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Ukraine‘s deterrence failure: Lessons for the Baltic States

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Abstract: The annexation of Crimea in 2014 was a clear sign that Moscow is looking to extend its sphere of influence and it forced the Baltic States to take a very close look at their deterrent capabilities. The article introduces the basic concepts of deterrence and discusses the differences between the deterrent capabilities of Ukraine and the Baltic States. Furthermore, the threats that Russia presents, the factors that were responsible for Ukraine’s deterrence failure and the challenges that the Baltic States are facing are analysed. The article concludes that while the Baltic States are significantly better prepared for possible Russian aggression, their deterrent capabilities must continuously evolve to reflect the changes in the nature of modern warfare.

Keywords: deterrence, Russia, Baltic States, Ukraine, Crimea, hybrid warfare

Introduction

Over recent years, the European geopolitical map has been through a period of turbulent development, with the events in Ukraine being the most serious geopolitical conflict in Eastern Europe since the end of the Cold War. The annexation of Crimea and the events surrounding it were not only severe violations of international law and treaties, but have been a clear sign that Russia is looking to revise the structure of international relations in the region. Its implications reach far beyond Eastern Europe and it forces us to re-evaluate the perceptions of international conflict and to develop a new understanding of war and peace as the distinction between them seems to have been blurred. Ukraine demonstrates just how thin the line is and serves as a reminder that the status quo is never guaranteed. The Baltic States have been paying close attention to their Eastern neighbour and have been preparing for possible Russian intervention, whatever shape it may take. To prevent an attack, the Baltic States have put a lot of effort into improving their deterrent capabilities over the past few years.

Deterrence

Deterrence has been brought up countless times over recent years, most recently in relation to Russia and its revisionist behaviour in Ukraine. Essentially, deterrence means trying to prevent a conflict by convincing a potential adversary that the consequences of its actions, including retaliation, economic sanctions, political isolation, legal challenges or even military defeat, will outweigh the potential gains (Ducaru, 2016, p. 9), or that it will incur a higher loss or lower gain that would follow from avoiding an

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attack. The logic of deterrence, therefore, is to reduce the probability of an enemy attack (Snyder, 1961, p. 12). However, for deterrence to be effective it has got to be backed up by both political resolve and military capabilities (Anderson, Larsen and Holdorf; 2013, p. 7).

While the concept of deterrence is a rather broad one, there are two major ways in which it can be categorised. One of them is to differentiate between deterrence by denial and deterrence by punishment, where the former 'results from the capacity to deny territorial gains to the enemy' (Snyder, 1961, p. 14). The aggressor therefore chooses not to take action because the deterring country 'has taken, or will take, steps to ensure this action will fail to achieve its desired result' (Anderson, Larsen and Holdorf; 2013, p. 3). On the other hand, deterrence by punishment can be achieved through the threat of retaliation (Snyder, 1961, p. 14), which would make the adversary reconsider his attack due to the actions that would follow. However, as noted by Davis (2014, p. 4), concepts of denial and punishment do not stand alone and deterring an adversary should be viewed as a combination of the two. Another way of categorising deterrence is to differentiate between direct and extended deterrence. As described by Huth (1999, p. 27), 'a policy of deterrence can be directed at preventing an armed attack against a country's own territory (direct deterrence) or that of another country (extended deterrence)'. An example of direct deterrence would therefore be the Estonian armed forces trying to deter Russia from attacking Estonia, whereas extended deterrence would be foreign armed forces trying to prevent an attack on Estonia, such as the North Atlantic Treaty Organisation's (NATO) multinational battalions which are to be deployed in each of the Baltic States and Poland in early 2017.

The Russian threat

Russia and its revisionist behaviour present the Baltic States with a multitude of threats, making deterrence a top priority in the Baltic Region. Not only does Moscow wish to extend its sphere of influence to include what it describes as 'near abroad', it must carefully protect its own model of 'sovereign democracy' at home. Prior to Russian involvement, Ukraine was getting close to signing an association agreement with the European Union (EU) and it was feared that 'democratic change in brotherly Ukraine could spread to Russia'. Transforming Ukraine to a western democracy was seen as a threat to the Russian regime and was thus stymied at its source (Snegovaya, 2014). However, the Baltic States have already been fully integrated into NATO and the (EU) and have been stable democracies for over two decades now. So what is the nature of the threat that Russia presents to the Baltic States?

Putin is using hybrid tactics as a means of achieving his objectives of a politically restructured Europe. These include massive pro-Russian propaganda and misinformation campaigns, using economic levers, intimidation, or the employment of cyber warfare elements. In Ukraine in 2014, Russia has once again demonstrated its resolve to use both military and non-military means to create and fuel conflicts in pursuit of its wider geopolitical interests. The Kremlin is busily trying to regain its sphere of influence over nations that were formerly part of the Soviet Union, and the Baltic States' governments are continuously being reminded to stay alert. In addition, NATO frontier allies face much more significant threats due to their proximity to the potential aggressor (Grygiel and Mitchell, 2016, p. 166). Thus, what NATO needs most to deter Russia is 'to demonstrate robust political solidarity' within the alliance (NATO Parliamentary Assembly Report, 2015, pp. 4-6). There has been a significant increase in Russian probing activities to gauge NATO's commitment to the Baltic States over the past two years. Grygiel and Mitchell (2016, p. 43) define Russian probing as a 'low-intensity and low-risk test aimed at gauging the opposing state´s power and will to maintain security and influence over a region'. In case of the Baltic States, probing is aimed at the US and the strongest European countries, their power and their will to back up their most exposed allies. As mentioned by Grygiel and Mitchell (2016, p. 122), 'there is a strong correlation between the existence of alliances in a given region and the effectiveness of deterrence against a threatening power'. Building on the allies' fear of abandonment and US fear of entrapment in local conflicts, Russia is aiming to hinder their relationships which could ultimately provide Moscow with more room for probing and manoeuvring in the Baltic Region.

Hybrid or conventional?

A lot of attention has also been directed towards what approach Russia might take if it decides to launch an attack on the Baltic States and whether they would be able to employ the same hybrid strategy as they did in Ukraine. The term hybrid warfare, also called asymmetrical or non-linear warfare, has been brought up countless times since the Russian invasion of Ukraine in 2014. It has been defined as a 'mixture of coercive and subversive activities, conventional and unconventional methods (i.e. diplomatic, military, economic, technological), which can be used in a coordinated manner by state or non-state actors to achieve specific objectives while remaining below the threshold of formally declared warfare' (European Commission, 2016b, p. 2). Essentially, this form of offensive can include various tactics aimed at influencing the decision-making processes, such as information campaigns or using proxy actors for certain tasks (NATO Cooperative Cyber Defence Centre of Excellence, 2016). In reality, any threat can be perceived as hybrid as long as it is not limited to a single element of warfare. Puyvelde (2015) explains that the term hybrid should not be overused as it might cause confusion instead of 'clarifying the reality of modern warfare'. The word hybrid therefore does not truly differentiate one type of warfare from another, as the vast majority of (if not all) conflicts have utilised a multitude of forms and dimensions of warfare. NATO has already experienced this as well, as the Soviet Union used to create 'grey zones of ambiguity surrounding the degree of its involvement' in manipulating NATO members´ domestic issues (NATO Parliamentary Assembly Report, 2015, p. 3). Figure 1 shows changes in the character of armed conflict according to Valery Gerasimov, the Chief of Russia's General Staff (2013).

Traditional Military Methods	New Military Methods
– Military action starts after strategic deployment (Declaration of War). – Frontal clashes between large units consisting mostly of ground units. – Defeat of manpower, firepower, taking control of regions and borders to gain territorial control. – Destruction of economic power and territorial annexation. – Combat operations on land, in the air and at sea. – Management of troops by rigid hierarchy and governance.	– Military action starts by groups of troops during peace-time (war has not been declared at all). – Non-contact clashes between highly manoeuvrable interspecific fighting groups. – Annihilation of the enemy's military and economic power by short-term precision strikes on strategic military and civilian infrastructure. – Massive use of high-precision weapons and special operations forces, robotics, and weapons that use new physical principles (directed-energy weapons – lasers, shortwave radiation, etc.). – Use of armed civilians (4 civilians to 1 military). - Simultaneous strikes on the enemy's units and facilities in all territories. – Simultaneous battle on land, in the air, at sea, and in cyberspace. – Use of asymmetric and indirect methods. – Management of troops in a unified informational sphere

Figure 1: Changes in the Character of Armed Conflict according to Gerasimov (2013).

It is clear that deterring hybrid elements of warfare requires a much different approach than that of deterring a conventional attack, including 'increased resilience of cyber networks, diversification of energy supplies, and strategic communications that can rapidly correct false information spread by an opponent' (Rühle, 2015). *Deterrence-by-resilience* has been suggested as a response to the Russian hybrid warfare strategy employed in Ukraine. This type of deterrence is meant to dissuade the aggressor by demonstrating the futility of its approach rather than by inflicting punishment upon it (Shea, 2016). In twenty-first century warfare it is inevitable to consider it a core element of a country's deterrence capabilities of the same level of importance as conventional military deterrence measures.

Deterrence measures of Ukraine

It is clear that Ukraine has failed to deter Russia from aggressive behaviour, and there are several reasons for this. Firstly, let's examine the elements of hybrid warfare which were employed in Ukraine throughout the crisis. Russia has employed both an overt and covert military presence in the conflict, creating a rather confusing environment by using unmarked 'little green men' (Miller et al., 2015) on the 'battlefield'. Cyber-attacks were also employed, albeit as part of a broader strategy of information (or psychological) warfare. Propaganda and disinformation in the forms of pro-Russian and anti-Western attitudes are powerful psychological components which were used to divide Ukrainian society and change the general perception of ongoing events (Rogers and Tyushka, 2016). Digital propaganda, denial-of-service (DoS) campaigns, website defacements or information leaks were all used during the crisis for this purpose (Geers, 2015, p. 8). Finally, economic warfare was used to inflict various trade sanctions upon Ukraine. Consequently, Ukraine's gross domestic product contracted by around 16% between 2014 and 2015 (Aslund, 2015).

Self-evidently, Russia has launched its offensive on many fronts and Ukraine was unable to adequately respond to any of them. At the time of Russian involvement, Ukraine's military deterrence capabilities were solely dependent on its national army due to the lack of collective defence arangements with other countries and few effective resilience capabilities. An agreement which was supposed to keep Ukraine intact was the Budapest Memorandum from 1994 where Ukraine's territorial integrity was guaranteed by the United Kingdom, the US and Russia in exchange for its nuclear arsenal (Rogers and Martinescu, 2015, p. 15). Needless to say, Moscow has completely disregarded this in the pursuit of its geopolitical agenda. It is also important to note that whatever support Ukraine has received from other countries were only ad-hoc measures rather than structured deterrence mechanisms. Besides the clear advantage in size of the Russian military compared to that of Ukraine, there were several other factors present which resulted in Ukraine's inability to deter the Kremlin. According to an official from the Lithuanian Ministry of National Defence (2016), the Ukrainian army was in bad shape and nowhere near ready to go to war, both in terms of equipment and chain of command. Ambiguous rules of engagement, overlapping competences and severe corruption throughout the entire government were all contributing factors. As mentioned by Bulakh (2016), 'the Kremlin effectively exploited a number of vulnerabilities in Ukraine's societal cohesion, the lack of a nation-state narrative, corruption and weak government institutions, and a lack of trust and cooperation between the state and civil-society actors and citizens'. The lack of preparation for a stealthy incursion of the Russian army on its territory was met with certain legal constraints which made the situation even more difficult, such as the fact that the Ukrainian army could only be used against a foreign intruder. It was not a simple task to identify foreign military present at the time, as Russia had created a 'fog of war' with unclear participants. On top of this, the Kremlin's narrative regarding the protection of Russians abroad might have kept Ukraine in check in order not to give Russia a pretext to escalate its aggression (Rogers and Martinescu, 2015, p. 14).

There were several possibilities discussed in order to prevent the aggressive behaviour of Russia. For instance, it was suggested that Ukraine could cause great economic harm to Russia as half of its energy exports travel through Ukrainian pipelines, or that Ukraine could cut Crimea off from electricity, food and water supplies to deter further Russian belligerence. However, it is almost certain that none of these would have worked. Firstly, Russia has alternative routes for exporting its energy and Ukraine is heavily dependent on Russian pipelines anyway; secondly, cutting Crimea off could result in more aggressive actions from Russia as this 'new part of Russia' would now be directly threatened (Person, 2015). Regarding the threats from the EU and US about severe economic sanctions towards Russia, these were simply not perceived as harsh enough by the Kremlin. The potential gains for Moscow, i.e. preventing Ukraine from integrating further into European-, and potentially, the Euro-Atlantic structures, outweighed whatever economic losses Russia was going to incur. Therefore, Ukraine's inability to deter Russia resulted in the loss of Crimea.

Deterrence measures of the Baltic States

To begin with, there are several important differences between the Baltic States and Ukraine. Firstly, in light of Russia's geopolitical belligerence in Ukraine, the Baltic States are well aware of the possibility of Russian aggression towards themselves; secondly, they have already experienced several elements of hybrid warfare. The point could be made that the Baltic States have even been experiencing elements of hybrid warfare since regaining their independence in 1991 due to constant pro-Russian propaganda in the region. Furthermore, since the collapse of the Soviet Union, Russia has attempted to affect policy changes in the Baltic Region in the form of gas supply cut-offs (Smith, 2004, p. 1), or, more recently, the Russian cyber-attack on Estonia in 2007. These two points clearly differentiate between the preparedness of Ukraine and the Baltic States.

In terms of deterrence measures, the Baltic States have much more to offer than Ukraine, especially since 2014, as they have put a lot of effort into strengthening their capabilities. There have been changes on the national, regional and NATO & EU levels as well. On the national level, Lithuania has reintroduced conscription and amended its legislation to allow the use of armed forces during peacetime to shorten reaction times in case of an attack (Szymański, 2015, pp. 1-5). Similarly, Latvia has amended a national security law which gives the commanders of particular units rights and obligations to act without prior political agreement to allow for quicker reactions (Representative from the Latvian Ministry of Defence, 2016). There have been developments in terms of cyber-security as well, such as Estonia integrating cyber-defence into its compulsory military service and the establishment of a cyber-command which is currently awaiting the government's approval (Pernik, 2016). Other measures include increased military expenditures to accelerate the modernisation of the armed forces, as well as raising the combat readiness of certain units and the modernisation of training scenarios to include elements of hybrid warfare (Szymański, 2015, pp. 1-5).

In terms of regional cooperation, there have been several military projects created in the Baltic States since they regained their independence in 1991 to improve their defence capabilities. These include the Baltic Peacekeeping Battalion (BALTBAT), the Baltic Naval Squadron (BALTRON), the Baltic Air Surveillance Network (BALTNET), the Baltic Security Assistance Group (BALTSEA) and the Baltic Defence College (BALTDEFCOL) (Ito, 2013, p. 246). Furthermore, Lithuania, Latvia and Estonia hold regular meetings on several levels with plans to strengthen this cooperation over the coming years and there is also an information exchange channel – used daily – for intelligence sharing amongst the Baltic States (Representative from the Latvian Ministry of Defence, 2016). While these are steps in the right direction towards confirming the direct deterrent of the Baltic States, they cannot by themselves be viewed as a credible deterrent against an adversary as powerful as Russia.

The backbone of deterrence of the Baltic States is their NATO membership. Since 2004, the Baltic States have enjoyed the security provided by NATO's Article 5 in relation to collective defence. However, after the events in Ukraine in 2014 and increased Russian probing activity in the Baltic Region, NATO has significantly improved its deterrent posture on the Eastern Flank. There have been two large NATO Summits since the annexation of Crimea, both of which have introduced significant changes regarding NATO's deterrent posture in the Baltic Region. The NATO Wales Summit in 2014 resulted in a Readiness Action Plan (RAP), which provides an initial answer to the 'challenges posed by Russia and their strategic implications' (NATO, 2014). It comprises both adaptation measures, which are changes to NATO's long-term military posture and capabilities, and assurance measures, namely an immediate increase in the military presence on the Eastern Flank (NATO, 2015a). As part of the RAP measures, the NATO Response Force (NRF) has been improved by creating the Very High Readiness Joint Task Force (VJTF) within it. The NRF consists of about 40,000 personnel, 5,000 of which will be part of the VJTF and will be capable of deploying within 2-3 days (NATO, 2016b). Furthermore, a NATO Force Integration Unit (NFIU) has been established in each of the Baltic States to 'support collective defence planning and assist in coordinating training and exercises' (NATO, 2015b, p. 2).

During the latest NATO Summit in Warsaw, further modifications were made to the alliance's deterrent posture in the Baltic Region. NATO has pledged to increase its forward presence on the Eastern Flank by

positioning one battalion in each of the Baltic States and Poland starting in early 2017 (NATO, 2016a). These battalions will comprise multinational forces with emphasis being placed on the rotation of forces in order not to violate the NATO-Russia Founding Act of 1997, which states: 'NATO reiterates that in the current and foreseeable security environment, the alliance will carry out its collective defence and other missions by ensuring the necessary interoperability, integration, and capability for reinforcement rather than by additional permanent stationing of substantial combat forces' (NATO-Russia Council, 1997, p. 14). Even though Russia has unilaterally and forcefully altered the security environment, the rotation of forces ensures that NATO continues to uphold the agreement, as they are not permanently stationed. Having combat-ready battalions present in the region is a major shift from the past. Even though there were foreign soldiers present in the Baltic States, their numbers were significantly fewer and they never formed an entire 'package' including enablers – which these battalions will contain. Not only is this a clear sign that the Baltic States have the alliance's full support, it is also a message to Russia that an attack on the Baltic Region will quite literally be an attack on all. When calculating potential gains and losses of an attack on the Baltic States, getting engaged with thousands of foreign troops suggests a rather weighty item in the 'potential losses' column. While retaliation resulting from the deaths of a small number of foreign troops could have been questionable, it is unthinkable that the obliteration of a battalion-sized unit – some backed by nuclear powers – would not be met with a massive response.

In addition, there have also been some significant improvements related to overcoming hybrid elements of warfare. When talking about 'deterrence-by-resilience', Shea (2016) outlined seven basic requirements, which cover the entire spectrum of the crisis – from evolving hybrid threats to the worst possible scenarios. The requirements are the following:

1. Assured continuity of government and critical government services;
2. Resilient energy supplies;
3. Ability to deal effectively with the uncontrolled movement of people;
4. Resilient food and water resources;
5. Ability to deal with mass casualties;
6. Resilient communications systems; and finally
7. Resilient transportation systems.

In part due to the initiatives of the Baltic States, these are now being addressed on both the EU and NATO levels. The EU has recently introduced a Joint Framework to improve the resilience of EU Member States while increasing cooperation with NATO on countering hybrid threats. Even though countering these types of threats is primarily the responsibility of Member States, the Joint Framework helps in the process by combining national and European instruments more effectively. The EU Joint Framework proposes operational actions aimed at raising awareness, building resilience, preventing crises, responding to crises and recovering & stepping up the cooperation between the EU and NATO as well as other partner organisations (European Commission, 2016a). The timeframe for the implementation of these measures is largely dependent on EU Member States. It should, however, be one of the top priorities in the most exposed regions such as in the Baltic States.

One of the most significant instruments regarding hybrid threats will be the EU Hybrid Fusion Cell. The aim of this will be to 'receive, analyse and share classified and open source information specifically relating to indicators and warnings concerning hybrid threats' from various stakeholders (European Commission, 2016b, p. 4). Furthermore, National Contact Points will be established by Member States to cooperate and communicate with the EU Hybrid Fusion Cell; equally, staff of the EU Hybrid Fusion Cell will be trained to recognise early hybrid threat signs. Another measure seeks to develop a strategic communication strategy: preventing and countering disinformation is crucial as 'providing swift factual responses and raising public awareness about hybrid threats are major factors for building societal resilience' (European Commission, 2016b, p. 4). Finally, the EU is looking to establish a Centre of Excellence to focus on researching hybrid threats and ensuring that decision-making is well informed with regard to the complexities and ambiguities associated with hybrid threats (European Commission, 2016b, p. 5). The EU Joint Framework also mentions increasing cooperation with NATO to be better prepared to face and respond to hybrid threats in

a complementary manner. This would involve sharing analyses and best practices and liaising with the EU Hybrid Fusion Cell and NATO´s Hybrid Fusion Cell (European Commission, 2016b, p. 17).

To further enhance resilience, the EU emphasises protecting critical infrastructure which is vital in preventing economic or societal disruption. This includes diversifying EU's energy sources, suppliers and routes, but also increasing the resilience of nuclear infrastructures by promoting safety and security standards (European Commission, 2016b, p. 6). Furthermore, the EU is improving its legislation and processes to enhance the protection of transport and supply chains (airports, road infrastructure, ports, etc.), increase the resilience of space infrastructure, strengthen defence capabilities (e.g. surveillance and reconnaissance capabilities) and protect public health and food security. Cybersecurity is another vital element of building resilience as the vast majority of services across the EU can be subject to a cyber-attack. A cyber-attack can trigger an Article 5 response, however, NATO's mandate with regard to cybersecurity is strictly defensive and its role is to protect the networks of the alliance and its allies. It is essential to protect NATO's Information Technology infrastructure to 'fulfil NATO's core tasks, maintain its technical edge and ensure its capabilities work as an integrated whole in the 21st century, where information warfare is a 24/7 battle' (Fertasi and Vivo, 2016). The NATO Cooperative Cyber Defence Centre of Excellence is an international military organisation with the mission to enhance the capability, cooperation and information sharing ability of NATO, its member countries and partners in terms of cyber defence. Meanwhile, the EU Joint Framework on countering hybrid threats further considers improving cybersecurity resilience in terms of energy, financial systems, transport, hybrid threat financing, resilience against radicalisation and violent extremism, and cooperation with third-party countries (European Commission, 2016b, p. 10).

Challenges

While the Baltic States, the EU and NATO seem to have been strengthening every aspect of their deterrence capabilities, there are still many challenges ahead. According to an official from the Lithuanian Ministry of National Defence, most of their attention should be directed towards an enhanced forward presence in the region its implementation, sustainability and role within the overall defence plans. While the NATO battalions provide a significant increase in terms of combat-ready land forces, Praks (2016) suggests that similar steps regarding naval and air forces should follow to further increase the deterrent effect. Furthermore, as NATO is a multinational organisation, its decision-making processes can be rather lengthy. The challenge for the future is to shorten them as much as possible to allow prompt reactions by the alliance as one of the major lessons learned from Ukraine is the need to be decisive and act quickly. To make the most of the armed forces present in the region, the rules of engagement in case of an attack should be perfected, including the logistics and lines of command, a process that is currently underway. However, this is not a national matter and requires strong NATO involvement (Official from the Lithuanian Ministry of National Defence, 2016).

Should Russia adopt the same approach towards the Baltic States as it used in Ukraine, it would in all likelihood not be as successful as a hybrid approach would allow for the country under attack (which is always the first responder) and the Alliance to mobilise itself and disrupt any potential threats (Praks, 2016). However, this idea presumes the ability to identify any emerging threat from its earliest stages, which is currently lacking. The EU Hybrid Fusion Cell is addressing this issue directly by providing a platform to share and analyse intelligence, as well as by having staff trained to recognise early signs of hybrid threats. The establishment of this mechanism is currently ongoing; however, one of the greatest challenges will be the successful implementation of the goals set out in the EU Joint Framework by EU Member States into their legislation (European Commission, 2016b, p. 18). As far as conventional attacks go, snap exercises occurring in close proximity to the borders of the Baltic States should not be underestimated. Since 2014 there has been a notable increase in unannounced Russian snap exercises of significant sizes near the borders of the Baltic States (Hurt, 2016, p. 38). These exercises sometimes consist of as many as 45,000

troops and could be used to create a new state of normality. Then, once the alliance no longer sees snap exercises as something extraordinary, they might be used to launch a surprise attack.

Furthermore, the Russian speaking population is a potential vulnerability which should not be overlooked, even though there is a significant difference between the Russian minority in the Baltic States and in Ukraine. Even though parts of the Russian minority do not enjoy the same rights as Estonian or Latvian citizens, including restricted political rights (Cianetti, 2014, p. 86), their living standards are still significantly higher than those of Russian speakers in Ukraine, or even those in Russia itself. Only a small minority of them are considered to be radical and according to a representative from the Latvian Ministry of Defence, they are not thought of as a threat. However, it is essential that pro-Russian propaganda and disinformation is constantly countered and objective information is available to all. Certain measures to make the minority feel more included have already been taken, e.g. by redistributing much of Riga's budget to be invested in the easternmost part of Latvia where the majority of the Russian-speaking population is situated, or plans to establish a Russian-speaking television network across the Baltic Region (Representative from the Latvian Ministry of Defence, 2016).

Given the broad spectrum of elements that twenty-first century warfare presents us with, it is essentially impossible to succeed in deterring it completely. The Baltic States must work diligently to successfully implement the features of the EU Joint Framework on countering hybrid threats in their legislation and continuously keep improving their own processes and capabilities, both nationally and within the region. What the alliance needs to do is to show unconditional support towards all its members and thus erase any doubts concerning NATO's stability, especially in terms of the current situation regarding the question mark surrounding the direction of US foreign policy during the coming administration of Donald Trump. If these conditions are met, the Baltic States will be a very hard puzzle to solve for Russia, whichever approach it might choose.

Conclusion

Ukraine's lack of collective defence treaties and no resilience capabilities on the one hand and the NATO membership of the Baltic States on the other are the seemingly obvious reasons as to why Ukraine has not been able to deter Moscow while the Baltic States have been successful so far. The alliance provides them with a powerful extended deterrent through the possibility of activating Article 5, and a shift towards accommodating all aspects of non-linear warfare by NATO is currently ongoing to cover the entire spectrum of potential threats. While this has indeed been the most significant difference between Ukraine and the Baltic States, there are more contributing factors including the previous experiences of the Baltic States in dealing with elements of hybrid warfare or their anticipation of belligerent Russia, which has also fueled regional cooperation. While the gap in terms of deterrent capabilities between Ukraine and the Baltic States was already quite significant back in 2014, it has been widening continuously ever since as the Baltic States, the EU and NATO focus on improving their military and non-military deterrence measures and related processes.

References

Anderson, J., Larsen, J. and Holdorf, P. (2013). *Extended Deterrence and Allied Assurance: Key Concepts and Current Challenges for U.S. Policy*. [online] Colorado: USAF Institute for National Security Studies at the USAF Academy, Available at: http://www.usafa.edu/df/inss/OCP/OCP69.pdf [Accessed 3 Nov. 2016].

Aslund, A. (2015). *Russia's War on Ukraine's Economy.* [online] Project Syndicate, Available at: https://www.project-syndicate.org/commentary/russia-war-on-ukraine-economy-by-anders-aslund-2015-07?barrier=true [Accessed 3 Nov. 2016].

Bulakh, A. (2016). *Defining Ukraine's National Resilience in Light of Non-linear Threats: Where to Start?* [online] International Centre for Defence and Security, Available at: http://www.icds.ee/blog/article/defining-ukraines-national-resilience-in-light-of-non-linear-threats-where-to-start/ [Accessed 25 Dec. 2016].

Cianetti, L. (2014). Granting Local Voting Rights to Non-Citizens in Estonia and Latvia: The Conundrum of Minority Representation in Two Divided Democracies. *Journal on Ethnopolitics and Minority Issues in Europe,* Vol. 13 (Issue 1), [online] Available at: http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2014/Cianetti.pdf [Accessed 30 Jan. 2017], pp. 86-112.

Davis, P. (2014). *Toward Theory for Dissuasion (or Deterrence) by Denial: Using Simple Cognitive Models of the Adversary to Inform Strategy*. [online] Available at: http://www.rand.org/content/dam/rand/pubs/working_papers/WR1000/WR1027/RAND_WR1027.pdf [Accessed 20 Oct. 2016].

Ducaru, S. (2016). Framing NATO´s Approach to Hybrid Warfare. In: N. Lancu, A. Fortuna, C. Barna and M. Teodor, ed., *Countering Hybrid Threats: Lessons Learned from Ukraine*, 1st ed., Amsterdam: IOS Press BV, pp. 3-11.

European Commission, (2016a). *Security: EU strengthens response to hybrid threats.* [online] Available at: http://europa.eu/rapid/press-release_IP-16-1227_en.htm [Accessed 2 Nov. 2016].

European Commission, (2016b). *Joint Framework on countering hybrid threats: A European Union response.* [online] Available at: http://data.consilium.europa.eu/doc/document/ST-7688-2016-INIT/en/pdf [Accessed 2 Nov. 2016].

Fertasi, N. and Vivo, D. (2016). *Cyber resilience: protecting NATO's nervous system.* [online] NATO Review magazine. Available at: http://www.nato.int/docu/review/2016/Also-in-2016/nato-cyber-resilience-security/EN/index.htm [Accessed 4 Dec. 2016].

Geers, K. (2015). Foreword. [online] In: K. Geers, ed., *Cyber War in Perspective: Russian Aggression against Ukraine*, Tallinn: NATO CCD COE Publications, pp. 8-9. Available at: https://ccdcoe.org/sites/default/files/multimedia/pdf/CyberWarinPerspective_full_book.pdf [Accessed 3 Dec. 2016].

Gerasimov, V. (2013). Новые вызовы требуют переосмыслить формы и способы ведения боевых действий, *Военно-промышленный курьер*, No. 8 (476). [online] Available at: http://www.vpk-news.ru/articles/14632 [Accessed 2 Dec. 2016].

Grygiel, J. and Mitchell, A. (2016). *The Unquiet Frontier: Rising Rivals, Vulnerable Allies, and the Crisis of American Power.* New Jersey: Princeton University Press.

Hurt, M. (2016). Preempting Further Russian Aggression Against Europe. *The Heritage Foundation*. [online] Available at: https://s3.amazonaws.com/ims-2016/PDF/2016_Index_of_US_Military_Strength_ESSAYS_HURT.pdf [Accessed 2 Nov. 2016].

Huth, P. (1999). Deterrence and International Conflict: Empirical Findings and Theoretical Debates. *Annual Review of Political Science,* 2, pp. 25-48.

Ito, P. (2013). Baltic Military Cooperative Projects: A Record of Success. In: T. Lawrence and T. Jermalavičius, ed., *Apprenticeship, Partnership, Membership: Twenty Years of Defence Development in the Baltic States*, 1st ed. Tallinn: International Centre for Defence Studies, pp. 246 – 281.

McDermott, R. (2014). Putin Orders Largest Snap Inspection Exercise of the Year. *Eurasia Daily Monitor*, Vol. 11 (Issue 162). [online] Available at: https://jamestown.org/program/putin-orders-largest-snap-inspection-exercise-of-the-year/ [Accessed 12 Oct. 2016].

Miller, J., Vaux, P., Fitzpatrick, C. and Weiss, M. (2015). An Invasion by Any Other Name: The Kremlin's Dirty War in Ukraine. *The Interpreter.* [online] Available at: http://www.interpretermag.com/wp-content/uploads/2015/09/IMR_Invasion_By_Any_Other_Name.pdf [Accessed 3 Nov. 2016].

NATO, (2014). *Wales Summit Declaration.* [online] Available at: http://www.nato.int/cps/en/natohq/official_texts_112964.htm [Accessed 20 Oct. 2016].

NATO, (2015a). *NATO's Readiness Action Plan.* [online] Available at: http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2015_05/20150508_1505-Factsheet-RAP-en.pdf [Accessed 20 Oct. 2016].

NATO, (2015b). *NATO Force Integration Units.* [online] Available at: http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2015_09/20150901_150901-factsheet-nfiu_en.pdf [Accessed 20 Oct. 2016].

NATO, (2016a). *Warsaw Summit Communiqué*. [online] Available at: http://www.nato.int/cps/en/natohq/official_texts_133169.htm [Accessed 15 Oct. 2016].

NATO, (2016b). *NATO Response Force.* [online] Available at: http://www.nato.int/cps/en/natohq/topics_49755.htm [Accessed 8 Nov. 2016].

NATO Cooperative Cyber Defence Centre of Excellence, (2016). EU Policy on Fighting Hybrid Threats. [online] Available at: https://ccdcoe.org/eu-policy-fighting-hybrid-threats.html [Accessed 9 Nov. 2016].

NATO Parliamentary Assembly Report, (2015). Hybrid Warfare: NATO´s New Strategic Challenge? No. 03/15. [online] Available at: http://www.ndc.nato.int/news/news.php?icode=814 [Accessed 20 Oct. 2016].

NATO–Russia Council, (1997). *Founding Act on Mutual Relations, Cooperation and Security Between NATO and the Russian Federation*. [online] Available at: http://www.nato.int/nrc-website/media/59451/1997_nato_russia_founding_act.pdf [Accessed 20 Oct. 2016].

Official from the Lithuanian Ministry of National Defence, (2016). Interviewed by David Takacs, 26 Oct. 2016.

Pernik, P. (2016). *CyCon 2016 and NITEC2016: NATO's Cyber Defence Post-Warsaw*. [online] International Centre for Defence and Security, Available at: http://www.icds.ee/blog/article/cycon-2016-and-nitec2016-natos-cyber-defence-post-warsaw/ [Accessed 05 Dec. 2016].

Person, R. (2015). Ukraine and The Limits of Deterrence. [online] Vox Ukraine, Available at: http://voxukraine.org/2015/07/23/ukraine-and-the-limits-of-deterrence_eng/ [accessed 12 Oct. 2016].

Praks, H. (2016). Interviewed by David Takacs, 1 Nov. 2016.

Puyvelde, D. (2015). *Hybrid war – does it even exist?* [online] NATO Review magazine, Available at: http://www.nato.int/docu/Review/2015/Also-in-2015/hybrid-modern-future-warfare-russia-ukraine/EN/index.htm [Accessed 20 Oct. 2016].

Representative from the Latvian Ministry of Defence, (2016). Interviewed by David Takacs, 21 Nov. 2016.

Rogers, J. and Martinescu, A. (2015). *After Crimea: Time for a New British Geostrategy for Eastern Europe?* London: The Henry Jackson Society.

Rogers, J. and Tyushka, A. (2016). Russia's "Anti-hegemonic" Offensive: A New Strategy in Action. *Diplomaatia*, No. 160, [online] Available at: http://www.diplomaatia.ee/en/article/russias-anti-hegemonic-offensive-a-new-strategy-in-action/ [accessed 23 Dec. 2016].

Rühle, M. (2015). Deterrence: what it can (and cannot) do. [online] NATO Review magazine, Available at: http://www.nato.int/docu/Review/2015/Also-in-2015/deterrence-russia-military/EN/index.htm [accessed 28 Oct. 2016].

Shea, J. (2016). *Resilience: a core element of collective defence*. [online] NATO Review magazine, Available at: http://www.nato.int/docu/Review/2016/Also-in-2016/nato-defence-cyber-resilience/EN/index.htm [Accessed 20 Oct. 2016].

Smith, K. (2004). *Russian Energy Politics in Poland, Ukraine and the Baltic States*. [online] Available at: https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/attachments/041019_smith_presentation.pdf [Accessed 20 Oct. 2016].

Snegovaya, M. (2014). Ukraine's Crisis Is Not the West's Fault. *The Moscow Times*. [online] Available at: https://themoscowtimes.com/articles/ukraines-crisis-is-not-the-wests-fault-39411 [Accessed 9 Nov. 2016].

Snyder, G. (1961). *Deterrence and Defense: Toward a Theory of National Security*. New Jersey: Princeton University Press.

Szymański, P. (2015). Between continuation and adaptation: The Baltic States' security policy and armed forces. *Ośrodek Studiów Wschodnich*, Volume 190. [online] Available at: https://www.osw.waw.pl/en/publikacje/osw-commentary/2015-11-24/between-continuation-and-adaptation-baltic-states-security [Accessed 8 Nov. 2016].

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Research Article **Open Access**

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The Baltic states should adopt the self-defence pinpricks doctrine: the "accumulation of events" threshold as a deterrent to Russian hybrid warfare

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Abstract: This article addresses a key legal debate that the Baltic NATO members ought to engage in: what constitutes an "armed attack" and what interpretation should be made of this concept in order to deter recent Russian hybrid warfare strategies. These questions are considered in connection with a more general issue regarding the law of self-defence: the question of what constitutes an armed attack in international law. This article will try to present a broad definition and context of Russian hybrid warfare and how it is challenging traditional jus ad bellum paradigms. Too few policy-makers have paid detailed attention to the new Russian "lawfare" in Ukraine, using specific military and non-military tactics in order to blur the lines between "armed attack" and mere political intervention. Meanwhile, legal scholars detach their analysis from actual policy-serving considerations and tend to acquiesce to some very restrictive theories of the use force in self-defence. For some countries, like the Baltic ones, facing strategic exposure – because of both threatening neighbours and low military capacities – the jus ad bellum paradigm should not be construed as another layer of obstacle.

Keywords: self-defence doctrine, Baltic States, Russian hybrid warfare, NATO, pinpricks doctrine, accumulation of events doctrine, entrapment strategy, aggression, armed attack

1 Introduction

Lithuania, Estonia and Latvia[1] are members of the North Atlantic Treaty Organization [Hereafter: NATO]. The Russian Federation's new method of expanding its sphere of influence and, in the worst case, its territory, has been labelled as *hybrid warfare* (Jones, 2014). The latter is not yet clearly defined (Huovinen, 2011).[2] The recent reticence of Western powers to use NATO as a countering force to Russian expansionism legitimately frightens small States like the Baltic ones (Browne, 2016; Shuster, 2016; Scarborough, 2016). These countries perceive a degree of strategic exposure vis-à-vis Russia.[3]

1 Hereafter: The Baltic States.

2 The relevant doctrine usually combines multiple tactics in the generic term "hybrid warfare": economic manipulation; disinformation and propaganda campaigns; fostering of civil disobedience and insurrection by targeting ethnic, religious or any clearly defined minority; the use of paramilitary forces; massive cyber-attacks on strategic private and State networks; and diplomatic efforts to destabilize and ostracize the victim State.

3 Russia already obstructed trade in Lithuania for example. In March 2014, Moscow imposed a ban on all food transported through the Lithuanian port of Klaipeda, the largest in the Baltics. Lithuania provides the most direct land access to Russia's Kaliningrad enclave, representing a strategic target for potential future warfare scenarios.

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States have an "inherent right of self-defence" under conventional public international law.[4] This principle is a fundamental regulation of inter-State relations (Dinstein, 2005).[5] It guarantees each State the right to defend itself in case the international community fails to ensure world peace and security. However, this right has fully grown and shaped itself as a legal instrument since the prohibition of the threat and use of force in inter-State relations (Dinstein, 2005; Sierpinski, 2006). In fact, States almost invariably invoke the right of self-defence when they use armed force in their international relations.

The right of self-defence must be read through the prism of article 2(4) of the Charter of the United Nations.[6] Self-defence is an exception to the illegality of the use of armed force in inter-State relations. It is legal and legitimate because it responds to a previous illegal use of armed force by an attacking State (or attacking States).[7] Determining *what* constitutes an armed attack and *who* launched it are therefore pivotal as far as the issue of self-defence is concerned.[8]

This article seeks to provide clarification of appropriate legal criteria that should be taken into consideration while determining what constitutes an armed attack and who can actually commit such an armed attack. This analysis will help us frame the legal boundaries in which the recent Russian hybrid warfare strategy moves and develops. Part II of the Article identifies both methods and reasons for this new hybrid warfare strategy. Part III addresses self-defence in both conventional and customary international law. This part will particularly focus on the armed attack threshold. Part IV analyses the pinpricks doctrine – or accumulation of events doctrine – and its legality under the international law of the use of force. Under this doctrine, an armed attack is not necessarily a full-scale military invasion or campaign of military strikes, but can also be the result of an accumulation of low-scale events of different natures: cybersecurity breaches, small-scale guerrilla warfare, spontaneous but limited airstrikes, etc. Such small-scale events, if relatively rare in terms of time and not "grave" enough with regard to how much destruction they cause, are unfortunately not considered as an armed attack by many legal scholars or States. Finally, Part V thoroughly investigates NATO's Article 5 and how the Baltic States, by adopting the pinpricks doctrine, could deter Russian intentions of hybrid warfare by securing a realistic and efficient application of Article 5.

2 The new russian hybrid warfare

Traditional international law regulates situations of clear use of armed force by both State and non-State actors. Hybrid warfare, where the use of armed force is not the core tactic used by the attacking belligerent, defies the strictly defined notion of "armed conflict".[9]

A factual case study of Russian hybrid warfare strategy is necessary to set up the framework of a new Baltic self-defence doctrine. This case study must encompass both military doctrines developed by States – the theoretical aspect of hybrid warfare – and actual tactics and operations on the ground – the empirical study of previous Russian use of hybrid warfare, including in Ukraine.

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4 Article 51 of the Charter of the United Nations states that "Nothing in the present Charter shall impair the *inherent right* of individual or collective self-defence if an armed attack occurs against a Member of the United Nations [...]" [emphasis added].

5 "The reliance on self-help, as a remedy available to States when their rights are violated, is and always has been one of the hallmarks of international law." The author distinguishes self-help from self-defence, the latter being the final phase of self-help. In other words, "self-defence is a permissible form of "armed self-help"".

6 Article 2(4) of the Charter of the United Nations promulgates the general prohibition of the use of *force* between States. [emphasis added].

7 *USA v. von Weizsaecker et al.* ("the Ministries Trial") (Nuremberg, 1949), 14 NMT 314, 329: "there can be no self-defense against self-defense."

8 Emphasis added.

9 Two distinct categories of armed conflict are recognized by the Geneva Conventions: international and non-international armed conflicts. Common Article 2 of the Geneva Conventions of 1949 international armed conflicts is defined as those which oppose "High Contracting Parties", meaning States. As for non-international armed conflicts, both Common Article 3 of the Geneva Conventions of 1949 and Article 1 of the Additional Protocol II define them as hostilities occurring between governmental armed forces and non-governmental armed groups or between such groups only. The present Article is only interested in the first category of armed conflicts, the international ones.

The new Russian hybrid warfare is sometimes referred to as the Gerasimov Doctrine (Monaghan, 2015/6). The Chief of the General Staff, namely Army General Valery Gerasimov, published in the Russian newspaper *Voenno-Promyshlenni Kurier* in early 2013, an article said to set the contours of what nowadays commentators call hybrid warfare (Gerasimov, 2013).[10] In this article, Gerasimov points to the increasing importance of non-military means in achieving political and strategic goals. He additionally advocates a system of armed defence in the interests of the State beyond the borders of its territory. This article is the cornerstone of this new Russian strategic thinking.

First of all, its author, Chief of the General Staff Valery Gerasimov, holds one of the highest military commanding posts in Russia. The Chief of the General Staff in Russia is responsible for long-term planning duties and oversees strategic transportation; developments in terms of doctrine and capabilities of the force; and equipment procurement for all branches of the Ministry of Defence. He also exercises daily control, during peacetime, of the *Glavnoye Razvedyvatel'noye Upravleniye* (Main Intelligence Directorate, GRU). He therefore is in charge of developing the theoretical and practical framework of future Russian warfare.

Secondly, the Chief of the General Staff's article is part of the process of setting up Russian national security policy (Blank, 2011).[11] Indeed, the latter process is quite decentralized in Russia. It starts with numerous publications in Russian peer-reviewed journals. It then takes the form of conferences and colloquiums, both in State and non-State owned institutes and think tanks. This second step helps key officials benefit from the contradictory nature of debates and helps them gain a broad comprehension of the different proposals and doctrines defended. The last process is however fully integrated in the State's bureaucracy - both the Ministry of Defence and the Ministry of Foreign Affairs are responsible for key parts in the final draft of the national security agenda or white paper. Gerasimov's article is therefore not benign since it fuels the debate in Russia over what form national defence should take in the upcoming years.
Hybrid warfare can be qualified as a controlled chaos. The key stages of it are:

- Destabilization of the targeted country by fuelling domestic conflict;
- Ruining the economy and causing State collapse by targeting key infrastructures;
- Russia's "step in" as an invited saviour replacing local political leadership with its own operatives (Güngör, 2007; Hernad, 2012).[12]

The methods used are the following (they can be used simultaneously or alternatively, depending on the international pressure which Russia faces during the different steps of the conflict):

- Creation of "puppet State" structures;
- Flooding the targeted country with illegal weapons;
- Using foreign paid mercenaries;
- Enforcing a refugee crisis;
- Exploiting social media and information warfare;
- The use of low-scale force or the threat of the use of force;[13]
- Introduction of a Russian "peacekeeping force".

10 Name of the article: The Value of Science Is in the Foresight: New Challenges Demand Rethinking the Forms and Methods of Carrying out Combat Operations. He indeed mentions, amongst other things, the "internal opposition to create a permanently operational front through the entire territory of the enemy state."

11 Military doctrine forms an important part of the Russian security policy. This important impact of military doctrine can be seen in the different Foreign Policy Concepts (FPC) of the Russian Federation.

12 The last step shows how the new Russian hybrid warfare can only be applied in Russia's neighbouring States. Russia could not play the role of the saviour in countries where no Russian or Russian speaking people live. The new hybrid warfare is therefore tightly linked to the notion of "protection of nationals and cultural minorities abroad". This notion will be discussed later in Part IV. The Baltic States are therefore potential targets since they are neighbours to Russia and have Russian and Russian speaking communities.

13 Diplomatic and political threats are one of the tactics of hybrid warfare. Some authors consider these means as excluded from the scope of self-defence. However, as was pointed out in *Legality of the Threat or Use of Nuclear Weapons*, a threat to use force is as much a violation of Article 2(4) of the Charter of the United Nations as an actual use of force. *See Nuclear Weapons* advisory opinion (n° 2) para. 47.

These methods are particularly effective on multi-ethnic and/or multilingual societies – as the Ukrainian case showed.

This new kind of warfare seeks to expand the scope of conflict from purely inter-military actions to the State's full waging of war. Army General Gerasimov's article expands conflict to "the broad use of political, economic, informational, humanitarian and other non-military measures." The objectives of this new doctrine are clear:

- Since Russia cannot afford a full frontal confrontation with Western powers, it seeks to challenge them in other ways;
- This warfare uses less costly tactics such as special forces, strategic communications, disinformation and propaganda campaigns, the fostering of civil disobedience and insurrection, and the use of paramilitaries;[14]
- It remains in the "grey zone" between war and peace – the intention behind this is to remain under the threshold of the clear use of armed force while coercing the victim State.

The case study of President Putin's declarations on the Crimea crisis helps understand the first abovementioned reason. For more than six weeks after the Crimean occupation, President Putin explicitly denied that Russian soldiers had been involved. He shifted his view on April 2014, admitting that "Russian servicemen did back the Crimean self-defence forces" and that "Russia created conditions [...] for the expression of the will of the people living in Crimea and Sevastopol".[15] As for South-East Ukraine, Russia constantly denied that regular forces were involved. By denying and then openly admitting that his previous public statements were not true, President Putin defied a rather widely accepted principle of international diplomacy: statements of top officials concerning major political crises can, at most, be blurry, but never totally and wilfully wrong (Allison, 2014).[16]

A hybrid war is therefore a non-linear conflict. Russian hybrid warfare blurs the classic war paradigms: *Who* is behind the armed attacks; *how much* is the attacker implicated in the armed attacks; and *what are the objectives* of the offender.

3 Self-defence in conventional and customary international law

3.1 Self-defence in conventional international law

The right of self-defence in international law is the State's *inherent* right to use force in order to protect itself from an armed attack. This legal notion has widely been studied and analysed by the relevant legal doctrine (Bowett, 1958; Zourek, 1975; Dinstein, 2005; Green, 2009).[17]

14 This new hybrid warfare tactic relies on proxies and surrogates to prevent attribution and intent and to maximize confusion and uncertainty. This is the reason I previously mentioned a Russian "lawfare" in Ukraine.

15 Interview with Radio Europe 1 and the TF1 TV channel, June 4th, 2014.

16 The Israeli diplomatic practice of "no comment" after Israeli military actions outside of Israel's territory is a proof of this diplomatic principle. Indeed, Israel has no interest in admitting its military actions in neighbouring hostile States. Such statements would undermine its national security and its efforts for a peaceful settlement in the Middle East. However, the international community demands to know when and why a State used force under a particular circumstance. Israel then adopts the "silent treatment" rather than denying its actions. State practice shows that such a policy of silence is not widely condemned by the international community. It can therefore be concluded that silence is an accepted form of diplomatic communication, but openly lying is not. The author states that: *Although military means ultimately were critical, the Russian interventions in the spring and summer of 2014 relied heavily on diplomatic, legal and media campaigns; the mobilization of local political support among civilian groups; and economic pressures and threats in working towards the political goal of restructuring the Ukrainian state.*

17 This article does not intend to present an exhaustive view of the legal literature on self-defence. The reader will, without a doubt, be aware of the impossibility of such an attempt since self-defence is one of the most studied subjects in public international law.

The inter-State use of force is prohibited by Article 2(4) of the Charter of the United Nations, which states that:

> *All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*[18]

The logical other side of the coin of this prohibition is the right given to every State to protect itself by using armed force in self-defence. The Charter of the United Nations is the primary authority concerning self-defence. Article 51 of the UN Charter states that:

> *Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.*[19]

Self-defence is, by Charter norms, governed by a series of factual and legal conditions:
- The presumed victim State must be facing an "armed attack" (or armed aggression if the French translation is the ruling translation);[20]
- The presumed victim State must verify that its armed reaction is necessary (Dinstein, 2005);[21]
- The presumed victim State must use this right only to repel the aggression;[22]
- The actions of the victim State must be proportionate to the armed attack (Dinstein, 2005);[23] and
- The presumed victim State must inform the United Nations of its decision to engage in armed hostilities.

However, the Charter does not define what constitutes an armed attack or armed aggression. On December 14th 1974, the General Assembly of the United Nations adopted Resolution 3314 (XXIX) concerning the definition of aggression. This Resolution states that:

> *Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.*

This definition was an attempt by the international community to clarify the notion of "armed attack" and the legal framework in which the presumed victim State must manoeuvre when it uses armed force with the aim of self-preservation. However, the Resolution's definition of aggression does not clarify all the issues of Article 51 since it only mentions the armed version of an aggression,[24] and is not a binding document.

18 emphasis added.

19 The French translation of Article 51 does not mention "armed attack" but "armed aggression". The French text of Article 51 states that: "Aucune disposition de la présente Charte ne porte atteinte au droit naturel de légitime défense, individuelle ou collective, dans le cas où un Membre des Nations Unies est l'objet d'une *agression armée* [...]." [emphasis added]

20 This legal condition is also referred to as "immediacy". It is based on the presumed victim State's own factual interpretation of the actual military circumstances taking place. The burden of proof is on the presumed victim State: it must prove that an actual armed attack exists; and that it is presently underway.

21 The interpretation of the necessity requirement is a factual interpretation of whether a reasonable settlement of the armed attack in an amicable way is possible. In this article the specific issue of the "threat of imminent attack" and what the relevant self-defence law that is applicable are not discussed.

22 Meaning the goal of the presumed victim-State's military operations should not be, for example, to topple the attacking regime.

23 This requirement crystallizes the penetration of international humanitarian law with regard to one of the aspects of the *jus ad bellum*: self-defence.

24 Making it harder to distinguish between armed attack and aggression. What differentiates an armed attack from armed aggression? What differentiates armed aggression from aggression?

The last international documents that are relevant with regard to self-defence are the founding texts of regional self-defence organizations, such as:

- Article 5 of the North Atlantic Treaty (Washington D.C., 4 April 1949) stated that "if [...] an armed attack occurs, each of them [the Treaty members], in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked [...]".
- Article 4 of the Warsaw Treaty Organization of Friendship, Cooperation, and Mutual Assistance (Warsaw, 14 May 1955) stated that "In the event of armed attack in Europe on one or more of the Parties to the Treaty by any state or group of states, each of the Parties to the Treaty, in the exercise of its right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations Organization, shall immediately, either individually or in agreement with other Parties to the Treaty, come to the assistance of the state or states attacked with all such means as it deems necessary, including armed force. [...]".[25]

The key issue this Article is going to discuss is *what* constitutes an armed attack.[26] The different terms used in the above documents – armed aggression, aggression, and use of force – could be interpreted as a disorganized attempt by the international community to regulate the use of force regarding self-defence. However, the reason for the use of different terms is the international community's intention to distinguish between the "first shot" and the "armed attack" itself (Dinstein, 2005). Indeed, one should not confuse the first State which opened fire, through its armed forces, with the aggressor. Imagine State A's armed forces are ordered to enter State B's territory and capture an undefended border city. The city falls without any armed fight; no weapons are fired. State B responds by deploying its armed forces. State B's forces are the first to open fire in order to capture the fallen city. In that case, however, State A would not be the "first to shoot", but it would be the aggressor since it committed the armed attack.

It can therefore be considered that Article 2(4) from the Charter prohibits the use of force which, if it takes the form of an armed aggression, will materialize through an armed attack, triggering the right to self-defence of Article 51. In some cases then, a State can use mere force – diplomatic and economic pressure, threats – without actually committing armed aggression. The challenge with recent strategies of Russian hybrid warfare is the fast-paced passage from a mere Russian use of force to actual aggression, in its worst form: armed attack. Indeed, the Ukrainian crisis showed how, one week, Russia would be threatening and putting economic pressure on the Ukrainian government, and the next week, would be engaging in full front armed attacks, to suddenly deescalate the conflict and then return to mere diplomatic and economic pressures again.

3.2 Self-defence in customary international law as interpreted by the International Court of Justice

The decisions of the International Court of Justice [hereafter ICJ] are not general binding authorities.[27] However, studying the Court's jurisprudence in cases related to "use of force" is interesting in two ways: firstly, cases related to the use of force, and more specifically to the right of self-defence, are not common and are therefore unique occasions for the Court to study customary self-defence law; secondly, the Court's decisions tend to be harmonized and present a rather exhaustive analysis of both doctrine and State legal opinions. Customary international law can therefore "appear" behind such decisions.

The main self-defence issue treated in the ICJ's jurisprudence is the requirement of armed attack. For the ICJ, an armed attack is a prerequisite for the lawful exercise of self-defence. The majority of the Court

25 Other examples include the Chapultepec Pact (March 3rd, 1945), etc.

26 emphasis added.

27 The Court, in *Military and Paramilitary Activities in and against Nicaragua*, stressed that it does not possess "authority to ascribe to states legal views which they do not themselves advance".*See Nicaragua* merits (n°2) para. 207.

asserted this requirement in the *Nicaragua* judgement,[28] in the *Case Concerning Oil Platforms*,[29] and in the *Armed Activities on the Territory of the Congo* case.[30] The occurrence of an armed attack is therefore the condition *sine qua non* for the right to use armed force in self-defence.

A secondary issue arose from the self-defence cases of the ICJ: when can a State use armed force in response to the *threat* of attack, rather than an actual attack. This article will not discuss this issue since the pinpricks doctrine is a response to the delicate issue of *what* is an armed attack, not *when* can a State use armed force – before an attack because of a threat, or after an attack (Green, 2009; Allain, 2004).

According to the ICJ, identifying an armed attack is a question of gravity. The Court has viewed it as "necessary to distinguish the gravest forms of the use of force from other "less grave forms".[31] The ICJ therefore introduces the notion of gravity in the process of determining what constitutes an armed attack. Additionally, by stating that an armed attack is either a grave or less grave *use of force* – and not a use of armed force – the Court considers that the armed attack must in itself be contrary to Article 2(4) of the UN Charter. This highlights the relationship between the notion of armed attack and the principle of non-intervention. Therefore, all armed attacks amount to both uses of force and interventions. In contrast, not all interventions amount to an armed attack.

In *Nicaragua*, the Court outlined the "nature of the acts which could be treated as constituting armed attack":

> [I]*t may be considered to be agreed that an armed attack must be understood as including not merely action by regular armed forces across an international border, but also "the sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to" (inter alia) an actual armed attack conducted by regular forces* [...] *In customary law, the prohibition of armed attacks may apply to the sending by a State of armed bands to the territory of another state, if such an operation, <u>because of its scale and effects</u>, would have been classified as an armed attack rather than a mere frontier incident had it been carried out by regular armed forces. But the Court does not believe that the concept of "armed attack" includes not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or <u>logistical or other support</u>.*[32]

One act identified by the Court as being able to amount to an armed attack is useful for the purposes of this article: the sending of irregulars if their actions have a certain scale and certain effects. However, the Court did not consider the "significant scale" assistance of such irregulars in the form of logistical or "other support" as an action capable of amounting to an armed attack (Green, 2009).[33]

The pinpricks doctrine is the answer to such a restrictive ICJ approach to what can constitute an armed attack. Recent Russian warfare strategy uses the restrictive ICJ approach in order to avoid accountability and to restrain its victim from invoking its right of self-defence. However, if logistical or "other support" is accumulated to other actions taken by a State against another State, the latter can claim to be a victim of an armed attack.

This leads us to the issue of how to frame the pinpricks doctrine while remaining coherent with regard to customary and conventional international law.

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28 *Nicaragua* merits (n°2) para. 195.

29 *Case Concerning Oil Platforms* (*Islamic Republic of Iran v. United States of America*) merits (2003) ICJ Reports 161, paras. 51 & 71.

30 *DRC v. Uganda* (*Armed Activities on the Territory of the Congo, Democratic Republic of the Congo v. Uganda*) merits (n°2) paras. 143 & 146.

31 *Nicaragua* merits (n°2) para. 191; *Oil Platforms* merits (n°2), para. 51.

32 *Nicaragua* merits (n°2) para. 195.

Emphasis added.

33 The author states that: "this would mean that material support even on a vast scale would not be grave enough to give rise to the right of self-defence".

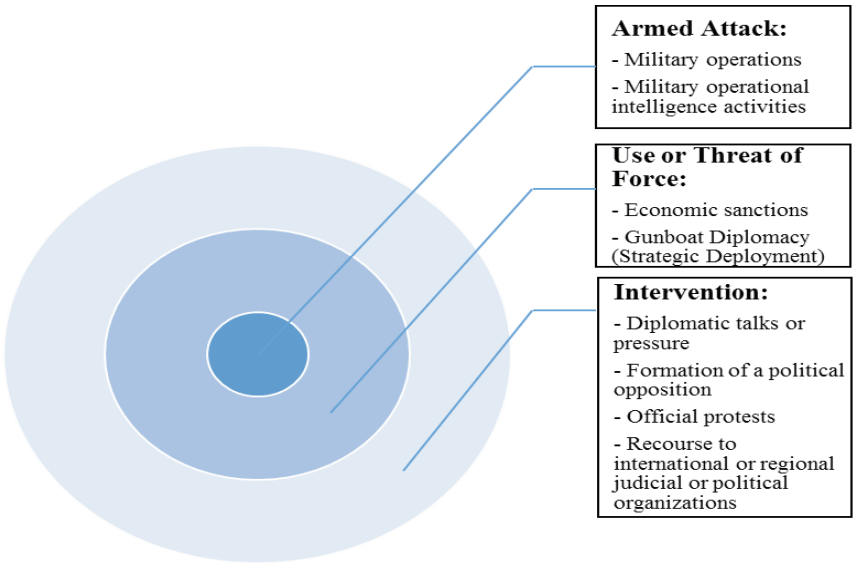

Figure 1. Hybrid warfare and the three levels of intervention as interpreted by the ICJ

4 The pinpricks doctrine: an accumulation of events lowering the armed attack threshold

4.1 The "accumulation of events" doctrine and State practices

The pinpricks doctrine lowers the traditional threshold of an "armed attack". It states that the addition of many actions, both armed and unarmed, happening over a relatively long period of time, can constitute an armed attack. The addition of multiple actions of different natures – political, economic, electronic and military – can constitute an armed attack.[34]

This doctrine finds its source in the gravity threshold set out by the Court with regard to self-defence. Some authors define the gravity criterion as "context specific" (Green, 2009). An armed attack is therefore not a mere question of fact – namely the actions taken by the attacking State – but rather an analysis of the factual circumstances of each crisis (Bou Nader, 2016). This would explain the ICJ's distinction between cases of grave use of force and other less grave uses of force. The Court invites both policymakers and the doctrine to study each case in a broader more exhaustive manner than mere actions where "fire" is used. The pinpricks doctrine answers the Court's incentive to adopt a global and encompassing analysis of situations where *force* is used.[35]

This doctrine, if it had been adopted by the Ukrainian decision-makers as soon as the events in the East of the country and in the peninsula of Crimea started, would have resulted in a faster response from Kiev. Indeed, under this doctrine, the Russian combination of cyberattacks, the sending of irregulars, the sporadic artillery support provided by Russian armed forces, the sending of so-called humanitarian relief convoys, and the threat or use of economic pressures would have been identified, considered cumulatively, as an armed attack triggering the State's right of armed self-defence. Instead, the Ukrainian government started by using its police forces and anti-riot corps. The use of the army, and therefore the full use of the State's armed potential, was delayed because of both the difficulty in attributing the actions of armed

34 For example, a small-scale cyberattack, combined with massive anti-regime propaganda and the use of certain militias and economic pressures are considered to form an actual armed attack by the defenders of this doctrine.
35 emphasis added.

groups to a foreign country – in this case Russia – and the blurriness of the events happening, from purely political events such as riots to sporadic artillery strikes from remote areas.

This doctrine is often adopted by States facing asymmetrical tactics from non-State actors. General State practice tends to be in favour of such an approach. For example, the Israeli defence doctrine adopted the accumulation of events doctrine in its armed conflict with *Hezbollah* in 2006. Israel claimed that the accumulation of events prior to the actual armed conflict justified its use of armed force with regard to self-defence (De Bock, 2007). Indeed, the *Hezbollah* border attack was considered by Israel as part of a series of other "repetitive" – or even "continuous" – forceful actions. Additionally, Israel justified its raids in Syria (November 1964), in Lebanon (May 1970 and June 1972) and in the Gaza Strip (Operation Defensive Shield, 2002) by stating that the doctrine of accumulation of events met the armed attack threshold.

In the *Oil Platforms* case, the United States of America invoked the doctrine of accumulation of events. Indeed, the United States of America "*tried to tackle the argument that a single incident would not be enough to amount to an armed attack by putting forward the « accumulation of events » theory according to which a series of attacks may amount to an « armed attack ». The US listed a number of incidents as being part of a series of attacks* [...]" (Chainoglou, 2008).

This doctrine is therefore suitable under certain circumstances where a country is facing an unclear threatening foreign political agenda. Against a non-State actor, a State can adopt the pinpricks doctrine in order to deter such an actor and respond, even extraterritorially, against the actions of the non-State actor. Against a State, this doctrine can prevent hybrid warfare tactics where the attacking State would use both military and non-military actions, over a relatively long period of time, in order to blur the lines between armed conflict and peace. If such actions are taken by the attacking State, the defending State, under the pinpricks doctrine, will not await a full-on armed conflict to break out in order to use its right of armed self-defence.

The issue remaining is whether this doctrine is legal under international laws related to the use of force in inter-State relations.

4.2 The legality under conventional and customary international law of the pinpricks doctrine

The pinpricks doctrine is legal under both conventional and customary international law. The accumulation of events doctrine does not overstep the confines of the right to self-defence. The Court tried to determine the nature of an armed attack in the *Case Concerning Oil Platforms*. It stated that:

> [...] *in order to establish that it was legally justified in attacking the Iranian platforms in exercise of the right of self-defence, the United States has to show that attacks had been made upon it for which Iran was responsible; and that those attacks were of such a nature as to be qualified as "armed attacks" within the meaning of that expression in Article 51 of the United Nations Charter, and as understood in customary international law on the use of force.*[36]

Additionally, in *DRC v. Uganda*, the majority stated that:

> *Article 51 of the Charter may justify a use of force in self-defence only within the strict confines there laid down. It does not allow the use of force by a state to protect perceived security interests beyond these parameters.*[37]

36 *Case Concerning Oil Platforms* (*Islamic Republic of Iran v. United States of America*) merits (2003) ICJ Reports 161, para. 51. **The Court reaffirmed its view that an armed attack is the prerequisite for the right of self-defence in terms of both its advisory opinion in** *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* **and in** *Armed Activities on the Territory of the Congo* **(***Democratic Republic of the Congo v. Uganda***).**
See the advisory opinion of *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* **(2004) ICJ Reports 135, para. 139;** *DRC v. Uganda* **merits (n°2), paras. 143, 146.**
37 *DRC v. Uganda* merits (n°2) para. 148.

The Court did not develop the issue of what are the "confines" laid by Article 51 of the Charter. However, the reading of the Court's decisions with regard to matters of use of force helps to extract a set of conditions to qualify a use of force as an armed attack. First of all, as mentioned above, the Court viewed it as necessary to distinguish the gravest forms of the use of force from other less grave forms. The Court can therefore be said to distinguish between two sets of situations: situations where the actual use of force exists but is not serious enough to amount to an armed attack; and situations where the use of force is too serious not to amount to an armed attack. As a consequence, an armed attack is recognized as such depending on its "gravity".

But how can lawyers and policy-makers define the gravity of each situation? The second issue at hand therefore shifts to when the actual use of force becomes grave enough. The answer to this question resides in the Charter's prohibition of the use of force in inter-State relations.[38] The Court solved this issue by linking the concept of armed attack and the principle of non-intervention. In *Nicaragua*, the Court stated that an unlawful use of force also constitutes a breach of the principle of non-intervention.[39] An armed attack is therefore, according to the Court, a grave use of force and an intervention.[40] Using a lethal drone to strike down a terrorist leader on another country's territory can, under this interpretation, be considered as a grave use of force but not really an intervention since the latter must be targeted at the political integrity of another State. An armed attack is therefore the grave use of force by a State in order to intervene in the victim-State's internal affairs.

The last issue is whether the international legal framework of self-defence is applicable to cases where non-State actors are the opposing side. Some scholars may argue that such cases constitute pure policing cases and should therefore be regulated by domestic criminal and military law. This issue emerged with the recent Russian recourse to so-called "little green men". Indeed, Russia could argue that the unidentified combatants crossing the border are not Russian agents but mere organized militias. Nonetheless, this line of defence would not stand under the pinpricks doctrine since the Baltic States would argue that the accumulation of Russian logistical support to such groups, with the opening of the Russian border and the economic and diplomatic support Russia gives to these groups, would constitute an armed attack orchestrated by Russia.

The accumulation of events doctrine is therefore not contrary to both conventional and customary international law. Indeed, it does not violate the armed attack requirement of Article 51; it does not contradict the ICJ's interpretation of the concept of armed attack; and it is coherent with the ICJ's incentive to study each situation in a "context specific" manner and to not restrain an armed attack to a situation where only "fire" is being used.

5 Nato's article 5 and the pinpricks doctrine: deterring the threat by securing respect of conventional collective security obligations

Hans Morgenthau considers alliances as the most important manifestation of the balance of power. Alliances can be defined as formal associations of States bound by the mutual commitment to use armed force against any aggressor to defend the integrity of member-States.

Article 5 of the Washington Treaty stipulates that an armed attack on one is an attack on all. It adds that the parties will take such action *as deemed necessary to restore and maintain* the security of the North Atlantic Area.[41] According to the international doctrine, Article 5 "is not per se a mutual defence

38 Article 2(4) of the UN Charter.

39 *Nicaragua* merits (n°2), paras. 205, 247.

Here, the use of force in situations other than for self-defence or in accordance with a UN Security Council resolution is an unlawful use of force.

40 On the other hand, not all interventions are armed attacks and not all uses of force amount to an armed attack. An armed attack should therefore violate both the prohibition of the use of force and the principle of non-intervention.

41 emphasis added.

clause, since there is no absolute guarantee of mutual military assistance in the case of an armed attack on a signatory to the Washington Treaty" (Jonson, 2010). Additionally, the scope of the assistance is not conventionally determined.

Adopting the pinpricks legal doctrine would in fact be a translation of the political will of the Baltic leaders to create an "entrapment" logic in the relationship between NATO and Russia. Indeed, in an alliance system, some States, in particular the great powers, might not consider the threat to a small State or a civil war as a threat worthy of collective action. Such political considerations can lead to an "abandonment" logic where small States see their security guarantees as not respected by their more powerful counterparts. Small States can therefore adopt an entrapment logic consisting of dragging their more powerful partners into their armed conflict. Small States have the ability to upset the designs for stability promoted by the larger States: this ability reflects the leverage small States have over more powerful ones in the systems of alliances.

Such a policy would be a political act by which the Baltic States would preserve their security while at the same time contribute to the stability and efficacy of NATO's north-eastern borders. However, this adoption would only be effective if two requirements were met.

First of all, this new self-defence doctrine should be publicly adopted. The white papers of the Baltic States should therefore include this doctrine. In comparison, the nuclear deterrence of a State would not be effective if its policy related to the use of its nuclear capacity was not made public. Rendering public such a policy serves as an essential aspect of deterrence: letting the potential aggressor be aware of both the willingness of the State to respond to aggression and the cost – in a nuclear scenario that cost would be unbearable – of such an aggression.

Secondly, the Baltic States should adopt this self-defence doctrine but not lobby for a full reform by NATO of its Article 5 self-defence approach. Indeed, if NATO institutionally adopts the same doctrine, some of the members of the Alliance may use it for non-defensive purposes and turn this policy into a doctrine that creates tension. Turkey for example could use this new NATO doctrine in order to justify strikes and military operations against Kurdish groups in Syria, Iraq and Iran; against Armenian armed groups in Armenia; and against the Republic of Cyprus. Such actions would jeopardize the stability of the south-eastern border of the Alliance as seen in the figure below.

The figure shows how the Baltic States have no interest in using the pinpricks doctrine for offensive purposes against Russia since they hold no strategic reason within Russian territory. However, and as the figure shows, some of Turkey's strategic interests are extraterritorial and would consist of intervening outside of Turkish soil. The pinpricks doctrine in the Turkish case would therefore necessarily be an offensive tension-creating policy rather than a defensive policy.

Additionally, if NATO adopts the pinpricks doctrine, it could be argued that the nature of the Alliance would change from a defensive one to an aggressive one. A collective security agreement that countenances aggression is bound to be in violation of the peremptory nature of the prohibition of the use of inter-State force as *jus cogens* (Dinstein, 2005). NATO's adoption of the pinpricks doctrine would render it offensive because of the different political agendas that reside in such an Alliance – the Turkish case shows how this theory could be a tension-creator, if the country using it has an extraterritorial destabilizing agenda.

The following prediction of events in the case of Russian hybrid warfare against the Baltic States will help us understand how the adoption of this legal doctrine will create a political will of the NATO members to engage in a more deterring posture vis-à-vis Russia and will therefore deter Russian expansionism:

1 Russia engages in hybrid warfare against the Baltic States: use of military and non-military tactics to destabilize the Baltic States and, in the worst case, invade parts of their territories by proxy forces.
2 The Baltic States, as soon as any hybrid warfare tactics are used against their sovereignty, will engage in an armed conflict against Russia and will ask NATO members to abide by their Article 5 promise to stand by any member of NATO facing an armed attack.
3 Three scenarios are possible at this level:

a. NATO members do not agree with the active and early use of armed self-defence of the Baltic States and do not militarily support them: the consequence of such an abandonment would be the loss of NATO's credibility. In the long run, some eastern European NATO members would probably reconsider their NATO treaty obligations and would turn to a "European Union-only" security framework.

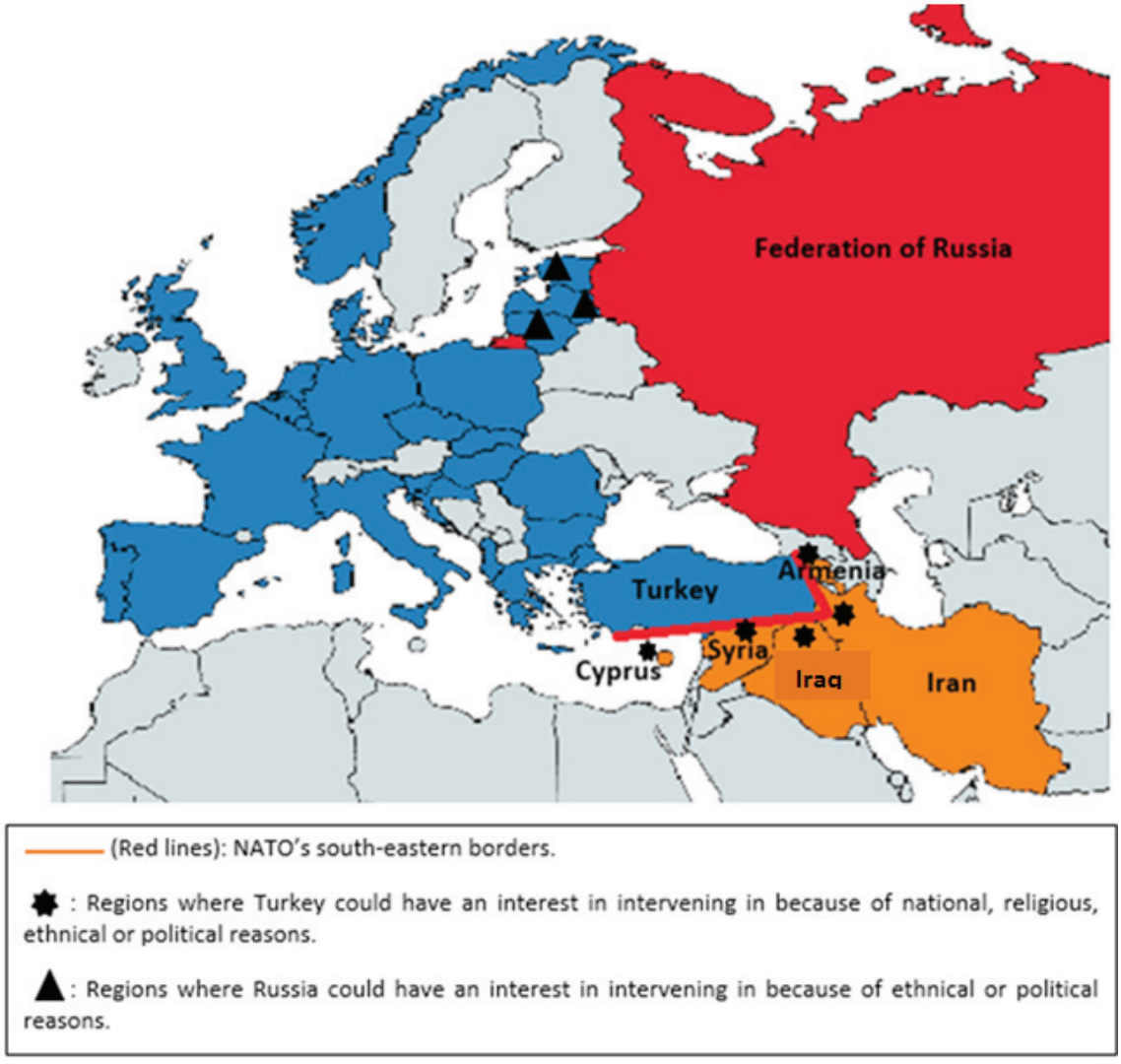

Figure 2. Map of the European Members of NATO

b. NATO members do not agree with the active and early use of armed self-defence of the Baltic States but militarily support them: by doing so, NATO safeguards its fundamental purpose – collective self-defence – but the NATO-Russia armed conflict would cause too much of a disturbance in terms of international relations and its military and financial consequences could be dramatic.
c. NATO members agree with the active and early use of armed self-defence of the Baltic States and militarily support them: same consequences as in (b).

As for the Russian standpoint, scenarios (a), (b) and (c) would cost too much for too little gain. Indeed, in scenario (a), the dislocation of NATO in Eastern Europe would certainly strengthen European Union projects concerning defence unification and could lead to a coherent European block on the western border of Russia. As for scenario (b), the fight against NATO would probably cost too much for Russia on both the economic and military levels, partly because the modernization of the Russian army is still underway. Additionally, the European and Asian neighbours of Russia would distance themselves even more out of fear of more targeting in terms of hybrid warfare.

Since the consequences in the three possible scenarios would be too grave to be acceptable, the psychological effect of the adoption of the pinpricks doctrine would lead to a stronger presence of NATO

in the Baltic States and to Russia reconsidering the use of hybrid warfare against them. The pinpricks doctrine of the Baltic States would be similar to nuclear deterrence in that its fundamental objective is to, paradoxically, never be used. Its primary goal is to deter, not to destroy or justify any military action.

6 Conclusion

Law can create policy as much as policy can create law. The Baltic States should adopt the pinpricks doctrine with regard to their self-defence posture. This doctrine, legal under the international law concerning the use of force in terms of inter-State relations, would create an entrapment strategy vis-à-vis the NATO allies of the Baltic States, and a deterrent strategy vis-à-vis Russia:

- The entrapment strategy: non-Baltic members of NATO would see themselves forced to both reinforce their support of the security with regard to the Baltic States – physical and in terms of cybersecurity – and stand by their Baltic partners in the event of Russian intervention. Additionally, non-Baltic members of NATO, and NATO as an institution, would be forced to tightly cooperate with Russia in order to avoid such an eventuality of armed conflict.
- The deterrent strategy: Russia would be deterred since the cost of its hybrid warfare strategy against the Baltic States would be much higher than its benefits.

However, and paradoxically, the Baltic States should not lobby for an adoption by NATO of this doctrine since some members of NATO could use it for destabilizing purposes – the Turkish case is the primary example of such a negative effect. In case some members of NATO argue that Article 5 should be redefined to absorb the pinpricks doctrine, the Baltic States should therefore use the consensus system enforced in NATO in order to block any formal modification of the collective security philosophy outlined in Article 5 of NATO.

References

Allain, J. (2004). The True Challenge to the United Nations System of the Use of Force: The Failures of Kosovo and Iraq and the Emergence of the African Union. 8 *Max Planck Yearbook of United Nations Law*, pp. 237-242.

Allison, R. (2014). Russian "deniable" intervention in Ukraine: how and why Russia broke the rules, International Affairs, *The Royal Institute of International Affairs*, available at: http://commonweb.unifr.ch/artsdean/pub/gestens/f/as/files/4760/39349_202339.pdf (accessed January 22nd, 2017).

Blank, S. (2011). Russian Military Politics and Russia's 2010 Defense Doctrine. *Strategic Studies Institute*, available at: http://www.strategicstudiesinstitute.army.mil/pdffiles/pub1050.pdf (accessed February 11th, 2017).

Bou Nader, P. (2016). *Les interprétations extensives de l'article 51 de la Charte : De la légalité en droit international public des extensions temporelles et matérielles du droit de légitime défense*. Germany. 200 pages.

Bowett, D. W. (1958). *Self-Defense in International Law*. Manchester. 294 pages.

Browne, R. (2016). Is Trump on a collision course with NATO?, CNN Politics, available at: http://edition.cnn.com/2016/11/09/politics/trump-nato-challenge/ (accessed December 18th, 2016).

Chainoglou, K. (2008). *Reconceptualising the law of self-defence*. Brussels. 488 pages.

De Bock, C. (2007). Israel, Eté 2006: « légitime défense disproportionnée » ou « représailles » ? Analyse d'un glissement de langage. *Revue québécoise de droit international*, p. 55.

Dinstein, Y. (2005). *War, Aggression and Self-Defence*. 4th ed. Cambridge. 349 pages.

GERASIMOV, V. *Tsennost Nauki v Predvidenniye*, Voenno-promyshlenni Kurier, February 27th, 2013, http://www.vpk-news.ru/articles/14632

Green, J. (2009). *The International Court of Justice and Self-Defence in International Law*. Oregon. 229 pages.

Güngör, O. (2007). Ethnic Russians and minority rights in the Baltic States during their EU accession process. Ph.D., available at: https://etd.lib.metu.edu.tr/upload/12609195/index.pdf (accessed February 5th, 2017).

Hernad, W. (2012). The Russian minority in Estonia. *Institute for Cultural Diplomacy*, available at: http://www.culturaldiplomacy.org/pdf/case-studies/russian-minority.pdf (accessed February 5th, 2017).

Captain Petri Huovinen (2011). Hybrid Warfare – Just a Twist of Compound Warfare?, Department of Military History, National Defence University, available at: https://www.doria.fi/bitstream/handle/10024/74215/E4081_HuovinenKPO_EUK63.pdf (accessed December 18th, 2016).

Jones, S. Ukraine: Russia's new art of war, *Financial Times*, August 28th, 2014, available at https://www.ft.com/content/ea5e82fa-2e0c-11e4-b760-00144feabdc0 (accessed January 15th, 2017).

Jonson, P. (2010). The debate about Article 5 and its credibility – What is it all about?, Research Paper, *NATO Defense College*, No. 58, Rome, 12 pages.

Harold Hongju Koh, Legal Adviser, U.S. Department of State, Remarks at USCYBERCOM Inter-Agency Legal Conference: International Law in Cyberspace, September 18th, 2012.

Monaghan, A. The "War" in Russia's "Hybrid Warfare", *Strategic Studies Institute, Parameters*. 45(4) Winter 2015-16, 65, available at http://www.strategicstudiesinstitute.army.mil/pubs/parameters/issues/Winter_2015-16/9_Monaghan.pdf (accessed January 14th, 2017).

Scarborough, R. Obama viewed NATO as a"threat" rather than peace alliance, top U.S. general charges, *The Washington Times*, 2016, available at: http://www.washingtontimes.com/news/2016/sep/9/obama-viewed-nato-threat-rather-peace-alliance-top/ (accessed December 18th, 2016).

Shuster, S. Can NATO Survive a Donald Trump Presidency?, *TIME*, 2016, available at: http://time.com/4569578/donald-trump-nato-alliance-europe-afghanistan/ (accessed December 18th, 2016).

Sierpinski, B. (2006). La légitime défense en droit international : quelques observations sur un concept juridique ambigu, *Revue Québécoise de droit international*, 19.1, pp. 79-120.

Zourek, J. (1975). La notion de légitime défense en droit international, *Annuaire International de Droit International*, pp. 1-80.

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Research Article **Open Access**

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Declared and Undeclared Wars

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Abstract: Occasionally, people characterise foreign military interventions as "undeclared wars". It is not entirely clear what is the meaning and value of such a qualification, but it seems that they want to add an extra weight to their condemnation. Still, does it have legal significance? At times, international law demanded that States issued a declaration of war before the commencement of hostilities but the obligation was mostly ignored for varied reasons. Notably, between two world wars, States avoided certain legal obligations (e.g. the prohibition to use war, the rules of warfare) by not declaring or otherwise recognising a state of war. After the Second World War, considering the earlier abuses, States redesigned the international legal regulations in a way that the declaration of war became practically irrelevant when it comes to the legality or illegality of the use of armed force, or to the application of law.

Keywords: armed conflict, use of force, declaration of war, ultimatum

Introduction

Numerous commentators have concluded that Russia is waging an "undeclared war" in Ukraine. The incorporation of Crimea into Russia and the involvement of Russia in the armed conflict in Eastern Ukraine do not conform with international law, but does it make a difference whether Russia has declared war or not? This issue is not unique to the conflict in Ukraine as similar statements have been made in connection with other situations involving covert military interferences by foreign states. It seems that when people want to emphasise that a particular use of a country's armed forces is treacherous or troublesome, they add the "undeclared" qualification. Also, this echoes the conviction that there must be some degree of chivalry and honesty as far as international relations are concerned even when States resort to armed force. These views have valid historical roots as the declaration of war was previously obligatory under international law for the sake of clarity and predictability. Following the 4th Hague Convention in 1907 either of the opposing States were required to communicate serious disagreements that may lead to war, unless the opposing State makes certain concessions (conditional declaration of war) or declares that hostilities will commence in the future (actual declaration of war). Such a gentlemanly approach had its reasons and usefulness at the time but was later misused, i.e. the existence of war in the technical sense and the applicability of relevant legal rules became dependent on the willingness of States to formally acknowledge the state of war. Eventually, the declaration of war lost its practical and legal meaning. After the Second World War, the international legal regulation moved away from the subjective approach to war (it is war if all States declare it is war) to the objective approach to war (it is war if there is actual fighting between States, regardless of how they qualify the situation). As a result, the system became resistant to previous formalistic manipulations and nowadays, it is essentially irrelevant whether declared or undeclared wars are being dealt with.

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This article takes a retrospective approach to explain the legal implications of the declaration of war and how they have changed since the beginning of the twentieth century. Interestingly, it was never entirely clear what was the purpose and effect of the declaration of war, and whether a war was illegal without a declaration of war. The first chapter looks briefly at the concept of war and earlier practices of declaring war in the world of bipolar international law. The second chapter analyses the period from the Second Hague Peace Conference in 1907 until the Second World War when the subjective approach to war dominated and the declaration of war had practical and legal significances. The third chapter examines the switch to the objective approach to war in the Charter of the United Nations in 1945 and the Geneva Conventions in 1949, and the simultaneous decline of the declaration of war. These documents adopted, respectively, the more pragmatic and inclusive terms of "force" and "armed conflict" instead of the formalistic and limited term of "war" in the context of international law.

The Concept of War

Traditionally, international law recognised two possible conditions between States, i.e. the state of peace and the state of war, and consisted of two distinctive legal regimes respectively, i.e. the law of peace and the law of war. The factual and legal world views were bipolar in both a sharp and simplistic manner. In 1625, the renowned Dutch legal scholar Hugo Grotius wrote in his aptly titled book "On the Law of War and Peace" that no intermediate state exists between war and peace (Grotius, 1625). The law of war was applicable in the period between the opening of hostilities and the restoration of peace. Such an understanding was almost universally accepted for centuries before and after its proclamation, and was not challenged until the twentieth century.

Logically, when States transitioned from peace to war, they became subject to a completely different legal regime (McNair and Watts, 1966). In the nineteenth century, the applicable international legal rules changed considerably in three ways due to the state of war (Greenwood, 1987). Firstly, the laws of war became applicable to govern the conduct of hostilities between the belligerents, e.g. the right to establish a maritime blockade in order to disrupt the adversary's commerce. Secondly, the non-hostile relations between the belligerents were affected, e.g. the validity and application of treaties or the termination of diplomatic relations. Thirdly, the relations between the belligerents and other States became subject to the laws of neutrality, e.g. the prohibition to interfere with neutral vessels. These limited examples demonstrate that war had significant legal and practical implications both internationally and domestically.

When considering the above-mentioned consequences of war, it is reasonable to assume that what constitutes war, and when war begins and ends are clearly understood. However, international law does not outline a binding definition of war even though there have been many treaties and concepts specifically linked to war, e.g. a condition that a particular treaty applies in a time of war. Instead of a universal legal definition, various scholarly attempts exist to explain the concept of war based on state practices (Detter, 2014). These definitions explain why and how war is waged, but rarely address the question of when war actually exists. For example, Carl von Clausewitz explained that "war is thus an act of force to compel our enemy to do our will" (why) and "war is merely the continuation of policy by other means" (how), but did not provide criteria to assess when war begins and ends (when) (von Clausewitz, 1976).

Probably the most often quoted definition by a legal scholar originates from Lassa Oppenheim who described war as a "contention between two or more States through their armed forces, for the purpose of overpowering each other and imposing such conditions of peace as the victor pleases" (Oppenheim, 1906). This definition sheds some light on the temporal scope of war. He believed that actual hostilities between the armed forces of States were necessary for the existence of war. In his opinion, unilateral acts of force by the armed forces of a State against another State cannot be classified as war, although they may cause the outbreak of war, e.g. an occupation of a part of a foreign territory is illegal but does not amount to war so long as it does not meet armed resistance. Hence, the annexation of Crimea is not war in his eyes

because Ukraine did not use armed force to prevent the occupation of the peninsula. Oppenheim stressed that "war is a fact recognised, and with regard to many points regulated, but not established by International Law", which means that the existence of war is first and foremost a question of fact.

Although scholars had different opinions about the concept of war, there was little uncertainty about whether the state of war existed in reality. However, what was the role of the declaration of war in terms of the existence of war? Grotius claimed that such a declaration was a prerequisite for the existence of war. His rule was intended to preclude treacherous attacks and to make sure that the opposite State had a chance to respond to the declaration of war or, at least, to prepare some defence. Yet, later, he divided wars into declared wars (lawful) and undeclared wars (not necessarily unlawful). This approach demonstrates that the lawfulness of war was not associated with the declaration of war and that the latter was not actually indispensable for the existence of war (Grotius, 1625).

In spite of the influence of Grotius, by the eighteenth century, it was accepted in practice and in research that war may begin and often did begin without a formal declaration. In other words, there was no general legal obligation to declare war (Detter, 2014). The declaration of war became a chivalry act that was usually skipped because it deprived a State of the advantage of surprise or States had already exchanged demands and all parties understood what was coming. Despite a rather common perception, the eighteenth and nineteenth centuries were characterised by disregard for the practice of issuing declarations (Eagleton, 1938). When the British officer John Frederick Maurice was tasked to analyse the state practice related to declaring war, he was able to identify, to his surprise, "less than ten instances" where war had been formally declared from 1700 to 1870 (Maurice, 1883).

Notwithstanding the legal status of the declaration of war during that period, it did serve two purposes when issued. Firstly, the conditional declaration of war was a warning and gave the opposite State an opportunity to make certain concessions in order to avoid war. Secondly, the actual declaration of war established the state of war in the legal sense, and erased all doubts about the status of affairs between States and the applicable legal regime.

The Prime Time of the Declaration of War

The idea of a formal and obligatory declaration of war was revived by scholars at the turn of the nineteenth and twentieth centuries due to the development of modern weaponry which allowed the execution of hostilities with greater speed and more devastating results. It became a matter of interest for States after the outbreak of the Russo-Japanese War in 1904. The Japanese torpedo boats attacked Russian warships before a declaration of war was delivered to Russia (a similar scenario was repeated when Japan attacked Pearl Harbor in 1941). Such a treacherous act was met with widespread disapproval and accelerated the movement towards the adoption of some up-to-date written rules on the commencement of war (Schindler and Toman, 2004).

In 1907, following instigation by the United States President Theodore Roosevelt the States convened for the Second Hague Peace Conference (the conference was supposed to have already taken place in 1904 but was postponed because of the Russo-Japanese War) and adopted 14 conventions dealing with various aspects of the conduct of hostilities. The Hague Convention (III) relative to the Opening of Hostilities provided that "the contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a declaration of war, giving reasons, or of an ultimatum with conditional declaration of war" (Article 1). Some argued that the convention represented an emerging customary norm (Eagleton, 1938), but most likely, it was not a codification, but a development of international law (Greenwood, 1987). Nevertheless, this convention was the renaissance of the declaration of war and largely shaped our continued understanding of the declaration of war.

Several observations can be made about Article 1. First, it is clear that hostilities may not begin before a previous and explicit warning is given in two possible forms, but there is nothing concerning the interval

between the warning and the beginning of hostilities. At the conference, a Dutch general proposed that hostilities should not commence until 24 hours has lapsed from the time when a declaration of war had been received by the prospective adversary, but his proposal was defeated (Higgins, 1909). As no one insisted on a meaningful interval over the years that followed, it must be concluded that the declaration of war was considered a formality which did not deny the advantage of surprise. However, a conditional declaration of war (ultimatum) must contain a specific deadline in order to give the opposite State a chance to accept or reject the demands. Secondly, both forms of the declaration of war should inform the opposite State of reasons why war will or may begin. Whether such reasons give useful insight or practical values is questionable. Thirdly, the provision does not require any particular form of the declaration of war. Obviously, it must be issued by a competent organ of state and must be communicated unequivocally to the opposite State. In the case of *Dalmia Cement Ltd.* v. *National Bank of Pakistan*, the arbitrator found that a radio broadcast where the Pakistani President told the people that their country was at war with India did not amount to a declaration of war as the radio broadcast was not directed at the Indian government. Indeed, war is such a serious matter that the existence of war should not be implied lightly. Equally, there are no standard wordings or elements for the declaration of war. Fourthly, the provision does not explain whether and how the State must act when its ultimatum is rejected. For the sake of clarity, the State should take a position either by saying that it will not follow the path of war or by confirming that the States are now at war. For example, when Serbia rejected the ultimatum of the Austro-Hungarian Empire, the latter made its position known with a separate formal declaration (Naval War College, 1918):

> The Royal Serbian Government having failed to give a satisfactory reply to the note which was handed to it by the Austro-Hungarian minister in Belgrade on July 23, 1914, the Imperial and Royal Government is compelled to protect its own rights and interests by a recourse to armed force.
>
> Austria-Hungary, therefore, considered herself from then onwards to be in a state of war with Serbia.

A declaration of war is a unilateral act. At the conference, the Chinese delegation inquired "whether a declaration of war can be considered by the State toward which it is directed as a unilateral act and whether the latter can regard it as null and void?" (Eagleton, 1938). They did not receive an answer, but both the earlier and subsequent state practices indicated that the opposite State could do very little, i.e. the state of war comes into existence if one State seeks war. In 1813, a British court concluded that "a declaration of war by one country was not a mere challenge to be accepted or refused by the other" (Kelsen, 1954). Interestingly, the declaration of war creates a state of war even in the absence of any actual hostilities, e.g. a number of Latin American States were at war with Germany during both world wars but no fighting took place (Briggs, 1952).

Following the Hague Convention (III) and relevant state practice, two schools of thought emerged (Greenwood, 1987). Advocates of the subjective approach maintained that the decisive consideration was the intention of the States involved in hostilities, i.e. the state of war existed only if at least one State chose to recognise the situation as war in some way (McNair, 1925). Supporters of the objective approach believed in the objective criteria of war, and considered factual circumstances decisive instead of subjective and usually as biased political positions of States (Borchard, 1933). Both sides had significant flaws. The subjective advocates made the existence of war dependent on the whim of States, and helped to create an artificial division between the factual and legal state of war. The objective supporters suffered from a problem that has haunted and still haunts different areas of international law, i.e. the difficulty or impossibility of drawing up a universally accepted definition of war. As the search for a generic definition of terrorism remains fruitless, so did the search for the objective criteria of war, i.e. there is no general agreement among States regarding the definition of war. Eventually, the subjective approach to war prevailed which meant that by 1919, a state of war commenced when at least one State considered the situation a state of war either by declaring war or by otherwise recognising such a condition between relevant States, and ended with a peace treaty (Dinstein, 2012).

The flaws of the subjective approach to war became more apparent and open to abuse in the light of the Covenant of the League of Nations in 1919 and the General Treaty for Renunciation

of War as an Instrument of National Policy (better known as the Kellogg-Briand Pact of 1928). After the First World War, States hoped to prohibit the resort to war but as the peace talks continued, it became clear that this was too idealistic a vision. In the end, States managed to set procedural limits on the commencement of war, i.e. they committed to using certain peaceful procedures to settle their differences and, if disagreeing with the outcome, not to resort to war before three months has passed since the end of the chosen procedure (Article 12). If a State satisfied all conditions set in the Covenant of the League of Nations, it was legally free to go to war against another State, provided it respected other rules concerning hostilities, including the Hague Convention (III). This solution was dissatisfactory for many States and the Kellogg-Briand Pact imposed further restrictions. States condemned "recourse to war for the solution of international controversies" and renounced war as an "instrument of national policy in their relations with one another" (Article I).

In the 1920s and especially in the 1930s, there were numerous occasions where States avoided the obligations laid down by these and other treaties by refusing to declare war or otherwise recognise the existence of a state of war (Brownlie, 1963). In September 1931, Japan began the invasion of Manchuria, a region of China. What followed were years of hostilities but neither China nor Japan declared war, broke off diplomatic relations or requested third-party States to observe neutrality (however, China did declare war on Japan in the context of the Second World War in December 1941). Japan claimed that the rules of warfare did not apply because such rules apply only during war which did not exist. Later, Japan disputed that it could not commit crimes of war because they are violations of the rules of warfare. The League of Nations accepted that neither Japan nor China had resorted to war and therefore, no violation of the obligation to exhaust the methods of peaceful settlement of dispute before going to war had been made.

So, how did States qualify their "not war" situations? They were somewhat imaginative, e.g. Japan referred to its invasion of Manchuria as an "incident" and in 1936, when Italy annexed Abyssinia, Mussolini described the undertaking as an "expedition" (Schrijver 2015).

The Council of the League of Nations allowed the subjective approach to war to prevail with a few exceptions, e.g. the annexation of Abyssinia by Italy was qualified as a resort to war by the Council even though both States denied that a state of war existed between them. The Council's tactics were foremost pragmatic because States did not want to recognise that the existing international legal and structural systems were inadequate, e.g. the League of Nations was supposed to take countermeasures when a state of war existed, but in reality, it lacked the necessary mechanisms, which meant that it was convenient to agree that there was no war. As a result, war became very formalistic and technical in nature, dependent on the caprices of States, and usually disconnected from reality.

In summary, it provided a decisive difference from the perspective of international law whether declared or undeclared wars were being discussed, e.g. whether and to what extent certain rules were applicable or collective measures were usable depended on the technical qualification of the situation.

The Alignment of the Factual and Legal Realities

During the Second World War, States declared war more extensively compared to previous decades. However, after the war, the declaration of war became a rarity due to the fundamental overhaul of the legal regulation concerning the use of force in international relations. No doubt that States understood during the inter-war period that they had engaged in legal deception when they refused to recognise a factual state of war also as a legal state of war. As a result of the Second World War and the changes in the international community, States were forced to re-evaluate their practices. Subsequently, the objective approach to war underwent a revival and deeds as opposed to declarations became the decisive factor.

The League of Nations was replaced by the United Nations, and the constitutive instrument of the new international organisation also addressed matters of violence with regard to inter-State relations. Article 2(4) of the Charter of the United Nations states that:

> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

The wording of this provision is undoubtedly a considerable improvement in comparison with Article I of the Kellogg-Briand Pact because it is "force", not "war" that is prohibited. Every resort to war involves the use of force, but not vice versa. States deliberately adopted a new term, namely "force", that encompasses both classical war and other forms of inter-State force "short of war" (Schachter, 1982). The prevailing, and without a doubt correct, view is that in this context the term "force" is limited to armed force and does not include, for example, political or economic coercion (Värk, 2013). The prohibition is not limited to the use of force, but covers also the threat of force in order to minimise possible loopholes (Stürchler, 2007).

The term "force" is not bound to some formalistic criteria and in order to assess whether there has been a use of force, the facts on the ground have to be identified and examined. This makes the system quite fool-proof and States cannot ignore their obligations under international law by devising ingenious political and legal metaphors. Also, it means that States cannot disconnect the factual and legal realities, i.e. the legal state of war is possible without actual fighting, but there cannot be any use of force in the legal sense without the actual use of force.

Does it make a difference whether or not States declare war under contemporary international law? The short answer is no. As already explained, the new system was designed with the intention of eliminating the abuses and peculiarities that came with the existence or absence of a declaration of war shaped by the subjective approach to war. It would be strange if the declaration of war had a purpose once more. It is plausible to argue that the intentional and explicit establishment of a state of war with a declaration of war is altogether incompatible with the Charter of the United Nations (Greenwood, 1987). If this argument is followed further, declared wars can be described as even more unlawful due to the state of mind. It is worth mentioning that the influential commentary of the Charter of the United Nations edited by Bruno Simma does not even mention a declaration of war when discussing the prohibition of the use of force (Dörr & Randelzhofer, 2012).

Moreover, contemporary international law is no longer divided sharply between the law of peace and the law of war as described above. When hostilities break out, the switch in legal regime is not as extensive as it was previously, and it is definitely not dependent on whether or not the situation is characterised as war. For example, according to the Geneva Conventions (1949) "shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them" (Common Article 2). In addition to classical war, these conventions adopted a new term, namely "armed conflict" that refers to factual hostilities on the grounds of "short of war" (a situation that does not qualify as war in the technical sense as discussed in the previous chapters, but is war in the light of facts). Hence, States cannot evade the rules of warfare by not declaring war (like Japan did during the Manchuria invasion).

Conclusion

Occasionally, people characterise foreign military interventions as "undeclared wars". It is not entirely clear what is the meaning and value of such a qualification, but it seems that they want to add an extra weight to their condemnation. Still, is it of legal significance? The practice of declaring war goes back to the times of ancient civilisations but rules, scholarship and state practices have been both diverse and confusing. The declaration of war was foremost associated with the chivalry conduct of war and not necessarily demanded by law. In the eighteenth and nineteenth centuries, States had no obligation to declare war and they mostly refrained from issuing a prior declaration of war. Due to the changes in political and military affairs, States decided in 1907 that war should not commence without previous and explicit warning in the form of a (conditional) declaration of war. The practical function of the declaration of war was to establish a state of war so that States knew the status of affairs

and the applicable legal regime. War became very technical and often did not reflect the reality, i.e. war began with a declaration of war and ended with the conclusion of a peace treaty regardless of whether there were actual hostilities. Increasingly, States denied the existence of a state of war to escape the rules applicable during war. As a result, it mattered whether it was a declared or undeclared war. Contemporary rules, enshrined in the Charter of the United Nations, took a different approach by paying attention to the reality on the ground and adopting new, more inclusive terms. It prohibits the use of force in general and whether or not there was a declaration of war does not affect the scope or applicability of that prohibition. Equally, the rules of warfare become applicable once hostilities have begun regardless of how States decide to characterise the situation. In conclusion, nowadays, there is no significant legal reason to differentiate between declared and undeclared wars.

References

Borchard, E. M. 1933. "War" and "Peace". *American Journal of International Law,* 27, 4.
Briggs, H. W. 1952. *The Law of Nations: Cases, Documents, and Notes,* New York, Appleton-Century-Crofts, Inc.
Brownlie, I. 1963. *International Law and the Use of Force by States,* Oxford, Clarendon Press.
Detter, I. 2014. *The Law of War,* London, Routledge.
Dinstein, Y. 2012. *War, Aggression and Self-Defence,* Cambridge, Cambridge University Press.
Dörr, O. & Randelzhofer, A. 2012. 'Article 2 (4)' in B. Simma (ed), The Charter of the United Nations: A Commentary, 3rd ed, pp. 200-234, Oxford, Oxford University Press.
Eagleton, C. 1938. The Form and Function of the Declaration of War. *American Journal of International Law,* 32, 17.
Greenwood, C. 1987. The Concept of War in Modern International Law. *International and Comparative Law Quarterly,* 36, 24.
Grotius, H. 1625. *On the Law of War and Peace,* Indianapolis, Bobbs-Merrill.
Higgins, A. P. 1909. *The Hague Peace Conferences and Other International Conferences concerning the Laws and Usages of War,* Cambridge, Cambridge University Press.
Kelsen, H. 1954. Collective Security Under International Law. *International Law Studies,* 49, 275.
Maurice, J. F. 1883. *Hostilities Without Declaration of War,* London, Her Majesty's Stationery Office.
McNair, A. D. 1925. The Legal Meaning of War, and the Relation of War to Reprisals. *Transactions of the Grotius Society,* 11, 23.
McNair, A. D. & Watts, A. 1966. *The Legal Effects of War,* Cambridge, Cambridge University Press.
Oppenheim, L. 1906. *International Law: A Treatise,* London, Longmans, Green, and Co.
Schachter, O. 1982. International Law in Theory and Practice. *Recueil des Cours de l'Academie de Droit International de La Haye,* 178, 395.
Schindler, D. & Toman, J. 2004. *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions, and Other Documents,* Leiden, Martinus Nijhoff Publishers.
Schrijver, N. 2015. 'The Ban on the Use of Force in the UN Charter' in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law*, pp. 465-487, Oxford, Oxford University Press.
Stürchler, N. 2007. *The Threat of Force in International Law,* Cambridge, Cambridge University Press.
von Clausewitz, C. 1976. *On War,* New Haven, Princeton University Press.
Värk, R. 2013. The Legal Framework of the Use of Armed Force Revisited. *Baltic Security & Defence Review,* 15, 39.
Naval War College (1918). *International Law Documents 1917: Neutrality, Breaking of Diplomatic Relations, War*, Washington, Government Printing Office.
Charter of the United Nations, 1 UNTS xvi, adopted 26 June 1945, became effective on 24 October 1945.
Covenant of the League of Nations, 225 CTS 188, adopted 28 June 1919, became effective on 10 January 1920.
Dalmia Cement Ltd v *National Bank of Pakistan*, International Chamber of Commerce, December 1976, 67 ILR 611.
Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 UNTS 31, adopted 12 August 1949, became effective on 21 October 1950.
Hague Convention (III) relative to the Opening of Hostilities, 205 CTS 264, adopted 18 October 1907, became effective on 26 January 1910.
Treaty Providing for the Renunciation of War as an Instrument of National Policy, 94 LNTS 57, adopted 27 August 1928, became effective on 24 July 1929.

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"Pool it or lose it?" – a contrastive analysis of discourses concerning EU military integration and demilitarisation in the Baltic Sea

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Abstract: This article illustrates that justification for EU military integration is sought with imperatives related to the economy, security, EU integration, and demands of citizens of the Member States. However, EU Treaties in terms of the improvement of military capabilities are not considered as a justification, but the European Union appears to be more of a power-enhancing realist actor rather than a normative one. As a counterexample to the European discourses, I discuss the case of the demilitarisation of the Åland Islands, in which case treaties perfectly justify demilitarization. I conclude that the development of European military integration is justified by political imperatives, but the demilitarization of the Åland Islands is supported with reference to agreements, which illustrate the differences in justifying military force and its absence. It is concluded that while the European Union appears as a realist actor in terms of defence, Finland complies with the image of a normative power as far as the Åland Islands are concerned.

Keywords: European Union, Common Security and Defence Policy, European Defence Agency, Åland Islands

Introduction

Calls for cooperation in terms of European Union defence have intensified as a result of the Brexit referendum and the launch of the European Union Global Strategy with its subsequent defence proposals. EU military cooperation has been willingly promoted, but has only recently gained momentum. This can be seen as a logical continuation of an "ever closer union", where exogenous factors such as the Yugoslavian wars after the Cold War have been a contributing factor (Howorth 2003, pp.221–222). From a military perspective, Sven Biscop considers it pivotal for European states to cooperate in order to maintain their military capabilities (e.g. Biscop 2016b). I am also about to show in this article that the traditional image of the European Union as a normative power relying on non-military means (Manners 2002) is contrasted by the recent emphasis on military activities as solutions, as also argued by the author of the Normative Power Europe thesis himself (Manners 2006). The new focus on military means can be seen as a contradiction with the original idea of the European Union to emphasise law rather than arms. The aim was outlined, for example, in the European Commission's White Paper on the Future of Europe (2017) stating that the founding fathers "replaced the use of armed forces by the force of law" (p.6). Now, it seems that arguments emphasising European integration, finances, threats and responsibility as far as citizens are concerned have surpassed the legal rhetoric, and law is not considered to be relevant in terms of the military discourses. In contrast, Finland, a non-NATO country that promotes more defence cooperation within the EU, seems to comply with the image of a law-emphasising normative power at least with regard to the demilitarised area of the Åland Islands, a group of islands with a strategic location in the Baltic Sea.

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In this article, I thus examine how European military enhancement is presented as necessary with political imperatives instead of by appealing to the legal basis in terms of EU treaties. Furthermore, I provide a counterexample of a demilitarised area inside the European Union where demilitarisation remains enforced due to international agreements. In simplified terms, it seems that "militarisation" requires crises, whilst demilitarisation requires multilateral agreements. I employ the terms military/defence cooperation/integration interchangeably, since the issue addressed revolves around the same tendency: European Union Member States embarking on more military-related issues together.

I analyse how EU actors working in the field of defence cooperation seek to present EU-level military capability as inevitable because of different challenges. In other words, a decline in terms of capability is considered to be dangerous and national sovereignty appears as something that hinders effective military capability. The European Defence Agency (EDA), among other institutions, claims that cross-border risks and risks of declining military capability should be addressed by pooling and sharing European military equipment and activities. I analyse such argumentation with the aid of the Discourse-Historical Approach and show that there are contradictions in these premises. The question I ask is *what sorts of arguments do defence actors utilise with regard to the enhancement of military capabilities and its absence and what does such argumentation reveal about the said actors*?

Deepening EU defence and the demilitarised Åland Islands both have a significant role as far as security is concerned in the Baltic Sea region. Indeed, one of the major security concerns in Europe is the Baltic Sea region, with rising concerns over the security situation in the area. Evidence of such tension appears to encompass, for example, the Russian deployment of missiles that can carry nuclear warheads in Kaliningrad and the Swedish decision to remilitarise Gotland. The Baltic States joined NATO and the EU simultaneously in 2004, but there are also two non-NATO countries, Finland and Sweden, in the region. Altogether, there are six militarily non-allied Member States in the European Union (Finland, Sweden, Austria, Cyprus, Malta and Ireland), but Finland has shown great interest in strengthening EU defence (France & Finland 2016; Rettman 2016a). In contrast, the Baltic States seem a bit uneasy about the prospect of European defence as an alternative to NATO (Peck 2016). It may seem unnecessary for Baltic NATO countries, faced with an increased NATO presence and rising defence budgets, to be part of yet another defence structure. Finland, in contrast, does not have the security guarantees provided by NATO, which makes it logical to push for security cooperation in the EU. In spite of the emphasis on defence when it comes to the EU, we will observe how the Finnish political approach as far as the demilitarised Åland Islands are concerned relies on diplomatic and international legal aspects, whilst the defence aspects are intentionally ignored.

In November 2016, all EU Member States unanimously accepted an Implementation Plan on Security and Defence, which, *inter alia*, calls for the launch of the Permanent Structured Cooperation (PESCO) in terms of defence (Council of the European Union 2016b). As far as this topical context is concerned, this article contributes to the recent scholarly debate on EU military cooperation and the role of the European Defence Agency (EDA) from a discursive perspective analysing the justifications for such military cooperation. EU military cooperation has gained much scholarly attention, focusing on both the problems of conducting military cooperation in the EU and on the discursive means of European officials that promote more military cooperation (Dijkstra 2012; Koivula 2016; Matlary 2008; Müller 2016; Norheim-Martinsen 2013; Rayroux 2013). In contrast to these studies that examine the influence of policies and discourses, this article focuses specifically on the types of argumentation and their relationship with each other, while also analysing potential justifications for these.

It seems that the objective of European institutions such as the European Commission and the European Defence Agency is to progressively develop European military capabilities, as laid down in the Treaty on European Union (TEU) 24(3): "Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as 'the European Defence Agency') shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall

assist the Council in evaluating the improvement of military capabilities." In this article, I demonstrate how increasing European military capabilities is justified by the existence of different types of problems instead of by referring to the provision above or any other legal commitments. It appears that the enforcement of defence harmonisation is strongly sought after on the Union level, although an official common defence policy must be a unanimous decision of the Member States, as defined in Section 42(2) of the Treaty on European Union (TEU): "The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides." Even though this formulation emphasises national discretion, there is a desire to present the unification of defence as inevitable in the European Union: the need to maintain military capabilities overrides other viewpoints.

In the following sections, I illustrate which arguments are the most commonly employed ones in in terms of arguing for more power for the EU in general and for the EDA in particular as far as defence matters are concerned. I begin by illustrating the background and my methodological basis, and then move onto presenting different arguments found in the analysis. There are five empirical sections focusing on different types of arguments and on the image portrayed by these arguments of the European Union. One should note that the material only covers the sphere of defence, and thus cannot provide a comprehensive picture of the Union. The four first sections present the arguments with which European defence actors promote the enhancement of military capabilities, whilst the final section presents how a contrasting phenomenon, demilitarisation, is discussed in Finland in terms of international legal responsibilities in spite of alleged security risks in the Baltic Sea region. Finally, I draw conclusions on the overall picture.

Analysis of European military debates

Since the late 1990s, the European Union has strengthened its legal and institutional security structures with enhanced cooperation with regard to security, making it not only a matter of domestic concern. A historical principle in military affairs has been a state monopoly on the legitimate use of force, which has been divided into domestic order and inter-state relations, that is, the police and the military. The EU has blurred these lines as well as the lines between different aspects of security. Traditionally, a trilogy of security threats, security strategies and security organizations has formed the basis of security policies, while today this trilogy has fallen apart in the Common Security and Defence Policy (Schroeder 2011, pp.19–24). The increased emphasis on military security may, however, be in contrast with the view that the European Union is often perceived as a peace project; European integration was launched after the Second World War to unite the continent into a security community where war would be unthinkable (cf. Deutsch et al. 1957). One of the most recent influential characterisations relates to the EU as a normative power (Manners 2002), which may be contrasted with military integration that has been a focus of debate recently.

Although outlined in the Maastricht Treaty, the actual framing of the Common Foreign and Security Policy, including the European Security and Defence Policy (ESDP, later CSDP), did not start until the incorporation of the so-called Petersberg crisis management tasks into the Treaty of Amsterdam[1] of 1997. The political push for the ESDP was provided by the UK and France in the St Malo Declaration of 1998, followed by the European Council's Helsinki Headline Goal of 1999. The ESDP was established during the European Council's meeting in 1999, preceding the European Capability Action Plan (ECAP) of 2001. The ESDP was particularly aimed at conducting crisis management on an intergovernmental basis. However, the EU seems to be in great difficulties when trying to draft common approaches to security challenges. This was evidenced already by the Yugoslav wars during the 1990s and more recently in the inability to find a common stance in the Libyan crisis of 2011. Furthermore, although proponents of a deeper defence community exist, it seems unlikely that the EU would witness defence cooperation involving all the

1 This Treaty also established the architecture for the internal security with the title "Visas, asylum, immigration and other policies related to free movement of persons".

Member States. Instead, the Permanent Structured Cooperation (PESCO)[2], founded in the Lisbon Treaty that came into force in 2009, has now started to be seriously considered as a way forward (Council of the European Union 2016b). According to the EU's Global Strategy and its implementation plan approved by the European Council in November 2016, the Permanent Structured Cooperation (PESCO) should be launched (Council of the European Union 2016a). But what would the PESCO mean in practice? It would mean a group of Member States voluntarily integrating their defence structures. According to the European Commission, it would be a progressive process whereby Member States would harmonise different aspects of defence and enable non-participants to join on a project-by-project basis (European Commission 2015a, p.8). Problems related to the potential of the PESCO include the question of whether it puts too much pressure on the "input" side of military procurement and too little on the "output" side of deployability. Furthermore, although the ideal situation would be if all Member States participated, a smaller group could achieve deeper levels of integration. Notions of national sovereignty, national economy and other interests are also relevant in this regard (Duke 2012, p.351).

In this article, I focus on the argumentative methods utilised in favour of military cooperation in the EU as well as those related to the demilitarised Åland Islands in Finland. I have categorised the arguments into five groups following my analysis and constructed the table below after analysing arguments justifying further military cooperation in terms of official defence-related documents of the European Union over the past few years: from the European Defence Agency, European Commission, European Parliament and the High Representative. One of the most important sources was the bi-annual *European Defence Matters* magazine which has been published by the European Defence Agency since 2012. By considering the time period from January 2012 to December 2016 I am able to examine the periods of time both before and after the Ukraine crisis, which have often been referred to in recent debates. With regard to demilitarisation, I take into account the recent Finnish debates and arguments utilised by the current Finnish Defence Minister, who has been in power since 2015. My interest is thus on how defence actors discuss military issues and their absence.

The utilised methodology is adopted from the Discourse-Historical Approach elaborated on by Ruth Wodak (Wodak 2001; Wodak 2009) in particular. The approach enables "discursive practices, social variables, institutional frames and socio-political and historical contexts" (Wodak & Boukala 2016, p.178) to be taken into account, which are also important in defence discourses. The Discourse-Historical Approach is based on three dimensions: topics, discursive strategies and linguistic means. The topics of the discourses analysed in this study include military capability, demilitarisation and related phenomena, and I analyse discourse strategies through different *topoi* for argumentation. Wodak specifies five different types of discursive strategies (Wodak 2001, p.73), but for the purposes of this study, the most applicable ones include those of justificatory *topoi*. Linguistic means, in turn, are the manners in which these discursive strategies are constructed (Wodak 2009, p.38; Wodak 2001, p.74).

Table 1: Examples of argumentation concerning militarisation and its counterexamples.

	Topos of usefulness	**Topos of finances**	**Topos of threat**	**Topos of responsibility**	**Topos of law**
Example in favour of military means	EU actorness requires military capability	Economic effectiveness calls for European solutions	Military capability necessary to manage new types of risks	Citizens want cost-effectiveness and protection at the EU level	Legal obligation to defend the national territory
Counterexample	Arguing for voluntary arrangements	Need to create an autarchic defence industry	Need to prepare for traditional military threats	Citizens elect politicians who do not pursue EU military integration	International agreements to maintain demilitarisation

2 A military alliance constituted of willing EU Member States.

According to Wodak, the *topoi* are 'parts of argumentation which belong to the obligatory, either explicit or inferable premises' (Wodak 2001, p.74). Different *topoi* include those of usefulness/advantage, uselessness/disadvantage, definition/name-interpretation, danger and threat, humanitarianism, justice, responsibility, burdening/weighting, finances, reality, numbers, law and right, history, culture and abuse (Wodak 2001, p.74). In this article, I focus on the most common *topoi* found in the analysed debates, including *topoi* of usefulness, finances, threat, responsibility and law.

As can be seen in the table above, military enhancement can, among other issues, be presented as crucial for European integration, but such arguments can also be contrasted with proposals for voluntary defence arrangements such as the PESCO. In addition, responding to cross-border security risks may be argued to be endangered if more pooling and sharing is not conducted, but in contrast, traditional military threats against states also exist. Military cooperation also appears to be an economic necessity, but it is simultaneously linked to the willingness to create an autarkic defence industry, which may not be the most economically viable one. European officials present military cooperation also as a must demanded by European citizens, but there is simultaneously a lack of political will. Finally, in legal terms, there may be an obligation to either militarily defend or exclude military activities from a certain area. In the following sections, I focus specifically on these five aspects, starting with the *topos* of usefulness, according to which the European Union needs military capability to be more powerful.

Topos of usefulness: imperative for European integration

In this section, I discuss argumentation whereby European integration requires military capability in order for the European Union to be a credible actor. In other words, the European project cannot allegedly continue without common military capabilities, and this is presented as a more important objective than that of national sovereignty in terms of defence. In contrast, as the current EU-level discussion mainly relates to voluntary PESCO arrangements, it is difficult to see how European integration in general could deepen if some countries choose not to participate in the cooperation.

The arguments presented in this section are based on the *topos* of usefulness, whereby an action should be performed if it is useful in some way (Wodak 2001, p.74). The logic of integration underpinning this *topos* of usefulness also reflects Ernst Haas' idea of neo-functionalist European integration, spilling over into adjacent fields (Haas 1968). Institutions such as the EDA could expand their tasks even further in this spill-over manner, as defined by Haas: "policies made pursuant to an initial task and grant of power can be made real only if the task itself is expanded, as reflected in the compromises among the states interested in the task" (Haas 1961, p.368). The argumentation relying on the *topos* of usefulness seems to portray the European Union as a neofunctional actor, whereby integration moves forward in a spill-over manner into fields where it is considered functional. After the British "Brexit" decision in June 2016, European military cooperation may be easier to promote, as Britain was traditionally one of the fiercest opponents of a common European defence cooperation (Biscop 2012; Biscop 2016a). As argued by Jolyon Howorth, shifting integration also in the field of defence is only a logical continuation of the integration process (Howorth 2003, pp. 221–222).

In the EDA, decisions related to military cooperation projects are made on a voluntary basis by willing Member States (and Denmark is not even part of the EDA), but there appears to be a disposition to change that course, as the current practices do not provide much power to the EDA. It has indeed been argued that the EDA activities are hampered by its nature as an intergovernmental organisation (Trybus 2006), and that EDA personnel have had a supranational disposition from the beginning (Bátora 2009). Nevertheless, the EDA actors do not employ much spill-over argumentation, but such discourses are mainly presented by other actors related to EU security and defence. It has also been argued that the EDA favours a more ad-hoc and project-based approach than structural ones preferred by the European Commission (Fiott 2015). Of course, the actors utilising argumentation related to defence integration also aim at furthering their own interests; the EDA and the European Commission would benefit if they were to receive more resources as a result of EU defence cooperation.

It seems that military cooperation is presented as something inevitable, and it can also be argued that EU crisis management actions have spill-over effects on general defence cooperation (Österdahl 2009, p.105), in which case military harmonisation appears to occur for a good cause. The EDA also emphasises civil-military cooperation, which might make it easier to intensify military cooperation as well. At least, it seems that civil-military cooperation has further served to make the organisation more supranational, which again furthers the power interests of the organisation.

There are several arguments emphasising common defence as imperative for European integration. Relying on a *topos* of usefulness, the *Future of EU Defence Research* report claims that "the future of the whole European project" depends on introducing more defence activities in the European Union (Mauro & Thoma 2016, p.1). Common defence is thus presented as pivotal for the comprehensive integration of the European Union. It seems that in no other area of European integration is the insistence on the "must" as strong as in defence. The must in military harmonisation is also closely related to the European Union in terms of international affairs. Relying on a *topos* of usefulness, the then European Commissioner for Internal Market and Services, Michel Barnier, argued in 2012 that "[we] are right to address the issue of 'soft power', but at the same time we need to safeguard our military capacity – this is a precondition for a credible foreign and security policy". In the same comment, he added that "European defence is not an option – it's a necessity" (European Defence Agency 2012a, p.23). According to him, modifying defence at the European level should not be a national political decision but it is self-evident that all must commit to this. In addition to the strong demands of the President of the European Commission Jean-Claude Juncker to launch a European army (European Commission 2015a, p.2), it seems that the European Commission includes strong supporters of supranational defence policies. A major hindrance for European security seems to be the sovereignty of Member States, and according to the Strategic Notes from the European Commission's EPSC (European Political Strategy Centre), "Member States are slow to accept that they need to go beyond a model where defence is a matter of strict national sovereignty" (European Commission 2015a, p.6). By relying on the *topos* of usefulness, the Member States should give up their sovereignty in exchange for more security. EU Member States are presented as slow and perhaps stubborn in the sense that they want to retain sovereignty even though it is evident for EU actors that European defence is necessary.

Even the EDA actors sometimes link the *topos* of usefulness to European integration. In 2014, it was stated in the magazine *European Defence Matters* that we should not forget the "supporters of European defence cooperation, who went to great lengths to promote the idea that we are 'stronger together'. For it is in our collective past that we might find answers to the new threats" (European Defence Agency 2014, p.5). Although this comment also relates to the *topos* of threat, the main point seems to be that European integration in terms of defence is useful in the sense that the countries are stronger together.

Voluntary solutions have also been promoted, which contradict the aim of building a stronger European Union. PESCO is a voluntary programme and it seems unlikely that all the Member States will participate in PESCO. Relying on the *topos* of usefulness, the defence report commissioned by the European Parliament states that "EDA without PESCO is like the European Central Bank without convergence criteria" (Mauro & Thoma 2016, p.7). According to this claim, the existence of the EDA as such can also be a reason for deeper levels of integration, in line with the spill-over theory. Then again, PESCO among certain Member States could also lead to increased fragmentation in the EDA, resulting in a multi-speed Europe (Jokela 2014). It appears that the claim that the EDA is ineffective without PESCO is by itself an insufficient argument for establishing PESCO. Furthermore, PESCO among a few countries could also harm the entire European integration as it would divide the EU into different groups.

As far as European integration is concerned, there is currently much activity. A new *European Global Strategy on Foreign and Security Policy* (EUGS) was published in late June 2016, where defence themes were also considered essential for building a stronger European Union: "A stronger Union also requires investing in all dimensions of foreign policy. In particular, investment in security and defence is a matter of urgency" (Mogherini 2016b, p.10). In the context of rising levels of Euroscepticism, more military cooperation could even harm European integration. Since military cooperation is argued to be useful, it can thus simultaneously create different groups inside the European Union. It seems that the European

Union is utilising realist and rationalist argumentation to further the development of a neofunctional European Union, where a two-speed Europe in terms of defence must be allowed in order to preserve the European Union. It can be questioned whether or not such an EU with different groups of insiders and outsiders makes the European Union a stronger foreign policy actor, but this seems to be preferable to the option of not having deeper levels of defence cooperation at all. Defence integration in the European Union also provides more power for the actors analysed in this article, which may explain why any defence cooperation is considered positive.

Topos of finances: imperative for the economies of the Member States

In this section, I illustrate how defence harmonisation is presented as an economic non-choice for the Member States; control should be handed to European institutions as far as defence procurement is concerned in order to be effective. In such argumentation, the necessity of military capabilities is considered a pressing issue, and the argumentation mainly relates to why Member States should share costs in connection with defence matters. Such discourses rely on the *topos* of finances: if something costs too much, actions should be taken to diminish those costs (Wodak 2001, p.76). In this process, the financial crisis has provided particular leverage, as it has served as an impetus for further pooling and sharing of military equipment (Council of the European Union 2010). Economic interests are thus seen as imperative as far as questions related to maintaining and enhancing military capabilities are concerned. They most certainly are, but probably the reason why economic arguments are utilised is that those are the ones regarded as objective and rational. National leaders can more easily justify defence cooperation in terms of economic saving than relying on the need for further integration, since people take different stances as far as that is concerned. With regard to using the *topos* of finances, the EU appears to conform to the logic of liberal intergovernmentalism outlined by Andrew Moravcsik, whereby Member States choose to integrate whenever it is economically rational (Moravcsik 1998).

National-only procurement appears to be an economic problem, but the discourses contain contradictions; economic grounds are emphasised together with demands for European strategic autonomy in terms of defence, although protectionism is probably not the most economically viable solution. Economic arguments thus lose some of their weight when European protectionism is added to the picture: national protectionism is considered unviable, but the European equivalent is not, and it appears that national protectionism in relation to defence procurements is sought to be applied at the European level. Instead of finding the economically most viable option, ensuring that production and military capabilities remain in Europe is the priority.

The *topos* of finances was connected to the risk of losing military capabilities as far as the EU discourses are concerned. This is captured in the slogan of "pool it or lose it", which was also adopted by Catherine Ashton, the former High Representative and Head of the European Defence Agency: "Our shared strategic culture is also a big advantage and the desire to maintain certain capabilities, given budgetary and other constraints, means 'pool it or lose it' is becoming a reality" (European Defence Agency 2012b, p.15). The risk of losing capabilities is considered to be a genuine concern and pooling and sharing appears to be the only method of maintaining defence capabilities. Therefore, the Member States have no say as to whether or not they want to pool resources, but it is evident that military capabilities require cooperation.

In the aftermath of the financial crisis, it is of course useful to argue in support of the *topos* of finances which states that economic austerity requires defence cooperation. For example, in the European Commission's communication *Towards a more competitive and efficient defence and security sector* published in 2013, it is emphasised that "Facing severe budget constraints, it is particularly important to allocate and spend financial resources efficiently. This implies inter alia to cut back operational costs, pool demand and harmonize military requirements" (European Commission 2013, p.16). The only rational action to take seems to be to pool and share military means, since military capability is allegedly something that cannot be weakened under any circumstances. The actors discussed in this article seem to share the view that

Member States cannot afford to employ national defence policies. In the EU Global Strategy of 2016, it was also stated that "While defence policy and spending remain national prerogatives, no Member State can afford to do this individually: this requires a concerted and cooperative effort. Deeper defence cooperation engenders interoperability, effectiveness, efficiency and trust: it increases the output of defence spending" (Mogherini 2016b, p.20). She contrasts sovereignty and economic interests in the argumentation: defence sovereignty should not be lost, but it is indispensable to cooperate as a result of economic aspects. Saving money thus trumps sovereignty in the rhetoric of the High Representative.

Similarly, the current EDA Chief Executive Jorge Domecq insists that economic necessity is the biggest issue in terms of common defence activities, in line with the *topos* of finances: "The sharp decline in national defence research and equipment budgets is here to remind us that we should spend more and better together if we want to retain the capabilities we need to act as a security provider" (European Defence Agency 2015b, p.20). Defence cooperation was thus considered as "providing security", which was why capabilities needed to be maintained. In this context, it appears reasonable for the Member States to embark upon such common projects for economic reasons. The financial crisis is also exploited in such argumentation, since it is considered to make cooperation even more pivotal. In the defence discourses, military capability is thus the ultimate priority, to which all other aspects should be subordinate. Allegedly, if the Member States cannot afford to maintain capabilities alone, they must seek assistance on the European level.

Controversially, European strategic autonomy is also referred to as desirable, although an even wider degree of interdependence could be more effective in reducing risks and increasing cost-effectiveness. European cooperation is justified by economic argumentation, but European-only cooperation is more difficult to justify in such terms; it relies on the pursuit of autarkic defence production. In a report commissioned by the European Parliament, the guiding principle of spending is: "European money goes for European value", which is justified by the claim that all countries follow suit (Mauro & Thoma 2016, p.67). This is closely related to the other crucial principle in European defence policies, namely the strategic autonomy of the European Union in terms of defence (Mauro & Thoma 2016, p.37). It is not justified why the progressive improvement of military capabilities is necessary, but it is argued as such to share costs in order to maintain this capability. In other words, in order to retain current military capabilities, European military integration is argued to be inevitable. Of course, self-interests are also influential when EU actors argue with such premises; more pooling and sharing at least means more work and resources for the European Commission and the EDA. Furthermore, if the commonly procured defence equipment is also manufactured in Europe, this may require actions from the EU institutions. Although the arguments presented may have valid grounds, it is important to also consider why such discourse is adopted; the reason seems to be to shift power to the European institution by arguing in favour of economic effectiveness, in line with liberal intergovernmentalist thinking.

Topos of threat: imperative to respond to security threats

In this section, I demonstrate that threats are employed as arguments for further military cooperation at the European level. While on the one hand it is argued that new risks are unpredictable, on the other hand there are discourses concerning preparation for traditional military threats, which have not led to the abandonment of national military capabilities in the past. Military cooperation is presented as non-politicised, i.e. as an issue that does not require political assessment but is inevitably necessary. This aspect could also be referred to as securitisation – a view of common threats that needs to be addressed, without the introduction of any alternatives. Securitisation is simultaneously a type of depoliticisation, as the question no longer concerns a political choice but a necessary measure (Diez et al. 2016). In argumentative terms, this aspect reflects the *topos* of threat; if there are threats, then enhancing European military capabilities is seen as the best solution to address them (Wodak 2001, p.75). Securitisation is a measure that has been connected to justifying exceptional measures, which may also be the case as far

as European defence actors are concerned. As a securitising actor, the EU also appears as a rational and realist actor that tries to convey its own interests by constructing threats.

A peculiar aspect in European debates is that the threats are not specified, but it is assumed that there is a mutual understanding of the existence of threats. This common assumption implies that there are threats and that Member States cannot respond to them alone. Relying on the *topos* of threat, the former Chief Executive of the EDA, Claude-France Arnould, stated in an issue of the *European Defence Matters* magazine published in 2012 that "I don't think it's possible to collectively define exactly what sort of conflicts we will face, but I do think we can define the types of capability we will need" (European Defence Agency 2012a, p.11). Such unpredictability justifies the creation of common capabilities and trusting that the EDA knows how to tackle such risks. Mrs Arnould seems to assume that threats are in any case are cross-border in nature and require cooperation between the Member States. Similarly, the final report on the *Common Security and Defence Policy* compiled in 2013 by the then High Representative/Head of the EDA Catherine Ashton, stated that: "The future threats and challenges are such that some convergence of defence capability plans will be required if Member States are to be able to collectively meet the challenges of the future" (Ashton 2013, p.15). Ms. Ashton thus did not require the demise of national sovereignty but emphasised the importance of convergence due to the nature of future challenges.

It has been determined that the EDA has a double role in terms of modern security threats: it simultaneously introduces certain threats (such as cybersecurity) and claims that it is able to tackle them (Friis & Rechborn-Kjennerud 2016). This can also be observed in the material analysed in this article. In 2015, the EDA justified its actions with the *topos* of threat: "Whilst it is all too easy to allow a virtual threat to limit our ambitions or, worse, be used against us, the Agency's work is moving defence to greater internal awareness of the cyber reality, from which we can manage risks and limit effect" (European Defence Agency 2015c, p.14). Such discursive construction of threats also serves to justify the existence of the EDA. Interestingly enough, while cybersecurity is often mentioned in EDA documents, terrorism is not considered an issue to be tackled with more military cooperation. Instead, according to the Global Strategy of 2016, the main measures of addressing terrorism include non-military ones such as "greater information sharing and intelligence cooperation" (Mogherini 2016b, p.21). Although it is usually the police and other internal security actors who are responsible for tackling terrorism, scholars have found that even the police are sometimes being militarised in the face of modern threats (Weiss 2011, p.399). An interesting aspect in this regard is whether or not the security concepts and responses to them are compatible: does cybersecurity require a defensive response and does defence remain the main response to security threats even though security encompasses ever more issues? At least in the discourses of the actors analysed in this article, it seems that common defence is seen as the ultimate solution.

The Ukraine conflict appears to provide further leverage for the EDA to put emphasis on European military capabilities as responding to military threats. Indeed, even though rhetoric of military threats largely disappeared in the 21st century when new types of risks started to emerge, the current situation has reintroduced war rhetoric. The actors of the European Union thus utilise *double rhetoric*; on the one hand, they argue that there are new types of threats but on the other hand, there are traditional military threats, and both of them require military preparation. Such military rhetoric is often discussed in the interviews published in the magazine *European Defence Matters*. In 2015, the *topos* of threat with regard to territorial defence was employed by Christian Madsen, Head of Unit in charge of cooperation planning at the EDA: "The question of territorial defence is back on the agenda for EU Member States" (European Defence Agency 2015a, p.21). It still remains unclear what makes it necessary to compromise national sovereignty in the face of such threats now, if previous threats have undergone a revival; why does such territorial defence need a European response now, when it has not needed it in the past? Neither is it justified why the revival of old threats needs new measures that compromise national sovereignty. The deterioration of the security situation seems to constitute an effective argument for exceptional measures such as European defence. Justification with regard to the deteriorating security situation is also present in the European Defence Action Plan of the European Commission: "The analysis in these reports and the work of the EEAS and EDA confirm the deterioration of Europe's security situation and the need to do more to develop a more coordinated and robust European approach to defence co-operation" (European

Commission 2015b, p.1). While providing more power for these actors, military cooperation appears as something that can repel security risks. When the question is about threats, national sovereignty appears subordinate to the need to address such threats.

All EU actors talk about security challenges without outlining what they really are. The European Defence Action Plan published on 30 November 2016, reiterates that Member States cannot face challenges alone, in line with the *topos* of threat: "Europe has to take responsibility for protecting its interests, values and the European way of life. It is facing complex security challenges and no Member State can meet those challenges on its own" (European Commission 2016, p.19). It is understandable that threats are utilised to support defence cooperation, but why do the traditional threats require European defence right now? To search for an answer, one may refer back to securitisation: traditional military threats are the most intimidating threats, which is why they are also the most useful ones in arguing for exceptional measures such as European defence. So far, all the arguments presented imply that the European Union is a rational actor that seeks to promote integration as functional, enhance economic interests as well as securitise the world outside the EU, which also conforms with the idea of "romantic realism" whereby the identity of the European Union can be considered endangered without defence capabilities (cf. Morozov 2002). The last type of argumentation is more deontological (duty-based) at first sight, but the underlying implications are realist, as we shall observe.

Topos of responsibility: imperative to respond to the demands of citizens

In this section, I illustrate how state-specific defence arrangements are argued to be incompatible with the demands of citizens, who would prefer European military capabilities. The arguments relate to the *topos* of responsibility, whereby actors are deemed responsible for a specific situation (Wodak 2001, pp.75–76). In the European Union, this implies that states should be able to convince citizens of supranational rules; thereby both maximising and minimising their own power (Beck 2008, p.799). In this respect, the EU thus portrays itself as a democratic actor that takes into account the will of the people. However, referring to citizens seems to mainly be used as a rhetorical tool with which to bolster the previously presented arguments concerning European integration, economic rationality and threats. The European Union thus maintains the image of a realist actor also in this regard, since even citizens are only considered to be interested in economic effectiveness, European integration and protection. Citizens are presented as important reference points, but the sovereign decision-making power of the Member States is ignored. Indeed, in the argumentation of the European defence actors, it seems that Member States appear as the actors emphasising their sovereignty and blocking the will of citizens to go beyond the Member State as far as defence matters are concerned. This is somewhat contradictory: sovereignty relates to the will of the people, so how can citizens desire something else other than the politicians they elected?

The demands of citizens are connected to economic and security arguments, since it is taxpayers' money that is used and national citizens that should be protected by defence arrangements. However, this argumentation that is reliant on citizens can also be questioned: if citizens really require further European military cooperation, why have the elected leaders not embarked upon such arrangements? Also in this context, military harmonisation is presented as inevitable: Member States have no other option but to harmonise their policies, since citizens require that. The main alleged problem appears to be that citizens do not get enough security for their money, which is why European cooperation is necessary. In this case, citizens are probably brought into the picture, because they are effective argumentative tools; the job of the politicians is to further the will of the people.

Citizens are thus connected to both security and economic arguments. Federica Mogherini, the current High Representative and Head of the European Defence Agency, argued that citizens are the primary source of more effective defence cooperation, in line with the *topos* of responsibility: "By doing more

together, we will also clarify priorities for our defence industry and reduce the fragmentation of supply and demand, thus increasing the efficiency of our defence spending. European taxpayers expect no less of us" (European Defence Agency 2015b, p.35). It is thus argued that the taxpayers expect the Member States to do more together, but it is not specified where European taxpayers express the demands for more EU defence cooperation.

By relying on the *topos* of responsibility, the Chief Executive of the EDA, Jorge Domecq, has also intertwined public opinion and security by stating that in the current situation, the public expects more: "Public opinion is expecting a renewed impulse in defence cooperation in the face of the present security environment" (European Defence Agency 2015a, p.6). In a sense, Mr. Domecq argued that citizens have comprehended the risks of the current situation. According to the EDA documents, one gets the impression that citizens favour common defence, while the Member States insist on retaining their sovereignty. Indeed, in a Eurobarometer survey of the European Parliament in 2016, 66 % of the respondents appear to be in favour of the EU intervening more than at present in security and defence policy (European Parliament 2016, p.27). The Chief Executive of the EDA, Jorge Domecq, referred to the result of the study and stated that "Europe needs to be a reliable security provider for its partners while at the same time protecting its citizens. In order to achieve this goal, defence can no longer be looked at simply from a national perspective" (European Defence Agency 2016, p.29). Interestingly enough, only certain Member States have called for more robust defence policy in the EU. If it really is of high priority for citizens, one would assume unanimous support for it. In addition, if it is of the upmost importance for citizens, they would probably elect politicians who support such aims.

In addition to economic reasons, citizens should be protected from different types of risks. By relying on the *topos* of responsibility, the 2016 *Future of EU Defence Research* report stated that "Ultimately the demand to put 'more defence in the Union' comes from European citizens who wonder why Europe does not protect them in the current turmoil" (Mauro & Thoma 2016, p.1). Citizens are thus connected to the security situation, and the opinion of citizens is the reason for making it more important to harmonise defence in the European Union. According to the same report, the main justification does not relate to the turmoil, but to the demands of citizens, whose money should also be wisely spent: "We also suggest the definition of 'European Defence Research Entities' (EDRE) to make sure that the Union's taxpayer money is conveyed to authentic European Defence Companies and undertakings" (Mauro & Thoma 2016, p.10). This comment is also connected to the demand for strategic autonomy in terms of defence, which is presented as of ever increasing importance, since it is not simply money, but taxpayers' money that is at stake.

The 2016 Global Strategy document also refers to citizens 30 times in total, who constitute the main purpose for stronger foreign and security cooperation in the European Union, in line with the *topos* of responsibility: "The Strategy nurtures the ambition of strategic autonomy for the European Union. This is necessary to promote the common interests of our citizens, as well as our principles and values" (Mogherini 2016b, p.4). The High Representative made a similar argument in her speech at the EDA Annual Conference in 2016: "I believe this is a responsibility, first of all towards our citizens, who, everywhere across our Union, ask for security – look at the polls, first comes security, second comes economy and employment" (Mogherini 2016a). However, the fact that citizens appreciate security does not mean that security should be organised at the European level. The decision-makers in the Member States of the European Union are politicians elected by citizens, which allows the citizens to elect politicians who support European defence cooperation. In several Member States, the politicians have indeed illustrated their willingness to strive for stronger military cooperation in the European Union, including in Germany, France, Italy, Finland and Spain. These calls have intensified since the Brexit referendum and the election of Donald Trump as the President of the US (Rettman 2016a; Rettman 2016b). It is still unclear whether citizens support such plans; however, no major opposition to defence affairs in particular, at least, has surfaced. However, there is increasing criticism towards developing integration in different European countries, which is ignored in arguments promoting EU defence.

Topos of law: imperative to hold onto demilitarisation in spite of risks

In contrast to the efforts to push EU military harmonisation with the aid of different political imperatives, demilitarisation of the Åland Islands, an autonomous region of Finland with a strategic location in the Baltic Sea, is grounded in international law and justified on this contractual basis. Although provisions of EU law seem to be irrelevant with regard to military capability, legal obligations appear to be the very reason for enforcing demilitarisation. Finland is a small EU Member State that promotes international law, which is logical for a non-NATO country whose foreign policy is based more on rules rather than military deterrence. Finland could even be described as a normative actor: trying to diffuse the norm of rule-adherence by setting an example (Manners 2006, p.184). Although demilitarisation is absent in the identity of Finnish foreign policy, not complying with the treaties would contradict this rules-based image.

This legal argumentation relates to the *topos* of law, according to which actions should be performed if they are stipulated in law (Wodak 2001, p.76). Demilitarisation of the Åland Islands does not seem to be questioned even if the demilitarised islands are at the centre of a deteriorating security situation in the Baltic Sea. According to the Government Report on Finnish Foreign and Security Policy published in June 2016, "The security policy environment of Finland [...] has transformed. A tenser security situation in Europe and the Baltic Sea region will directly impact Finland. The use or threat of military force against Finland cannot be excluded" (Prime Minister's Office Finland 2016). Still, the same report assures that the demilitarised and neutralised status of the Åland Islands remains valid. In the Defence Report published by the Finnish Government in February 2017, the Åland Islands are not discussed but the general impression reads that "Military activity and military tensions have increased in the Baltic Sea region" (Prime Minister's Office Finland 2017, p. 5). Securitisation of the surrounding region thus does not justify questioning the demilitarised status of the islands, unlike in the case of the EU discussed above.

Demilitarisation (and neutralisation) of the islands is stipulated in several international treaties, the first of which was concluded in 1856 between Russia, Great Britain and France.[3] These agreements, including a League of Nations Convention in 1921 and a bilateral treaty between Finland and Russia established in 1940, can even be regarded as customary international law. On the one hand demilitarisation means that a military presence is forbidden in an area during peacetime, but on the other hand neutralisation stipulates that no indirect or direct war activities may take place during wartime. The example of demilitarisation illustrates that increased military capability is not the only option to prevent harm but international law may also be effective, as it has been on the islands for more than 150 years. The strongest justification for maintaining demilitarisation is indeed its legal status as part of customary international law, which no actor has an incentive to violate. Although the islands are demilitarised, Finland is permitted and obliged to militarily defend the islands should they be attacked, e.g. by mining the demilitarised maritime area.

As was also evident in the quotations from the government reports, there is currently heated debate with regard to the alleged deteriorating security situation in the Baltic Sea area. Researchers have also speculated in newspapers suggesting Russian occupation of the Åland Islands (Myntti 2016; Tarkka 2015; Salonius-Pasternak 2014). Traditionally, the proponents in favour of changing the demilitarisation regime have originated from the military personnel, who argue that demilitarisation has not prevented the exploitation of the Ålandic territory in wars; weapon technology has made it easier to attack, and Finland's international freedom to manoeuvre enables it to renegotiate agreements (Tiilikainen 2002, p.38; Hannikainen 1994, p.627). Such comments have been appearing since the beginning of the 1990s and have

3 For example, the 1921 League of Nations Convention on the demilitarisation and neutralisation of the Åland Islands stipulates that Finland may ask for help from the signatory states, which include Denmark, Estonia, France, Germany, Great Britain, Italy, Latvia, Poland and Sweden. Russia is not a member of the treaty, but Finland and Russia have a separate agreement concerning the demilitarisation of the islands, which was concluded first in 1940 and renewed after the Soviet collapse in 1992. Originally, the demilitarisation of the islands was stipulated in a convention held in 1856 after the Crimean War, and also the Paris Peace Treaties established in the aftermath of the Second World War confirmed the status of the Åland Islands.

led to occasional discussions in the media that last for a few weeks at a time (Poullie 2016). However, no major support for changing the status is suggested.

In the autumn of 2016, there was another public debate in Finland concerning the relationship between the demilitarised islands and Finnish defence. The Defence Minister wrote in his blog that "the demilitarization of the islands does not decrease the risk towards the islands, rather the contrary. Although it would be militarily justified to reassess the status of the Åland Islands, we do not currently have such plans. [...] Defence plans take into account the agreement obligations related to the demilitarization of the Åland Islands" (Niinistö 2016b). It seems that in spite of alleged security risks, international obligations trump military considerations. Subsequently, comments made by him about the issue in the media, even though lamenting the difficulties of defending the islands, justified the maintenance of the status with regard to the *topos* of law. For example, in a televised interview, he claimed to be prepared to discuss changes in the status, in spite of failing to question its legal validity (Ykkösaamu 2016). Other Government Ministers and the President of the Republic denied that any changes were foreseen, and the status was also confirmed in a Parliamentary Committee Statement in November 2016 (Finnish Parliament Committee for Foreign Affairs 2016). A few weeks later, the Defence Minister addressed the issue again in his blog, also stating that Finland does not aim to revise the status even though it would be militarily justified; instead it is a more complex issue (Niinistö 2016a). The issue was also debated in the Finnish parliament, where the Defence Minister addressed the difficulties of defending the islands but assured that the common line of the government was to maintain the status (Finnish Parliament 2016). The Defence Minister argued that there are risks related to the islands, but such arguments seemed insufficient in order to question the status. International law thus seemed to overrule defence aspects in this case. The question of why defence aspects are ignored with regard to the Åland Islands probably refers to the reluctance of Finnish politicians to open a defence-related discussion in the fear of the status being questioned. Instead, by sticking to the role of demilitarisation as a diplomatic and international tool of law, such problems are evaded.

The discussion with regard to demilitarisation is thus very different from discussions concerning European defence, but even this superficial contrast between these debates reveals interesting insights. Alleged threats exist both in the European and Finnish debates, but Finland is unwilling to deviate from its international legal obligations even for defence reasons. The defence actors of the European Union, in turn, seem to suggest it is necessary that military aspects be introduced into European integration, utilising arguments that do not rely on treaties. Interestingly enough, the enforcement of defence did not seem to have progressed much before Member States started to make initiatives themselves. In particular economic and security arguments also appear to prevail in terms of the recent national arguments, and they have greater powers to actually apply more defence in the European Union. Whereas "more military" arguments present the European Union as a realist actor, the "no military" case of demilitarisation presents Finland as a normative one.

Concluding remarks

In this article, I have demonstrated how defence actors of the European Union present military harmonisation as a non-choice instead of mentioning its basis as part of a treaty. Several arguments for common defence in the European Union have been presented at the level of the European Commission, High Representatives and the EDA.

I divided the European arguments into four groups. In line with the *topos* of usefulness, the European Union is argued to necessitate integration in the field of defence in order for the international agency of the European Union to be effective. In contrast, the proposed measures are based on voluntary actions, such as the PESCO, and such forms of two-speed integration may not ensure the European Union becomes a more powerful foreign policy actor. As far as usefulness is concerned, the European Union appears to be a neofunctionalist actor that progresses in the fields considered functional, even though a multi-speed Europe may not always be functional. From the perspective of economic logic and the *topos* of finances, cooperation

appears to be the only economically reasonable action to take in order to maintain military capabilities. Still, economic arguments were also connected to European protectionism, which may not be the most economically efficient choice. Such thinking portrays the European Union as a liberal intergovernmentalistic actor, whereby economic interests encourage the Member States to integrate their policies.

As alleged risks for the security of the European Union are looming, the *topos* of threat suggests it is necessary to prepare through military cooperation, but the arguments also mention the return to traditional security risks, which questions the need for new cooperation. The European Union appears to be a securitising actor that tries to argue for exceptional measures in face of security threats. Finally, in line with the *topos* of responsibility, citizens are presented as demanding to be defended as cost-effectively as possible, but the citizens still do not seem to elect political leaders who might embark upon such actions. By referring to citizens, the EU may present itself as a democratic actor, but the arguments ultimately rest on the same realist arguments concerning integration, money and threats. It seems that enhancement in terms of military capability is not justified by EU Treaties, whereas the need for military capability in the first place is only justified with reference to threats.

While European military cooperation was considered the best solution with regard to security, integration, economic and democratic terms, demilitarisation had already been stipulated in international law as the solution elected by major powers with regard to the Åland Islands in the 1850s. Although international law is not always respected by major powers (Hannikainen & Lundstedt 2016), it was a solution enabling the actors to shift their focus away from the Baltic Sea. Despite alleged risks concerning the demilitarised islands, international law is the justification for maintaining the status. If Finland were to start questioning international rules, its foreign policy reputation of practising what you preach would be hampered.

It is also remarkable that the discourses with regard to European defence do not seem to have much power. Calls for military harmonisation have been made throughout recent years, but the movement only started to progress when the largest Member States started to promote it. Of course, there are some external events that have encouraged such proposals to be drawn. In the past, the UK has vetoed proposals concerning defence integration such as the launch of a military headquarters, which was backed by many states (Whitman 2016), and Brexit thus makes military integration easier. The election of Donald Trump as the President of the US also increased calls for autonomous European defence, since during his campaign, Mr. Trump did not always appear very eager to support European states through NATO. Furthermore, increasing tension between Russia and the West may have functioned as a pushing force towards common defence, especially in the Baltic Sea Region.

This article has illustrated that security concerns do not always surpass other concerns, but are apparently considered effective in justifying "more military". Security threats may be an effective tool in increasing defence budgets and European cooperation, but they do not seem to be effective in trumping demilitarisation based on international law. Instead of becoming a military superpower, one of the major incentives for European actors to promote defence cooperation seems to be to move European integration forwards. The European Union is sometimes compared to a bicycle, which falls if it does not move forward. However, this is not necessarily the case, and it is only the Member States that can move integration forwards as far as defence matters are concerned. As stated previously, decisions always have to be made unanimously, and the Member States may decide to stay outside the PESCO. They can thus make up their own minds on how to find a balance between being a realist actor with military power and the idea of Normative Power Europe that relies on norms.

References

Ashton, C., 2013. Final Report by the High Representative/Head of the EDA on the Common Security and Defence Policy. *European Defence Agency (EDA) Annual Conference*, (October), pp.1–27.

Bátora, J., 2009. European Defence Agency: A Flashpoint of Institutional Logics. *West European Politics*, 32(6), pp.1075–1098.

Beck, U., 2008. Reframing Power in the Globalized World. *Organization Studies*, 29(5), pp.793–804.
Biscop, S., 2012. The UK and European defence: Leading or leaving? *International Affairs*, 88(6), pp.1297–1313.
Biscop, S., 2016a. The EU Global Strategy: Realpolitik with European Characteristics. *Security Policy Brief,* 75 (June).
Biscop, S., 2016b. All or nothing? The EU Global Strategy and defence policy after the Brexit. *Contemporary Security Policy,* 37(3), pp.431–445.
Council of the European Union, 2010. Council conclusions on Military Capability Development.
Council of the European Union, 2016a. Council conclusions on implementing the EU Global Strategy in the area of Security and Defence.
Council of the European Union, 2016b. Implementation Plan on Security and Defence, (November), pp.1–31.
Deutsch, K.W. et al., 1957. *Political community and the North Atlantic area : international organization in the light of historical experience*, Princeton (N.J.): Princeton University Press.
Diez, T., Von Lucke, F. & Wellmann, Z., 2016. *The Securitisation of Climate: Change Actors, Processes and Consequences*, Abingdon: Routledge.
Dijkstra, H., 2012. The influence of EU officials in European Security and Defence. *European Security*, 21(3), pp.311–327.
Duke, S., 2012. The EU, NATO and the Treaty of Lisbon: Still Divided Within a Common City. In: P. J. Cardwell, ed. *EU External Relations Law and Policy in the Post-Lisbon Era*, The Hague: Springer Science+Business Media BV, pp. 334–355.
European Commission, 2013. Towards a more competitive and efficient defence and security sector. *COM(2013) 542 final*.
European Commission, 2015a. In Defence of Europe. *EPSC Strategic Notes*, (4).
European Commission, 2015b. Roadmap: European Defence Action Plan.
European Commission, 2016. European Defence Action Plan. *COM(2016) 950 final*.
European Commission, 2017. White Paper on the Future of Europe.
European Defence Agency, 2012a. European Defence Matters 1.
European Defence Agency, 2012b. European Defence Matters 2.
European Defence Agency, 2014. European Defence Matters 6.
European Defence Agency, 2015a. European Defence Matters 7.
European Defence Agency, 2015b. European Defence Matters 8.
European Defence Agency, 2015c. European Defence Matters 9.
European Defence Agency, 2016. European Defence Matters 11.
European Parliament, 2016. Europeans in 2016: Perceptions and expectations, fight against terrorism and radicalisation. *Special Eurobarometer of the European Parliament*.
Finnish Parliament, 2016. Minutes of the plenary session on 20 Oct 2016.
Finnish Parliament Committee for Foreign Affairs, 2016. Committee Report on the Government's Foreign and Security Policy Report 9/2016.
Fiott, D., 2015. The European Commission and the European Defence Agency: A Case of Rivalry? *Journal of Common Market Studies*, 53(3), pp.542–557.
France & Finland, 2016. Declaration on strengthening the EU's Common Security and Defence Policy.
Friis, K. & Rechborn-Kjennerud, E., 2016. From cyber threats to cyber risks. In: K. Friis & J. Ringsmose, eds. *Conflict in Cyber Space: Theoretical, Strategic and Legal Perspectives*. Abingdon, Oxfordshire: Routledge, pp. 27–44.
Haas, E.B., 1961. International Integration: The European and the Universal Process. *International Organization*, 15(3), pp.366–392.
Haas, E.B., 1968. *The uniting of Europe : political, social, and economic forces 1950-1957*, Stanford, California: Stanford University Press.
Hannikainen, L., 1994. The Continued Validity of the Dernilitarised and Neutralised Status of the Åland Islands. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 54(3), pp.614–651.
Hannikainen, L. & Lundstedt, T., 2016. Kansainvälisen oikeuden rooli nyky-Venäjän ulkopolitiikassa. *Finnish Ministry of Defence*.
Howorth, J., 2003. Why ESDP is Necessary and Beneficial for the Alliance. In: J. Howorth & J.T.S. Keeler (eds) *Defending Europe: The EU, NATO, and the Quest for European Autonomy*. Gordonsville, Virginia: Palgrave Macmillan, pp. 219–238.
Jokela, J., 2014. Multi-speed Europe ? Differentiated integration in the external relations of the EU. *FIIA Report 38*.
Koivula, T., 2016. *The European Union and the Use of Military Force: Uncovering the Myths*, Abingdon, Oxfordshire: Routledge.
Manners, I., 2002. Normative Power Europe: A Contradiction in Terms? *JCMS: Journal of Common Market Studies,* 40(2), pp.235–258.
Manners, I., 2006. Normative Power Europe Reconsidered: Beyond the Crossroads. *Journal of European Public Policy,* 13(2), pp.182–199.
Matlary, J.H., 2008. Much ado about little : the EU and human security. *International Affairs,* 84(1), pp.131–143.
Mauro, F. & Thoma, K., 2016. *The Future of EU Defence Research*.
Mogherini, F., 2016a. Opening Speech by High Representative/Vice-President Federica Mogherini at the 2016 EDA Conference.

Mogherini, F., 2016b. *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy*, Available at: https://eeas.europa.eu/top_stories/pdf/eugs_review_web.pdf.
Moravcsik, A.,1998. *The Choice for Europe : Social Purpose and State Power from Messina to Maastricht. Cornell Studies in Political Economy*. Ithaca (NY): Cornell University Press.
Morozov, V., 2002. Human Rights and Foreign Policy Discourse in Today's Russia: Romantic Realism and Securitisation of Identity. *COPRI Working Papers* (6/2002).
Müller, P., 2016. EU foreign policy: no major breakthrough despite multiple crises. *Journal of European Integration*, 38(3), pp.359–374.
Myntti, K., 2016. "Putin driver oss mot Nato". *Vasabladet 8 June 2016*.
Niinistö, J., 2016a. Ahvenanmaan asia. *Jussi Niinistö's Blog*.
Niinistö, J., 2016b. Gotlanti ja Ahvenanmaa. *Jussi Niinistö's Blog*.
Norheim-Martinsen, P.M., 2013. *The European Union and Military Force : Governance and Strategy*, Cambridge: Cambridge University Press.
Peck, T, 2016. Britain will veto EU army, says Defence Secretary. *The Independent 17 September 2016*.
Poullie, Y., 2016. Åland's Demilitarisation and Neutralisation at the End of the Cold War – Parliamentary Discussions in Åland and Finland 1988–1995. *International Journal on Minority and Group Rights*, 23(2), pp.179–210.
Prime Minister's Office Finland, 2016. *Finnish Foreign and Security Policy 2016 Government Report 6/2016.*
Prime Minister's Office Finland, 2017. *Government's Defence Report. Government Report 5/2017.*
Rayroux, A., 2013. Speaking EU Defence at Home: Contentious Discourses and Constructive Ambiguity. *Cooperation and Conflict*, 49(3), pp.386–405.
Rettman, A., 2016a. Finland calls for "pragmatic" EU defence. *EUobserver*, 27 Sep 2016.
Rettman, A., 2016b. Germany: Trump victory to spur EU military union. *EUobserver*, pp.2–5.
Salonius-Pasternak, C., 2014. Tutkija Salonius-Pasternak: Suomi voisi olla sotilaallisen iskun ensimmäinen kohde. *Helsingin Sanomat 29 Dec 2014*.
Schroeder, U.C., 2011. *The Organization of European Security Governance: Internal and External Security in Transition*, Abingdon, Oxfordshire: Routledge.
Tarkka, J., 2015. Ahvenanmaan asia. *Etelä-Suomen Sanomat*.
Tiilikainen, T., 2002. *The Åland Islands, Finland and European security*, Mariehamn: The Åland Islands Peace Institute.
Trybus, M., 2006. The new European Defence Agency: a contribution to the common European defence policy and a challenge to the community acquis? *Common Market Law Review*, 43(3), pp.667–703.
Weiss, T., 2011. The blurring border between the police and the military: A debate without foundations. *Cooperation and Conflict*, 46(3), pp.396–405.
Whitman, R.G., 2016. The UK and EU Foreign, Security and Defence Policy after Brexit: Integrated, Associated or Detached? *National Institute Economic Review*, (238), pp.43–50.
Wodak, R., 2001. The Discourse-Historical Approach. In: R. Wodak & M. Meyer, eds. *Methods of Critical Discourse Analysis*. London: SAGE Publications, pp.63–94.
Wodak, R., 2009. *The discourse of politics in action: politics as usual*, New York: Palgrave Macmillan.
Wodak, R. & Boukala, S., 2016. Talking about Solidarity and Security in the Age of Crisis: The Revival of Nationalism and Protectionism in the European Union - A Discourse-Historical Approach. In: C. Carta, J.-F. Morin, & M. Telo, eds. *EU Foreign Policy through the Lens of Discourse Analysis: Making Sense of Diversity*. Farnham, Surrey, GBR: Routledge.
Ykkösaamu, 2016. Jussi Niinistö. *Ykkösaamu*, 15 Oct.
Österdahl, I., 2009. The Neutral Ally: The European Security and Defence Policy and the Swedish Constitution. *Nordic Journal of International Law*, 78, pp.95–132.