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HAMBURG
VIGONI **FORUM**

CONTOURS OF EUROPE

CHALLENGES AND OPPORTUNITIES IN SPATIAL DIMENSIONS

HAMBURG VIGONI FORUM

The Hamburg-Vigoni Forum is organized as one of the University of Hamburg's international strategy conferences and is financed by the University with funds from the Excellence Strategy of the German federal and state governments.

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VillaVigoni
Centro italo-tedesco per il dialogo europeo
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CONTOURS OF EUROPE

THE HAMBURG-VIGONI FORUM

The Hamburg-Vigoni Forum aims to bring research and politics together in an innovative way. The focus is less on detailed questions of day-to-day politics than on an over-all concept of integration policy: "space—sovereignty—identity", the narratives of integration and disintegration that are familiar but not yet sufficiently questioned in terms of their relevance for concrete concepts for the future of European politics. Scientifically reflected and theoretically informed, the aim is to offer politicians inter-pretations to explain Europe in its whence and whither, to make it more tangible for citizens and to enable them to experience it in their everyday reality.

The conference series addresses the central question "What holds Europe together?". This question is to be placed in a global context, which is characterized by great changes and substantial upheavals (most alarming is, of course, the Russian Federation´s war of aggression since February 24, 2022). In its search for identity, Europe must at the same time react to these (threatening) global challenges and, in the struggle for a multilateral world order, remain or become an actor with the power to shape and act. Thus, European answers are also sought to global questions.

To this end, University of Hamburg, as part of its European strategy as a "University of Excellence", the Europa-Kolleg Hamburg, the Institute for Peace Research and Security Policy and the Villa Vigoni have joined forces to stimulate a constructive discourse on European policy with the participation of leading aca-demics. In the period from 2021 to 2026, a total of seven academic conferences will be held, alternating between Villa Vigoni and Hamburg. In this way, a forum can be created, supported by experienced partners, to provide sustainable impetus for the overarching discourse on the future of Europe initiated by the EU Commission.

The Hamburg-Vigoni Forum is organized as one of the international strategy conferences of the University of Hamburg and is funded by the Excellence Strategy of the German federal and state governments.

FOREWORD

"What holds Europe together?"

The "Hamburg-Vigoni Forum" conference series endeavors a reflection of this profound question by fostering a convergence of academic research, political discourse, and civil society engagement. Rather than delving into the minutiae of day-to-day politics, the Forum seeks to construct a comprehensive framework for European integration policy, anchored in three fundamental pillars: *space*, *sovereignty*, and *identity*.

This ambitious undertaking involves the participation of globally renowned scholars, as well as a special focus on early-career academics. Through a sequence of workshops, designed to encourage cross-generational and transnational dialogues on European policy, the exploration of these themes unfolds alternately at the Villa Vigoni in Menaggio, Italy, and at the Europa-Kolleg in Hamburg, Germany. The Forum stands as a collaborative effort spearheaded by the University of Hamburg, as an integral part of its European strategy as a "University of Excellence", in partnership with the Europa-Kolleg Hamburg, the Institute for Peace Research and Security Policy, and the Villa Vigoni.

With this vision in mind, the sixth volume of the "Notes from the Hamburg-Vigoni Forum" publication series distills the insights garnered from the workshop, which convened at Villa Vigoni in February 2025. This volume offers the findings of our esteemed participants and augments them with an interdisciplinary exploration of specific subdomains within the realm of European space, while incorporating diverse national perspectives.

We extend our heartfelt appreciation to all the Forum participants for their contributions and dedication and wish you an enriching and enlightening reading experience.

Prof. Dr. Markus Kotzur   Dr. Christiane Liermann   Prof. Dr. Ursula Schröder

I. AN INTRODUCTION

The notion of "Europe as a space" has long been central to the intellectual, legal, and political imagination of the continent. From its philosophical reflections in Kant's transcendental aesthetics – where space and time are understood as forms of intuition necessary for knowledge – to its historical elaboration in early modern debates on *dominium* and sovereignty, the European idea has been framed through categories of spatiality. Law, in particular, has offered one of the most powerful lenses through which to conceptualize Europe: a means of allocating rights, determining the legitimacy of rule, and structuring the relationship between political authority and territorial boundaries.

In the modern period, questions of territoriality and legitimacy emerged forcefully with the Spanish conquests of the sixteenth century. European jurists were compelled to confront whether indigenous sovereignty could coexist with universalist claims to imperial authority. The very concept of political rule was increasingly understood through analogies with private property, whereby sovereignty, like ownership, required a legal title. This historical moment revealed the entanglement of law, space, and power, highlighting how legitimacy is never reducible to sheer might. The enduring lesson – that power without law is violence rather than authority – continues to inform debates over Europe's normative order today.

To conceive of Europe as a space thus requires more than a merely descriptive account of its geography or institutions; it calls for an inquiry into the ways in which law, politics, philosophy, and history intertwine to shape and sustain its spatial dimension. This dimension emerges from the interplay of distinct yet interdependent spheres – political, economic, geographic, philosophical and security, among others – whose coherence must be continually sought and negotiated.

<p style="text-align:center">***</p>

In particular, the twentieth and twenty-first centuries have witnessed new and pressing challenges. The European Union emerged after the Second World War as a peace project, grounded in law and committed to transforming a continent scarred by centuries of warfare into a community of States bound by norms rather than force. Central to this project has been the establishment of a "common area of justice", in which free movement, mutual recognition, and shared values operate as structuring principles. Europe as a legal and political space is thus premised on a delicate balance: open borders and mobility require trust in common values, effective institutions, and the rule of law. Yet this balance is under increasing strain.

The reintroduction (from time to time) of border controls, ongoing disputes over the rule of law within certain Member States, and the management of migration at the Union's external frontiers all underscore the fragility of Europe's spatial openness. The rise of populist movements, the impact of the COVID-19 pandemic, and the divisive pressures of geopolitical rivalries – particularly Russia's full-scale invasion of Ukraine in 2022 and the shifting posture of the United States after

the 2024 elections – have exposed the vulnerabilities of a Union often perceived as reluctant to engage in power politics.

Europe's reliance on law as the principal form of integration contrasts starkly with the reassertion of raw power by authoritarian actors, raising questions about whether Europe's "legal space" can withstand an increasingly adversarial international environment.

These developments also invite reflection on the concept of European exceptionalism. Unlike the United States, whose exceptionalism has often been cast as a universalist model for global emulation, Europe's exceptionalism rests in its self-understanding as a space of integration, values, prosperity, and peace, consciously shielded from the brutalities of great power competition. This *inward-looking model*, however, now faces profound challenges. Can Europe preserve its identity as a space defined by law, freedom of movement, and mutual trust, while also confronting the realities of geopolitical rivalry and external threats? Or must it adapt its spatial imagination to encompass both normative commitments and strategic agency?

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The contributions gathered in this brochure address these questions from a variety of perspectives.

Some view Europe as a space of law, examining how legal integration simultaneously empowers and constrains political authority. Others emphasize freedom of movement as the most tangible expression of spatial openness, stressing the conditions necessary to sustain it. Still others situate Europe within the broader geopolitical arena, analyzing how external pressures – from Russia's aggression to shifting American commitments – reshape Europe's capacity to act. A feminist perspective reveals how borders, security, and cohesion are deeply shaped by social, gender, and ethnic inequalities, calling for an inclusive and sustainable approach to address insecurities at both local and global levels. Finally, the recognition of "insecurity" as a defining feature of Europe's spatial condition highlights the urgency of reclaiming agency to transform insecurity into genuine security.

Taken together, these contributions reveal that "Europe as a space" is not a static concept but an evolving one. It is a space constituted by law, animated by mobility, contested by power politics, and rendered fragile by insecurity. Yet it is also a space that continues to offer a distinctive vision: that legitimacy derives not from force but from right, that peace and prosperity are achievable through law, and that Europe's identity, while exceptional, is neither timeless nor immune to change. The challenge – *and the opportunity* – lies in ensuring that this spatial imagination remains both resilient and responsive in the face of unprecedented transformations.

Roberto Luppi[1]

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1   Roberto Luppi is post-doc in Philosophy of Law at the University of Palermo.

II. EUROPE AS A SPACE. A PHILOSOPHICAL PERSPECTIVE

In his *Kritik der reinen Vernunft*, Immanuel Kant described "intuition" *(Anschauung)* as the end towards which thinking is directed as a means. For him, intuition, together with thinking, leads to knowledge. Intuition and thinking have a common root, which metaphysics deals with. The two basic concepts of transcendental aesthetics are space and time. Space is an external form of intuition that allows an object to be viewed and described externally or even recognized or measured.

In his introduction to the *Metaphysik der Sitten*, Kant contrasts space with the concept of law. Law is thus also a "form of external intuition", which in this case does not refer to the evaluation of objects, but to the evaluation of actions or states. As a form of intuition, law eludes cognition to a certain extent. Rather, the form of intuition helps us to gain knowledge. If we understand Europe as a space in this sense, it is not so much a question of measuring the space itself, but rather of using the intuition of space (and also of law) to better understand Europe.

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In the sixteenth century, the Spanish conquests in Latin America raised completely new questions for European legal thinking, particularly with regard to space. The need to think about the territorial limits of political rule became much clearer than before. Was the rule of the indigenous peoples legitimate when there was an emperor whose claim to power basically spanned the whole world? The sources spoke of "dominium" when they referred to rule. It is no coincidence that this is also the predominant Latin term for "property". Above all, property means dominion *(Sachherrschaft)* – and always over certain things. Political rule was now understood to be very similar to "dominium" under private law. But then the question of legitimacy, of the title of ownership or dominion, was raised with the conquests.

Just as the right of ownership clarifies the allocation of property to the owner, the same applies to political rule. It is dependent on a *legal* assignment. Rule always requires a legitimate legal title. Like a magnifying glass, the history of the sixteenth century shows how *political rule*, *space* (in the sense of territory) and *law* relate to each other. It was completely undisputed that the legitimacy of rule was a *question of law*. Only in law is it possible to determine whether the area of rule – to stay with the metaphor – is correctly measured, whether the allocation is correct – in a metaphysical sense.

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The conference at Villa Vigoni was strongly influenced by the US administration of Donald Trump, which has recently shattered the North Atlantic policy of the USA of the last 80 years and announced that it would negotiate with Putin's Russia over the territory of Ukraine, just as Trump

had recently declared Gaza, Greenland and the Panama Canal to be territories that should serve American interests. Here, too, an approach of linking political rule with space becomes clear, but it lacks any legitimizing backing. This approach amounts to pure Machiavellianism. The "right" of the strongest has never been real law. Rather, since the deed of Cain, it has been clear that, as the strongest, one can perhaps impose one's will, but justice remains unimpressed and unaffected. The legitimacy of the allocation of power is not derived from might, but from right. In this respect, it does not make sense to speak of a "normative power of the factual", as is occasionally the case.

The European Union project, which came into being after the Second World War, has been a peacekeeping project since its beginnings. It is interesting to note the remarkable success that the Member States have lived together in peace for the duration of an entire human life, despite all the conflicting interests. Close economic interdependence between the countries has certainly contributed to this, but the EU's "form of intuition" is that of law. The common "area of justice" promised by Article 3 TEU is the decisive basis for the emergence of peace, the fruits of which include prosperity.

Tilman Repgen[1]

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1 Since 2002, professor of modern private law history, German legal history, and civil law at the University of Hamburg; since 2010, also dean.

III. EUROPE AS A LEGAL SPACE

Europe, in its perception as a legal space, has multiple ramifications and levels of perception and is a topic that is open to imaginative interpretation.

A legal space can be perceived as one that has taken shape through law or as a space committed to law and giving law space to unfold. In both contexts, "space" can be assigned a literal meaning (as something three-dimensional) or a figurative one. Though, English parlance prefers "area" (as in "areas beyond national jurisdiction"[1], which translate into German as "staatsfreier Raum"[2]), which in the Treaties also stands for the various fields of competences, over "space". In "area of freedom, security and justice" (Art. 3 (2) TUE) – a "Raum" according to the German text – these different meanings of "area" intersect.

While what presently may be referred to as the European legal space is in essence a post-war product, there are, to some extent, early precursors to it. While in the eyes of many private lawyers, this is true for the *Ius commune* which emerged from scholasticism[3], its ties with EU law, which does not extend to much of private law, are rather weak. Under the "Ius Publicum Europae(or) um"[4], which determined the relations between Europe's sovereign States, a legal space can be held to have gained shape from 1648 onwards, but this order abandoned its European focus in the 20th century while metamorphosing to the now universal Public International Law.[5] Due to its European origins, this universalized order still bears an imprint of colonialism, imperialism and power politics, all of which take root in Europe[6], while at the same time incrementally reflecting

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1   Cf., for instance, the 2023 Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, C.N. 203.2023.TREATIES-XXI.10.

2   For a general approach on the concept, see R. Wolfrum, *Die Internationalisierung staatsfreier Räume*, 1984 ("Einleitung – Begriff staatsfreie Räume", pp. 1-9).

3   For more information, cf. K. Basu, J. A. Kämmerer and H. Schäfer, "Introduction: the European Union in global perspective – a governance model on trial", in J. A. Kämmerer, H. Schäfer and K. Basu (eds.), *The EU Reexamined*, 2024, pp. 1-21 (at pp. 13-15, with further references); P. Haggenmacher, "Droits subjectifs et systèmes juridiques chez Grotius", in L. Foisneau (ed.), *Politique, droit et théologie chez Bodin, Grotius et Hobbes*, 1997, pp. 116-117.

4   A. Von Bogdandy and S. Hinghofer-Szalkay, "Das etwas unheimliche Ius Publicum Europaeum" (2013), ZaöRV 73, 209 (222 ff.).

5   P. Starski and J. A. Kämmerer, "Imperial Colonialism in the Genesis of International Law – Anomaly or Time of Transition?" (2017), 19 *Journal of the History of International Law* (JHIL) 50-69.

6   For a general overview on the colonialist origins of legal scholars, see A. Anghie, *Imperialism, Sovereignty, and the Making of International Law*, 2005, pp. 13-23.

» **First, Europe is a space created *by* law. Behind this truism lies the more challenging question of whether the EU *has* a space – akin to the territory of a State – that is more than just the room where law applies and is its constitutive element.**

values of which Europe prides itself as the cradle, such as human rights and the rule of law.[7] This European self-image could be an explanation for why, in these matters, EU law shows a missionary tendency which makes it "spill over" to other parts of the world.

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First, Europe is a space created *by* law. Behind this truism lies the more challenging question of whether the EU *has* a space – akin to the territory of a State – that is more than just the room where law applies and is its constitutive element.[8] It, at least, has become an entity much of whose law has uniform application in all Member States, whose legal basis has amalgamated with the Member States' constitutions ("Verfassungsverbund")[9] and whose geographical confines cannot be overseen by those seeking to enter: there is a clear perception of "inside" and "outside".

The second observation is that Europe is a space committed *to* law. This has a qualitative dimension insofar as law (and its general principles, such as legality, legitimacy, legal certainty, etc.) is its genetic code, and a rather quantitative one insofar as its law appears to be omnipresent – a "space full of laws". While "area (or 'space') of freedom, security and justice" conveys more properly than "Raum … des Rechts"[10] what the inherent powers of the Union are about, namely regulation of judicial cooperation, not the general attainment of justice and lawfulness as such, Art. 2 TEU and Art. 7 (1) TFEU (by reference) binds the Union and its Member States to the "rule of law".

The ECJ has repeatedly called the EU "a union based on the rule of law".[11] Among the practical implications of this finding are the "upgrading" of Art. 19 (1) TEU to a stronghold of judicial independence by the ECJ and the sharpening of its procedural tools against non-compliant Member States.[12]

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[7] See for instance Article 3 of the Statute of the Council of Europe which requires "[e]very member of the Council of Europe (to) accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms."

[8] Cf. Article 1 of the Montevideo Convention on the Rights and Duties of States, listing four criteria for statehood (a defined territory being one of them).

[9] For the notion of "Verfassungsverbund", cf. I. Pernice, "Bestandssicherung der Verfassungen: Verfassungsrechtliche Mechanismen zur Wahrung der Verfassungsordnung", in R. Bieber and P. Widmer (eds.), *L'espace constitutionnel européen. Der europäische Verfassungsraum. The European constitutional area*, 1995, pp. 225, 261 ff.

[10] Cf. Art. 3 (2) TUE.

[11] For example, *Case C-650/18*, Commission/Hungary, judgment of 3 June 2021, ECLI:EU:C:2021:426, para. 34 (with references to its previous case-law).

[12] See the CJEU judgments concerning Romania (*Case C-430/21*, judgment of 22 February 2022) and Poland (*Case C-791/19*, judgment of 15 July 2021), which clarified the Court's reasoning on judicial independence (Article 19(1) TEU) in conjunction with the primacy of EU law.

The European legal space is not unlimited but has boundaries and faces challenges.

First, there is an inherent tendency of "overfilling" and even "overflowing". One is left with the impression that the pursuit of an "ever closer union"[13] (a term that implies a lack of space in between) has brought about an excess of rules, many of them (questionably) resorting to Art. 114 TFEU[14], and that, gradually, the freedoms of the internal market yield to a stern imposition of compliance rules and bureaucratic constraint.[15] Controversial legislative acts such as the 2020 Taxonomy Regulation, the 2024 Directive on Sustainability Reporting (CSDDD) and the 2024 AI Regulation are emblematic of this tendency.

The proliferation of EU law is coupled with extraterritorial effects – a "missionary" trend as regards the rule of law and human rights of which the EU is the cradle –, or "spillovers" if staying with the space metaphoric.[16] The odds that some of Europe's trading partners that do not cling (any longer) to similar standards will oppose them and even resort to countermeasures to these legislative acts are not negligible.[17]

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13 Cf. Preamble to the 1992 Treaty on European Union (Maastricht Treaty) and Statement from the Paris Summit (19 to 21 October 1972).

14 Such as the Tobacco Products Directive (validation of the competence in *C-547/14 Philip Morris*) and the Tobacco Advertising Directive, both based on Article 114 TFEU.

15 The Draghi Report 2024 (https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en#paragraph_47059) calls on simplifying the rules to consolidate European economy and competitiveness.

16 A. Bradford, "The Brussels Effect" (2013), 107 N.W. U. L. REV. 1.

17 This reality must be faced pragmatically, even though Ursula von der Leyen stated that "Trade is not an end in itself. It is a means to deliver prosperity at home and to export our values across the world. I will ensure that every new agreement concluded will have a dedicated sustainable development chapter". Cf. *Political Guidelines for the Next European Commission 2019-2024*, p. 17.

» **For Europe, the abandonment by America of its longstanding values is a hazard but also a chance – to evolve to a legal retreat space, one of the remaining strongholds of the rule of law on the global scale.**

A second challenge is political fragmentation: an incrementally ideological cleavage between right-wing and left-wing forces, implacable but both prone to populism, within and between Member States, to which classical liberal democracy loses ground.[18]

Both these challenges are closely associated with the third – exogeneous – challenge, which stems from political disruption and pressure lasting on a weakened Union, which might eventually yield to it. The 2008 fiscal and financial crisis, Brexit, the pandemic, the Russian assault on Ukraine and, finally, the 2024 US elections are all disruptive events from which the European legal space did not emerge unscathed.[19] Will it be able to resist Donald Trump's lack of respect for the rule of law and his belief in what is no longer a rules-based but rather a "deals-based international order" that is built on pressure, threat and constraint?

For Europe, the abandonment by America of its longstanding values is a hazard but also a chance – to evolve to a legal retreat space, one of the remaining strongholds of the rule of law on the global scale. Clinging to, and capitalizing on, legal certainty, respect for the freedoms of opinion and science, efficient access to completely independent courts, the EU would have the potential to trump Trumpism – on condition that it keeps a lower profile in its quantitative legal output, gears to the reduction of bureaucracy and focuses on regulation that is efficient, concise and not patronizing.

The forthcoming years might be decisive for whether Europe will survive as a truly legal space where more remains then just the letter of the law.

Jörn Axel Kämmerer[20]

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18   Cf. also B. T. Wieliński, "Kto naprawdę wygrał wybory europejskie, a kto je przegrał?". *Gazeta Wyborcza*, available at: https://wyborcza.pl/7,82983,31036885,kto-naprawde-wygral-wybory-europejskie-a-kto-je-przegral.html#S.index-K.C-B.5-L.40.duzy. This article illustrates the growing political fragmentation within the EU.

19   For a discussion of the effects of several of these crises, see L. van Middelaar, *Quand l'Europe improvise: Dix ans de crises politiques*, 2018.

20   Prof. Dr. Dr. h.c. Jörn Axel Kämmerer is Professor at Bucerius Law School in Hamburg where he holds a Chair of Public Law, Public International Law and EU Law.

IV. EUROPE AS A SPACE OF FREE MOVEMENT

The spatial dimension of European integration is particularly manifest in the freedom of movement. Allowing people to move from one Member State to another without being checked at the borders is a key achievement of European integration. This achievement has many facets, ranging from the free movement of workers and the self-employed as part of the internal market, to the free movement of EU citizens, which is not based on economic rationality, to the free movement of certain groups of third-country nationals (II.). This high level of spatial openness requires agreement on – and compliance with – certain basic conditions (III.). Unfortunately, the European space of free movement is facing increasingly serious challenges in recent times (IV.), challenges which will need to be addressed, in legal terms, particularly by the EU legislator (V.).

ELEMENTS

Freedom of movement within the EU comprises various elements. The oldest of these is the free movement of workers and the self-employed, as well as their family members, as part of the European internal market. Here, freedom of movement occurs in an economic sense, in the form of the mobility of production and value-added factors – mediated by the fundamental freedoms of the internal market, which are key in protecting the individual.

Detached from this economic rationale, EU citizenship has emerged as another central pillar of free movement over the past quarter of a century, including the associated right to non-discrimination, which also implies access to social benefits under certain conditions. In addition, third-country nationals can enjoy freedom of movement within the EU under certain conditions, for example if they are entitled to permanent residence or, for a shorter period, have a Schengen visa.

Today, the right to free movement for all of the above-mentioned groups of people is not only based on the – undoubtedly fundamental – treaty provisions, but largely specified in EU legislative acts by the EU legislator. This is also true for the key legal acts on visa (Visa Code) and the EU's external and internal borders (Schengen Border Code), both of which are directly applicable EU regulations enacted by the European Parliament and the Council.

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Freedom of movement within the European Union is supplemented by rules on police and judicial cooperation. One example of this is the European Arrest Warrant, which is designed to prevent criminals from exploiting the freedoms gained through freedom of movement for their own benefit.

BASIC CONDITIONS

In order for such a far-reaching model of freedom to function outside the regulatory framework of a Nation State, a number of basic requirements must be agreed upon and observed.

These basic requirements include, above all, the values (or fundamental principles) of the European Union enshrined in Article 2 TEU. Based on the principle of mutual trust, EU Member States are legally obliged to presume that all other EU Member States generally adhere to these values. However, should a Member State act in a manner that undermines these values on a systemic level, for instance, by undermining the independence of the judiciary and thus the principle of the rule of law, or by placing individuals at real risk of having core human standards violated, this presumption is rebutted.

In addition, the Union is dependent on functioning legislatures, executives and judiciaries at the national level in order to implement Union law properly. Should national institutions fail to fulfil certain minimum requirements, in particular those pertaining to human rights, democracy and the rule of law, the fundamental prerequisites for the functioning of the Area of Freedom, Security and Justice are at risk.

» There are significant challenges at both the external and internal borders. These challenges are interconnected in such a way that a lack of effective control of the external borders could lead to the reintroduction of border controls at the internal borders, creating a domino effect.

CHALLENGES

Now, more than ever, the concept of Europe as a space of free movement is facing major challenges. Two of these challenges will be outlined and summarised as examples. They relate to both the internal and external dimensions.

At internal borders, freedom of movement is being called into question by the widespread reintroduction of border controls across the EU. The European Commission's comprehensive list of Member States' notifications of the temporary reintroduction of border control at internal borders currently lists 472 cases of border control since 2006. What empirically appears to have become the norm should, of course, remain an exception in normative terms. Article 25 of the Schengen Borders Code, which was amended in 2024, only allows the reintroduction of border controls at internal borders in exceptional cases in the event of a "serious threat to public policy or internal security", in particular in the event of "large-scale public health emergencies", such as the COVID-19 pandemic, or in "an exceptional situation characterised by sudden large-scale unauthorised movements of third-country nationals between the Member States, putting a substantial strain on the overall resources and capacities of well-prepared competent authorities and which is likely to put at risk the overall functioning of the area without internal border control".

Border controls at internal borders must therefore remain the exception and shall be reintroduced "only as a measure of last resort". Their scope and duration "shall not exceed what is strictly necessary to respond to the serious threat identified". If, during border controls at internal borders, people who do not have valid travel documents but apply for asylum are refused entry without further ado, this violates, in general, EU law, as the Dublin III Regulation at least grants the right to a procedure for establishing the Member State responsible for carrying out the asylum procedure (Dublin procedure). This was also recently confirmed by a widely noted decision of the administrative court of Berlin in relation to the return of asylum applicants by the German Federal Police to Poland (*Case 6 L 191/25*).

However, there are also numerous challenges at the EU's external borders. The lessons learnt from the COVID-19 pandemic and the poorly coordinated reactions of the individual Member States at the external borders were attempted to be addressed through an amendment to the Schengen Borders Code (Article 21a as amended in 2024).

With regard to refugee-related migration, a core question at the external borders currently is to what extent so-called "push-backs" can be considered legal under certain conditions. The term "push back" is legally vague in that it encompasses a large number of different measures, the legal assessment of which varies greatly. Case law has clearly established that transferring migrants

rescued at sea to a third country without an individual hearing violates the ban on collective expulsion (Article 4, Protocol 4, ECHR) and the principle of non-refoulement (Article 3, ECHR), provided that these individuals are at risk of torture, inhumane or degrading treatment in the country of transfer (ECtHR *Hirsi*). Conversely, the immediate return of migrants to a third country on the basis of their "own conduct" may be compatible with fundamental rights, for example if they have jointly stormed border installations by force even though alternative legal means of entry were available to them (ECtHR *N.D. v Spain*; *M.A. v Cyprus*; *M.B. v Spain*). The ECtHR will soon decide on the particularly controversial case of how to legally classify "push-backs" or border security measures by which European States react to a particularly cynical form of hybrid warfare by Belarus or Russia, which deliberately send migrants across the border in order to destabilize European countries (ECtHR *R.A./Poland*; *H.M.M./Latvia*; *C.O.C.G/Lithuania*, pending).

CONCLUSION

There are significant challenges at both the external and internal borders. These challenges are interconnected in such a way that a lack of effective control of the external borders could lead to the reintroduction of border controls at the internal borders, creating a domino effect. While some of the measures provided for in the reform of the Common European Asylum System (CEAS), which is due to come into force in mid-2026, are moving in the right direction, it is doubtful that the reform will adequately address these problems sufficiently in their totality. The EU legislator, responsible for amending the key legislation, still has much work to do.

Mattias Wendel[1]

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1   Mattias Wendel is Professor for Public Law and European Law at the University of Hamburg.

V. RETHINKING THE EUROPEAN SPACE: A CRITICAL-FEMINIST PERSPECTIVE

INTRODUCTION

The analysis of the European space is dominated by geopolitical, economic, or legal-institutional paradigms. While offering important factors, they have systematic blind spots as they neglect the gender-specific and social dimensions of European reality.

This article draws a new map. Through a critical-feminist lens, we will expose how social inequalities and power relations shape Europe's cohesion and security, and why the continent is far from the neutral or homogenous space it is often portrayed to be. At this moment of multiple global and internal challenges, rethinking "space" is both urgent and necessary.

EUROPEAN SPACE AS A SPACE OF INVISIBLE BORDERS

Our understanding of the European space can be challenged by integrating socio-cultural factors[1] into the traditional factors of geopolitics, economics, and law.

Women and people with a migrant heritage are overrepresented in poorly paid and precarious jobs, while unpaid care work at home remains invisible. Economic disparities also divide regions and social groups: wealthier Western Europe benefits more from mobility and resources, while Eastern, Southern, and rural regions often struggle with out-migration, low wages, and inadequate infrastructure, marking them as internal peripheries. These dynamics disproportionately affect women, who carry the burden of limited childcare and healthcare services or migrate to wealthier regions for care work under precarious conditions.

Even women's bodies and autonomy can become a subject, as uneven regulation of abortion across Europe forces many to cross national borders to exercise reproductive rights, while structural discrimination within healthcare systems restricts access for migrant women, women with disabilities, or queer women.

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1   These remarks are based on an intersectional feminist perspective, see B. Cooper, "Intersectionality", in L. Disch and M. Hawkesworth (eds), *The Oxford Handbook of Feminist Theory*, 2016, p. 385.

» **The "European identity" itself is often portrayed as masculinity, whiteness, Christianity, and Western modernity. After all, it is therefore not surprising that women remain underrepresented in parliaments and decision-making bodies.**

Finally, cultural and social norms form boundaries that are often intangible yet deeply felt. Our socialization is manifesting gender stereotypes while valuing "masculine" traits. Subtle forms of harassment can ultimately limit the freedom of movement. The "European identity" itself is often portrayed as masculinity, whiteness, Christianity, and Western modernity. After all, it is therefore not surprising that women remain underrepresented in parliaments and decision-making bodies.[2]

These examples demonstrate how rights, resources, and recognition are distributed along the lines of gender, class, or ethnicity. Far from being neutral or homogenous, the European space is a complex network of visible and invisible borders, with implications for both internal cohesion and Europe's global role.

EUROPEAN SPACE AND THE GLOBAL ARENA

Traditionally, states are viewed as the main global actors, with international relations being examined primarily through a state-centric lens that focuses on factors like economy, law, and geopolitics. However, incorporating new factors challenges this narrow conception, revealing that the global system is profoundly shaped by patriarchal, Eurocentric structures.[3] Historically rooted in warfare and the spread of masculine values, such as autonomy, power, and instrumental rationality, these structures are enforcing power asymmetries and historical continuities.[4]

This is evident in the conceptualization of the European space as a "core" surrounded by a "periphery". For instance, enlargement policy positions the Western Balkans in a waiting room, while the Schengen regime constructs a bounded internal space by outsourcing border control to countries like Turkey or Libya. Beyond Europe's immediate neighborhood, trade agreements with African States and global supply chains for critical raw materials reproduce a structural dependency in which Europe secures its prosperity at the expense of others' vulnerability. Similar

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2 Showing the public-private dichotomy, where public space is often coded as male and the domestic sphere as female, see C. Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (1989).

3 U. Ruppert, "Ein bisschen Feminismus im Krieg?: Über das Paradoxe feministischer Außenpolitik" (2022), 52 *PROKLA Zeitschrift für kritische Sozialwissenschaft* 499, pp. 501 and 503; J. A. Tickner, *Gender in International Relations: Feminist Perspectives on Achieving Global Security*, 1992, Chapter 5; T. Kayaoglu, "Westphalian Eurocentrism in International Relations Theory" (2010), 12 *International Studies Review* 193.

4 F. A. Stengel and A. T. R. Wibben, "Think Big(Ger)! Warum Feministische Außenpolitik Ein Radikales Umdenken Erfordert" (2024), 17 *Zeitschrift für Außen- und Sicherheitspolitik* 407.

dynamics emerge in climate politics, where the EU's Green Deal and carbon border taxes shift ecological and economic burdens onto producers in the Global South.[5]

Moreover, these dynamics are not gender-neutral: they shift risks disproportionately onto women, children, and marginalized groups, whether through precarious migration routes, the gendered effects of austerity, the unequal burdens of resource extraction and care work, or the intensified vulnerabilities created by climate change. Although the EU presents itself as a transformative actor for gender justice, its external practices often reproduce inequalities.

This illustrates that the global order is shaped not only by neutral States, but by the experiences and actions of individuals and communities, while simultaneously creating experiences for them.[6] The "European Space" is not therefore merely a geographic territory or a union of States, but a network of power practices that extends beyond its territorial borders.

A CRITICAL-FEMINIST VIEW ON A "SECURE" EUROPEAN SPACE

Amidst the war in Ukraine, the discourse on a secure European space has returned to a state-centered and military-oriented paradigm of security in a way not seen in recent decades. However, this is not merely a logical reaction to new circumstances but, above all, an unveiling of the underlying masculinized discourse and hegemonial-patriarchal structures.[7] This classical approach to security mirrors the dynamics described above.

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5   P. Morone and A. Alfino, "Impact of the EU Carbon Border Adjustment Mechanism on the Global South" (2025), 6 *Discover Sustainability* 315.

6   J. A. Tickner, *Gender in International Relations: Feminist Perspectives on Achieving Global Security*, 1992.

7   F. A. Stengel and A. T. R. Wibben, "Think Big(ger)! Warum feministische Außenpolitik ein radikales Umdenken erfordert" (2024), 17 *Zeitschrift für Außen- und Sicherheitspolitik* 403, p. 407.

The patriarchal nature of war is not only evident in its devastating physical consequences[8] but also in how it reinforces gendered roles and hierarchies. It solidifies the idea of a male "protector" and a female "protected".[9] Moreover, women are disproportionally affected by negative consequences of armed conflict like sexual violence, forced displacement, and economic dependence.[10]

While an armed conflict undoubtedly presents a major security risk, for many women and marginalized groups in Europe security threats are often much closer. Gender-based violence, discrimination against migrants, and economic precarity are critical security factors, revealing that security constitutes another invisible border within the European space. Even though these forms of insecurity affect large parts of the population, they are often labeled as "private" or "social matters", or "marginal issues", and are not a priority in political discussions on security.

It also reveals that genuine security is not merely the absence of war but the presence of social, economic, and physical safety for all individuals, regardless of their gender, origin, or class.[11] The climate crisis and environmental degradation, for instance, directly threaten safety – disproportionately affect women, children, elderly people, and those in marginalized communities.[12]

This broader conception of security also highlights the constant and dynamic interaction between the macro-level of geopolitics and the micro-level of the everyday experience. In this sense, even the socialization individuals undergo is relevant when discussing the (in)security of states.[13] Masculinity as a cultural and political construct permeates security in its multiple dimensions

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8   U. Ruppert, "Ein Bisschen Feminismus Im Krieg?: Über Das Paradoxe Feministischer Außenpolitik" (2022), 52 *PROKLA. Zeitschrift für kritische Sozialwissenschaft* 500, pp. 501, 503; J. A. Tickner, *Gender in International Relations: Feminist Perspectives on Achieving Global Security*, Chapter 1.

9   J. A. Tickner, *Gender in International Relations: Feminist Perspectives on Achieving Global Security*, Chapter 5; F. A. Stengel and A. T. R. Wibben, "Think Big(ger)! Warum feministische Außenpolitik ein radikales Umdenken erfordert" (2024), 17 *Zeitschrift für Außen- und Sicherheitspolitik* 403.

10   OHCHR, "Women's human rights and gender-related concerns in situations of conflict and instability", https://www.ohchr.org/en/women/womens-human-rights-and-gender-related-concerns-situations-conflict-and-instability (access date 28.08.25).

11   L. Basch, "Human Security, Globalization, and Feminist Visions" (2004), 16 *Peace Review* 5.

12   UN Women, "How gender inequality and climate change are interconnected", https://www.unwomen.org/en/articles/explainer/how-gender-inequality-and-climate-change-are-interconnected (access date 27.08.25).

13   The separation between the "public" sphere of politics and the "private" sphere of the household is abandoned, see C. Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (1989), Chapter 9 ("The Personal Is International; The International Is Personal", p. 343).

》》 The patriarchal nature of war is not only evident in its devastating physical consequences but also in how it reinforces gendered roles and hierarchies.

and can lead to the neglect of other critical but "feminized" approaches, such as crisis prevention, diplomacy and social justice.[14]

Feminist perspectives are more urgent than ever. Precisely now, when traditional military and state-centered approaches dominate the security agenda, and security is framed as a priority over gender equality and climate justice as if they weren't intrinsically linked, is the moment to keep these perspectives at the very center of the discourse. Highlighting feminist and conflict-transformative approaches in the current geopolitical moment is not a denial of reality or "luxury problems" but rather the foundation for sustainable security. They can expose the blind spots of a one-dimensional, militarized understanding of security and act as a connective thread across different layers of insecurity.

By naming and analyzing the complex, cross-cutting dynamics of power, inequality, and gender, feminist approaches are essential for developing holistic, preventive, and sustainable strategies needed to face today's multidimensional insecurity challenges that shape people's everyday lives. A feminist vision of security insists that only when these values are embedded in both domestic and foreign policy can the European space truly become secure – for everyone.

CONCLUSION

Rethinking the European space through a critical-feminist lens reveals a Europe marked by invisible borders that strongly shape lived realities, both within and beyond its territory. The challenges of precarious work, reproductive injustice, and subtle cultural biases are not minor footnotes; they are fundamental obstacles that undermine the very ideals of freedom and equality the European project espouses. This analysis emphasizes that only by including diverse perspectives will we be able to grasp the full complexity of the challenges and the potential we face. Ultimately, we can only fulfil Europe's own values of peace, cohesion and equality if we are prepared to broaden our perspectives and embrace all dimensions of European reality.

Julia Gelbhaar[15]

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[14] U. Ruppert, "Ein Bisschen Feminismus Im Krieg?: Über Das Paradoxe Feministischer Außenpolitik" (2022), 52 *PROKLA. Zeitschrift für kritische Sozialwissenschaft* 500, pp. 501, 503; G. Heathcote, "Gendered Security", in R. Geiß and N. Melzer (eds), *The Oxford Handbook of the International Law of Global Security*, 2021, p. 343.

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VI. EUROPEAN (IN)SECURITY SPACE

European security has been shaken by Russia's full-scale invasion of Ukraine in 2022 and then by Donald J. Trump's re-election for the second presidential term in 2024. This article posits that European security space has evolved from the post-Cold War peace dividend where European security space was primarily conditioned by the U.S. primacy and the absence of existential security threats to a more precarious situation the key characteristics of which are Russia's military aggression against Ukraine, threats to EU and NATO Member States on the eastern flank, and concerns over the U.S. security guarantees. Thus, Europe's current insecurity is caused, conditioned, and shaped by external actors. Transforming Europe's insecurity space back into a security space would require Europe reclaiming agency and becoming an actor capable of shaping its own security as well as that of its neighbourhood.

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The aim of this article is to identify the sources of the current European security crisis and offer a few ideas on how the crisis can be addressed. The article starts by outlining the origins of Europe's current insecurity. Then, it looks the reasons why Russia poses a particularly concerning security problem despite the imbalance in terms of population and economic power between Russia and the EU. The final section discusses the potential European response to its security challenges that would transform Europe back into a security space.

ORIGINS OF EUROPEAN INSECURITY

While threats to Europe's security are well known by now and include both military and liminal threats[1] posed by Russia, their origins have become a hotly debated subject in the past years. The bottom line, however, is that European security space was not static in the past decades in the sense that over time EU's pull *vis-à-vis* prospective Members was stronger than Russia's. What Russia could offer in terms of economic well-being, values, and way of life was less attractive than the prospect of European integration. Thus, Russia was about to lose its hold on Ukraine, Georgia, and Moldova, unless it acted aggressively and decisively.

It was zero-sum thinking in Moscow that produced the confrontation that began in 2008 with Russia's war against Georgia and later continued with the annexation of Crimea, military conflict

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1   D. Kilcullen, "The Evolution of Unconventional Warfare" (2019), 20 *Scandinavian Journal of Military Studies* 1, 61-71, DOI: https://doi.org/10.31374/sjms.35

in Ukraine's Donbas region, and eventually led to Russia's desperate attempt to subjugate Ukraine through the full-scale invasion in 2022.

As the EU and NATO were gradually enlarging, Russia was ready to stop that process with violence, if needed. Having succeeded in eliminating political opposition, building on centuries long tradition of authoritarianism, and concentrating political power in his hands, Russia's president Vladimir Putin imposed his conspiratorial view of the world on the whole country where disinformation and conspiracy theories about Western decadence and interference in Russia's traditional sphere of influence became commonplace.

OUTSUFFERING UKRAINE AND THE WEST?[2]

Why were Russia's decision-makers confident that they could take control of Ukraine, despite Western warnings about severe consequences that Russia would face in the aftermath of the invasion? The short answer is that Russia hoped to win quickly, but it could also grind down Ukraine slowly if the initial onslaught failed. Russia rebuilt its military since its victorious but otherwise disastrous war against Georgia which gave it confidence before invading Ukraine in 2022. Albeit Russia could expect the fall of Kyiv in a matter of days, it also had a fall-back option, that is, if Russia did not manage to win quickly, it could try to outlast Ukraine and its Western partners.

Russia is particularly suited to pursue the strategy of outsuffering. It has pursued this strategy since 2014 when economic sanctions were imposed by the West, limiting Russia's access to Western financial markets and technologies for oil and gas exploration and extraction offshore in the Northern part of Siberia.

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2 The arguments in this section are based on author's prior study of Russia's strategy in the war against Ukraine. The main findings were published in the following article: T. Rostoks, "Russia's Strategy of Outsuffering and the War in Ukraine" (2023), 16 *Canadian Journal of European and Russian Studies* 2, 48-72, DOI: https://doi. org/10.22215/cjers.v16i2.4130

After Russia invaded Ukraine in 2022, severe economic sanctions were imposed upon Russia. Sanctions aimed to weaken Russia and curtail its ability to continue military aggression. Russia, however, was uniquely positioned not to yield in the face of external pressure because of the lack of a viable political opposition in Russia and the presence of the tradition of authoritarianism that enables Putin's foreign policy, that is, the Russian president faces few if any domestic constraints in his pursuit of aggressive foreign policy. The Russian public has no other choice than to keep quiet about government policies.

In retrospect, it was almost inevitable that Russia would face steep costs because of its discontent with the U.S.-led world order. Russia's efforts to speed up the onset of multipolarity were bound to generate pushback from the US and its Western partners even had Russia not invaded Ukraine. While Donald J. Trump's return to the White House may ease some of the external pressure that Russia has faced in the past, it remains to be seen whether American efforts to reach out to Russia bear fruit. Past efforts have almost invariably fallen flat in the face of Russia's intransigence.

EUROPE ALONE?

Russia's full-scale invasion of Ukraine has shaken Europe's security, and Donald J. Trump's return to the White House has rattled the Transatlantic alliance, questioning the US security commitment to Europe. As the result, the security environment in Europe has already taken the turn for worse. If America takes a step back and Europe does not step up, then European security environment may continue to deteriorate, with potentially disastrous consequences for frontline allies in Central and Eastern Europe. That outcome, however, is not predetermined because the U.S. may still be committed to Europe's security even though the expectation might be that Europeans would shoulder a much larger part of defence burden.

The challenge for European States would be to take greater responsibility for Ukraine's and their own security in circumstances least conducive to such efforts. Apart from Germany, there is little fiscal space elsewhere to accommodate higher defence expenditure. The U.S. may further exacerbate European economic woes with tariffs. And in many European States the long overdue debate on reinstating conscription has hardly begun. It seems clear though that Europe will own more responsibility for its own (and Ukraine's) security in the coming years. Europe's greatest impediment in that regard may be the lack of political will, not financial, industrial and other obstacles.[3] It has been often remarked that the U.S. would do the right thing after it has tried everything else. Perhaps Europe is also capable of doing the right thing once it becomes clear that all other options are exhausted.

Toms Rostoks[4]

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3   J. Watling and M. Kofman, "Willpower, not Manpower, Is Europe's Main Limitation for a Force in Ukraine, War on the Rocks", 03 March, 2025, available at: https://warontherocks.com/2025/03/willpower-not-manpower-is-europes-main-limitation-for-a-force-in-ukraine/

4   Toms Rostoks, PhD, is the director of the Centre for Security and Strategic Research at the National Defence Academy of Latvia. His research mainly focuses on deterrence, state intentions, Russia's strategy, and Baltic security.

VII. EUROPE AND THE RETURN OF POWER POLITICS

The return of geopolitics was discussed well before Donald Trump's presidency. The end of the Cold War generated naive hopes that the world would converge towards Western models. This idea quickly faded, prompting a search for new frameworks in international relations. American liberals tried to promote democracy versus authoritarianism as a guiding principle, exemplified by initiatives like the Community of Democracies. However, rising powers like China, Russia, India, and Brazil rejected such normative constraints. For them, sovereignty remains paramount: it is the right to wield power unless checked by another State's power. Fixed alliances are seen as restrictions on sovereign freedom.

In the U.S., the 2011 book *Sovereignty or Submission* by John Fonte reflected growing concern over global governance. Its author, once considered a little eccentric, now aligns with mainstream U.S. political thought. Today, when people speak of geopolitics, they typically mean *power politics* – particularly great power rivalry. In many non-Western countries, this is seen not as a threat but a return to normalcy, where power has always driven international relations.

Historically, the U.S. combined hard power with a commitment to the normative world order based on international institutions. This balance was its unique strength. However, the U.S. is now retreating from its traditional role as global guardian, a shift as profound as any since WWII. While some nations fear this vacuum, others – especially non-Western States – welcome the expanded room for manoeuvre. Without U.S. leadership driven by both values and interests, stability may depend more and more on a traditional balance of power, possibly involving Russia. President Trump has signalled interest in this approach through dialogues with Vladimir Putin.

<p style="text-align:center">***</p>

For Europe, the return of power politics is a dramatic challenge. Its model has been based on prosperity and democracy while shunning global power politics – a conscious choice following the traumatic excesses of earlier European power struggles. Integration, not competition, became Europe's formula for stability: every country has the right to enjoy the same level of security, regardless of its seize, geography and history. This is the European exceptionalism. Unlike the U.S. exceptionalism, it is not designed as a model for the world. It is meant to be protected from the world. One could even say it is not compatible with the world.

Europe's reluctance to engage in power politics created vulnerabilities. During the Yugoslav wars, European powers hesitated, wary of reawakening old rivalries. The U.S. ultimately intervened to end the conflict. Similarly, after the Cold War, German reunification forced Europe to confront the balance of power once more. America's continued presence in NATO helped reassure European States. Not surprisingly, Poland insisted on being included in this successful zone of security.

Central and Eastern Europe, Poland argued, could either be integrated in the Western security structures, NATO and the EU, or they would end up as a playground for power rivalries. Enlargement contributed to securing decades of peace and prosperity for the region.

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Russia's full scale war against Ukraine was rightly perceived as an attack on the European security order. Putin's historical and geographical theories as an attempt to legitimize the aggression are an open challenge to Europe's values and interests. The challenge was met. The war in Ukraine offers further lessons. Military power remains a necessary condition for defending European values against authoritarian imperialism. If Ukraine prevails, it must be welcomed into the European family.

Europe cannot *defy* geopolitics, but it must learn to engage with it confidently. There are more and more encouraging examples of a close policy coordination between European countries. France, Germany, Poland, and the U.K., as well as Italy and others are now uniting their efforts without seeking dominance. History and geography can be reinterpreted in ways that serve a stronger, more unified Europe.

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