors).

Methodology

Politics and law are inextricably linked. Legal mechanisms reflect "political decisions at a certain time and in a certain environment, which have assumed a legal form and nature", and they also have a reverse impact on politics.[6] In the analysis underlying this article, an interdisciplinary approach was therefore adopted.[7] Using a descriptive legal approach, the contents of the Legacy Bill and the changes it envisions to the approach to TJ and reconciliation in Northern Ireland are illustrated. This allows for a discussion of why the Legacy Bill is widely criticized and expected to hinder reconciliation in NI. The results of an Applied Thematic Analysis (a form of inductive qualitative content analysis) of parliamentary debate transcripts on the Legacy Bill from both the House of Commons and the House of Lords are then presented.[8] They reveal multiple indicators that the UK Government's move to introduce the Legacy Bill was influenced by Brexit. To enrich the findings of the debate analysis, two semi-structured stakeholder interviews were conducted, which corroborated the results of the debate analysis.[9]

Transitional Justice and Reconciliation

Transitional justice is a lens through which the ways that legacies of violent conflicts are dealt with can be regarded. De Greiff defines TJ as a "set of measures implemented in various countries to deal with the legacies of massive human rights abuses", such as truth-telling, reparations, memorialization, criminal prosecutions and institutional reforms. His holistic understanding of TJ can be used to analyze both judicial and non-judicial measures as well as top-down or bottom-up initiatives. TJ measures, according to de Greiff, have as one of two final goals the promotion of reconciliation.[10] Aiken's use of knowledge from the discipline of social psychology to investigate how TJ measures are linked to reconciliation were used to complement De Greiff's conceptualization. Aiken defines reconciliation as "transforming the relations between rival sides from hostility and resentment to friendly and harmonious relations".[11] He names three types of strategies necessary for the "social learning" required for post-conflict reconciliation in divided

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6   Miro Cerar, "The Relationship Between Law and Politics," *Annual Survey of International and Comparative Law* 15, no. 1 (2009): 21.

7   This article is based on an analysis completed for the author's Master's thesis, written at the Institute for European Global Studies (University of Basel) and submitted on July 3rd 2023.

8   Following Udo Kuckartz, "Qualitative Text Analysis: A Systematic Approach," *Compendium for Early Career Researchers in Mathematics Education,* ed. Gabriele Kaiser and Nora Presmeg (Cham: Springer, 2019); Greg Guest, Kathleen MacQueen and Emily Namey, *Applied Thematic Analysis* (Thousand Oaks: Sage, 2012): 181–197.

9   William Adams, "Conducting Semi-Structured Interviews," *Handbook of Practical Program Evaluation*, 4th ed., ed. Kathryn Newcomer, Harry Hatry and Joseph Wholey (Hoboken, New Jersey: John Wiley & Sons Inc, 2015), 492–505, 498.

10   Pablo De Greiff, "Theorizing Transitional Justice," *Transitional Justice*, ed. Melissa Williams, Rosemary Nagy and Jon Elster (New York and London: New York University Press, 2012), 34–40.

11   Nevin Aiken, "Learning to Live Together: Transitional Justice and Intergroup Reconciliation in Northern Ireland," *The International Journal of Transitional Justice* 4 (2010): 168.

societies. Firstly, *instrumental reconciliation* (the so-called 'contact hypothesis') is strengthened through measures which aim to foster cooperative interaction between former rivals.[12] Secondly, *socioemotional reconciliation* can be consolidated when the emotional and perceptional legacies of conflicts, such as feelings of victimization or guilt, are tackled. Efforts to shape a "mutually accepted (or at least mutually tolerable) shared understanding" of the past are seen as desirable.[13] Lastly, *distributive reconciliation* is developed through the reduction of structural and material inequalities and through attempts to lessen inequitable socioeconomic conditions, for example via socioeconomic and legislative reforms as well as monetary compensation. The approach to TJ that arose in NI, and UK Government's efforts to restructure it through the Legacy Bill can only be assessed against the backdrop of history.

The Troubles and Northern Ireland's Transitional Justice Process

From 1968, Northern Ireland experienced three decades of violence, triggered by a dispute over the question whether NI should remain in a union with Great Britain or whether it should be part of a united Ireland. After the partition of the Irish island into Northern Ireland and the Irish Free State in 1921, pro-British Protestant ('unionist') leaders in the North alienated the pro-Irish Catholic ('nationalist') minority politically, socially and economically.[14] The Catholic community reacted by forming a civil rights movement in the mid-1960's. When a civil rights march in Derry was brutally dispersed in 1968, violence erupted. What started as riots in the context of civil rights movements escalated into a conflict characterized by "urban guerilla warfare".[15] The main actors could be grouped into (Catholic) nationalists and 'republican' paramilitaries, (Protestant) unionists and 'loyalist' paramilitaries, the British government (including its Army) and the Irish government. Over 3.700 people lost their lives and more than 40.000 suffered injuries – considerable numbers for a population of only 1,5 million.[16] The peace talks that had started out secretly via backchannels officially moved to the negotiating table in 1997, with the involved parties ready

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12   Nevin Aiken, *Identity, Reconciliation and Transitional Justice. Overcoming intractability in divided societies,* (Oxon: Routledge, 2013): 34–37.

13   Aiken, *Learning to Live Together,* 170–71.

14   The Troubles were not necessarily a religious dispute, but rather a political dispute in which religion served as an identifier for group affiliation (see Philip Barnes, "Was the Northern Ireland Conflict Religious?" *Journal of Contemporary Religion* 20, no. 1 (2005): 55–69.); Dean Pruitt, "Readiness Theory and the Northern Ireland Conflict," *American Behavioural Scientist* 50, no. 11 (2007): 1521.

15   Woodwell, *The 'Troubles' of Northern Ireland,* 174.

16   Eamonn O'Kane, *The Northern Ireland Peace Process. From armed conflict to Brexit,* (Manchester: Manchester University Press, 2021): 5–17 and 215–216.

to negotiate the peace agreement, the 1998 Belfast Agreement, which would lay the groundwork for Northern Ireland's TJ process.[17]

The Belfast Agreement (BA, colloquially also known as the Good Friday Agreement), signed on April 10th 1998, dealt with the devolved democratic institutions in Northern Ireland and set up a new consociational power-sharing Northern Ireland Assembly. Furthermore, it initiated a new North/South Ministerial Council and dealt with the East-West relations between Britain and Ireland. The BA also contained measures concerning the safeguarding of rights, decommissioning, security, policing and justice, and prisoners.[18] It was an unbelievable achievement of multi-party talks which succeeded in ending political violence. However, some scholars argue that the BA dodged key issues, such as addressing the conflict's legacy, in order to secure the agreement – often leading to it being labelled "constructively ambiguous".[19] In addition to the BA, governmental actors have initiated various legal investigations into the past since 1998, such as the highly regarded Bloody Sunday Inquiry which led to a public apology by the British state in 2010 for the actions of its security forces. However, the area where centralized governmental initiatives were most successful in NI is in reducing the structural discrimination of Catholics, for example through housing and employment reforms.[20] The failure to establish a mutually accepted shared understanding of the past continues to hinder wider processes of reconciliation. But in December 2014, the British and Irish governments as well as the Northern Irish Executive concluded the Stormont House Agreement (SHA) which achieved an unusually high level of agreement between the involved parties. Four main elements regarding dealing with the past were agreed to in the SHA: (1) the creation of an Oral History Archive, (2) the establishment of a Historical Investigations Unit, (3) the formation of an Independent Commission for Information Retrieval (ICIR), and (4) the initiation of an Implementation and Reconciliation Group. Emphasis was put on the fact that no-one providing information to the ICIR would receive immunity from prosecution.[21] The SHA was seen as a good way to move forward, but its implementation has been put on the back burner.[22] With the introduction of the Legacy Bill, the UK Government departed significantly from what had been agreed upon.

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17   Aiken, *Identity, Reconciliation and Transitional Justice*, 59.
18   Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland 1998. Cm 3883. Signed by the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, 10 April 1998.
19   Kieran McEvoy, Anna Bryson and Amanda Kramer, *The Empire strikes back*, 642.
20   Aiken, *Learning to Live Together*, 173–175.
21   Stormont House Agreement. Reached between the Governments of Britain, Ireland and the five main political parties of Northern Ireland, 23 December 2014.
22   McEvoy et al. "Prosecutions, Imprisonment and the Stormont House Agreement: A Critical Analysis of Proposals on Dealing with the Past in Northern Ireland." Dealing with the Past in Northern Ireland (2020), 6.

The limited effectiveness with which centralized TJ measures tackled truth recovery and inter-group rapprochement led community-based projects to pop up all over NI. Without mentioning these, any account of NI's TJ process remains incomplete. They range from storytelling projects, sometimes combined with archiving work or cross-community dialogue, to projects focusing on the reintegration of former paramilitaries.[23] Although not all community-based initiatives are equally effective, these manifold bottom-up projects have measurably improved intergroup relations in NI. The approach to TJ which has arisen in NI over the past decades can therefore be described as "combining widespread community-based reconciliation initiatives with a more 'piecemeal' approach to dealing with the past through interventions by governmental and non-governmental actors".[24] But how did Brexit impact NI's approach to TJ, and why is the "European dimension" of NI's peace relevant?

Brexit and the European Dimension of Northern Ireland's Peace

The Leave EU campaign in the lead-up to the Brexit vote was centered around anti-immigration rhetoric and issues of national autonomy, including disdain for the supremacy of European over British laws and complaints over the EU's politics. The economic malaise felt by many parts of the population due to the unequal distribution of the benefits of globalization increased susceptibility for the campaign's populist messages.[25] Multiple scholars have discussed the role that Euroscepticism, English nationalism, empire nostalgia and issues of sovereignty played in the UK's decision to leave the EU.[26] The hardening of English nationalism is rooted in 'empire nostalgia', a longing for the British Empire's previous 'greatness' which was achieved largely through colonial aspirations. The Leave campaign's vision of a renewed empire evidently inferred *English*

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23   See for example Michelle Anderson, "Community-Based Transitional Justice Via Creation and Consumption of Digitalized Storytelling Archives: A Case Study of Belfast's Prisons Memory Archive," *International Journal of Transitional Justice* 13 (2019): 30–49.; Benjamin Maiangwa and Sean Byrne, "Peacebuilding and Reconciliation through Storytelling in Northern Ireland and the Border Counties of the Republic of Ireland," *Storytelling, Self, Society* 11, no. 1 (2015): 85–110; Tim Chapman and Hugh Campbell, "Working across frontiers in Northern Ireland. The contribution of community-based restorative justice to security and justice in local communities," *Restorative Justice in Transitional Settings*, ed. Kerry Clamp (London: Routledge, 2016): 115–132.

24   Aiken, *Learning to Live Together*, 167 and 184; Aiken, *Identity, Reconciliation and Transitional Justice*, 86.

25   Craig Calhoun, "Populism, nationalism and Brexit," *Brexit. Sociological Responses*, ed. William Outhwaite (London and New York: Anthem Press, 2017), 58–62.

26   See also Agust Arnorsson and Gylfi Zoega, "On the causes of Brexit," *European Journal of Political Economy* 55 (2018): 301–323; Mary Murphy, "Northern Ireland and Brexit: Where sovereignty and stability collide?" *Journal of Contemporary European Studies* 29, no. 3 (2021): 405–418; Michael Keating, "Between two unions: UK devolution, European integration and Brexit," *Territory, Politics, Governance* 10, no. 5 (2022): 629–645.

dominance. The Leave campaign also coupled *English* nationalism and empire nostalgia with concerns over sovereignty (its slogan was "take back control"), resulting in "an (unsubstantiated) claim for a unified English/Westminster/governmental sovereignty to the exclusion of other parties".[27] These dynamics were mirrored within parts of the political elite in the British parliament – important to emphasize, since the parliamentary parties are the main actors in the process of debating, amending, and passing Bills into law in the UK (including the Legacy Bill). Especially within the Conservatives, an intensification of Euroscepticism took place when the hard Brexit faction took over, mostly under Boris Johnson's leadership between July 2017 and July 2022.[28] On June 23rd 2016, the UK's population voted by 52 to 48 percent to leave the EU.[29] However, in NI 56 percent of the voters supported remain.[30] Although hardly discussed in the run-up to the vote, ensuring that peace would not be broken as a consequence of a possible hard border reappearing between Ireland – still an EU member state – and NI became central to the arduous negotiations of the Withdrawal Agreement (incl. the Northern Ireland Protocol) which was ratified in January 2020.[31] Empire nostalgia and English nationalism manifested themselves both in Britain's blind spots when it came to the impact of Brexit on NI – ranging from naivety to conscious dismissal – as well as in the way the Irish island was framed by hardcore Brexiteers as being a nuisance in their quest to "get Brexit done".[32]

But the European dimension of NI's peace was established long before Brexit, with the EU's supportive involvement beginning as early as the late 1970's. Leaving the EU has potentially far-reaching implications for the areas of rights protections, funding for peace projects and the facilitation of a "habit of cooperation" in Anglo-Irish relations. A variety of EU-underpinned rights, especially those deriving from EU membership and EU law, as well as the right to an effective judicial remedy could be affected.[33] The role of the European Convention on Human Rights (ECHR) – an instrument established by the Council of Europe – is another key element of

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27   Sionaidh Douglas-Scott, "Brexit and the siren-like allure of sovereignty," *On Brexit. Law, Justices and Injustices*, ed. Tawhida Ahmed and Elaine Fahey (Cheltenham: Edward Elgar Publishing Limited, 2019), 98.

28   Richard Hayton, "Brexit and party change: The Conservatives and Labour at Westminster," *International Political Science Review* 43, no. 3 (2022): 350; Ruike Xu and Yulin Lu, "Intra-party dissent over Brexit in the British Conservative Party," *British Politics* 17, no. 3 (2022): 274–297, 294.

29   Anne Applebaum, "Britain After Brexit. A Transformed Political Landscape," *Journal of Democracy* 28, no. 1 (2017): 53–58, 53.

30   McEvoy, Bryson and Kramer, *The Empire strikes back,* 637–638.

31   Christopher McCrudden, *Introduction*, 8–11.

32   McEvoy, Bryson and Kramer, *The Empire strikes back*, 616–620 and 625–626.

33   Christopher McCrudden, "The Good Friday Agreement, Brexit, and Rights", *A Royal Irish Academy - British Academy Brexit Briefing* (2017): 5.

the European dimension discussed.[34] The ECHR and the importance of direct access to courts and remedies for convention breaches were explicitly included in the BA.[35] Through its judgements, the European Court for Human Rights (ECtHR) provides important oversight of the handling of Troubles-related legacy cases in UK courts. Now Brexit has removed the UK's implicit obligation to remain a member of the ECHR as an EU state and discussions about a possible withdrawal have already sparked.[36] When it comes to financial support, the EU remained committed after Brexit to continuing funding for peace programs. And while for now, the UK has agreed to participate in funding those programs, scholars' warnings that financial contributions could compete for UK budget funds for areas such as health and education still stand.[37] Maybe most importantly though, the EU is seen to have been central in facilitating a "habit of cooperation" in Anglo-Irish relations – two countries with a historically contentious relationship – during the peace process through regular exchanges.[38] European integration promoted the bridging of Britain's and Ireland's political differences.[39] Now Brexit has profoundly damaged the political and diplomatic Anglo-Irish relationship and called into question the British government's commitment to reconciliation.[40] How this destabilization of the European dimension of Northern Ireland's peace also had an impact on the introduction of the Legacy Bill is demonstrated in the following sections.

Northern Ireland Troubles (Legacy and Reconciliation) Bill

The Legacy Bill was introduced to the House of Commons for parliamentary scrutiny by its sponsoring ministerial department, the Northern Ireland Office (NIO), during Boris Johnson's premiership in May 2022.[41] It envisions significant changes to NI's approach to dealing with the past.

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34   Michael Keating, *Between two unions*, 636; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), Council of Europe, 1950.

35   McEvoy et al., "Model Bill Team Initial Response to Northern Ireland Troubles (Legacy and Reconciliation) Bill", Dealing with the Past in Northern Ireland (2022), 6.

36   McCrudden, *The Good Friday Agreement, Brexit, and Rights*, 3 and 7–8.

37   European Commission, "Northern Ireland: PEACE PLUS programme will support peace and prosperity across Northern Ireland and the border counties of Ireland," 13 July 2022; Northern Ireland Office, "UK announces majority contribution to PEACE PLUS funding," 4 September 2021.

38   McEvoy, Bryson and Kramer, *The Empire strikes back*, 630–37.

39   Katy Hayward and Mary Murphy, *The EU's Influence on the Peace Process*, 4.

40   Mary Murphy, *Northern Ireland and Brexit*, 413.

41   As bills move through legislative stages they are amended. This analysis worked with the Bill as introduced in the HoL after passing through the HoC: "Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022. (HL Bill 37). Session 2022–23."

Concerning judicial TJ measures, the Legacy Bill provides for the establishment of an Independent Commission for Reconciliation and Information Recovery (ICRIR). Among other things, the ICRIR's functions include the carrying out of reviews into Troubles-related deaths or other harmful conduct, as well as determining whether to grant persons immunity from prosecution for Troubles-related offences. However, requests for such reviews will not be permissible after the end of the fifth year of the ICRIR's operations, equalling a *de facto* amnesty for Troubles-related offences after that period. Scholars have noted there is a "conspicuously low threshold" for immunity.[42] Additionally, the Legacy Bill stipulates that requests shall not be granted to any person of whom a public prosecution for a Troubles-related offence is underway, or who has already been convicted. It has been pointed out that these provisions seem to be designed to facilitate immunity requests by state actors: between 25.000 and 30.000 members of paramilitaries have convictions precluding them from applying, while criminal proceedings for state actors have been modest in numbers.[43] Furthermore, the Legacy Bill essentially prohibits all Troubles-related judicial activity (criminal investigations, criminal enforcement action and civil proceedings) except for processes taking part within the framework of the ICRIR's functions. The only way in which new criminal enforcement actions will still be permitted is when the ICRIR refers a case of a person without immunity to a prosecutor. The Bill also prohibits the continuation and initiation of nearly all coroner's inquests into Troubles-related deaths as well as police complaints made to the Police Ombudsman for NI for Troubles-related incidents. Therefore, the Legacy Bill radically restricts victims' access to judicial means to search for truth and accountability. Eradicating judicial means hinders the fight against impunity and the provision of justice which are required to achieve socioemotional reconciliation. This also puts into question compliance with Protocol Article 2 (no diminution of rights guaranteed in the 1998 BA) as well as with the ECHR.[44] Material by bodies such as the Joint Committee on Human Rights and the Northern Ireland Human Rights Commission reflect this.[45] So, although earlier ECtHR judgements had already identified issues with the UK's past handling of NI legacy cases, the Legacy Bill risks further aggravating failures to be ECHR-compliant, instead of implementing promised measures to remedy shortcomings.

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42   McEvoy et al., *Model Bill Team Initial Response*, 16.
43   McEvoy et al., *Model Bill Team Initial Response*, 13–17.
44   Northern Ireland Human Rights Commission, "Advice on NI Troubles (Legacy and Reconciliation) Bill," 2022: 50.
45   Joint Committee on Human Rights, House of Lords/House of Commons, "Legislative Scrutiny: Northern Ireland Troubles (Legacy and Reconciliation) Bill," HC 311/HL Paper 79. Sixth Report of Session 2022-23, 2022; Northern Ireland Human Rights Commission, "Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill," 2023.

Regarding non-judicial TJ measures, the Legacy Bill includes the aim of supporting the creation of oral history records, memorialisation and academic research. It is the Secretary of State for Northern Ireland (SOSNI, a UK Government senior minister position) who allocates resources and appoints the designated persons to do this work. Scholars have noted, however, that placing research programmes under the control of the SOSNI raises concerns about the independence of the work and causes doubts about whether such efforts will be seen as credible and legitimate by the public. The strong emphasis put on centralizing decision-making on large parts of the official TJ process in the Legacy Bill is striking. The SOSNI is given extensive powers to influence the workings of the ICRIR as well as the delegated persons responsible for the non-judicial mechanisms in the Legacy Bill. This is criticized by scholars who have reservations about how this power could be instrumentalized to hide unlawful conduct by state actors.[46] When speaking about centralization of governmental control in the UK, discussions on devolution are seldom far off. Multiple sources attest to the fact that this Bill does not respect current devolution settlements with NI and Scotland.[47] Yet not only the overriding of devolution settlements is notable, but also a more "Westminster-internal" concentration of power: A Committee in the House of Lords tasked with providing oversight on whether new bills inappropriately delegate legislative powers objected to certain powers in the Legacy Bill being transferred to the SOSNI without parliamentary scrutiny. The NIO chose not to amend the Bill in these regards.[48] Unsurprisingly, the Bill sparked a large wave of criticism from all political parties in NI, victims' organizations and other actors such as the Council of Europe's Commissioner for Human Rights or the United Nations.[49]

Qualitative Analysis of UK Parliamentary Debates

Given the widespread opposition to and the expected negative impacts of the Legacy Bill on Northern Ireland's (centralized) TJ process, the question to answer remains: Did Brexit play a role in the move by the UK Government to introduce and push for a bill which is expected to disrupt

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46   McEvoy et al., *Model Bill Team Initial Response,* 8 and 15.

47   Scottish Government, "Legislative Consent Memorandum. Northern Ireland Troubles (Legacy and Reconciliation) Bill," LCM-S6-27. Session 6. Scottish Parliamentary Corporate Body, 20 October 2022; Select Committee on the Constitution, "5th Report of Session 2022-23. Northern Ireland Troubles (Legacy and Reconciliation) Bill. HL Paper 70," 2022; Northern Ireland Office, "Government Response: Report of the Constitution Committee Northern Ireland Troubles (Legacy and Reconciliation) Bill," 21 February 2023.

48   Delegated Powers and Regulatory Reform Committee, "9th Report of Session 2022-23. House of Lords Delegated Powers and Regulatory Reform Committee. HL Paper 55," 2022; Delegated Powers and Regulatory Reform Committee, "20th Report of Session 2022-23. House of Lords Delegated Powers and Regulatory Reform Committee. HL Paper 113," 2022.

49   Council of Europe, "Rule 9 Submission by the Council of Europe Commissioner for Human Rights. Comm-DH(2022)22," 31 August 2022; OHCHR, "UK: Flawed Northern Ireland 'Troubles' Bill flagrantly contravenes rights obligations, say UN experts 2022," 15 December 2022.

reconciliation efforts in Northern Ireland? To answer this question, taking a closer look at parliamentary debates in both UK parliamentary chambers proves useful.[50]

The most vocal support for the Legacy Bill came from some (but not all) members of the (then) governing Conservative party, while opposition was strong in all other parties. The issue of the treatment of veterans of the British Army and the Royal Ulster Constabulary (the largely Protestant police force in NI before police reforms) was particularly salient. Multiple Conservative MPs argued that these veterans had been treated unfairly due to 'vexatious litigation' and 'lawfare', and that the Bill was necessary to give them certainty they would not be legally pursued for their actions during the Troubles. This 'veterans narrative' garnered criticism from other parties. Notably though, even Northern Irish unionists supportive of veterans showed disagreement. Therefore, the veterans narrative being propagated mainly by *English* politicians aligned with the work of scholars who observed a rise of this portrayal of 'vexatious litigation' in relation to NI legacy discussions.[51] The related but more overarching discussion of the role of the British state in the Troubles and TJ process more generally was also salient. Here, the fault line most visible was that between those arguing for the need of the British Government to acknowledge its active role in the conflict and those denying (negative) aspects of it. These two issues raised questions regarding a possible implicit influence of Brexit on the Bill: To what extent did Brexit and the associated rise in English nationalism shape these narratives? To what extent were these narratives a factor in the timing of the Legacy Bill's introduction? Why was the veterans narrative mobilized in support of the Legacy Bill by English Conservative politicians, but not by NI unionists who otherwise also support veterans? Do the differing opinions of the Bill within the Conservative party reflect post-Brexit internal party dynamics?

During the debates a fair amount of discussion took place on the specific design of the individual TJ mechanisms in the Legacy Bill, as well as their expected implications for the TJ process in NI. There was significant agreement across the political spectrum (apart from those few strongly supportive Conservatives) that the Legacy Bill failed to deliver for victims and that it would take away their hope of receiving closure or justice, while simultaneously giving perpetrators a free pass. It is important to note, however, that there was no consensus on what the ideal TJ mechanisms would look like, and arguments were often rooted in the debate participants' view on

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50   The House of Commons debate took place on May 24th 2022, while the House of Lords debate took place on November 23rd 2022 (see House of Commons 2022 and House of Lords 2022). Members of the HoC are called MPs, while Members of the HoL are simplified here with "ML".

51   McEvoy et al., *Prosecutions, Imprisonment and the Stormont House Agreement,* 8; Mark McGovern, "Legacy, Truth and Collusion in the North of Ireland," *Race & Class* 64, no. 3 (2022): 59–89, 82.

the "hierarchy of victims".[52] The immunity scheme and the expected *de facto* amnesty got most attention. A majority of debate participants was sceptical that the immunity scheme as it stood would contribute to truth recovery and therefore justify the ending of judicial TJ measures – an argument made by the Northern Ireland Office. On the other hand, the non-judicial TJ measures received comparatively less attention than the ICRIR, the immunity scheme and the de facto amnesty. But they were also met with universal opposition – either due to concerns over lack of independence from the British Government or due to concerns that they would be instrumentalized by groups furthering an anti-state narrative:

> "Commendable as the proposals for an oral history are [...] it is possible that it will also be politicised and enrolled in an ongoing effort to retell the history of the Troubles from an anti-state perspective." (Lord Godson, Conservative Party, HoL)

Another extensively discussed topic was the issue of compliance with legal obligations. Members of the NIO insisted that the Bill would ensure an ECHR-compliant process. But, as illustrated earlier, there are serious concerns in expert circles about the Legacy Bill's ability to comply with legal obligations. Such concerns were mirrored among debate participants, including some Conservative members. A contribution by a Labour MP alluded to the fact that adherence to ECHR rules goes against the liking of those Conservatives with sceptical positions on European laws. Therefore, the debate participants themselves had the possibility of factors such as Euroscepticism playing a role in the Legacy Bill's development on their minds:

> "[...] it would be difficult even for the most Panglossian optimist to contest the view that the UK's reputation for adherence to international law has been degraded by the actions of successive Governments since the Brexit referendum." (Lord Browne of Ladyton, Labour Party, HoL)

A significant part of the debate also treated issues of independence, with the most frequently raised topic being the powers granted to the SOSNI under the Legacy Bill. It stands to reason that such centralization of power in the hands of Westminster, combined with the intersecting issue of veterans evoked by English Conservatives, exhibits an expression of the rise in English nationalism and sovereignty concerns. But this centralization being universally criticized in both debates – including by some Conservatives – as well as by certain government internal bodies, brings forth questions about possible Brexit-related tensions between State bodies, and within

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52   Sarah Jankowitz, "The 'Hierarchy of Victims' in Northern Ireland: A Framework for Critical Analysis," *International Journal of Transitional Justice* 12, no. 2 (2018): 216–236.

the Conservative party itself. This would align with scholars' work on party change and intra-party dissent within the Conservative party since Boris Johnson's campaign to "get Brexit done", stating there was a takeover by the hard Brexit faction and key posts in Government were awarded to hardcore Brexiteers.[53]

How the UK Government proceeded in introducing the Legacy Bill, including its motivations, the conditions of parliamentary scrutiny, the timing and the policy shift in contrast to the SHA also garnered attention. This included discussions on how the Government approached public consultation and cooperation with inter/national actors. Many debate participants stated that the goal of furthering reconciliation asserted by the Government was a smokescreen for its actual main motivations. The many statements made to this effect are further indications that the Brexit wing of the Conservatives had a considerable influence on the Bill's introduction:

> "The reality is that the Secretary of State has given in to what he perceives to be the demand from his own Back Benchers, but at the expense of the many people who could have been served by a much better Bill. That has to be recognised." (Tony Lloyd, Labour Party, HoC)

The introduction of the Legacy Bill by the UK Government was very often contrasted against what had previously been agreed to in the Stormont House Agreement. The dominant opinion was that the SHA had, contrary to the Legacy Bill, received support from the broadest possible coalition of actors, and it was therefore unacceptable that the UK Government abandoned it. In fact, the issue of unilateral decision-making was one of the most salient. The positions opposing the Government's approach revealed the striking extent to which the Legacy Bill was considered by MPs and MLs to be a bad bill being pushed through with a considerable disregard for democratic due process of law-making. This disregard for opinions from other stakeholders by the Government was of particular importance for this analysis in relation to three issues: (1) devolution, (2) Anglo-Irish relations, and (3) Westminster internal dynamics. On devolution, the general view during the debate was that the UK Government was infringing not only on NI's devolved powers, but also on matters transferred to the Scottish Parliament. This seemed like an expression of the "lack of embeddedness" of inclusion of devolved interests in UK policy-making becoming increasingly apparent since Brexit.[54] Certain MPs and MLs also played at negative attitudes towards "the Northern Ireland question" and NI's standing in the Union – reminiscent of

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53   Hayton, *Brexit and Party Change;* Xu and Lu, *Intra-party dissent over Brexit.*
54   Mary Murphy and Jonathan Evershed, "Contesting sovereignty and borders: Northern Ireland, devolution and the Union," *Territory, Politics, Governance* 10, no. 5 (2022): 672.

scholars describing how NI was perceived of being in the way of "getting Brexit done".[55] Note the wording chosen in the following contribution:

> "Members have cynically used the failure of successive Governments over decades to address this issue as an excuse to now 'get Northern Ireland done'" (Claire Hanna, Social Democratic and Labour Party, HoC)

The ways in which Anglo-Irish relations were discussed during the debates provided further indications of links to Brexit. After the publication of the Legacy Bill, the Irish Government said that it was "disappointing that the UK Government have chosen to unilaterally introduce legislation".[56] The sentiment that attempts of cooperation by the UK Government had not been satisfactory was reflected in the debates, although from two differing perspectives: Either Ireland's role as a valuable partner in the Northern Irish peace and reconciliation process was emphasized, or it was argued (by less supportive Conservative and Democratic Unionist Party members) that Ireland had not been doing its part in handling legacy issues so far and must therefore be included now. Either way, the prevailing opinion was that the Irish Republic should have been included more actively in the UK Government's approach to the Legacy Bill:

> "The Irish Government are supposed to be a partner in the process and in managing the Good Friday Agreement, but have not been part of this phase of the legacy deliberations. They, too, see the Bill as unworkable and as incompatible with article 2 of the convention." (Stephen Farry, Alliance Party, HoC)

Regarding Westminster-internal dynamics, the analysis showed that 'the Government' must be regarded with a more differentiated view, specifically by highlighting the NIO's role – and even the role of individual members of the NIO. As described above, it was the NIO who was informed by Westminster-internal Committees about their criticism of the Bill and which responded dismissively of this criticism. The NIO – once "the main institutional location" within the UK Government for NI expertise – was increasingly marginalized during the Brexit process, and even more so with the May and Johnson Governments when reshuffles in the department resulted in the fact that no senior politicians with direct NI experience staffed the department.[57]

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55   McEvoy, Bryson and Kramer, *The Empire strikes back*, 620 and 625–26.
56   Irish Department of Foreign Affairs, "Statement by the Minister for Foreign Affairs and Minister for Defence Simon Coveney on the publication of the UK Government's 'Northern Ireland Troubles (Legacy and Reconciliation) Bill'," 18 May 2022.
57   Michael Kenny and Jack Sheldon, "'A place apart', or integral to 'our precious Union'? Understanding the nature and implications of Conservative Party thinking about Northern Ireland, 2010–19," *Irish Political Studies* 36, no. 2 (2021): 291–317, 301.

That a change had taken part within the NIO, which was affecting relations with NI, was hinted at during the debate:

> "[...] I heard at first hand from numerous organisations, when discussing legacy, how frustrated they were that they had better working relationships with the former Secretary of State [...] than they do with the incumbent Secretary of State for Northern Ireland." (Tonia Antoniazzi, Labour Party, HoC)

To sum up, the analysis of parliamentary debates revealed multiple indicators that the UK Government's move to introduce the Legacy Bill was influenced by Brexit. Firstly, the veterans narrative was carried mainly by English politicians, pointing to a possible link to the increase in English nationalism since Brexit. Secondly, the lack of compliance with the ECHR and other legal obligations (at least the willingness by parts of the Conservative party to accept it) likely reflected the rise in Euroscepticism and renewed emphasis on English sovereignty. Thirdly, the centralization of power in the hands of the SOSNI which the NIO-sponsored Legacy Bill foresees was widely criticized, even by some Conservatives and other State bodies, pointing to party-internal tensions and the possible impact of post-Brexit reshuffles of NIO staff. Lastly, the unilateral approach adopted by the NIO, including the policy shift after the SHA, the disregard for devolution agreements, the perceived negative attitudes towards NI, as well as non-cooperation with Ireland, demonstrated parallels to scholarly works exploring English nationalism and aspirations for an English sovereignty.

Insights from Stakeholder Interviews

To corroborate the findings from the parliamentary debate analysis, stakeholder interviews were conducted with Charlie Whelton, Policy and Campaigns Officer at the UK-wide human rights organization Liberty (which takes a neutral stance on Brexit) and Daniel Holder, Director at the Northern Irish human rights organization Committee on the Administration of Justice (CAJ) – two individuals who have engaged extensively with the Legacy Bill. Both interview partners attributed the direct influences on the Legacy Bill to the veterans issue and the Overseas Operations (Service Personnel and Veterans) Act 2021 (OOA), aligning with the results of the debate analysis.[58] The interviewees had slightly differing perceptions of the strength of the link between the OOA, its supporters in the UK Government, Brexit and the Legacy Bill. While Whelton did not initially

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58   Overseas Operations (Service Personnel and Veterans) Act 2021 (c.32). The law makes "provision about legal proceedings and consideration of derogation from the European Convention on Human Rights in connection with operations of the armed forces outside the British Islands".

connect the veterans issue to Brexit (although it was not ruled out), Holder saw a clear overlap between the specific group of Conservatives supporting Brexit and those pushing for the Legacy Bill. Holder also voiced his perception that sovereignty issues, political marginalization of NI as well as contempt for international law were a characteristic of the hard Brexit faction of the Conservative party. Therefore, preliminary findings supported the possibility that a link between the hard Brexit faction of the Conservatives, the veterans narrative and the increase in English nationalism exists and it was relevant for the Legacy Bill.[59]

Regarding the Legacy Bill's non-compliance with ECHR, Whelton showed consternation about "just how cavalier" the Bill's advocates were about breaching the ECHR and mentioned statements by then-Prime Minister Rishi Sunak implicitly threatening the UK's departure from it. His perceptions showed a clear parallel to findings of the debate analysis that sovereignty concerns and empire nostalgia especially, but also Euroscepticism, fueled this disregard for ECHR obligations in the Legacy Bill. Holder also touched upon the European dimension. He noted a conflation of European institutions (such as the EU, Council of Europe etc.) since Brexit, prevalent among people in high political office in the UK, and how this may have influenced the Legacy Bill. Additionally, he highlighted the deterioration of Anglo-Irish relations since Brexit which had resulted in diminished regard for the previously existing habit of cooperation that had provided (political) checks and balances:

> "Another parallel is the treatment of the Irish Government. The peace process has always been driven by both countries and governments. It has been very much a bilateral process. Both Brexit and the Legacy Bill under the current British Government have essentially ended that." (D. Holder, CAJ, 12.06.2023)

The role of the NIO and whether Brexit-related changes within the department could have influenced the Legacy Bill's introduction and the shift away from the 2014 SHA was another issue the conversations with stakeholders allowed more insights to be gathered on. The interview partners' views on the NIO supported preliminary findings from the debate analysis that this post-Brexit reshuffle shaped its unilateral approach to the Legacy Bill's introduction:

> "When Liz Truss became Prime Minister she did a reshuffle and she put into the NIO as

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[59]   The overlap between 'veteran culture' and Brexit supporters, as well as the tensions between post-Brexit English nationalism and allegations of human rights abuses of the British Army are also mentioned, but not developed in detail, in Kevin Hearty, "Misrecognising the victim of state violence: Denial, 'deep' imperialism and defending 'our boys,'" *Crime, Law and Social Change* 73, no. 2 (2020): 217–235; Kevin Hearty, "Closing the ranks: Bondedness, sense of self and moral injury during legacy case prosecutions," *Irish Journal of Sociology* 0 (2022): 1–20.

the Secretary of State Chris Heaton-Harris and as Minister Steve Baker. And these are two of what's known as the 'Brexit Spartans,' the very strong Brexiteers. [...] I don't think that the current make-up of the NIO in terms of the Commons members, I don't think that legacy is a key concern of theirs. I think it is the impact of Brexit." (C. Whelton, Liberty, 19.05.2023)

Hard Brexit supporting ministers were brought on who hold attitudes characterized by aspirations for an English version of sovereignty. This was, as both stakeholders' responses showed, also reflected in the way the Legacy Bill was designed to override devolution agreements. Whelton's responses revealed that he perceived this approach as being deliberate, at least to some extent. When asked whether this unilateral course of action in legislating on devolved matters had occurred previously (a question posed to ensure no pattern unrelated to Brexit was being overlooked), Holder answered that the only two examples of the UK Government so clearly overriding the NI devolution settlement – when it was not only unnecessary to ensure compliance with, but actually countering, international legal obligations – were Brexit and the Legacy Bill. However, both stakeholders mentioned the introduction of several other bills which, in their opinions, demonstrated parallels to the Legacy Bill, such as unilateralism and disregard for international legal obligations. Some of these were criticized so strongly by other actors that the Government had to backpedal. Further research could attempt to map with more detail the dynamics within the opposition's campaign, which factors influenced it and attitudes towards NI – a gap the analysis underlying this article does not address sufficiently. This could be helpful in explaining why other Bills criticized for similar reasons were scrapped, while the Legacy Bill was not. Whelton emphasized that, in his view, the span of legislation brought on by the current UK Government all came down to avoiding accountability. He said he especially saw the 2019 election and Boris Johnson's takeover as Prime Minister as a pivotal moment in time. This showed that Brexit was not simply the singular day of the referendum vote in 2016, or the date of the UK's legal departure from the EU in 2021. Rather, Brexit was both a manifestation and a catalyst of a number of shifts in UK politics.

Conclusion

The Legacy Bill envisions significant changes to the centralized elements of Northern Ireland's transitional justice approach. Existing judicial TJ mechanisms would essentially be scrapped, thus radically restricting victims' options to search for truth and justice. The only remaining judicial avenue would function through the newly established Independent Commission (ICRIR) which would only run for five years, resulting in a de facto amnesty thereafter. The Legacy Bill

significantly centralizes power over all TJ mechanisms in the Bill in the hands of the Secretary of State for Northern Ireland, resulting in a lack of independence and legitimacy. It further overrides devolution agreements, and there are concerns over compliance with (international) legal obligations such as those deriving from the ECHR, the 1998 Belfast Agreement or the NI Protocol. The Legacy Bill is expected to hinder socioemotional reconciliation, which is fostered through the provision of justice and the promotion of truth. This article described how the Legacy Bill's timing, its contents, and the way in which its introduction was handled by the sponsoring the Northern Ireland Office were likely impacted by Brexit. More specifically, they were affected through the influence of the hard Brexit Conservative party faction characterized by its Euroscepticism, English nationalism, and commitment to British sovereignty. First, the analysis of parliamentary debates revealed that Brexit potentially influenced the following elements of the Legacy Bill: (1) the UK Government's apparent main motivation to issue the Legacy Bill: protecting British veterans, (2) non-compliance with the ECHR, (3) the centralization of power over TJ mechanisms in the hands of the SOSNI and (4) the UK Government's unilateral approach to the Bill's issuance (disregard for devolution agreements, the perceived negative attitudes towards NI, as well as lack of cooperation with the Republic of Ireland). Then, findings from stakeholder interviews corroborated these findings and garnered further evidence that this impact was facilitated by reshuffles in the NIO to include ministers known to be "Brexit Spartans". Although the results garnered here are preliminary, they offer insights on how Brexit has continued to pose challenges to peace and stability in Northern Ireland not just through disputes over the border and protocol negotiations, but also through its impact on law-making in the area of TJ in perhaps more subtle – but not necessarily less meaningful – ways.

In September 2023, a couple of months after the analysis underlying this article was completed, the Legacy Bill passed into law.[60] After that, multiple legal challenges were launched. In December 2023, the Government of Ireland decided to initiate an inter-State case against the UK under the ECHR over the Legacy Act. The first case between the UK and Ireland before the ECtHR since 1971.[61] In February 2024, the High Court in NI handed down a judgment stating – among other things – that the Legacy Act's immunity provisions, as well as its ending of civil actions, are incompatible with the ECHR and article 2 of the NI Protocol (now 'Windsor Framework') on no diminution of rights through the UK's withdrawal from the EU.[62] Maybe most importantly though, the Leader of

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60   Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. (c.41).
61   Irish Department of Foreign Affairs, "Statement by the Tánaiste Micheál Martin on the government decision to initiate an inter-State case against the United Kingdom," 20 December 2023.
62   Judiciary NI, "Summary of Judgment – In re Dillon and others – NI Troubles (Legacy and Reconciliation) Act 2023," 28 February 2024.

the Labour Party, Sir Keir Starmer, who took over as the UK's new Prime Minister after the general election in July 2024, pledged to roll back the Legacy Act. In July 2024, Starmer's Government stated it would "begin the process of repealing and replacing the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023" – a promise welcomed by Northern Irish parties and victims' groups.[63]

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63   Prime Minister's Office, "The King's Speech 2024", 17 July 2024; Belfast Telegraph, "King's Speech: Controversial Legacy Act to be 'repealed and replaced'," 17 July 2024.

Bibliography

Academic Literature

Adams, William. "Conducting Semi-Structured Interviews." In *Handbook of Practical Program Evaluation,* 4th ed., edited by Kathryn Newcomer, Harry Hatry and Joseph Wholey. Hoboken, New Jersey: John Wiley & Sons Inc, 2015: 492–505.

Aiken, Nevin. "Learning to Live Together: Transitional Justice and Intergroup Reconciliation in Northern Ireland." *The International Journal of Transitional Justice* 4 (2010): 166–188.

——. *Identity, Reconciliation and Transitional Justice. Overcoming Intractability in Divided Societies.* Oxford: Routledge, 2013.

Anderson, Michelle. "Community-Based Transitional Justice Via Creation and Consumption of Digitalized Storytelling Archives: A Case Study of Belfast's Prisons Memory Archive." *International Journal of Transitional Justice* 13 (2019): 30–49.

Applebaum, Anne. "Britain After Brexit. A Transformed Political Landscape." *Journal of Democracy* 28, no. 1 (2017): 53–58.

Arnorsson, Agust, and Gylfi Zoega. "On the causes of Brexit." *European Journal of Political Economy* 55 (2018): 301–323.

Barnes, Philip. "Was the Northern Ireland Conflict Religious?" *Journal of Contemporary Religion* 20, no. 1 (2005): 55–69.

Calhoun, Craig. "Populism, nationalism and Brexit." In *Brexit. Sociological Responses*, edited by William Outhwaite, 57–76. London and New York: Anthem Press, 2017.

Cerar, Miro. "The Relationship Between Law and Politics." *Annual Survey of International and Comparative Law* 15, no. 1 (2009): 19–42.

Chapman, Tim, and Hugh Campbell. "Working across frontiers in Northern Ireland. The contribution of community-based restorative justice to security and justice in local communities." In *Restorative Justice in Transitional Settings,* edited by Kerry Clamp, 115–132. London: Routledge, 2016.

Cochrane, Feargal. *Breaking Peace. Brexit and Northern Ireland.* Manchester: Manchester University Press, 2020.

De Greiff, Pablo. Theorizing Transitional Justice. In *Transitional Justice*, edited by Melissa Williams, Rosemary Nagy and Jon Elster, 31–77. New York and London: New York University Press, 2012.

Douglas-Scott, Sionaidh. "Brexit and the siren-like allure of sovereignty." In *On Brexit. Law, Justices and Injustices,* edited by Tawhida Ahmed and Elaine Fahey, 96–110. Cheltenham: Edward Elgar Publishing Limited, 2019.

Garry, John, Brendan O'Leary, Kevin McNicholl, and James Pow. "The future of Northern Ireland: Border anxieties and support for Irish reunification under varieties of UKexit." *Regional Studies* 55, no. 9 (2021): 1517–1527.

Guest, Greg, Kathleen MacQueen, and Emily Namey. *Applied Thematic Analysis*. Thousand Oaks: Sage, 2012.

Hayton, Richard. "Brexit and party change: The Conservatives and Labour at Westminster." *International Political Science Review* 43, no. 3 (2022): 345–358.

Hayward, Katy, and Mary Murphy. "The EU's Influence on the Peace Process and Agreement in Northern Ireland in Light of Brexit." *Ethnopolitics* 17, no. 3 (2018): 276–291.

Hearty, Kevin. "Misrecognising the victim of state violence: Denial, 'deep' imperialism and defending 'our boys.'" *Crime, Law and Social Change* 73, no. 2 (2020): 217–235.

——. "Closing the ranks: Bondedness, sense of self and moral injury during legacy case prosecutions." *Irish Journal of Sociology* 0 (2022): 1–20.

Jankowitz, Sarah. "The 'Hierarchy of Victims' in Northern Ireland: A Framework for Critical Analysis." *International Journal of Transitional Justice* 12, no. 2 (2018): 216–236.

Keating, Michael. "Between two unions: UK devolution, European integration and Brexit." *Territory, Politics, Governance* 10, no. 5 (2022): 629–645.

Kenny, Michael and Jack Sheldon "'A place apart', or integral to 'our precious Union'? Understanding the nature and implications of Conservative Party thinking about Northern Ireland, 2010–19." *Irish Political Studies* 36, no. 2 (2021): 291–317.

Kuckartz, Udo. "Qualitative Text Analysis: A Systematic Approach." In *Compendium for Early Career Researchers in Mathematics Education,* edited by Gabriele Kaiser and Nora Presmeg. 181–197. Cham: Springer, 2019.

Maiangwa, Benjamin and Sean Byrne. "Peacebuilding and Reconciliation through Storytelling in Northern Ireland and the Border Counties of the Republic of Ireland." *Storytelling, Self, Society* 11, no. 1 (2015): 85–110.

McCrudden, Christopher. "The Good Friday Agreement, Brexit, and Rights." *A Royal Irish Academy - British Academy Brexit Briefing,* (2017).

McCrudden, Christopher. "Introduction." In *The Law and Practice of the Ireland-Northern Ireland Protocol,* edited by Christopher McCrudden, 1–18. Cambridge: Cambridge University Press, 2022.

McEvoy, Kieran, Anna Bryson, and Amanda Kramer. "The Empire strikes back: Brexit, the Irish Peace Process, and the limitations of law." *Fordham International Law Journal* 43, no. 3 (2020): 609–668.

McEvoy, Kieran, Anna Bryson, Louise Mallinder, Daniel Holder, Gemma McKeown, and Brian Gormally. "Model Bill Team Initial Response to Northern Ireland Troubles (Legacy and Reconciliation) Bill." Dealing with the Past in Northern Ireland, 2022.

McEvoy, Kieran, Daniel Holder, Louise Mallinder, Anna Bryson, Brian Gormally, and Gemma McKeown. "Prosecutions, Imprisonment and the Stormont House Agreement: A Critical Analysis of Proposals on Dealing with the Past in Northern Ireland." Dealing with the Past in Northern Ireland, 2020.

McGovern, Mark. "Legacy, Truth and Collusion in the North of Ireland." *Race & Class* 64, no. 3 (2022): 59–89.

Murphy, Mary. "Northern Ireland and Brexit: Where sovereignty and stability collide?" *Journal of Contemporary European Studies* 29, no. 3 (2021): 405–418.

Murphy, Mary, and Jonathan Evershed. "Contesting sovereignty and borders: Northern Ireland, devolution and the Union." *Territory, Politics, Governance* 10, no. 5 (2022): 661–677.

O'Kane, Eamonn. *The Northern Ireland Peace Process. From armed conflict to Brexit.* Manchester: Manchester University Press, 2021.

Pruitt, Dean. "Readiness Theory and the Northern Ireland Conflict." *American Behavioural Scientist* 50, no. 11 (2007): 1520–1541.

Skoutaris, Nikos. "Brexit and transitional justice: Brexit as a challenge to peacebuilding." In *On Brexit. Law, Justices and Injustices,* edited by Tawhida Ahmed and Elaine Fahey, 205–221. Cheltenham: Edward Elgar Publishing Limited, 2019.

Woodwell, Douglas. "The 'Troubles' of Northern Ireland: Civil Conflict in an Economically Well-Developed State." In *Understanding Civil War: Evidence and Analysis,* edited by Paul Collier and Nicholas Sambanis, 161–189. The World Bank, 2005.

Xu, Ruike and Yulin Lu. "Intra-party dissent over Brexit in the British Conservative Party." *British Politics* 17, no. 3 (2022): 274–297.

Legal Sources

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, January 31, 2020, 7–187,. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12020W/TXT#d1e32-102-1 (accessed 22.06.2023).

Belfast Agreement: An Agreement Reached at the Multi-Party Talks on Northern Ireland 1998. Cm 3883. Signed by the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, 10 April 1998. Available at: https://www.gov.uk/government/publications/the-belfast-agreement (accessed 25.06.2023).

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). Council of Europe, 1950. Available at: https://echr.coe.int/Pages/home.aspx?p=basictexts/convention (accessed 23.04.2023).

Northern Ireland Troubles (Legacy and Reconciliation) Act 2023. (c.41). Available at: https://www. legislation.gov.uk/ukpga/2023/41 (accessed 20.08.2024).

Northern Ireland Troubles (Legacy and Reconciliation) Bill 2022. (HL Bill 37). Session 2022-23. Available at: https://bills.parliament.uk/bills/3160/publications (accessed 16.04.2023).

Overseas Operations (Service Personnel and Veterans) Act 2021 (c.32). Available at: https://www. legislation.gov.uk/ukpga/2021/23/contents/enacted (accessed 5.06.2023).

Stormont House Agreement. Reached between the Governments of Britain, Ireland and the five main political parties of Northern Ireland, 23 December 2014. Available at: https://www.gov. uk/government/publications/the-stormont-house-agreement (accessed 11.06.2023).

Further Material

Belfast Telegraph. "King's Speech: Controversial Legacy Act to be 'repealed and replaced'." 17 July 2024. Available at: https://www.belfasttelegraph.co.uk/news/northern-ireland/kings-speech-controversial-troubles-legacy-act-to-be-repealed-and-replaced/a232976138.html (accessed 20.07.2024)

Council of Europe. "Rule 9 Submission by the Council of Europe Commissioner for Human Rights. CommDH(2022)22." 31 August 2022. Available at: https://www.coe.int/en/web/commissioner/-/proposed-united-kingdom-legislation-on-the-legacy-of-the-troubles-in-northern-ireland-raises-human-rights-concerns (accessed 30.06.2023)

Delegated Powers and Regulatory Reform Committee. "9th Report of Session 2022-23. House of Lords Delegated Powers and Regulatory Reform Committee. HL Paper 55." 2022. Available at: https://committees.parliament.uk/committee/173/delegated-powers-and-regulatory-reform-committee/publications/reports-responses/ (accessed 30.06.2023)

Delegated Powers and Regulatory Reform Committee. "20th Report of Session 2022-23. House of Lords Delegated Powers and Regulatory Reform Committee. HL Paper 113". 2022. Available at: https://committees.parliament.uk/committee/173/delegated-powers-and-regulatory-reform-committee/publications/reports-responses/ (accessed 30.06.2023)

European Commission. "Northern Ireland: PEACE PLUS programme will support peace and prosperity across Northern Ireland and the border counties of Ireland," 13 July 2022. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4489 (accessed 30.06.2023)

House of Commons. "Northern Ireland Troubles (Legacy and Reconciliation) Bill – 2nd reading." UK Parliament. 2022. Available at: https://bills.parliament.uk/bills/3160/stages/16472 (accessed 30.06.2023)

House of Lords. "House of Lords – Northern Ireland Troubles (Legacy and Reconciliation) Bill – 2nd reading." UK Parliament. 2022. Available at: https://bills.parliament.uk/bills/3160/stages/16831 (accessed 30.06.2023)

Irish Department of Foreign Affairs. "Statement by the Minister for Foreign Affairs and Minister for Defence Simon Coveney on the publication of the UK Government's "Northern Ireland Troubles (Legacy and Reconciliation) Bill," May 18 2022. Available at: https://www.gov.ie/en/press-release/7d622-statement-by-the-minister-for-foreign-affairs-and-minister-for-defence-simon-coveney-on-the-publication-of-the-uk-governments-northern-ireland-troubles-legacy-and-reconciliation-bill/ (accessed 30.06.2023)

Irish Department of Foreign Affairs. "Statement by the Tánaiste Micheál Martin on the government decision to initiate an inter-State case against the United Kingdom," 20 December 2023. Available at: https://www.gov.ie/en/press-release/82232-statement-by-the-tanaiste-micheal-martin-on-the-government-decision-to-initiate-an-inter-state-case-against-the-united-kingdom/ (accessed 20.07.2024)

Joint Committee on Human Rights, House of Lords/House of Commons. "Legislative Scrutiny: Northern Ireland Troubles (Legacy and Reconciliation) Bill." HC 311/HL Paper 79. Sixth Report of Session 2022-23. 2022. Available at: https://committees.parliament.uk/work/6732/northern-ireland-troubles-legacy-and-reconciliation-bill/publications/ (accessed 30.06.2023)

Judiciary NI. "Summary of Judgment - In re Dillon and others - NI Troubles (Legacy and Reconciliation) Act 2023." 28 February 2024. Available at: https://www.judiciaryni.uk/judicial-decisions/summary-judgment-re-dillon-and-others-ni-troubles-legacy-and-reconciliation-act (accessed 20.07.2024)

Northern Ireland Human Rights Commission. "Advice on NI Troubles (Legacy and Reconciliation) Bill." 2022. Available at: https://nihrc.org/publication/detail/briefing-on-the-northern-ireland-troubles-legacy-and-reconciliation-bill (accessed 30.06.2023)

Northern Ireland Human Rights Commission. "Supplementary Briefing: UK Government's Proposed Amendments to NI Troubles (Legacy and Reconciliation) Bill." 2023. Available at: https://nihrc.org/publication/detail/nihrc-supplementary-briefing-uk-governments-proposed-amendments-to-ni-troubles-legacy-and-reconciliation-bill (accessed 30.06.2023)

Northern Ireland Office. "UK announces majority contribution to PEACE PLUS funding." 4 September 2021. Available at: https://www.gov.uk/government/news/uk-announces-majority-contribution-to-peace-plus-funding (accessed 30.06.2023)

Northern Ireland Office. "Government Response: Report of the Constitution Committee Northern Ireland Troubles (Legacy and Reconciliation) Bill." 21 February 2023. Available at: https://
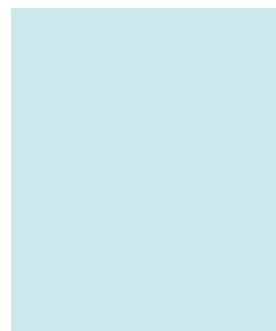
committees.parliament.uk/work/7325/northern-ireland-troubles-legacy-and-reconcilia-tion-bill/publications/ (accessed 30.06.2023)

OHCHR. "UK: Flawed Northern Ireland 'Troubles' Bill flagrantly contravenes rights obligations, say UN experts 2022." 15 December 2022. Available at: https://www.ohchr.org/en/press-releas-es/2022/12/uk-flawed-northern-ireland-troubles-bill-flagrantly-contravenes-rights   (accessed 20.07.2024)

Prime Minister's Office. "The King's Speech 2024." 17 July 2024. Available at: https://www.gov.uk/government/speeches/the-kings-speech-2024 (accessed 20.07.2024)

Scottish Government. "Legislative Consent Memorandum. Northern Ireland Troubles (Legacy and Reconciliation) Bill." LCM-S6-27. Session 6. Scottish Parliamentary Corporate Body, 20 October 2022. Available at: https://www.parliament.scot/bills-and-laws/legislative-consent-memoran-dums/northern-ireland-troubles-legacy-and-reconciliation-bill (accessed 30.06.2023)

Select Committee on the Constitution. "5th Report of Session 2022-23. Northern Ireland Troubles (Legacy and Reconciliation) Bill. HL Paper 70." 2022. Available at: https://committees.parlia-ment.uk/work/7325/northern-ireland-troubles-legacy-and-reconciliation-bill/publications/ (accessed 30.06.2023)

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