

# The State, its Boundaries, and Internationalization

## Considerations on the Domestic-Foreign and the Private-Public Boundary

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### Abstract

*In order to challenge the widespread identification of political inter-, trans-, and supranationalization with the disappearance of boundaries, the following heuristic reflections will concentrate on a few selected phenomena and changes of boundaries under conditions of increasing and intensified cross-border politics. While concentrating on boundaries that are constitutive with regard to state theory, the focus lies on particular modes of appearance of these boundaries in times of intensified inter-, trans-, and supranational relations. In doing so, boundaries will be understood as social and political phenomena, while at the same time taking their epistemic significance into account. It should be considered if we are really dealing with the dissolving of traditional boundaries in cross-border politics or rather with the volatility of boundaries, i.e. with flexible boundary lines, whereas the boundary's political and epistemic quality and function are not necessarily modified or weakened.*

*Keywords: political science, international relations, foreign policy, globalization, borders, state theory*

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### 1. Introduction

For several decades now we have been observing an acceleration<sup>1</sup> of political, social, and societal inter-, trans-, and supranationalization<sup>2</sup> that often is de-

scribed in terms of fading boundaries<sup>3</sup> or even “Boundarylessness”.<sup>4</sup> These dissolutions of boundaries, however, can be associated with new boundaries being established elsewhere, for a new purpose and with new functions. Such de- and reboundaryizations reflect that boundaries are characterized by “the capability of being simultaneously dissolved and set”,<sup>5</sup> and that any social or political distinction,

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<sup>1</sup> Hartmut Rosa, *Beschleunigung und Entfremdung. Entwurf einer Kritischen Theorie spätmoderner Zeitlichkeit*, Berlin 2013, in particular part 1, points out that acceleration represents an important feature of modernity and contemporary globalization.

<sup>2</sup> Inter-, trans-, and supranational relations are different types of relations that should not be confused. However, they all are types of cross-border relations. Since this paper focuses on boundaries, inter-, trans-, and supranational relations are relevant because of their shared transboundary and cross-border significance. Because of that, but in particular for the sake of readability, I will avoid using and repeating the phrase of inter-, trans-, and supranationalization, but rather follow both general linguistic usage and common practice in political science and speak about internationalization, international relations, international politics, etc. in an encompassing manner, including the trans- and supranational dimension. Thus, ‘international’ will be used largely synon-

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ymous with ‘transboundary’ or ‘cross-border’. Whenever the differences between the inter-, trans-, and supranational level is relevant, this will be indicated.

<sup>3</sup> See for instance Chris Rumford, *Cosmopolitan Spaces. Europe, Globalization, Theory*, New York 2008; Michael Hardt/Antonio Negri, *Empire*, Cambridge–London 2001; Ulrich Beck, *The Cosmopolitan Vision*, Cambridge 2006.

<sup>4</sup> Beck, Cambridge (see note 3), 17.

<sup>5</sup> Ehrhardt Cremers, *Grenze und Horizont. Protosozologische Reflexionen zu einer Phänomenologie und Soziologie sozialer Grenzen*, Hagen 1986, 86. All translations from German are my own.

definition, categorization, and selection<sup>6</sup> will imply a decision on, at, and through boundaries.

Although boundaries may be considered a universal medium<sup>7</sup> of both order-building and understanding, in the social sciences as well as in the public discourse nevertheless an intuitive moral skepticism with respect to boundary settings of any kind prevails.<sup>8</sup> Boundaries are discussed in terms of their supposed twofold negative function: On the one hand, they are regarded as obstacles in a purely structural sense, as impeding, stopping, and hindering phenomena. On the other hand, they are regarded as negative in a normative sense in that they obstruct whatever is, broadly speaking, desirable. We can thus observe, firstly, a tendency to negative connotations of boundaries in structural as well as normative terms. In this regard, the objective of overcoming boundaries appears as a principally sound ethical ideal.<sup>9</sup> Secondly, in political science boundaries are prevalently connoted in a territorial and spatial sense. Taking this into account and at the same time considering that political internationalization as well as globalization, by definition, are characterized by an intensification of political activity across national borders, it is hardly surprising that political science has paid special attention to the increasing insignificance of boundaries on one side<sup>10</sup> as well as to boundaries in a territorial sense on the other side. The role and function of boundaries in the context of intensified cross-border politics are discussed in

particular with regard to territoriality and mobility.<sup>11</sup> Globalization-focused studies often bring up the topic of boundaries by focusing on the suspension of boundaries in economic relations, on governance<sup>12</sup> as a response to ‘debordered’ policy fields and in terms of the end of the state and/or denationalization of politics.<sup>13</sup> As these rather macroscopic and often only implicit discussions of boundaries do not take a systematic perspective on boundaries and do not refer to their double meaning as both political and epistemic phenomena, they often tend to equate internationalization with the loss of significance of territorial borders and state boundaries.<sup>14</sup>

In order to expand the perspective and to challenge the established identification of intensified cross-border relations in the era of globalization with a supposed loss of significance of boundaries, the following heuristic reflections will concentrate on a few select phenomena and changes of boundaries under conditions of political internationalization. The aim of this contribution<sup>15</sup> is to look at rather particular boundary phenomena and changes. While indeed concentrating on boundaries that are constitutive with regard to state theory, I intend to zoom in on particular modes of appearance and on the micro-logics of these boundaries in transboundary

<sup>6</sup> Cf. the focus on “selective boundaries” in *Weltrends. Zeitschrift für internationale Politik*, Themenschwerpunkt ‘Selektive Grenzen’ 18: 71. 2010.

<sup>7</sup> Cremers, Hagen (see note 5), 163, aptly introduces the term “medium”.

<sup>8</sup> Cf. Margaret Moore, Conclusion and Overview, in: Allan Buchanan/Margaret Moore (eds.), *States, Nations, and Borders. The Ethics of Making Boundaries*, Cambridge 2003, 317-337, see 335.

<sup>9</sup> Cf. on this Christel Baltes-Löhr, *Grenzverschiebungen. Theoriekonzepte zum Begriff ‚Grenze‘*, in: Thomas Geisen/Allen Karcher (eds.), *Grenze: Sozial – Politisch – Kulturell. Ambivalenzen in den Prozessen der Entstehung und Veränderung von Grenzen*, Frankfurt am Main–London 2003, 83-98, see 89f. In contrast, Mark Arenhövel, *Abgrenzende Anerkennung. Für den produktiven Umgang mit Differenz in der Weltgesellschaft*, in: Mark Arenhövel/Maja Razbojnikova-Frateva/Hans-Gerd Winter (eds.), *Kulturtransfer und Kulturkonflikt*, Dresden 2010, 55-69, see 67, points out that it is exactly the “separation principle” of the boundary “which ensures the coexistence of incommensurable life patterns”.

<sup>10</sup> Cf. Andreas Müller, *Von Grenzfunktionen und Systemgrenzen*, in: *Weltrends. Zeitschrift für internationale Politik* 71. 2010, 113-117.

<sup>11</sup> Cf. the enlightening article by Steffen Mau, *Grenzen als Sortiermaschinen*, in: *Weltrends. Zeitschrift für internationale Politik* 71. 2010, 57-66, on how boundaries in globalization work as effective sorting machines enabling mobility for some groups and preventing mobility for other groups.

<sup>12</sup> For a comprehensive systematization of governance approaches, also pointing out the possibilities and limits of a governance focus, see Detlef Sack, *Governance und Gouvernementalität – Komplementäres und Distinktes zweier Regierungslehren*, in: Andreas Vasilache (ed.), *Gouvernementalität, Staat und Weltgesellschaft*, Wiesbaden 2014, 101-135.

<sup>13</sup> Cf. e.g. Marianne Beisheim/Sabine Dreher/Gregor Walter/Bernhard Zangl/Michael Zürn, *Im Zeitalter der Globalisierung. Thesen und Daten zur gesellschaftlichen und politischen Denationalisierung*, Baden-Baden 1999; Allen Buchanan/Margaret Moore (eds.), *States, Nations, and Borders. The Ethics of Making Boundaries*, Cambridge 2003; Gerhard Preyer/Mathias Bös (eds.), *Borderlines in a Globalized World. New Perspectives in a Sociology of the World-System*, Dordrecht 2002; Rumford, New York (see note 3).

<sup>14</sup> Cf. again Rumford, New York (see note 3); Hardt/Negri, Cambridge–London (see note 3); Beck, Cambridge (see note 3); Beisheim et al., Baden-Baden (see note 13); David Held, *Global Covenant. The Social Democratic Alternative to the Washington Consensus*, Cambridge 2004.

<sup>15</sup> I elaborated the following reflections in more detail in different previous (mostly German) publications.

politics. I expect that a micro-analytical perspective on boundaries and their particular realization modes can contribute to a better macroscopic assessment of boundaries in both IR and international politics. In so doing, boundaries are understood as political phenomena, while at the same time taking their epistemic significance into account. This double meaning as both political as well as epistemic principle of differentiation and distinction is a characteristic trait of boundaries. In fact, boundaries can be considered as a particular type of distinction. While not every distinction has a political, social or normative implication, boundaries separate both different political areas and different epistemic scopes of (legal, legitimacy, regulatory, etc.) validity.<sup>16</sup>

The following observations will focus on the boundary between domestic and foreign policy as well as the boundary between the public and the private sphere. But why focus on particularly these two boundaries? This choice is justified, firstly, as these two boundaries, with their significance in state theory, adopt a few remarkable modes of implementation under conditions of internationalization. Secondly, the boundaries between domestic and foreign policy and between the public and the private sphere are both politically highly significant and constitute separated categorical and epistemic areas of validity. Thirdly, these boundaries refer to other major political and epistemic boundaries of the modern state, namely to “the institutional limits”<sup>17</sup> between legislative and executive sovereignty and to the categorical limits of sovereign power (domestic-foreign boundary: limits of legal legitimacy as well as of the state’s ordering scope and power; public-private boundary: limits of legitimate state interven-

tion). Fourthly, both the boundary between domestic and foreign policy and the boundary between the public and the private sphere belong to those boundaries that are suspected of losing their significance in the process of globalization and increasing international relations. It will, however, remain to discuss to which extent this is the case.

The presented reflections basically aim at considering if we are really dealing with the disappearance of traditional boundaries in the course of internationalization and globalization – or rather with increasingly flexible boundary lines, i.e. with the volatility of boundaries, which does not necessarily modify or weaken the political and epistemic quality and function of boundaries or their political relevance.

## 2. Domestic affairs and foreign policy

### 2.1 Internationalization and the persistence of foreign policy

If we consider globalization and the unprecedented rise of international relations as “increased and intensified interdependencies of traffic, communication, and exchange across national borders”,<sup>18</sup> we will notice that this increase and intensification of international politics is carried out, first and foremost, by a multiplication and intensification of national foreign policy. Certainly, this increase in quality and quantity of foreign policy activities cannot be understood in terms of Westphalian bilateralism. National governments are in fact interacting with various new actors (NGOs, transnational organizations in the broadest sense, international institutions, a transnational civil society<sup>19</sup>) and within an emerging – or maybe even already existing – world society<sup>20</sup> with multiple new forums and institutions.

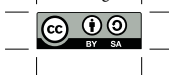
<sup>16</sup> On this political as well as epistemic double meaning as a constitutive feature of boundaries cf. Markus Bauer/Rahn Thomas, Vorwort, in: Markus Bauer/Thomas Rahn (eds.), *Die Grenze. Begriff und Inszenierung*, Berlin 1997, 7-9, see 9; Allen Buchanan, *The Making and Unmaking of Boundaries: What Liberalism Has to Say*, in: Allen Buchanan/Margaret Moore (eds.), *States, Nations, and Borders. The Ethics of Making Boundaries*, Cambridge 2003, 231-261, see 236; Niklas Luhmann, *Soziale Systeme. Grundriß einer allgemeinen Theorie*, Frankfurt am Main 1987, 266; Walter Pohl, *Soziale Grenzen und Spielräume der Macht*, in: Walter Pohl/Helmut Reimitz (eds.), *Grenze und Differenz im frühen Mittelalter*, Wien 2000, 11-18, see 16; Andreas Vasilache, *Der Staat und seine Grenzen. Zur Logik politischer Ordnung*, Frankfurt am Main–New York 2007, chapter 1.

<sup>17</sup> Günter Frankenberg, *Staatstechnik. Perspektiven auf Rechtsstaat und Ausnahmezustand*, Berlin 2010, 16.

<sup>18</sup> Jürgen Habermas, *Die postnationale Konstellation. Politische Essays*, Frankfurt am Main 1998, 101.

<sup>19</sup> Cf. Jens Steffek, *Die Legitimation internationalen Regierens: Vom Staatenkonsens zum Bürgerkonsens*, in: Nicole Deitelhoff/Jens Steffek (eds.), *Was bleibt vom Staat? Demokratie, Recht und Verfassung im globalen Zeitalter*, Frankfurt am Main–New York 2009, 161-186. The expanded public awareness of international challenges and the intensified public discourse on international affairs can be seen as an important contribution to the democratization of foreign policy in democratic states. However, the possibilities for public deliberation outlined by Steffek can take place only within consolidated democratic systems and between societies enjoying freedom of speech, of press, and of assembly.

<sup>20</sup> Cf. Mathias Albert, *Zur Politik der Weltgesellschaft. Identität und Recht im Kontext internationaler Vergesellschaftung*, Velbrück 2002.



Together, they deal with issues that nowadays can only be solved in regional or global cooperation, and non-governmental actors have become serious dialog partners in international affairs.<sup>21</sup>

And yet, non-governmental actors can, in the end, realize their goals only by convincing or influencing states and – more concrete – governments. With regard to the implementation and enforcement of international agreements or transnational regulations, national governments remain relevant as prerogative actors in a threefold sense: Firstly, they are the only ones authorized to agree on binding regulations under international law.

Secondly, as Müller points out, all private actors in international governance must legally constitute themselves in a state – and, thus, need the states to formally acknowledge or at least tolerate their political (be it regulative, consultative, monitoring, etc.) functions and competencies in cross-border relations. Thus, even in international governance processes and dynamics, in which states are not directly involved or not the main actors (for instance when common technical standards are negotiated and agreed between representatives of a particular industrial sector), still “the state remains a *virtual* participant, i.e. in the background”.<sup>22</sup>

And thirdly, states continue to monopolize the possibility of implementing and enforcing (or preventing) such regulations by transposing (or not transposing) them within the national legal framework. Actually, this is not only a state-, but rather a government-precedence – even though, in democratic states, the transposition into national law is

not a governmental, but a legislative competence. However, the legislative independence in transposing international law is limited to that effect that relevant legislation is not autonomous in terms of content, but rather required to insert existing international negotiation results into national law, to adapt them and to retrospectively reproduce the already given decision.<sup>23</sup> Such structures and processes can ultimately lead to the situation “that the agents de facto rule the political principals, whose agents they are”.<sup>24</sup> This is intensified by the precedence in information and technocratic competence that the foreign policy apparatus usually takes over national legislative institutions,<sup>25</sup> so that the latter in general deal with international affairs only indirectly, through the government. Taking a look at the separation of powers, we see that the structures and goals of international governance forums tend to favour governments over national legislative institutions. Because of the very specialized thematic focus of transboundary governance settings and their aim on the effective enabling and concrete implementation of cross-border regulations, again, governments in fact take precedence over their parliaments. With their clearly specialized thematic task area, practical orientation, their focus on very concrete issues and questions, and their decided bias on problem-solving, most forums and processes of international governance – even those that are allegedly ‘stateless’ – are located in the epistemic and political realm of the particular, the factual and the concrete. In the state’s institutional logics, this realm of the particular, the factual and the concrete is reserved for the executive power of the administration.<sup>26</sup>

<sup>21</sup> Cf. e.g. Bas Arts/Math Noortmann/Bob Reinalda (eds.), *Non-State Actors in International Relations*, Aldershot 2001; Rodney B. Hall/Thomas J. Biersteker (eds.), *The Emergence of Private Authority in Global Governance*, Cambridge 2002; Louis W. Pauly/Edgar Grande, *Reconstituting Political Authority: Sovereignty, Effectiveness, and Legitimacy in a Transnational Order*, in: Edgar Grande/Louis W. Pauly (eds.), *Complex Sovereignty. Reconstructing Political Authority in the Twenty-First Century*, Toronto 2005, 3-21, see 17; Tony Porter, *The Private Production of Public Goods: Private and Public Norms in Global Governance*, in: Edgar Grande/Louis W. Pauly (eds.), *Complex Sovereignty. Reconstructing Political Authority in the Twenty-first Century*, Toronto 2005, 217-237, see 217.

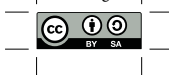
<sup>22</sup> Harald Müller, *Staatlichkeit ohne Staat – ein Irrtum aus der europäischen Provinz? Limitierende Bedingungen von Global Governance in einer fragmentierten Welt*, in: Nicole Deitelhoff/Jens Steffek (eds.): *Was bleibt vom Staat? Demokratie, Recht und Verfassung im globalen Zeitalter*, Frankfurt am Main–NewYork 2009, 221-258, see 236.

<sup>23</sup> Cf. also Gertrude Lübke-Wolff, *Die Internationalisierung der Politik und der Machtverlust der Parlamente*, in: Hauke Brunkhorst (ed.), *Demokratie in der Weltgesellschaft, Sonderband Soziale Welt 18*, 2009, 127-142, see 132.

<sup>24</sup> Rainer Schmalz-Bruns, *An den Grenzen der Entstaatlichung. Bemerkungen zu Jürgen Habermas’ Modell einer ‚Weltinnenpolitik ohne Weltregierung‘*, in: Peter Niesen/Benjamin Herborth (eds.), *Anarchie der kommunikativen Freiheit. Jürgen Habermas und die Theorie der internationalen Politik*, Frankfurt am Main 2007, 269-293, see 290.

<sup>25</sup> As Lübke-Wolff, 2009 (see note 23), 134f, judge of the German Constitutional Court, points out, the German Constitutional Court has underlined this executive precedence in transboundary politics in a normative sense, too.

<sup>26</sup> See Vasilache, Frankfurt a.M.–New York (see note 16), chapter 3.3, Andreas Vasilache, *The Rise of Executive Sovereignty in the Era of Globalization*, in: Mario Telò (ed.), *State, Globalization and*



These observations on the role of the state and national governments in international governance (no matter, whether supposedly 'stateless' or not) of course take into account that the modes of transboundary policy-making have substantially changed. Thus, the outlined reflections should not be mistaken as asserting an unchanged continuity of the Westphalian order and its state- and government-centric logics and structures of international politics. Quite the contrary, foreign policy ever increasingly takes place in and (re-)produces cross-border multi-level structures with a plurality not only of different actors, but of different types of actors. As Held rightly stresses globalization is "associated with the expansion of the terms of political activity."<sup>27</sup> At the same time, it has to be pointed out that the changing phenomenon in question continues to be foreign policy in that the traditional boundary between domestic and foreign affairs still persists. The structures, dynamics, and processes of foreign policy have indeed changed, but this has by no means led to the weakening of the systematic distinction between domestic policy and foreign policy. The latter continues to be constituted as a special policy field, categorically separated from domestic affairs and subject to governmental pre-eminence. Still, international politics is both dealt with and discursively represented as a political sphere somehow apart from 'normal' politics (with its reliable legal system, formalized procedures, party disputes, overt pluralism of social interests, checks and balances of states powers, etc.). Even under conditions of substantially increased internationalization and "Multicentric Governance",<sup>28</sup> cross-border politics are characterized by a "rise of government networks"<sup>29</sup> and, thus, seem to remain a sphere of activity mainly for – referring to

Slaughter – "national government officials".<sup>30</sup> Thus, the work with and within new international structures and processes can well be considered to be the specific form that foreign policy nowadays increasingly takes. This form is, on the one hand, replacing the traditional, quasi Westphalian shape of international relations – while, on the other hand, the systematic demarcation between domestic policy and foreign affairs based on the distinction between internal and external sovereignty is thereby conceptually left untouched.<sup>31</sup> This does not only indicate that territorial state borders keep their political and policy-relevance even under conditions of internationalization.<sup>32</sup> It moreover shows that the constitutive boundary of the modern, i.e. contractarian state between domestic and foreign policy spaces continues to persist and takes effect in its fundamental functional logic as a boundary between two categorially distinct political and epistemic areas of validity. This seems to be the case for international, transnational, and – as indicated by the (still) strongly intergovernmental structures of politics within the EU<sup>33</sup> – for supranational contexts as well.<sup>34</sup>

## 2.2 The volatility of foreign policy

The persistence of the systematic boundary dividing domestic and foreign policy is even reflected in the increasing discursive internationalization of many policy issues or entire policy fields. The fact that "not one relevant issue of economy, politics, and culture [...] nowadays seems discussable without its global references",<sup>35</sup> by no means necessarily leads to a weakening of the systematic boundary between domestic and foreign policy, but rather and frequently

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Multilateralism. The Challenges of Institutionalizing Regionalism, Dordrecht–New York 2012, 137-157, see 138-140; Lübke-Wolff 2009 (see note 23), 134f; see for the systematic foundation of the separation of powers in social contract theory Jean-Jacques Rousseau, *Œuvres complètes*, ed. by Bernard Gagnebin and Marcel Raymond. (Bibliothèque de la Pléiade.) Vol. III. Du contrat social. *Écrits politiques*, Paris 1964, 369-371, 378-384, 395-400; cf. on the relation between law, executive ordinances, and the governmental role of the police Michel Foucault, *Geschichte der Gouvernementalität I. Sicherheit, Territorium, Bevölkerung. Vorlesung am Collège de France 1977-1978*, Frankfurt am Main 2004, 488f.

<sup>27</sup> Held, Cambridge (see note 14), 88.

<sup>28</sup> Held, Cambridge (see note 14), 75.

<sup>29</sup> Held, Cambridge (see note 14), 75.

<sup>30</sup> Held, Cambridge (see note 14), 75; see also Robert O. Keohane, *The Contingent Legitimacy of Multilateralism*, in: GARNET Working Paper 09/06. 2006, 3, 10.

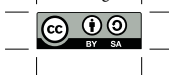
<sup>31</sup> On the continued executive priority in transboundary politics and the resulting legitimacy problems in democratic states cf. e.g. Klaus-Dieter Wolf, *The New Raison d'État as a Problem for Democracy in World Society*, in: *European Journal of International Relations* 5: 3. 1999, 333-363.

<sup>32</sup> See Müller, Frankfurt a.M.–New York (see note 22), 228.

<sup>33</sup> See Andrew Moravcsik, *The Myth of Europe's 'Democratic Deficit'*, in: *Intereconomics. Journal of European Economic Policy*, November/December 2008, 331-340.

<sup>34</sup> On the notion of supranationalism see Andreas Vasilache, *Supranational Power – Approaching a Theoretical Dilemma*, in: Dai Bingran/Jian Junbo (eds.), *The Enlarged European Union. Prospects and Implications*, Baden-Baden 2008, 41-56.

<sup>35</sup> Klaus Müller, *Globalisierung*, Frankfurt a.M.–New York 2002, 7.





to what one could call a *foreign-politicization* of domestic policy – i.e. to an import of government-biased foreign policy issues and logics into domestic policies. This holds true especially in the field of security policy. We are witnessing an expansion of security policy logics and the integration of security imperatives in various policy fields, justified with transboundary challenges. For purely illustrative purposes it should be pointed out that discourses on educational as well as on criminal policy in Europe are meanwhile often held as debates about migration, integration, and Muslim fundamentalism, whereas discourses on pluralism and immigration are threatened of “being dealt with merely in categories of internal security”.<sup>36</sup> The expanding suggestions, demands, and regulations in the field of domestic security are more and more frequently justified with cross-border problems, threats, and, more and more often, risks.<sup>37</sup> This indicates that internationalization can well be performed by integrating issues, categories, and logics of executive-dominated foreign policy into the realm of domestic affairs. The external threat or risk remains being discussed and understood as an international, foreign challenge – save for its occurrence within the state, thus challenging foreign policy as well as external security organs<sup>38</sup> within the state’s domestic area itself.<sup>39</sup>

From a systematic perspective focused on boundaries, the discursive internationalization of particular political issues or entire policy fields can be understood as a process of a permanent and sim-

ultaneous removal and setting of boundaries. In this process, governments on the one hand point out the transboundary context and relevance of the respective phenomenon, while on the other hand and *at the same time* the government retains its prerogative power in cross-border affairs, and foreign policy remains bound to its systematic executive focus on particular and factual measures. Neither the existence of boundaries nor their categorical function of separating the domestic area of the state from its external environment and domestic from foreign policy respectively is thereby systematically or conceptually called into question. Thus, it might be insufficient to outline that nowadays, “the anyway porous state boundaries seem to be particularly open and precarious”.<sup>40</sup> Rather, the discursive internationalization of various issues, problems or entire subject areas still seems to be based on the logic of a strict political and epistemic demarcation between the inside and the outside, between domestic and foreign policy – this boundary now, however, being flexible and volatile and no longer necessarily in line with the state’s territorial borders.

This can also be observed when governments turn to other states with specific requests or demands for regulating matters that are under the addressed state’s domestic policy. Especially in economic and ecological issues, attempts at directly influencing other states are markedly more accepted today than some decades ago. For instance, in the course of current industrialization processes, ecological ignorance can no longer be considered a merely domestic affair. States that do not concern themselves adequately with ecological sustainability become likely to incur international pressure, with other governments openly asserting their claim to influencing the relevant policy of the respective state. The issue being dealt with thereby undergoes, on the one hand, internationalization in that the issue in question is not accepted to be a purely domestic issue any more. With regard to the negotiating actors and the international dynamics, such processes, on the other hand, from the perspective of the addressed state structurally represent a foreign-politicization. The issue discussed is discursively transferred from the realm of the domestic legislative

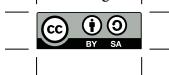
<sup>36</sup> Jürgen Habermas, Ach, Europa. Kleine politische Schriften XI, Frankfurt am Main 2008, 92.

<sup>37</sup> On risk-focused security rationalities see Oliver Kessler, Risk, in: J. Peter Burgess (ed.), The Routledge Handbook of New Security Studies, Abingdon 2010, 17-26; Robert Castel, From Dangerousness to Risk, in: Graham Burchell/Colin Gordon/Peter Miller (eds.), The Foucault Effect. Studies in Governmentality. With two lectures by and an interview with Michel Foucault, London 1991, 281-298; Mitchell Dean, Governmentality. Power and Rule in Modern Society, London 1999, 177; Claudia Aradau/Rens van Munster, Governing Terrorism Through Risk: Taking Precautions, (Un)Knowing the Future, in: European Journal of International Relations 13: 1. 2007, 89-115.

<sup>38</sup> Cf. the recurring demand of (usually conservative) politicians for the deployment of the German Federal Armed Forces within the German borders.

<sup>39</sup> Frankenberg, Berlin (see note 17), 39, speaks about the fight against internal enemies, while my focus is on the particularity that these enemies, threats, and risks in governmental discourses rather are (re-)presented and constituted as, so to speak, *incorporated external* or *embedded external* ones.

<sup>40</sup> Frankenberg, Berlin (see note 17), 19.



negotiation process to the field of foreign policy and its executive and intergovernmental bias.

It may well be considered a particular achievement of European integration to have limited the traditional Westphalian principle of non-interference with domestic politics of other states. However, although the non-interference principle experiences a by far weaker position and less political acknowledgement in the EU than in non-European international politics, the phenomenon at hand in its structure and systematic logic still remains an interference with domestic affairs. It is performed and negotiated between governments and their executive, diplomatic apparatus (either directly on a bilateral level, between the respective national and the European executive or in the Council of Ministers) and takes place in international forums and institutions. The structure of deciding and negotiating claims of EU members toward each other is still basically intergovernmental and based on a clear demarcation between domestic affairs and foreign policy. The persistence of the domestic-foreign boundary as well as the following executive bias is obvious in the relation between the EU member states, but is salient also in genuinely supranational structures and procedures of the EU, and even in cases, in which the European Parliament has co-decision authority. The particular 'foreign policy' status of EU policy is, by the way, also reflected in the fact that in most EU member states EU policy is assigned to foreign ministries or special ministries for European affairs.

The persistence of the categorial boundary between domestic and foreign policy also becomes obvious when states deliberately constitute special extraterritorial spaces (or plan to do so) and thereby pay meticulous attention to institutionalizing these areas either as external domestic areas or as domestic external areas. These areas are, on the one hand, outside the state's domestic sphere of legal and epistemic validity, but they are still exclusively subject to the respective government and its executive foreign affair logics. Examples for this are reception or prison camps (like the migrant reception camps in Australia or the Guantánamo detention camp), states of emergency, and also territory-related civil wars accompanied by a legal separation of the embattled area from the rest of the national territory, while at the same time the conflict area is still

claimed – in particular towards the international community – as being part of the domestic territory (for example Chechnya or Aceh). On the one hand, such phenomena are characterized by leaving the boundary between the interior and the exterior undecided.<sup>41</sup> On the other hand and at the same time, the establishing of such areas is necessarily based on a strict and categorial demarcation between internal and external affairs. All spaces not clearly assigned to the domestic area of legal validity are thus handed over to the sphere of executive-dominated foreign policy, even if the boundary of foreign policy no longer corresponds to the national territorial borders.

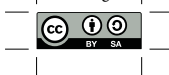
In summary we can state that the boundary between domestic and foreign policy is becoming increasingly flexible and detached from national territorial borders. We must consider this as an essential development, both from a political as well as a systematic theoretical viewpoint. This is of considerable significance for state theory as well as for practical politics – not least in normative terms – because the boundary of domestic legal validity is becoming uncertain and this uncertainty is shifting the relation of powers toward the executive. However, the volatility of the boundary between domestic and foreign policy does not amount to its disappearance, but is based precisely on its persistence and its political and epistemic rigidity and rigour. Thus, Held's statement that the "idea of global politics calls into question the traditional demarcations between the domestic and the foreign, and between the territorial and the non-territorial",<sup>42</sup> cannot, at least not generally, be confirmed from the perspective of a systematic boundary analysis. Under the current conditions of intensified political internationalization it is rather possible for these two boundaries – which Held equates and state theory views as congruent – to separate and to move apart from one another.

### 2.3 Political consequences

Having said this, not only in the context of boundary-focused analyses, but also in normative terms it seems advisable to take a close look at the boundary between internal and external affairs – rather than prematurely presupposing that this boundary has

<sup>41</sup> Cf. Giorgio Agamben, *Homo Sacer. Sovereign Power and Bare Life*, Stanford 1998.

<sup>42</sup> Held, Cambridge (see note 14), 74.



already become irrelevant. Considering the expansion and intensification of transboundary politics, we can follow Deitelhoff and Steffek in that “the question of the possibility of hierarchical self-intervention”<sup>43</sup> and its “links to processes of self-legislation and the rule of law”<sup>44</sup> is still awaiting an answer. In terms of legitimacy this cannot be ignored as the process of foreign-politicization implies a subtle de-democratization of democratic constitutional systems. This problem is not new: The strengthening of the executive power within the political system favors exactly that institution of the modern state, which has always, theoretically and empirically, posed the greatest inherent challenge to a liberal democratic order, making it a priority for democratic theory and practice to control and tame it.<sup>45</sup>

To prematurely dismiss the boundary between domestic and foreign policy would thus not only be a factual error, but it also tends to be questionable from a normative point of view. It would mean to forgo the possibility to discuss both the desired and undesired implications of this distinction, as well as the possibility to renegotiate or modify it. Analytically neglecting this political as well as epistemic boundary would intensify the problem in question, as it would either result in scholarly apologetics of questionable foreign-politicizations of political issues and structures, or at least would weaken the analytical means to address and counteract such tendencies. The statement that “the possibility of nation-state self-legislation in a globalized, highly interdependent world de facto no longer exists”<sup>46</sup> is an altogether too broad generalization in that it underestimates the necessity for differentiating between challenges that can no longer be regulated in a national context, on the one hand, and such issues, on the other hand, that can still be successfully and legitimately regulated on a national scale – or even below that.

That we are not talking merely about an abstract issue, but about a current political phenomenon can be demonstrated by the trend of *securitization*, which jeopardizes the “hard-won desecuritizing achievements of liberalism [...] over the past three centuries”.<sup>47</sup> A particular example is the concept of *human security*, in which the consumption of “narcotic drugs and a growing sense of individual isolation”<sup>48</sup> and even traffic accidents and individual crime are defined as objects of cross-border security policy<sup>49</sup> under the vague and broad slogan of “human distress”.<sup>50</sup> Ironically, the alleged boundlessness of all policy fields as well as the dismissal of the idea of nationally confined, domestic policy-making and legislation in times of globalization are positions that are regularly put forward in rather liberal approaches in IR, but in fact revive the realist idea of the black-box model: A differentiated view distinguishing precisely between issues that can only be regulated on the international scale, and those that can still be regulated on a national level is replaced by the hypothesis of a general dissolution and fading of territorial and systematic boundaries, construing the modern state as being systematically overcharged and therefore unable to cope with current problems and challenges – irrespective of the state or the policy field concerned.

To be clear: Pointing out the shortcomings of overhasty assertions of a world without borders is not to be confused with indiscriminately demanding recourse to a policy of national self-referentiality or self-sufficiency. I am, in contrast, arguing the case for a precise assessment of the boundary between domestic and foreign policies. Differentiated analytical consideration is necessary in order to not hastily hand issues, which it makes sense to deal with on a national scale, over to an international sphere that is characterized by a “stretched chain of legitimacy in connection with the problem of executive bias”.<sup>51</sup>

<sup>43</sup> Nicole Deitelhoff/Jens Steffek, Einleitung: Staatlichkeit ohne Staat?, in: Nicole Deitelhoff/Jens Steffek (eds.), Was bleibt vom Staat? Demokratie, Recht und Verfassung im globalen Zeitalter, Frankfurt am Main–New York 2009, 7-34, see 31.

<sup>44</sup> Deitelhoff/Steffek, Frankfurt a.M.–New York (see note 43), 31.

<sup>45</sup> See already Rousseau, Paris (see note 26), 421ff, 434ff and John Locke, Two Treatises of Government. A critical ed. with an introd. and apparatus criticus by Peter Laslett, Cambridge 1966, §§ 143-158.

<sup>46</sup> Deitelhoff/Steffek, Frankfurt a.M.–New York (see note 43), 31.

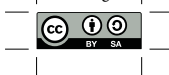
<sup>47</sup> Barry Buzan/Ole Wæver/Jaap de Wilde, Security. A New Framework for Analysis, Boulder–London 1998, 210.

<sup>48</sup> United Nations Development Programme (UNDP), Human Development Report 1994, New York–London 1994, 2.

<sup>49</sup> Cf. UNDP, New York–London (see note 48), 30.

<sup>50</sup> UNDP, New York–London (see note 48), 30. On the Human Security approach see Christoph Schuck (ed.), Security in a Changing Global Environment. Challenging the Human Security Approach, Baden-Baden 2011.

<sup>51</sup> Rainer Schmalz-Bruns, Moralisch-reflexive Staatlichkeit? Zum normativen Profil der jüngeren Debatte über ‚Staatlichkeit ohne





Therefore, discussing the factual persistence of the systematic boundary between domestic and foreign policy with its dangers and normative potentials does not refer to a traditional Westphalian ideal, but addresses the domestic-foreign-boundary under conditions of political internationalization. Acknowledging the persistence of this boundary also implies perceiving and acknowledging the substantial and qualitative changes of the structure, the actors, and the dynamics of contemporary international politics. At the same time this view makes it possible to call to mind the necessity for “democratic limits of the denationalization of world domestic politics [Weltinnenpolitik]”.<sup>52</sup>

### 3. The public and the private

The boundary between the public and the private sphere is constitutive in terms of state and democratic as well as legal theory. Ideal-typically, public interests, norms, and claims to validity always relate and apply to all possible addressees within the state. The private sphere, meanwhile, represents those spaces where rules, interests, and preferences take effect (within the limits of legality) that pertain only to a certain group of people within the entire collective or to single individuals. This sphere is largely free from state intervention in the sense of Isaiah Berlin’s concept of negative freedom.<sup>53</sup> The categorial boundary between the public and the private sphere results from the contractual logic of modern stateness and the idea of the rule of law.<sup>54</sup> However, while the political as well as epistemic boundary between the public and the private sphere of validity and regulation is a *sine qua non* of the modern state as well as of the idea of law, the concrete decision as to which issues fall within the scope of public validity and regulation (addressing everyone in the name of all) and which are subject to private regulation and/or preferences, i.e. the exact boundary line between the public and the private sphere, is indeed variable and has been made differently at different times and places.

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Staat’, in: Nicole Deitelhoff/Jens Steffek (eds.), *Was bleibt vom Staat? Demokratie, Recht und Verfassung im globalen Zeitalter*, Frankfurt am Main–New York 2009, 75–105, see 90.

<sup>52</sup> Schmalz-Bruns, Frankfurt a.M.–New York (see note 51), 102.

<sup>53</sup> Cf. Isaiah Berlin, *Liberty*, Oxford 2002, 166–217.

<sup>54</sup> Cf. Vasilache, Frankfurt a.M.–New York (see note 16), chapters 3.3, 3.4.

Now, the process of internationalization as well as globalization is characterized by increasingly intensified cross-border relations between private actors. In the first instance, this phenomenon may be considered as pertaining solely to the private sphere and therefore not per se affecting the boundary *between* the private and the public sphere. The need for regulation, however, resulting from the increase of private transboundary activities and the acknowledgment that private actors may be both the cause of and the remedy for challenging problems (ecological ones, for instance), have led to private organizations gaining political significance in international governance. This in turn causes fluxions to the boundary between the public and private sphere itself. Therefore, I will now pay attention to two particular modes of implementation of the boundary between the public and the private sphere, the first of which points at a categorial and epistemic reconstitution of this boundary and the second at its volatility.

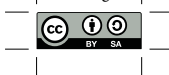
#### 3.1 Privatized public

If we consider the privatization of sovereign, especially security-relevant state responsibilities and functions, we will find it to have a twofold sense, with the second level being particularly relevant from a boundary-analytical perspective. When private actors get involved in ensuring sovereign functions, on the one hand, this simply is a privatization in the (literal) sense of public functions becoming private ones – i.e. of the private sphere expanding to the disadvantage of the public sphere.

On the other hand, however, the state can never *completely* withdraw from those fields of action that belong to the sovereign subject area of security. This is why the privatization of security-relevant functions and responsibilities can also be understood as a privatization of the state’s actor status and its very actor quality. The provision of security and the *enforceable* assertion of legitimate and the rejection of illegitimate claims based on its legal system are core – and even constitutive – duties of the modern state and part of its *raison d’être*. Therefore the state cannot *completely* shed its security-relevant responsibilities and functions, even if they are transferred to private actors.<sup>55</sup> As long as a state exists, it must

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<sup>55</sup> Cf. on this topic Volker Heins/Jens Warburg, *Kampf der Zivilisten. Militär und Gesellschaft im Wandel*, Bielefeld 2004; Ken Silverstein, *Private Warriors*, London 2000; Thomas Jäger/



rather reserve the role of controlling the private security actors as well as the possibility to re seize the previously privatized, security-relevant duties and functions at all times.<sup>56</sup> Thus, whenever private organizations are entrusted with fulfilling functions that belong to the core of state sovereignty, they are in fact always acting *on behalf of* or *in the name of the state*. When it comes to privatizing security-relevant functions, the state to some extent always remains involved. The respective private companies do not – and conceptually cannot – act completely on their own behalf, but always directly or indirectly on behalf of the state. They act on direct behalf when fulfilling requirements or concrete assignments by the state.<sup>57</sup> They act on indirect behalf when the state simply withdraws from ensuring particular security services and private organizations step up to fill the gap – which the state is however always authorized to fill on its own again.<sup>58</sup> In sovereign policy fields, i.e. in fields, in which the state has a prerogative regulatory power, private actors therefore principally work until recalled and they, at least potentially, have to answer directly to the state for each of their actions. Hereby, the state gains a second – executive – pillar that is constituted and operates through private actors, and yet remains under state control.

The state thus privatizes sovereign functions and areas of responsibility, without, however, completely relinquishing them, i.e. these function areas are only *partially* privatized. In this way the state becomes capable of taking an ambiguous, public-private hybrid position. The state itself undergoes privatization, becoming capable of performing – according to political convenience and expediency – as private actor represented by private security subcontractors at one time, and as public, governmental actor at another time.<sup>59</sup> In the involvement of private service providers in sovereign function areas we can thus discern beside the *first*, apparent level of privatization (public functions becoming private ones) a *second* level of privatization referring to the very actor quality of the state. The privatization of the state's actor quality takes place as an act of boundary setting between the public and the private sphere (as two areas of political and epistemic validity), with demarcation lines that now have become flexible and volatile.

We can conclude that the boundary between the public and the private sphere is in flux in a twofold sense. Not only are we dealing with a changing boundary line, which would imply to merely recategorize certain issues or subject areas as public or as private affairs.<sup>60</sup> The crux of the matter consists in the governmental actor's self-privatization, thus in the political and epistemic constitution of a public-private hybrid. This second dimension of privatization qualitatively goes beyond a co-operation in terms of a *public-private partnership* (PPP)<sup>61</sup> because the boundary line between the public and the private emerges and appears in the public sphere itself and establishes a privatized public actor. It is again in a twofold sense that this process is accompanied by an increased volatility of the boundary between the public and the private realm. On the one hand, we can identify volatility in a quantitative sense, comprising the possibility to situational and spontaneous

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Gerhard Kümmel (eds.), *Private Military and Security Companies. Chances, Problems, Pitfalls and Prospects*, Wiesbaden 2007.

<sup>56</sup> Wherever this is not the case, we are dealing with failing or already failed states. Cf. Thomas Risse, *Governance in Räumen begrenzter Staatlichkeit*. 'Failed states' werden zum zentralen Problem der Weltpolitik, in: *Internationale Politik* 60: 9. 2005, 6-12.

<sup>57</sup> This category includes all cases, in which the state directly contracts private service providers. Also ranging in this group are situations where the state demands certain standards, but leaves their implementation to private organizations. An example of the latter is passenger screening at Frankfurt Airport, which is legally required, while the responsibility for its implementation is placed on the airport operator. (This, to name just one remarkable outcome of such a *public-private-partnership* (PPP), can lead – as for instance at Frankfurt/Main Airport – to preferential treatment of selected passengers in the *fast lane*, taking place in the context of legally required security controls, but based on customer loyalty and discount programs offered by private airlines.)

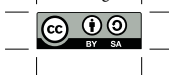
<sup>58</sup> This can be observed in the fields of private object security or petty crime. As pointed out by Philippe Robert, *Bürger, Kriminalität und Staat*. With a foreword by Fritz Sack, Wiesbaden 2005, 176, 239, these issues have almost completely drifted out of the focus of security policy of many Western states. As a result, defense and investigation for petty crime in shops, malls, and complete shopping areas in cities, as well as object security is largely left up to private security providers, who are largely commissioned by shopkeepers and business owners.

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<sup>59</sup> The employment of both state and private security agents (from *Blackwater*) in New Orleans after hurricane *Katrina* may serve as an example. Cf. Jeremy Scahill, *Blackwater Down*, in: *The Nation*, October 20, 2005.

<sup>60</sup> For instance, the introduction of public health insurance in the USA represents a re-categorization of health care no longer only as a private but also as a public affair.

<sup>61</sup> On PPP see Detlef Sack, *Governance und Politics. Die Institutionalisierung öffentlich-privater Partnerschaften in Deutschland*, Baden-Baden 2009.



changes of private-public boundary lines. On the other hand, and in a qualitative sense, the volatility of the private-public boundary affects the state's *actor status* itself by enabling the state to shift between a private and a public actor status.

### 3.2 Public privacy and the volatility of the boundary

The volatility of the boundary between the private and the public sphere is, however, also significant beyond the particular phenomenon of the governmental actor's self-privatization. Already the mere volatility of the boundary in itself is capable of counteracting its essential function. This, again, is most clearly evident in the subject area of security policy, especially when it comes to cross-border security.

In the OECD world,<sup>62</sup> security authorities have been expanding their competences and powers for several years now, and they have justified this with the defense against cross-border risks (usually terrorism, organized crime in the broadest sense, illegal migration, and pandemics).<sup>63</sup> In systematic terms, such expansions can be understood as the state entering into spheres that were formerly private and largely free from state interference. This is therefore, firstly, a change of the boundary line between the public and the private sphere. The boundary's existence and its constitutive and functional logic are however not per se called into question: Laws and regulations as, to give some recent examples from Germany, those for data retention, the eavesdropping operation also called 'Lauschangriff', online computer surveillance, retrospective preventive detention, or the control of "'suspect' products as

alcohol or tobacco",<sup>64</sup> reset and redefine the boundary line between the public and the private and thereby constitute formerly private issues and areas as problems that are now under public care. Secondly, such regulations – because of the frequency, the permanence, and the continuity of shifting the boundary between the public and the private sphere to the disadvantage of the latter – at the same time undermine this very boundary's reliable clarity, which is one of its essential functions. There is a risk that the fluctuating volatility and the fleetingness of the demarcation between the public and the private will eventually undermine exactly that degree of certainty and reliability, which is essential for the existence of the private sphere and without which it would ultimately lose its protective function in the sense of the citizens' negative freedom.

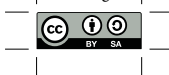
All the regulations mentioned here have been rejected, most of them by the German Federal Constitutional Court, some by European courts, as being unconstitutional and/or incompatible with human and/or civil rights. From a technical point of view, this indeed could be referred to as failed politics, as poor, unprofessional governance. To leave it at that, however, would mean to underestimate both the systematic and normative consequences of the volatility of the private-public-boundary for its main function and its *raison d'être*. In the last years, the respective governments and policy-makers seem to react to the perpetual juridical rejection of such laws and regulations either by passing yet more rigorous regulations (this happened for instance in the context of the eavesdropping operation 'Lauschangriff' in Germany or in the EU with regard to the mandatory car-positioning system 'eCall', which at the moment is pushed forward although the directive on the generalized retention of data has recently been overruled by the European Court of Justice (ECJ)), or by seeking ever-new possibilities for state interference and intervention – even if they are aware of the fact that the regulations in question will not endure, but be overruled by constitutional courts.<sup>65</sup> This whole procedure and circle of intrusive rule-making, abrogation, and re-establishing of intrusive

<sup>62</sup> As this article does not aim at an empirical overview my examples are mainly from Germany. The expansion of state competences in the field of security policy, however, represents an international trend. See for instance David Garland, *The Culture of Control. Crime and Social Order in Contemporary Society*, Oxford 2002; Buzan/Wæver/de Wilde, *Boulder–London* (see note 47); Didier Bigo/Anastassia Tsoukala (eds.), *Terror, Insecurity and Liberty*, Abingdon 2008; Andreas Vasilache, *Human Securitization. State Theory, Governmentality, and the Ambivalence of Security in Europe*, in: Christoph Schuck (ed.), *Security in a Changing Global Environment. Challenging the Human Security Approach*, Baden-Baden 2011, 123-152.

<sup>63</sup> Suffice it to say in this context that the discursive constitutionalization and representation of international, extraterritorial spaces as areas of threat, danger, and insecurity still works surprisingly well, even in the light of substantially increased cross-border mobility and information. On a discursive level, it seems that the state of nature still lurks beyond the national border.

<sup>64</sup> Castel, London (see note 37), 289.

<sup>65</sup> This was apparently what happened in the case of the German Retention of Data Bill, which the Federal Constitutional Court rejected in the beginning of 2010. The Federal Government didn't even make a serious effort to defend the bill in the hearing.



regulations, substantially contributes to keeping the boundary between the public and the private sphere pending, as a moving, flexible, and volatile boundary. The German Federal Constitutional Court recently stated that the perpetual attempts at state interference with the private sphere are not only problematic on a case-by-case basis. Above all, creating a situation of virulent insecurity and uncertainty about the state's possibilities for intervening could result in an atmosphere of state omnipresence and develop "lasting intimidating effects on the exercise of liberty [Freiheitswahrnehmung]".<sup>66</sup> According to the court, such a situation is suited to "cause a diffusely threatening feeling of being under observation that can diminish the unreserved and non-intimidated exercise of one's basic rights in many areas".<sup>67</sup> The ECJ argued in a similar way when it finally rejected the European directive on the retention of data on April 08, 2014. The court argued that the directive not only "entails an interference with the fundamental rights of practically the entire European population",<sup>68</sup> but that it "is likely to generate in the minds of the persons concerned the feeling that their private lives are the subject of constant surveillance".<sup>69</sup>

Under such conditions, the boundary between the public and the private sphere lacks reliability and certainty. Accordingly, the private sphere is merely constituted until recall, as a situational and only partially private sphere – the privacy of which is fleeting and altogether indecisive. As a final consequence, this may result in the boundary to lose its factual function and significance – while, incidentally,

in its microstructure the boundary may persist completely unchanged as a strict and dichotomous, political and epistemic demarcation line separating the public from the private sphere, even if the latter in its substance and purpose might finally continue to exist only as a *simulacrum*.

#### 4. Concluding remarks: The boundaries of the state

The presented heuristic considerations indicate that traditional boundary structures originating in the systemic logics of the modern state may well continue to exist under conditions of political internationalization. These boundaries, which in fact seem particularly prone to become precarious in times of globalization, even in the process of adjustment and change turn out to be persistent with regard to their basic logics and rationalities. And even in the just outlined case of the private-public boundary becoming unreliable, this loss of significance is based on the continual discursive and legal enforcement of the political and epistemic strictness and rigour of this boundary as such.

Nonetheless, the provided systematic and microscopic reflections on boundaries are not intended to suggest that the political and epistemic demarcations of the state may in no case become blurred, permeable, modified or even disappear. Of course, in the context of political internationalization and globalization, boundaries like those between public and private responsibilities, state powers,<sup>70</sup> between regional, national and supranational competences, and also between religious, ethnic, etc. affiliations of the citizens are renegotiated and sometimes fundamentally called into question.

However, from a systematic perspective on boundaries it should be emphasized that beside and within tendencies toward the emancipation of politics from the boundaries of the historical model of the sovereign territorial state,<sup>71</sup> there is also an obvious persistence of systematic delimitations and

<sup>66</sup> BVerfG, 1 BvR 256/08 from March 02, 2010, paragraph no. 233, [http://www.bverfg.de/entscheidungen/rs20100302\\_1bvr025608.html](http://www.bverfg.de/entscheidungen/rs20100302_1bvr025608.html), accessed March 25, 2014.

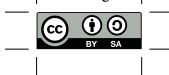
<sup>67</sup> BVerfG, 1 BvR 256/08 from March 02, 2010, paragraph no. 212, [http://www.bverfg.de/entscheidungen/rs20100302\\_1bvr025608.html](http://www.bverfg.de/entscheidungen/rs20100302_1bvr025608.html), accessed March 25, 2014.

<sup>68</sup> European Court of Justice, Judgment of the Court (Grand Chamber) from April 08, 2014 in joined cases C-293/12 and C-594/12, paragraph no. 56, <http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=3&part=1&mode=req&docid=150642&occ=first&dir=&cid=587846>, accessed April 10, 2014.

<sup>69</sup> European Court of Justice, Judgment of the Court (Grand Chamber) from April 08, 2014 in joined cases C-293/12 and C-594/12, paragraph no. 37, <http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=3&part=1&mode=req&docid=150642&occ=first&dir=&cid=587846>, accessed April 10, 2014.

<sup>70</sup> The emerging international jurisdiction could be an example for this. Cf. Christian Joerges/Inger-Johanne Sand/Gunther Teubner (eds.), *Transnational Governance and Constitutionalism*, Oxford 2004; Michael Zürn/Bernhard Zangl (eds.), *Verrechtlichung – Baustein für Global Governance?*, Bonn 2004; Michael Zürn/Christian Joerges (eds.), *Law and Governance in Postnational Europe. Compliance Beyond the Nation-State*, Cambridge 2005.

<sup>71</sup> Cf. Mathias Albert/Willibald Steinmetz, *Be- und Entgrenzung von Staatlichkeit im politischen Kommunikationsraum*, in: *Aus Politik und Zeitgeschichte* 20-21. 2007, 17-23.



boundaries that are constitutive in terms of state theory. This persistence particularly refers to the (micro-) logics of these boundaries. Although in the context of political internationalization boundaries may become volatile, unsteady, and erratic, they however do not necessarily lose their strict political and epistemic distinguishing function. This is obvious in the expansion of foreign policy and its executive inclination, which not only does not conflict with the traditional demarcation logics between domestic and foreign affairs, but is in fact based on it. In the course of and beside debouarizations, reboundarizations, and the blurring or removal of boundaries caused by the increase and intensification of international relations, the systematic boundaries of the modern state may in fact remain stable, intensify, and/or undergo adaptation and reconsolidation by change of position and location, thus by shifting and redrawing the course of the boundary. Thus, in processes and structures of political internationalization traditional boundaries do not necessarily dissolve or disappear, but we are rather dealing with their volatility, i.e. a flexibility of boundary lines, which does not modify or weaken the boundary's epistemic and political quality or relevance.

Because of their systematic relevance and even constitutive function for the modern state, the boundaries and their realization modes discussed here seem suited to indicate the persistence and adaptation of the boundaries of stateness in the process of change. Indeed, this paper is focused on very significant boundaries in terms of state theory: the political and epistemic distinction between domestic and foreign policy is a core aspect of the "Domestic-Foreign Frontier"<sup>72</sup> and is closely related to the boundary between executive and legislative authority, while the boundary between the private and the public sphere is essential for the idea of law. It can be assumed that similar indications and results would also yield from examining other boundaries not discussed in the present paper. An examination of, for instance, the shifting of the protection of national territorial borders far beyond the actual, physical borderline<sup>73</sup> as well as the intensification of border

control and surveillance within the state territory,<sup>74</sup> may demonstrate the external territorial border's virtual geographical variability and volatility. At the same time, even such a change in border security and of the virtual location of the boundary itself could turn out to still being based on the traditional logics of political and epistemic boundary setting by the state. It would be worthwhile to thoroughly consider how such dynamics take place and which theoretical, empirical, and normative consequences result from these processes. A systematic focus on boundaries that are constitutive for modern stateness seems altogether suited to contribute to a more differentiated assessment of the hypothesis on the debouarization of the state in the era of internationalization and globalization.

<sup>72</sup> James N. Rosenau, *Along the Domestic-Foreign Frontier. Exploring Governance in a Turbulent World*, Cambridge 1997.

<sup>73</sup> For examples see Mau, 2010 (see note 11), 62.

<sup>74</sup> This trend can be observed not only in the EU, but also with regard to the USA.

