

# The Schengen Area as an illustration of the Late Westphalian order

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## Abstract

States, sovereignty, territory, international law and derivatives of them are classical elements creating international space. Borders are their keystones, that organise the international space, and any changes in their position, structure or rules of crossing, result in huge consequences for a political order. Determinants of, the so called, post-Westphalian order: variability, uncertainty and pluralism of possibilities, destroy a shaped structure and mechanisms of relations between these elements. Changes in the rules and means of activity often bring a deficit of effective reactions and uncertainty. The essence of borders has also transformed in: a redefinition of division between the interior and external environments of the state, replacing a perception of the border in terms of barriers to the bridge and extending border control practices with the concept of border management. The Schengen area is an exemplification how borders "work" in the post-Westphalian order. They are redefined in their external and internal functions, and are manifestations of volatility, uncertainty and contradictions. Since 1985, the zone has developed in territorial and legal dimensions, passing through stages of introduction, growth, maturity, and decline, which does not mean the end of Schengen area, but uncertainty about conditions of its operation in the post-Westphalian order, which can be called a vacillation of borders. The present stage of Schengen may also represent a turning point in its development, called conversion and leading to its fundamental change.

**Key words:** post-Westphalian order, borders, Schengen zone, change, uncertainty, vacillation

## Strefa Schengen jako implementacja zasad ładu późnowestfalskiego

### Streszczenie

Klasycznymi elementami tworzącymi przestrzeń międzynarodową są podmioty państwowne, suwerenność, terytorium, prawo międzynarodowe i pochodne tych elementów zakorzenione w ładzie westfalskim. Ich zwornikiem są granice, które porządkują przestrzeń międzynarodową, a zmiany ich położenia, struktury czy zasad przekraczania pociągają za sobą ogromne konsekwencje dla porządku politycznego. Wyznaczniki ładu późnowestfalskiego, którymi są: zmienność, niepewność i pluralizm możliwości, burzą w pewnym wymiarze wypracowane mechanizmy funkcjonowania tych elementów. Zmiany zasad i możliwości funkcjonowania państw w środowisku międzynarodowym powodują często deficyt

mechanizmów reakcji na nie i pojawiający się efekt zaskoczenia. Zmianom ulega również istota granic, do których zaliczymy: redefinicję podziału wnętrza państwa i środowiska zewnętrznego, zastępowanie percepcji granicy w kategoriach bariery na rzecz pomostu oraz rozszerzenie praktyk kontroli granic o konsepcję zarządzania granicami. Strefa Schengen urzeczywistnia porządek późnowestfalski, redefiniując pojęcie środowiska wewnętrznego i zewnętrznego, granic państwowych i granic zewnętrznych oraz jest przejawem zmienności, niepewności i sprzeczności. Strefa ewoluowała w wymiarze terytorialnym i prawnym, przechodząc przez fazy wprowadzenia, wzrostu i dojrzalości oraz schyłku, który nie oznacza upadku strefy Schengen, ale niepewność co do uwarunkowań jej działania i jest przejawem koncepcji o „niezdecydowaniu” granic. Obecna faza może stać się punktem zwrotnym w kierunku konwersji strefy Schengen, niosąc ze sobą nowe rozwiązania.

**Słowa kluczowe:** ład późnowestfalski, granice, strefa Schengen, zmiana, niepewność

## Introduction

The dynamics of processes that apply to national borders have never been uniform. Yosef Lapid argues that borders are a critical component of the international order, and that changes to their location, structure, or rules pertaining to their crossing “carry momentous ramifications for political ordering at all levels of analysis” (Albert et al. 2001: p. 7). When we describe the modern international order as Late Westphalian, we assume that the borders of the countries that comprise the Schengen Area of the European Union reflect the markers of this order. The concept of the Late Westphalian order has gained traction in the scholarly study of international relations, but is not endorsed officially as a term by any national or international entity. In both the theoretical and practical dimensions, it is also *in statu nascendi*. The term Late Westphalian itself is considered by some international relations scholars to be more precise than post-Westphalian given the numerous characteristics of the Westphalian order that endure in the modern world, enhanced by new elements that distinguish the current era from what came before it. The Late Westphalian order is an amalgam of the continuity of the Westphalian order and the fluidity of the post-Westphalian order (Pietraś, Marzędą-Młynarska 2008: p. 9). On the other hand, the Schengen Area is strongly grounded in EU law, the rules that govern it are codified, and its history and evolution over the last several decades make it a prime case for hypothesis testing. On the one hand, the Schengen Area is embedded in the Westphalian system by emphasising the importance of sovereign states and their attributes; on the other, it redefines the concepts of space, security, and both internal and external borders in a way that strongly points to the emergence of a Late Westphalian order. This article is based on the transnational paradigm, which focuses on the relations occurring on the supranational level between

sovereign national entities. Rather than outlining these entities, I concentrate on the transnational processes and dynamics. However, it is important to note that the attributes of the current international environment generate many theoretical and methodological problems, as most of the established scholarly approaches are strongly guided by the Westphalian tradition. The relatively rigid theoretical frameworks that stem from this period do not allow for a comprehensive perspective on current international dynamics, which compel us to take into account the varied and hybrid nature of the international stage, whether the actors on it perform as subjects or objects (Pietraś 2015: p. 65–66). Andrew Bennett argues that modern-day theoretical currents in international relations are unable to holistically capture the complexity of this environment. The existing theories are thus fragmentary, and this fragmentation provides us with more freedom to choose our analytical tools (Bennett 2013: p. 459–481).

This article is composed of three sections. In the first, I present the central tenets of the Late Westphalian order in international relations, which I apply to the attributes of modern state borders in the second section. In the third and most critical section, I will frame the Schengen Area as an illustration of the Late Westphalian order in the context of the borders of its member states.

## **Indicators of a Late Westphalian Order in International Relations**

The Westphalian order, traditionally thought to have been initiated by the signing of the peace treaty following the Thirty-Year War in Europe in 1648, assumed the cardinal principle of non-intervention in the internal affairs of sovereign, equal, and territorially defined states (Schmidt 2011: p. 602). It adopted a state-centric perspective linking territorial integrity with state sovereignty. However, in reality, the ensuing centuries revealed that the hegemonic dominance of many state powers was incongruous with the ideal of geopolitical equality (Falk 2002: p. 312). The beginnings of the Late Westphalian order are more difficult to pinpoint in time, but one can identify certain turning points that set up the progressive deconstruction of the old paradigm in favor of the new. In particular, these turning points include the collapse of the bipolar system (and the end of the Cold War) and the terrorist attack on the World Trade Center in 2001 (Ikenberry 2014: p. 84–87). The first of these incidents extinguished the strong polarisation of the international system between rival military and ideological powers; the second one the capabilities and potential of non-state actors in the transnational environment, especially for national political leaders. Today, it is not only states that

define the rules of the international orders, but also scattered and sometimes amorphous non-state parties that conduct some of their activity on a transnational level. This trend has been described in the literature as *deterritorialisation*, which refers to, among other things, the right of territorial possession being granted to parties beyond the traditionally exclusive group of sovereign states and their respective populations. It also refers to new threats and new ways to combat them beyond the borders of the country in question – the latter known in the political doctrine of former U.S. president George W. Bush as preventive wars or stabilisation missions. At the same time, the notion of identifying an enemy with a national entity located in a well-defined territorial space has shifted to that of a dispersed, de-territorialised adversary (Paasi 1999: p. 73–75). This article posits three indicators of the Late Westphalian order: change, uncertainty, and plurality of options. All three will be outlined below.

The Late Westphalian order is a change. The change emerges in new rules and capabilities that govern the activities of states on the international stage, but also in new perspectives and research methods in the study of international relations. The Late Westphalian order is characterised by the intersection, synchronicity, and non-linearity of processes and dynamics that are often traditionally at odds with one another. These new qualities are sometimes brought under the term ‘hybridity’ (Pietraś, Marzędą-Młynarska 2008: p. 57–74). By extension, designating as an ‘order’ can sometimes be confusing given its characteristics, and the use of the term itself is a theoretical construct from international relations research that seeks to ground the analysis in the assumption of consistency and stability. State entities, sovereignty, territorial integrity, power, and international law were the traditional components of the Westphalian order, which preceded the current paradigm. Since the Late Westphalian order is built on the foundations of the Treaty of Westphalia, it carries over many of its attributes – but discards many others. Nearly none of the attributes mentioned above have disappeared or lost value, but each is accompanied by the plurality of conflicting attributes that emerge simultaneously (Ikenberry 2014: p. 83–106). State actors coexist with a much larger number of non-state actors and international organisations, to which they contribute based on mutual coordination of foreign policies. States share sovereignty with other states as a result of delegating their national powers to supranational institutions, but do not actually forfeit their sovereignty (Rothert 2013: p. 153–173; Witkowska 2013: p. 177–202; Ruszkowski 2013: p. 7–60). James Rosenau wrote about the so-called „post-sovereign space”, where part of the social life of multiple states takes place, while

the external environment diffuses through the porous borders of the sovereign state (Rosenau 1996: p. 271–273). Territorial jurisdiction remains with the state, reinforced by the demarcation and delimitation of national borders. While it continues to be the basis for both citizenship and the rule of law, it also becomes a shared space among foreign investors, penetrated by digital networks and satellite-based intelligence systems. In the Westphalian order, geographical space was harnessed using national borders, and distance partially dictated the feasibility and intensity of relations between states and societies. But in the age of globalisation, many of these dynamics passed into a trans-national, suprataritorial space, leading to the coexistence of a “traditional, territorially defined space and one altered by the dynamics of globalisation, relatively devoid of a sense of place, distance, and borders” (Pietras 2015: p. 72–72). International law now extends beyond agreements and conventions established by sovereign states, gaining a status superior to national law, as is the case in the European Union (Rothert 2013: p. 154). Its „Late Westphalian forms” – e.g., EU law or WTO standards – are shaping the rules of the international order, transitioning from the status of *ius dispositivum* (norms derived from the consent of states) to that of *ius cogens* (peremptory norms).

Another important qualitative change in international relations is the increased variety of threats and types of non-military instruments that can be used to inflict a range of damage on the state. Their usage of these instruments also dramatically alters the state’s security strategies, as conventional approaches to combat no longer yield zero-sum victories. Barry Buzan argues that the concept of security and its associated risk are becoming increasingly global, transcending a Westphalian order that is based on comparative military advantage and threats to national security. These concepts are beginning to envelop practically every possible area of interest to states – politics, the military, the economy, society, the environment – and diffuse from one area to another on the global level (Buzan 2007: p. 24–25).

The Late Westphalian order is uncertainty. One of the consequences of the transformation is the absence of tried and tested reaction mechanisms and protocols when faced with unexpected challenges, leading to a perpetual state of surprise. The strategies used to date still produce the expected results, but may also turn out to be too weak, ineffective, or even counterproductive in light of new threats, challenges, and needs in the international community. Ulrich Beck condensed these ‘uncertainties’ into the concept of the *risk society*, arguing that technological development and social modernisation leads to increased uncertainty regarding future outcomes, and modern-day threats af-

fect countries strong and weak, poor and rich alike (Beck 2012: p. 15–20). For Ulrich Beck, examples of this include environmental pollution and climate change, which transcend state boundaries while the ecological endeavors of individual countries are ineffectual (Beck 2012: p. 269–301). Additionally, it is impossible to credibly foresee the ramifications of the current kind of rapid technological change, as there are no analogous historical cases. In building their security strategies, many countries rely on extrapolating from previous experience, which is insufficient given the nature of the emerging threats. Terrorist attacks, cyberterrorism, and extreme weather events are neither one-off or cyclical occurrences, but rather volatile and non-linear phenomena. Therefore, forecasting the future of these threats based on experiences to date is simply not enough.

Risk, risk analysis, and risk management are increasingly factoring into states' strategic action plans. Their use goes beyond financial markets and into all of the other dimensions of state activity – e.g., environmental protection, politics, technological security, epidemiology, and food security. While in economics, risk is perceived as a quantifiable category, it is much harder to establish levels of probability (and, by extension, uncertainty) in the other dimensions. International relations actors are thus faced with the dilemma of choosing the lesser evil in light of their inability to avoid the majority of emerging threats and their repercussions.

Furthermore, the growing number of entities shaping the international environment greatly expand the number of variables that steer the dynamics of decision-making. This complicates the process, compelling a state to consider a variety of dimensions in every major decision: international regulatory mechanisms approved by international organisations in which the state is a member, the rights of minorities (if the state is a signatory of the Universal Declaration of Human Rights), CO<sub>2</sub> emissions (if it is a signatory of the UN Framework Convention on Climate Change), its own propensity to become a target for terrorist attacks, and the interests of its own citizens (Rosenau 2003: p. 7–10).

Finally, the Late Westphalian order is also the plurality of options. As described above, the modern-day international environment features qualitative and quantitative changes in the range of actors whose primary activities are conducted transnationally. Inter-state bonds are now accompanied by bonds among non-state actors as well as interactions between states and non-state actors (Rothert 2013: p. 166; Pietras, Piórko 2007: p. 142). This creates enormous opportunities for new tools of influence, which

can either be material (e.g., foreign direct investment by Corporation X in Country Y), virtual (e.g., attacks on the information networks and databases of states, banks, and corporations by organised criminal enterprises), or indirect (e.g., investment in stocks and funds whose value is shaped by hundreds of factors and decisions in different parts of the world).

Contemporary international financial market is the best example of a space that features highly complex, advanced tools and transactional channels that allow for the participation of both state and non-state actors operating both legally and illegally. Financial transactions are supplemented by derivative instruments such as forward and futures contracts, swaps, warranties, FX option transactions, and many others with an abundance of applications. The financial transactions themselves can assume the form of algorithmic trade, handled largely by artificial intelligence. It is in this dimension of international relations that the dynamics of globalisation have had their broadest and most indelible impact on the market, available strategies, and interdependencies among the actors. The primary driver of globalisation today is the Internet, not only in financial markets, but across all the dimensions of international relations. The Internet enables the participation of nearly all possible actors in social life on the international and global level – groups and individuals, organised and loosely structured collectives, formalised and informal entities.

The plurality of options entails the coexistence and co-emergence of contradictory phenomena, currents, and trends. In response to globalisation, greater value is assigned to the regional and local levels, thus confronting unifying tendencies with the heterogeneous structure of the international community, as well as the dynamics of integration with the dynamics of disintegration (Rosenau 2006: p. 38) and the centralisation of competencies with their decentralisation. Thus, we are dealing with both transformation and continuity, with enduring elements of the Westphalian system paired with the deconstruction of it.

The indicators of the Late Westphalian order outlined above are mutually conditional. The changes we are observing are continuous, and the structures of the international community are continually solidified and then reconfigured. Uncertainty regarding the future is an unavoidable element of the dynamics of international relations in the Late Westphalian period, and it affects all of the actors involved. This fact requires constant monitoring of the situation on the national, international, and global levels; in turn, the abundance of options, information, and other variables forces states to interact

with an ever-growing number of non-state actors. One of the consequences of this is a constrained ability to formulate long-term strategic goals in favor of tactical and operational goals.

## **The Role of National Borders in the Late Westphalian System**

The cornerstone of all the elements that bring order to the international system – the state, territorial possession, sovereignty and international law – is the border. It is the border that, through demarcation, determines the extent of sovereignty, territorial possession, and the status of a state as a subject in international law. Before it was imbued with its current political, legal, and economic functions, the border delineated the differences in the predominance and bonds of communities living on both sides of it (Balawajder 2012: p. 9–31). At the same time, the border remains one of the most volatile components of statehood and one of the most sensitive to turbulence in the international community, emerging trends, crises, and far-reaching societal changes.

Borders are a key tool to organise the international political space, and changes to their location trigger profound consequences for the state – e.g., limitations to the jurisdiction and reach of the state in a given area or over a given population, access to natural resources or lack thereof, and opportunities and restrictions in the development of the country. On the other hand, the political science literature of the 1990s was permeated with the notion of vanishing borders, which points to a focus on economic borders and reaffirms the dynamics of globalisation that dominated in that period (Albert et al. 2001; Robertson 1992). The new set of conditions that came with the Late Westphalian order affected primarily the role and function of borders rather than their demarcation, although the beginning of the 21<sup>st</sup> century also brought changes to borders themselves. Prime examples include the annexation of Crimea by Russia in 2014 and the emergence of new states and quasi-states, including East Timor (2002), Kosovo (2008), and South Sudan (2011). The key functions of national borders changed, by and large, due to the processes that accompanied and directly prompted the emergence of the Late Westphalian order, including globalisation, internationalisation, deterritorialisation, economic integration, political division, and others (see Moraczewska 2008: p. 35–61). At the same time, this transformation of the functions of borders became a determinant of the new order.

Fundamental changes to borders include: the reinvention of internal administrative divisions and external interests, the replacement of the perception of the border as a bar-

rier with that of a bridge, and the extension of border control practices to overarching border management. The first of these changes is linked to the dynamics of globalisation and the accompanying transnationalisation of international relations (see Dumala 1995: p. 196–200). The emergence of a large number of non-state actors and new tools to influence the status quo increased the volume of flows – human or otherwise – above and across national borders. This is largely a result of the dispersion of resources and activities of these actors, whose principal goal is to maximise their own benefits and/or push through their agenda, moulding states to the requirements and expectations of a given organisation. Globalisation and technological development have not only redefined space and time, but also led to the osmosis of states' external and internal affairs, which cuts both ways. Territorially defined states have begun to engage in extraterritorial relations with international organisations, integrational bodies and entities, transnational corporations, and non-governmental organisations, helping to create a network of interdependent systems and subsystems in which political borders no longer restrict one's ability to implement one's own convictions on the international or even the global level. Furthermore, the diffusion of internal affairs into the external realm and vice-versa manifests itself in complex interdependencies where state borders neither protect nor restrain citizens from participating in events that are occurring in remote parts of the world. Meanwhile, transnational actors, including organised criminal groups and corporations, are able to shape the needs and fears of local communities while bypassing government engagement entirely.

The change from barrier to bridge in the common perception of the border was prompted largely by the ideology of liberalism and the associated policy of economic integration. Both of them were heavily promoted after the fall of the bipolar system, and both were deeply rooted in Western European tradition. The economic aspects of borders, including costs such as tariffs, tools that are peripheral to or separate from tariffs, visas, and other administrative costs, are all in opposition to the idea of liberalism, which emphasises effective allocation of capital as well as vigorous development of both countries and businesses. Such hard borders also increase the risk of conflict with neighboring states. On the other hand, bilateral and multilateral economic agreements, such as customs unions and common markets, ensure free movement of goods, services, capital and people, breaking down customs, bureaucratic, and often technical borders. Moreover, the supranational integration model stipulates that member states transfer part of their competencies to broader institutions, which they convoke them-

selves and which use directives and decrees to shape the internal affairs of each state, including matters related to its borders (Bożyk et al. 1998: p. 511). In his analysis of the EU law, Jacek Pietraś argued that “in individual countries, legal entities must consider two legal systems, where that of the Union takes precedence over its national counterpart” (Pietraś 2002: p. 258). State borders in such a system constrains the government’s exclusive right to dictate the law on its territory, but also allows it to partake in the creation of rules and regulations that apply to the international community.

Interdependencies, transnational flows of revenues and threats, and increased mobility of people on a global level have eroded the effectiveness of traditional border control systems on border crossings. The transnational activities of non-state actors – especially organised criminal enterprises – have convinced governments of the shortcomings of national monitoring systems in terms of their ability to control and block a variety of scattered threats. Krzysztof Liedel argues that “little remains of the concept of militarised security, which relies on physically protecting individual national borders and securing the well-being of a single nation” (Liedel 2012: p. 81). Two strategies have arisen to supersede this: 1) pooling the resources of various government units as a part of a broader border strategy that also includes private actors (e.g., manufacturers of technologically advanced detection systems and equipment), and/or 2) transnational cooperation between two or more states, with the ultimate goal of improving the security of borders and national territory. These two strategies emerge in the guise of complex and mutually dependent systems. Traditional border control is one of many components of border management, which also includes risk analysis, electronic analytical and data processing systems, biometric and fingerprint databases, satellite-based instruments, intelligence systems, etc. Much like the threats of the modern age, the task of managing a national border has become dispersed both within states and outside of them. Other countries, which do not necessarily share a border with the state in question, and non-state actors are also involved in the process.

The rules governing border management in many countries reflect the uncertainty inherent to the Late Westphalian order. We can distinguish two parallel dynamics: on the one hand, both a qualitative change and an objective increase in the number of threats, and on the other, a constant uncertainty regarding the ability of current national security mechanisms to thwart these threats before they enter the territory of a country. The manifestations of this dichotomy abound, including the proliferation of instruments of control, the creation of complex monitoring systems, the growing

number of people directly and indirectly engaged in border protection, and the use of cutting-edge identification and detection techniques for both human trafficking and other smuggling operations. The ever-growing use of biometric passports and travelers' voluntary disclosure of personal data in the interest of international security suggest that everyone has become a potential suspect (see Bigo 2007: p. 9–14). This 'border uncertainty' also comes through in the constant need to monitor trends, flows, and events that take place far from the country itself, but may result in downstream effects in that country – e.g., increased migrant flows, illegal arms trafficking, and the spread of pathogens, viruses, and environmental hazards.

The Late Westphalian order enables a plurality of options in the functionality and management of borders as well as the crossing thereof. One of the ramifications of this is the emergence of contradictory processes taking place on these borders, which Étienne Balibar has described as the *vacillation of borders* (Balibar 1998: p. 216–263). The development of transportation methods brought about an increase in human mobility, and the process of 'crossing the border' (especially into highly developed countries) is initiated long before an individual sets foot in the territory of another country. (Of course, rules and procedures are not identical across countries and they are determined by numerous factors, both internal and external to a given country.) This is illustrated in the visa application process, which may take place at a consular unit representing the destination country; the storage of data regarding a certain traveler before he or she arrives in the country; and the enormous number of passport control procedures occurring at airports around the world, including those conducted through self-check systems. As mentioned above, other countries and private entities are also engaged in the protection of a country's territory. For instance, the concepts of offshoring and outsourcing have been folded into border control mechanisms, and threats have been, in many ways, exported to other countries to prevent their escalation and better control their flow. Specialised agencies, experts, and companies are hired to analyse and manage data, deliver new technologies and identification tools, and otherwise optimise the process of managing cross-border flows.

The principle of free movement, though eagerly embraced in some parts of the world, comes in tandem with severe restrictions to this freedom for citizens of countries outside a privileged few. The removal of physical barriers at some borders is accompanied by the construction of walls and the fortification of already existing barriers elsewhere, as in the case of the U.S.-Mexico border. Two sets of factors often affect

the fluctuation of these phenomena: individual turning points and short-term occurrences (e.g., the terrorist attack on the World Trade Center), and long-term trends (e.g., the intensity of migratory flows to Europe, economic crises, wars). Additionally, the smooth management of borders in the Late Westphalian order enables cross-border cooperation on regions that straddle the official boundaries between states, creating areas of common interest (e.g., environmental and cultural regions), irrespective of political divisions on the map.

In summary, modern borders are both stable and fluid in terms of the rules that govern them, their physical openness, the electronic filtration systems that control a variety of flows, physical and electronic barriers, the range of illegal crossing methods, the transfer of goods and capital, and their sensitivity to changes in both the internal and international environment in which the country is embedded.

### **The borders of Schengen Area member states in a redefined internal and international environment**

Both the idea and the subsequent implementation of the rules of the Schengen Area eschewed the framework of the Westphalian order, which imposed order on the international system through borders that clearly delineated the sovereignty of states. Western Europe accepted the gradual process of discarding administrative, formal, and physical barriers in favor of freedom of movement between member states of the new Area, the creation of commonly managed border regions with subnational cooperation structures, and the blurring of palpable indicators of territorial division (Antón 2015: p. 30–45). The Schengen Area is the realisation of the Late Westphalian order in that it redefines the concepts of internal and external spaces and borders. It is also a manifestation of fluidity, uncertainty, and contradiction in the conceptualisation of borders in general.

The Schengen Agreement was not merely an isolated legal act, but rather a collection of rules that are constantly evolving in light of the changes occurring in the international environment, to which they adapt in a variety of ways. In the late 1980s and early 1990s, the Agreement successfully implemented its primary goal – the freedom of movement among its signatories. It was the prelude to the full implementation of the four freedoms of the European market – the free movement of goods, services, capital, and people – through the elimination of administrative costs and major improvements in the efficiency of travel across national borders. The Agreement became a symbol of freedom and economic liberalism, but one that proceeded in phases, both in terms

of the Agreement itself and the borders to which it referred. Given the wide array and specificity of land, sea, and air borders, the elimination of border control progressed in a stepwise manner. The economic integration process between the member states of the European Economic Community/European Union unfolded much faster than their accession to the Schengen Area and the implementation of the Agreement's stipulations. From the outset, the question of 'softening' national border was considered to be a highly sensitive one politically, and one that would require a long-term adaptation process on the part of member states (see Trojanowska-Strzęboszewska 2011; Gruszczak 2014: p. 107–122). However, this process was a gradual one in terms of both its territorial range and legal form. Conversely, the progressive removal of boundaries was halted in the case of the last states to join the European Union – Bulgaria, Romania (2008), and Croatia (2013). This decision was driven by changes in the internal and external environment of the EU. Bulgaria and Romania were both deemed lacking in their application of the rigid border protection norms of the EU, and their citizens were abusing the financial resources of other countries (particularly Germany) in the form of social welfare. The situation took an even more unfavorable turn for the southern states when the wave of immigrants following the Balkan route to the interior of the European Union took hold of the news cycle, entering from countries such as Serbia and Bosnia and Herzegovina. The migration crisis that began in 2014 was effectively a turning point in the process of lifting border controls within the Schengen Area, generating a boomerang effect in the direction of restoring such controls rather than simply stalling the ongoing process. This renewed border vigilance spilled over from the three aforementioned countries into other member states, including Austria, Denmark, France, Germany, Norway, and Sweden.

It should also be noted that the provisions on restoring border controls that could be found in the original Schengen border protocol were significantly broadened in the 2016 Schengen Borders Code. The former included circumstances such as large sporting events, summits, and visits of the heads of state, and border controls could be reestablished for the duration of the event in question and for no longer than 30 days. Articles 28 and 29 of the Schengen Borders Code allow for the reintroduction of border controls for up to six months and the extension of such a provision for up to two years in situations that require an immediate response, as well as unique circumstances that threaten the internal affairs of the European Union (Schengen Borders Code, art. 25–30). This stipulation captures the dynamic nature of the Late Westphalian international system, including

the option of imposing countermeasures in high-risk situations, when such measures aim to guarantee the protection and survival of the Schengen Area without directly exposing their beneficiaries to danger. Change is thus itself a component of the legal foundations of internal borders in the Schengen Area. The idea of temporarily reintroducing borders continues to be raised periodically, with the understanding that the ‘temporary’ nature of this measure could last for as long as there is a threat to citizens’ safety. This points to member states’ acceptance of uncertainty as an element of the current international system, where the maintaining an equilibrium relies largely on reactive adaptability (see Pietraś 1998: p. 59).

Combining the two topics at hand – the Schengen Area and the Late Westphalian order – it can be argued that the former is a codified and structured collection of rules governing member states’ internal and external borders, thus corresponding to the concept of an ‘order.’ But it also defies the same concept if the latter is based on a realistic approach to national security within the borders of a single state. Despite this, the Schengen Area has been a functional entity and, since 1996, has established order and security in the flows of people, goods, services and capital across borders that physically do not exist. At the same time, whenever a threat arises, it possesses the necessary mechanisms to secure the integrity of border regions, the safety of the entire Area, and national sovereignty over each state’s borders via provisions that allow for the temporary reintroduction of border controls. Given the components of the Late Westphalian order emphasised throughout this article, the Schengen Borders Code brings order and uniformity to the territorial ‘mess’ that resulted from globalisation, deterritorialisation, and integration. It redefines the concept of borders as well as internal and external areas. It also regulates who may benefit from freedom of movement, what conditions must be fulfilled to become part of the Area, and when controls can be restored. In effect, it responds adaptively to the challenges of the Late Westphalian order, while simultaneously shaping it.

In its legal/international dimension, the Schengen Area is a clear illustration of the simultaneous contributions of state and non-state actors in the area of border management. It combines the national level with its international and supranational counterparts. Both the internal borders of member states and the external borders of the Area remain within the jurisdiction of individual states, and the European Union is not an independent party in the development of border treaties. Member states are also responsible for delegating appropriate agencies and services to tasks related to

border control in accordance with national law (Schengen Borders Code, Item 18). Similarly, they are responsible for “deploy[ing] appropriate staff and resources in sufficient numbers to carry out border control at the external borders” and “ensur[ing] that the border guards are specialised and properly trained professionals” (Schengen Borders Code, art. 15–16). However, the effectiveness of the Schengen Area is predicated on the engagement of all the member states, overseen by the European Commission and coordinated by the European Border and Coast Guard Agency. “[T]he Commission may draw up guidelines on the reintroduction of internal border control in cases which require such a measure on a temporary basis and in cases where immediate action is needed” (Schengen Borders Code, Item 28). When the implementation of border control on the external boundaries is deemed deficient, the Commission has the executive power to “recommend that the evaluated Member State take specific measures, such as deploying European border guard teams, submitting strategic plans or, as a last resort and taking into account the seriousness of the situation, closing a specific border crossing-point” (Schengen Borders Code, Item 29). In accordance with Article 290 of the Treaty on the Functioning of the European Union, the Commission is entitled to undertake additional measures relating to the protection of the EU’s external borders.

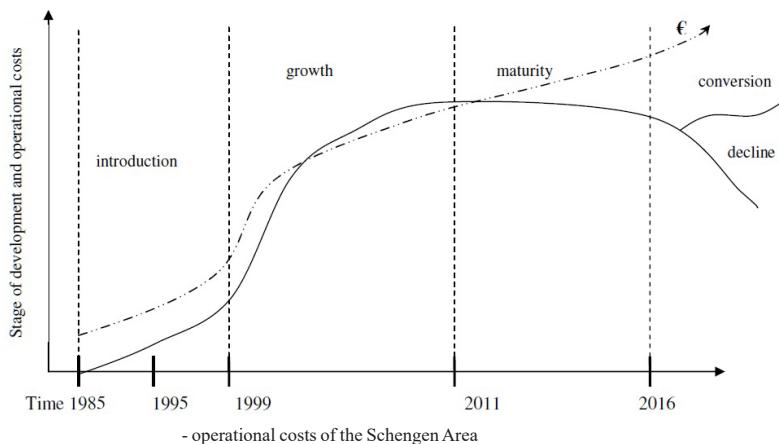
The EU has an integrated border management system that functions on both the national and supranational level. Frontex, established in 2004 and operating with an extended mandate since 2016, embodies the supranational aspect in its role as a specialised, autonomous agency responsible for external border protection and internal security based on expert assessments and cooperation between national border control entities (Regulation (EU) 2016/1624). The agency evaluates the “equipment, infrastructure, staff, budget and financial resources of Member States as well as their contingency plans to address possible crises at the external borders;” in particularly intractable cases, Frontex may, “at the request of a Member State or on its own initiative, organise and coordinate rapid border interventions and deploy both European Border and Coast Guard teams from a rapid reaction pool and technical equipment” (Regulation (EU) 2016/1624, Items 21 and 24). It also organises training exercises for border protection officers, which helps to standardise border control protocols and responses on the international level. As an EU instrument, Frontex possesses the status of a legal entity, acts on its executive authority, and remains independent in technical and operational matters (Regulation (EU) 2016/1624, Item 51; Parol 2014: p. 35–52). One innovative and unconventional element with respect to the Westphalian order is

the engagement of other states in the prevention of illegal flows of people and goods as well as those that constitute a threat to the Schengen Area. Individual agreements with the European Union transform non-EU states like Turkey into buffer zones and filtering entities in tackling mass migration from Africa and the Middle East to the European Union. Frontex itself is also empowered to collaborate with other international organisations, border agencies, and state agencies of non-EU countries. Many other institutions and systems whose activities are transnational in nature are involved in managing the borders of the EU and ensuring the security of the Schengen Area, including the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), the EU Agency for Network and Information Security (ENISA), the EU's Judicial Cooperation Unit (Eurojust), the EU Agency for Law Enforcement Cooperation (Europol), the Visa Information System (VIS), the Schengen Information System (SIS II), and European Dactyloscopy (Eurodac) (Szachoń-Pszenny, Wantuch 2015: p. 281–304).

In addition, multinational businesses, including IT corporations and manufacturers of mechanical and technical equipment for border protection and surveillance, are indirectly engaged in the security of the Schengen Area. Managing the external boundaries of the European Union and ensuring the freedom of movement within the Area is a multilayered, systemic task – the most complex of its kind in the world – and its effectiveness rests on cutting across the cross-border interactions of national, international, and supranational entities. It is a vivid illustration of the challenges, possibilities, and trends of the Late Westphalian order, which it actively helps to shape.

Given the abundance of political and media discourse on the crisis or even eclipse of the Schengen Area, the latter can be perceived as an area of uncertainty with respect to the continuation of its foundational idea. As mentioned previously, the Late Westphalian order is marked by increased uncertainty, largely due to the growing structural complexity of the universe of entities involved, as well as the proliferation of interactions and dependencies among them. Regardless of these considerations, however, no structure in the history of international relations has endured with no change whatsoever. Like the life cycle of an industrial product, political and economic structures have traditionally gone through the phases of introduction, growth, maturity, and decline. Using this framework from the study of marketing, we can visualise the stages of the Schengen Area in the following way (Figure 1):

**Figure 1. Operational stages of the Schengen Area according to the concept of the industry life cycle.**



Source: Own work.

The period between the year in which the Agreement was signed, through the Schengen Convention, and ending with its incorporation into the *Acquis Communautaire* should be viewed as a part of the Introduction phase, both in terms of legal status and implementation. With the incorporation of the Schengen Agreement into EU law and the collapse of the bipolar system, a phase of intensive growth began, stimulated by the territorial expansion of the Schengen Area and the successive elimination of border controls along the internal borders of member states. Free movement within the Area was guaranteed across land, air, and sea borders (with some exceptions). The year 2011 can be seen as a turning point given the confluence of several events: 1) the opening of the border with Liechtenstein and the expansion of the Schengen Area (Croatia, 2013); 2) an amendment to the Schengen Borders Code addressing situations in which border controls could be reintroduced (prompted by a conflict between France and Italy regarding immigrants from Tunisia); and 3) the suspension of the process of removing border controls on the internal borders of the European Union (Bulgaria and Romania). The rapid increase in migrant and refugee flows toward the EU in 2015 makes that year another turning point in the operational history of the Schengen Area. The precarious circumstances triggered changes in the politics of member states

in favor of restoring border controls within the Area, major rifts among member states with regard to asylum and migration policies, further expansion of the Agreement's provisions on the reintroduction of border controls and the Commission's capacity to enact special measures, and the expansion of authority of Frontex (represented by its new designation). Nevertheless, it would be hasty and premature to forecast the decline of the Schengen Area in light of these structural changes. More appropriately, this stage reflects the lingering uncertainty regarding its future. One could trace several possible scenarios, of which one would surely be a pessimistic vision of the Schengen system. It appears that the measures and solutions adopted to date ultimately aim to preserve the openness of the Area's internal borders while fortifying its external borders.

As a result, Figure 1 includes an alternative development path for the Schengen Area – the conversion. This represents an evolution, modification, or reorientation, with the caveat that, while these pathways are not identical, all of them may be realised separately or jointly. The conversion refers to a process of transformation which nonetheless preserves the driving concept of the Schengen Area; the exact nature of this process is difficult to predict given the dynamic changes occurring in the international realm and the multiplicity of decision-making bodies in the European Union. Moreover the concept of conversion can be demonstrated in systems theory, where it refers to a mechanism for processing stimuli that appear at the outset into products and reactions (e.g., decisions). The conversion, viewed this way, influences the operation of the entire system, and leads to a feedback loop between the internal and external environments of the system (Langer 1977: p. 41–46). The concept of conversion can also be applied to the idea of systemic resilience, which posits a system's ability to deal with crises and shocks by emerging from them with a renewed structure that is less sensitive to similar occurrences in the future – and therefore more resilient overall (see Zolii, Healy 2012). The conversion strategy of the Schengen Area assumes the latter's propensity toward fluctuation, adaptability, and uncertainty as a permanent attribute in the new, Late Westphalian international order. Furthermore, ever direction and stage of development is accompanied by continuously increasing costs incurred by constructing modern infrastructure on the external borders, implementing new surveillance systems, designing advanced information and identification systems, and individual rescue missions conducted in the coastal waters of the EU member states. This reflects the plurality of options and instruments used to maintain security within the EU. The path forward for the Schengen Area depends not only on the policies and

strategies adopted by individual member states and the European Union as a whole, but also on external factors that, contingent on their degree of volatility, will perpetuate feedback loops and backfire effects that will determine the nature of future decision-making regarding the Schengen Area.

## Conclusions

The Schengen Area reflects and embodies the characteristics of the Late Westphalian order in a number ways, including:

- the blurring of territorial borders of member states in both their formal and practical dimension;
- the redefinition of states' internal and external environment;
- the participation of both state and non-state entities in the process of managing the borders of EU member states;
- the support for and implementation of interstate cooperation on border affairs on the local, regional, international, and transnational level;
- the deepening of interdependencies that determine the security of member states.

Both the Schengen Area and the Late Westphalian order are characterised by volatility and uncertainty. Both in legal and territorial terms, the Schengen Area has evolved through the stages of introduction, growth, maturity, and decline, the last of which denotes not the impending implosion of the Area, but rather uncertainty regarding its functionality, tying into Balibar's previous mentioned *vacillation of borders*. The uncertainty of the Late Westphalian order translates to the proliferation of instruments of control and oversight along the external borders of the European Union and their increasing operational costs, which leads to uncertainty regarding the continued freedom of movement within the Schengen Area and the system's capacity to thwart threats before they emerge there. The plurality of options in how borders work across the Schengen Area manifests itself in the diversity of border management mechanisms, including the EU's use of offshoring and outsourcing techniques with regard to borders that were not part of any realistic security doctrine. Much like it is difficult to formulate axioms, rules, and credible scenarios for the future of the Late Westphalian order, the Schengen Area today is subject to endless speculation on its survival or collapse. The direction of the conversion that the Area seems to be following reflects the mul-

tidimensional challenges that it faces. Nevertheless, we can assume that the wording of the Schengen Borders Code, according to which “[t]he creation of an area in which the free movement of persons across internal borders is ensured is one of the main achievements of the Union”, still constitutes the foundation of how borders work in the ever-shifting Late Westphalian order.

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