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Editorial

Following our Special Issue on Narratives of Human Rights, we are very happy to present three graduate papers, which bring together methods and perspectives from law, political science, economics, and history to analyse questions of transitional justice, grand strategy, and the making of 'universal' norms.

Alyna Reading addresses the asymmetrical conditions under which legal norms were globalised through the lens of a 19th-century land purchase by European missionaries in British colonial West Africa. She explores how conflicting conceptions of property rights, land use, and metaphysics clashed and remained effectively unresolved as land passed from the community of Begoro to the Basel Mission. Swiss and South German pietism, British legal norms, and Akan customs of land tenure were negotiated and brought into unequal conversation.

Aurélie Salamin studies the treatment of former child soldiers. Even though a plethora of international treaties proscribe the recruitment and deployment of children in armed conflicts, this remains an ongoing practice with long-term consequences. The paper problematizes the standard narratives on children used in armed conflicts, which tend to typologize them as helpless victims, heroic survivors, or violent perpetrators. But these stereotypical typologies can hinder the reintegration of former child soldiers into society. International law demands that the 'best interest' of children be promoted, but what is in the 'best interest' of former child soldiers?

Finally, *Emanuel Sebastian De Seta* discusses the strategic options of small countries in an increasingly adverse geopolitical and economic climate. His paper outlines a conceptual framework for grand strategies open to small states facing an eroding global liberal order and intensifying great power competition. To apply these ideas to the practice of statecraft, De Seta analyses Switzerland's Free Trade Agreement with China in the context of global Sino-American competition and interprets it as an insurance policy aimed at ensuring access to the Chinese market without compromising relations with the United States and the European Union.

These papers explore a variety of subjects across different locations and time periods, but they share an interest in how norms and the 'normal' are constructed and maintained. By highlighting the agency of children involved in armed conflicts, by questioning the default strategic alignments of small states in a dangerous world, and by denaturalizing conceptions of property, these papers showcase the application of interdisciplinary approaches to grapple with the complexities of a fraying international order.

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

Alyna Reading

Divine Transformations: The Basel Mission in the Ghanaian Lawscape

Abstract: This article presents an interdisciplinary case study of a colonial land purchase made in 1875 by the Basel Mission in the Akyem Abuakwa region of Ghana. With the help of local carriers, catechists and seminarians, the missionaries travelled to the remote mountain town of Begoro to measure and map a plot of land, negotiate a price, and finally legitimise the sale through British bureaucratic processes. The sale then turned the land into private property, which the missionaries needed to establish Christian quarters or "Salems". In this article, I employ the legal concept of "lawscape" to examine the normative orders that governed land use in the early colonial period and their impact on the land itself. The aim of this case study is to highlight how religion and law as normative orders shaped the way in which the land was used and transformed at the dawn of colonial rule in Ghana.

Keywords: Historical property law, customary land tenure, Basel Mission, colonialism in Ghana (Gold Coast), Pietism

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Introduction

In the neighbourhood of Osu in Accra, Ghana, stands a concrete cross commemorating the arrival of the first Basel missionaries in 1828. The salty ocean air has corroded and weathered the cross itself, yet the golden letters on the marble slab at the foot of the memorial are well-polished and legible. They tell the story of the first missionaries who arrived at the Danish fort in Osu, on the coast then known to Europeans as the Gold Coast. Initially, these Pietist missionaries faced difficulties in establishing a mission in the region, but as the missionaries moved away from the coast and Danish patronage, they found that the climate and people in the hills of Akuapem were more agreeable to them. By the mid-1870s, the Basel Mission was growing and looking to buy land for new mission stations as far north as Akyem Abuakwa and Asante. Several missionaries – such as Johann Mader and Adolf Mohr – were involved in the surveying expeditions, while the mission treasurer, Christian Buhl, concluded land purchases using Western-style sales contracts.

The expansion of the mission coincided with other changes in the Gold Coast. While the missionaries claimed land for their mission stations and "Salems" (Christian towns) in the name of advancing Christianity, the British established colonial rule over the territory of the Gold Coast. In 1874, one year before the land sale investigated in this paper, the British ended the Third Anglo-Asante War by raiding Kumasi, the capital city of the autonomous Kingdom of Asante, and destroying the royal palace.[1] After this victory, the British began to formalise their rule over the

Figure 1: The Basel Mission Memorial near Osu, Accra, reads as follows: "In Blessed Memory of the Early Basel Missionaries who first landed at Osu (Christiansborg) in 1828 and tragically died within months of arrival" (photo by Rafael Feind, 2024)

Gold Coast by codifying law and establishing a colonial bureaucracy in Accra. As in other British colonies, "the law was not adapted to the land, rather, the land was adapted to the law".[2] Because the positivist international law of the nineteenth century did not regard West African kingdoms as equal nations, the British colonial administration only respected their hierarchy and norms in part. They did not regard them as applicable to British subjects and superimposed British legal norms as universally applicable.[3] Western property laws allowed the British colonial power to transform physical land into legal property that could be bought, sold or "consumed".

While the Basel missionaries worked independently of the British colonial power, they formed part of the "colonial spectrum".[4] Colonialism meant occupying territory in a material and psychological sense. It not only entailed the extraction of resources and human labour, but also promoted European science, religion and culture at the expense of local practices.[5] The missionaries applied property law as if it were universal, implementing it as a key technology by which colonial power was upheld.[6] The missionaries navigated a legally pluralistic space where traditional customs of land tenure and British property laws coexisted. These overlapping legal systems in one geographic area are interpreted through the concept of "lawscape", which explicitly asks how the physical space is affected by law.[7]

By focusing on the legal production of space, this paper uses the land as both "the object and tool of analysis"[8] to explore the consequences of missionaries buying land in a colonial environment. Firstly, this article aims to investigate the practices required to transform land into property through a micro-historical case study of a parcel of land purchased by the Basel Mission in the remote town of Begoro in Akyem Abuakwa. Secondly, I argue that land is shaped by religious and legal perspectives and that property law was introduced by the British colonial administration and enforced by third-party actors such as missionaries. Finally, using the specific case of the land at Begoro and the legal pluralism governing it, I will show how colonial law affected land use and ultimately transformed land into private property. Power over the land was not only legal but also strongly supported by religious moral frameworks as this paper will further illustrate.

2 Nicole Graham, *Lawscape: Property, Environment, Law* (Routledge, 2011), 124, https://doi.org/10.4324/9780203847169.
3 Stephen C. Neff. *Justice Among Nations* (Harvard University Press, 2014), 318.
4 Raymond Craib, "Cartography and Decolonisation." In *Decolonizing the Map: Cartography from Colony to Nation*, ed. James R. Akerman (University of Chicago Press, 2017), 16.
5 Clifford C. Campbell and Kwasi Konadu, *The Ghana Reader: History, Culture, Politics* (Duke University Press, 2016), 207.
6 Graham, *Lawscape*, 104.
7 Henry Jones, "Property, territory, and colonialism: an international legal history of enclosure." *Legal Studies* 39 no. 2 (June 2019): 188, doi: 10.1017/lst.2018.22.
8 Stuart Elden, *Birth of Territory* (The University of Chicago Press, 2013), 15.

Lawscape at Begoro

Lawscapes reflect both a highly specific geographic reality and an amalgamation of legal practices and therefore cannot be abstracted or generalised. Just as the weathered memorial at Osu tells a story not only of wind and corrosion but also of the missionaries and their "blessed memory", the plot of land at Begoro was defined by both its materiality and its social construction. The laws that governed land use directly impacted the way the land was physically shaped and socially imagined, so that "what we see in a landscape is not a detached and separated physical realm, "the land", but ourselves, our practices and our law – a lawscape".[9]

My case study focuses on Begoro, a mountain town on the Kwahu Plateau. The town was separated by steep scarps from the eastern part of the Kingdom of Akyem Abuakwa to which it belonged.[10] This remote location would later become a hindrance as the Basel Mission's inaccurate maps had placed it on the trade route to Kumasi. As elsewhere in the wider Akan states, the people of Akyem Abuakwa had cleared the thick forest in painstaking labour, creating arable land for present and future generations.[11] Two streams enclosed the plot of land that the missionaries would set out to buy, allowing for easy access to water even during the dry season or Harmattan. Far from the Eurocentric imagination of a *terra nullius*, an empty space whose history began at first contact with Europeans, this plot of land already had a varied history over the past centuries, with the recent settlement of the town of Begoro as part of the Akyem spatial politics that called for towns to change location and leadership to avoid uprisings.[12]

Before the advent of British colonial law in the Akan region in the 1870s, land use was regulated by what Ghanaian historian Robert Addo-Fening called the "customary land-tenure [sic] system".[13] In the customary land tenure system, the paramount chief of Akyem Abuakwa, the *okyenhene*, held stewardship of all the land, and this, in turn, obliged him to pay for all tribal war expenses.[14] He had the power both to grant newly conquered land to sub-chiefs and to return it to communal ownership. The sub-chiefs of each town held direct jurisdiction over their land but answered to

9 Graham, *Lawscape*, 5.

10 Robert Addo-Fening, *Akyem Abuakwa 1700–1943: from Ofori Panin to Sir Ofori Atta* (Trondheim: Norwegian University of Science and Technology, 2001), 1.

11 Akan is an umbrella term (originally used by Europeans) for all Twi-speaking matrilinear nations in this region of Ghana. The Akan state model was organised in a hierarchical manner with the paramount chief at the top. Next came the chief or *ohene* who governed a group of towns or a division. Each individual town in a division had a sub-chief or *odikro* and finally each settlement or village had a headman or *adikrofo*; Paul Glen Grant, "Healing and Power in Ghana: Early Indigenous Expressions of Christianity." In: *Studies in World Christianity*, ed. Joel A. Carpenter (Texas: Baylor University Press, 2020), 34–35.

12 Addo-Fening, *Akyem Abuakwa 1700–1943*, 8; Graham, Lawscape, 95; Grant, *Healing and Power in Ghana*, 47.

13 Addo-Fening, "Customary land-tenure system in Akyem-Abuakwa." *Universitas* 9 (1987), 95–107; Addo-Fening, *Akyem Abuakwa 1700–1943*.

14 Addo-Fening, "Customary land-tenure system", 95.

the *okyenhene*, to whom the sub-chiefs owed taxes and who would be consulted for land sales.[15] Even though the sub-chiefs were authorised to decide on land sales, the actual land and agricultural equipment were owned communally by the *abusua*, a family or clan with a common female ancestor.[16] The head of each *abusua* functioned as a custodian representing the interests of his *abusua*. Land was conceived as "belonging to a large family of which many are dead, a few living and countless are yet unborn".[17] While chiefs could grant land use rights, they retained "allodial rights" or, in other words, the power to withdraw land use rights in the interest of the community.[18] Future generations were included in land practices as the Akyem deliberately left some land uncultivated for the use of future generations.[19] The Akan lawscape was not only shaped by those currently living on the land, but also by ancestors and descendants.

The term "customary land tenure" that I am employing to describe Akan land use is not unproblematic when writing about African legal traditions. Instead of the more neutral term "informal law", the term "customary" was readily applied by Europeans in the colonial context, often without a deeper understanding of these laws. This could foster misunderstandings as "customary laws" related not only to rigid laws that had been passed down through generations but also to readily adaptable rules.[20] Additionally, the term suggested that customary traditions were inferior to formalised legal traditions.[21] All human societies were governed by rules and taboos concerning the economy, family relations or land use. While such systems – be they formal or informal – served a similar function to that of laws, the term law has historically been used to denote the specific rationalised and formalised legal systems of European states.[22] It would not do to conflate informal, religious or customary systems with formal law, since it was their differences that allowed these rules to coexist with or influence formal laws. I have therefore decided to use the more comprehensive concept of "normative orders" when referring to all binding principles observed within a society.[23] When talking about the normative orders surrounding land use in Akan societies, I will continue to use the term "customary land tenure" employed by Addo-Fening and other leading Ghanaian scholars to avoid confusion.

15 Addo-Fening, "Customary land-tenure system", 96.
16 Christoph von Blarer, "Der Akan-Staat Akyem Abuakwa zwischen 1860 und 1943: Verweltlichungsprozesse und Königsamt vor dem Hintergrund von Mission und kolonialer Herrschaft." *Lizenziatsarbeit der Ethnologie* (Universität Basel, 1999), 22.
17 Emmanuel Ababio Ofosu-Mensah, "The Politics of Property Rights." *Journal of West African History* 5 no. 1 (2019): 89, doi: 10.14321/jwestafrihist.5.1.0083.
18 Ernest Sewordor, *The Basel Mission and the Establishment of a "Model Town" in Ghana – the Case of Abokobi, 1854–1926* (University of Ghana, 2017), 39.
19 Addo-Fening, "Customary land-tenure system", 97.
20 Salvatore Mancuso, "African Law(s): Comparative Insights on the African Lawscape." *Comparative Law in Global Perspective* 6 (Brill Nijhoff, 2024), 41–42.
21 Salvatore Mancuso, *African Law(s): Comparative Insights on the African Lawscape*, 43.
22 Winnifred Sullivan, "Law." In: *Vocabulary for the Study of Religion* no. 2, ed. Robert A. Segal (Leiden: Brill Nijhoff, 2015), 325.
23 Mancuso, *African Laws*, 4.

Whereas the British colonial authorities did not recognise local authorities in the Gold Coast as equal sovereigns, they also did not entirely dispense with customary land tenure. Instead, they relied on treaties of protection and later created a system of indirect rule, in which Akan normative orders were preserved as subsidiary to British Common Law.[24] Yet the codification of supposedly customary law changed these flexible normative orders into more rigid legal norms congruent with the written British legal tradition.[25] While indirect rule allowed customary land tenure to continue, British property law still changed local practices of land use and notions of property, because Europeans in the Gold Coast were buying land as alienable property, thereby removing it from communal use. The missionaries entered the lawscape in Begoro right at the beginning of this transformation process and were confronted both with the dramatic geography of the land and the legal pluralism governing its use.

Transforming land into property

The purchase of land by the Basel Mission at Begoro was exemplary of the transformation of land into property. This was not realised in a single day but through a process lasting several months. Before buying the land, the missionaries went to survey it and reported their findings to the Mission's "Home Committee" in Basel.[26] While the missionaries were active on the ground in Akyem Abuakwa, the Committee in Basel held power over financial decisions, including land acquisitions. Most missionaries who worked for the Evangelical Basel Mission Society came from the southern German countryside, but the organisational centre was staffed by the bourgeois class of Basel and the Mission seminary. The Home Committee made the financial and administrative decisions carried out by the agents in the colonial periphery.[27]

The decisions made in Basel, however, relied on reports made in the field. The missionaries wrote frequent letters to the Home Committee such as the report on the land at Begoro. This report was written in 1875 by the seasoned missionary Adolf Mohr and his younger companion Johann Mader, both of whom travelled to Begoro to survey the land before it could be bought. Through "investigative modalities" such as taking measurements, drawing maps, and assessing the soil, the missionaries gathered and classified information that the administrative authorities in Basel used to make decisions.[28]

24 Mancuso, *African Laws*, 88.
25 Mancuso, *African Laws*, 146.
26 Seth Quartey, *Missionary Practices on the Gold Coast, 1832–1895; Discourse, Gaze and Gender in the Basel Mission in Pre-Colonial West Africa* (New York: Cambria Press, 2007), 24.
27 Paul Jenkins, *Kurze Geschichte der Basler Mission* (Basel: Basel Mission Verlag, 1989), 10.
28 Bernard S. Cohn, *Colonialism and Its Forms of Knowledge* (Princeton University Press, 1996), 5.

Mader and Mohr interacted with the land on their surveying expedition under the assumption that it was potential property. Surveying was a common colonial practice that allowed the land to be appropriated in the mind before it was appropriated on the ground.[29] Even when the act of seeing the land was relatively passive, European "explorers" portrayed it as a heroic adventure of discovery.[30] During the second half of the 19th century, colonial actors in particular considered themselves entitled to the land they surveyed and "discovered". Using a missionary map from 1873 and a compass, Mohr realised on the journey to Begoro that the mission map was inaccurate and noted corrections for future cartographers. Just because missionaries – or other colonial agents for that matter – had made a map and presumably travelled through territory, it did not always mean that they were able to accurately identify or localise what they encountered. The mission map placed Begoro directly north of Kibi and significantly closer to the Asante border. In reality, Begoro was much closer to the station at Kukurantumi than expected and, due to its location in the mountains, thoroughly unsuited as an entry point into Asante.

Figure 2: This is the map used by Mader and Mohr on their journey to Begoro. The map shows the town too far north and does not depict the steep cliffs of the Kwahu Plateau, which made travel to Asante impossible. Source: "Die Goldküste und westliche Sklavenküste sowie das südliche Asante Reich". c. 1873. (BMA 96073) Basel Mission Archives (Mission 21).

29 Tania Li, "What Is Land? Assembling a Resource for Global Investment." *Transactions of the Institute of British Geographers* 39, no. 4 (2014): 592–593.

30 Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation*, 2nd ed (Routledge, 2008), 199.

This mistaken geography showed once again that, although Europeans may have claimed scientific accuracy on the basis of their technology, they were actually highly dependent on local knowledge. On their way to Begoro, the missionaries were accompanied by (mostly unnamed) African agents such as catechists, seminarians and carriers who helped them find their way despite the inaccuracies of their map. The carriers are a powerful example of such unacknowledged labour by local actors. The carriers took on the physical burden of the missionaries' surveying trip by carrying them and their belongings in hammocks through the forests and hills.[31] Only local knowledge of the landscape and the language allowed the missionaries to find the land and start negotiations in Begoro. While the missionaries were not acting on behalf of a colonial power, they were engaging in a colonial practice. Some of the local authorities in the Gold Coast even perceived the Basel missionaries as so closely linked to the British colonial power that they called them "envoys of Queen Victoria".[32]

Once Mader and Mohr arrived in Begoro, they measured the land they wished to buy by walking around the plot of land and counting their steps. In addition to this rudimentary measurement, Mader described the boundary in words, explaining that it followed the stream and the road. These boundaries converted the land into something quantifiable, whose material properties could be measured and eventually valued at a certain price. The immobility of land meant that it could not be bought and sold like other commodities that could be lifted and carried away. [33] Only through boundaries could the land be transformed from common property into an alienable commodity.[34] The surveying expedition was the first time this land was regarded as one unit, whereas previously it had been part of the larger landscape encompassing agricultural land, forests and holy places such as the waterfall.

Fixing a price and drawing up a sales contract were only possible after measuring and mapping the plot of land. Maps created according to European scientific methods allowed the colonial project to advance. At the same time, the maps seldom achieved the scientific precision they claimed, relying on missionaries' accounts rather than scientific measurements. Like most missionaries, Mader and Mohr lacked the tools and education to draw precise maps of the land at

31 Johann Adam Mader and Adolf Mohr, "Begoro und Okwau. Bericht über zwei Untersuchungsreisen als Vorbereitung für die Asante-Mission." In: *Blätter für die Mitglieder der Frauen-Collecte zu Gunsten der Basler Heiden-Mission* no. 3 (Basel: Verlag der Missionsbuchhandlung, 1875), 8/9.

32 Sonia Abun-Nasr, "An African Missionary: The Ambition of David Asante." In: *University of Leipzig Papers on Africa: Mission Archives Series* 22 (2003), ed. Adam Jones: 41–50.

33 Li, "What Is Land?", 589.

34 Graham, *Lawscape*, 20.

Begoro. They were heavily dependent on local actors to find the land in the first place and to describe the plot they encountered using local designations such as the name of the stream or landmarks such as a holy tree that the missionaries dismissively called "fetish place". Still, the missionaries followed the aesthetic of science by drawing a descriptive map that included measurements in steps, which were usually defined as "the length of an average man's step".[35] Yet the numbers on the map cannot hide the fact that all these measurements amounted to nothing more than a sketch, and even the final entry in the mission land registry does not mention the area of the land at Begoro.[36] Even without scientific accuracy, a sales contract could be legally binding, favouring the correct legal form over the material content.

The original purpose of the mission station at Begoro had been to facilitate entry into the Asante Kingdom through a base close to the border. After correcting the mistaken geography, it became clear that Begoro was not as strategically valuable as expected. The annual report on the mission omitted the mistaken location and the failure to establish a means of preaching to the people of Asante. Instead of mentioning its geographic disadvantage, Mission Inspector Joseph Friedrich Josenhans remarked positively in his report on the number of potential baptismal candidates in Begoro.[37] Perhaps the remoteness of the town was offset by the concurrent opening of a mission station near Asante. Whatever the exact reasoning, the mission station at Begoro was approved by the Home Committee without openly acknowledging either that the missionaries had been mistaken about its location or that they had used funds that had been donated towards establishing a mission in Asante, even though Begoro was not part of Asante.

In November 1875, eight months after the return of Mohr and Mader from their surveying expedition, another group of missionaries set out from Kibi to purchase the land at Begoro. This time the missionaries were accompanied by the mission treasurer, a German from Calw named Christian Buhl, who conducted most of the mission's land purchases in the 1870s. Though Buhl worked for the mission, he was not a trained clergyman and did not seem to preach when travelling, leaving this task to his three companions. One of them was the first Basel-trained African missionary, David Asante, who was not only fluent in Twi but also a member of a royal Akan family. When the four missionaries arrived in Begoro on 12 November 1875, it was Asante who

35 Knut Borchardt and Cornelia Meyer-Stoll, *Die Maß- und Gewichtsreformen in Deutschland im 19. Jahrhundert* (München: Beck Verlag, 2010), 214.
36 Basler Mission, *Grundbücher der afrikanischen Stationen 1874–1846* (Basel Mission Archives: Signatur D-31.03,3), 181.
37 Joseph Josenhans, *Einundsechzigster Jahresbericht der evangelischen Missionsgesellschaft zu Basel* (Basel: Verlag der Missionsgesellschaft, 1876), 5.

interpreted during the audience with the *begorohene*, Antwi Kwasi[38], whom Buhl referred to only as "Antyi". The chief and his council of elders did not agree to the proposed boundaries since they included the aforementioned waterfall, which was venerated as a deity or *obosom*. Only after the parties had walked around the plot and defined a smaller parcel of land did the local authorities agree to negotiations.[39]

Buhl's description of the negotiations provides a glimpse into the lawscape present at Begoro. Legal pluralism is understood as the "coexistence of two or more normative orders"[40], and once these overlapping normative orders are put into their cultural and physical context, they form the lawscape. Antwi Kwasi and the elders of Begoro were operating within their own normative order concerning land. The lack of historical sources representing their perspectives meant that it was impossible to know many of the reasons for their actions. While they were accustomed to customary land tenure laws, they may have also been somewhat familiar with European concepts of property. The missionaries did reference other land purchases during negotiations that the chief and elders seemed to know about.[41] Considering that some of the earlier land purchases took place in nearby towns such as Kukurantumi the chief may well have been aware of the legal implications. Still, the plot of land at Begoro was in communal use at the time and had never entered the free market. While the chief and his elders may have been aware that selling the land might afford certain opportunities, it is also likely that they did not completely accept the British normative order as authoritative.[42]

At the beginning of the negotiations, Antwi Kwasi and the elders offered the land as a gift to the missionaries, but the missionaries declined and offered to pay because "we knew very well how expensive such a present would become".[43] Of course, we cannot be sure if Buhl understood the offer correctly. Perhaps it was less of a gift and more of a grant of land use according to customary land tenure laws, under which land use was adjusted by the chief according to the needs of the community. But it is almost certain that Buhl's understanding of a gift would have been different from the local understanding, according to which land was not something that could be alienated from its context. Buhl's dismissive comment on how "expensive" the gift would

38 Robert Addo-Fening, "Ofori Atta, Mate Kole, and Jurisdiction over the Krobo Plantations." *Transactions of the Historical Society of Ghana* no. 3 (1999), 82.
39 Christian Buhl, *Buhl to Basel November 24*, 1875 (Basel Mission Archives: Signature D-01.27.I..46), 2.
40 Mancuso, *African Laws*, 145.
41 Buhl, *Buhl to Basel*, 3.
42 Justice Modibo Ocran, "The Clash of Legal Cultures: The Treatment of Indigenous Law in Colonial and Post-Colonial Africa." Akron Law Review 39 no.2 (2006), 465–466.
43 Buhl, "Buhl to Basel", 3.

become made him sound distrustful. He seemed to believe that the local people were trying to trick the missionaries into taking land and later changing the conditions. Buhl had no grasp of the local customary land tenure system which would grant him the right to use the land but would ultimately leave the land in the possession of the community. Instead, Buhl framed the idea of a gift – most likely a grant of land use rights – as a trick and not as a standard procedure in the local normative order.

It is hard to know the degree to which the missionaries understood and respected the local normative order. David Asante, who was familiar with Akan laws through his heritage, must have been able to understand the rules surrounding land tenure, but Buhl's report did not mention consulting with him. Instead, Asante appears primarily as a translator while the missionaries actively negotiated with the relevant local authorities via British legal processes. There was some understanding that the local protocol had to be honoured through reciprocal visits to the chief, but ultimately the legitimisation of ownership would come through bureaucratic paperwork and the official registration with the British administration.

Beyond the juxtaposition of colonial state law and local customary land tenure laws, the missionaries also brought with them their own "normative order" or binding norms regarding negotiation and land use.[44] After the missionaries refused the initial offer, they began bargaining over a price for the land. Buhl emphasised that the missionaries were coming to Begoro for the locals' benefit and that the population would profit from a mission station. He criticised the *begorohene* and his council for driving a hard bargain and not agreeing to the missionaries' offers: "But they did not want to hear any of it, probably thinking that their eggs were double-yolked and that we must have their land".[45] Buhl used the image of the double-yolked eggs in a derisive way, implying that it would be silly to think of the land at Begoro as better than the land the mission had bought at Kibi, Kukurantumi, Aburi or Akropong. Instead, Buhl regarded the land as interchangeable, comparing it to eggs whose uniformity is reflected in the German expression "sich gleichen wie ein Ei dem anderen" (English: "to be alike as two eggs"). Moreover, Buhl made it clear that the mission did not need the land at Begoro and that the town's residents would profit from having a mission station.

44 Mancuso, *African Laws*, 148.
45 Buhl, "Buhl to Basel", 3. Dt. Sie wollten aber davon nichts hören, dachten wohl ihre Eier haben zwei Dotter & wir müssen ihr Land haben.

The local authorities asked for 60 ounces of gold dust or *sika futuro*, the traditional currency in Akyem.[46] Buhl seemed familiar enough with the currency to provide the equivalent in silver dollars immediately, explaining that sixty ounces of gold dust were equal to 216 dollars. Even though Buhl characterised the locals as driving a hard bargain and asking for an unreasonable amount of money, it was in fact the missionaries who remained firm in their offer. They only budged from their initial offer of 120 dollars to "meet in the middle"[47] at 140. This price was significantly lower than what the locals originally proposed and only marginally higher than the missionaries' first offer.

Buhl recorded no objections to paying in silver dollars instead of gold dust, but he did describe how important it was to him that the coins looked new. His account of the transaction makes it seem as if he felt the need to convince the locals that the silver money was valuable:

> By now evening had fallen, so we went home, prepared the papers, counted out the money in neat little piles. I had brought new silver money, which really struck the eye, especially when Br Werner lit a few more lamps. But the only way to get to the piles of money was through the place where I had prepared the papers for signature. Finally, it was over and the chief & his elders were able to pack up & leave.[48]

Buhl's description of the missionaries polishing their silver reads like a boyish trick. Buhl and the other missionaries set out the money to glisten in the lamplight to entice the *begorohene* as if he were a child or a magpie attracted to shiny objects. The fact that the missionaries felt compelled to try to trick the locals also shows that on some level they were aware that the chief and elders were discontent with the deal.

The conversion of land into property was finalised through the sales contract that named all parties involved as well as the plot of land concerned.[49] Unlike other commodities, land could not be moved or taken home by the buyer.[50] Turning land into private property required a process of

46 Kristen Windmuller-Luna, "Gold Dust Box (Abamphruwa)", *The Metropolitan Museum of Art*, last modified 2016, https://www.metmuseum.org/art/collection/search/310823 (30.05.2025).
47 Buhl, "Buhl to Basel", 4. Dt. "Auf halbem Weg"
48 Buhl, "Buhl to Basel", 4. Dt. Mittlerweile war es Abend geworden, wir gingen nach Hause, machten die Papiere fertig, zählten das Geld in schönen Häuflein zurecht, ich hatte neues Silbergeld mitgenommen, das stach ordentlich in die Augen, namentlich als Br Werner noch einige Lichter anzündete. Der Weg an die Geldhäuflein ging aber nur über den Platz, wo ich die Papiere zur Unterschrift parat hielt. Endlich war auch das erreicht & der Häuptling mit seinen Ältesten konnte einsacken & abziehen.
49 Christian Buhl, *Kaufbrief Missionshaus in Begoro November 15*, 1875 (Basel Mission Archives: Signature: D-31.03.06), 1/2.
50 Li, "What Is Land?", 589.

abstraction through which wealth and power could be transferred.[51] Although the land remained physically unchanged, it was now to be considered separate from its social and geographical space, with boundaries being used to limit its uses and access to it. At Begoro, this process followed a procedure similar to that used elsewhere in the British Empire. The plot of land was defined by boundaries and then legally transferred through a bureaucratic process involving a sales contract. Once the contract was signed and the price had been paid to the proper authorities, the land was considered private property. While the transformation of land into private property happened through treaties and agreements instead of military conquest, the process remained asymmetric. These treaties replaced customary land tenure laws, although the British colonial power formally left local authorities in charge, slowly replacing communal land use with alienable commodities.

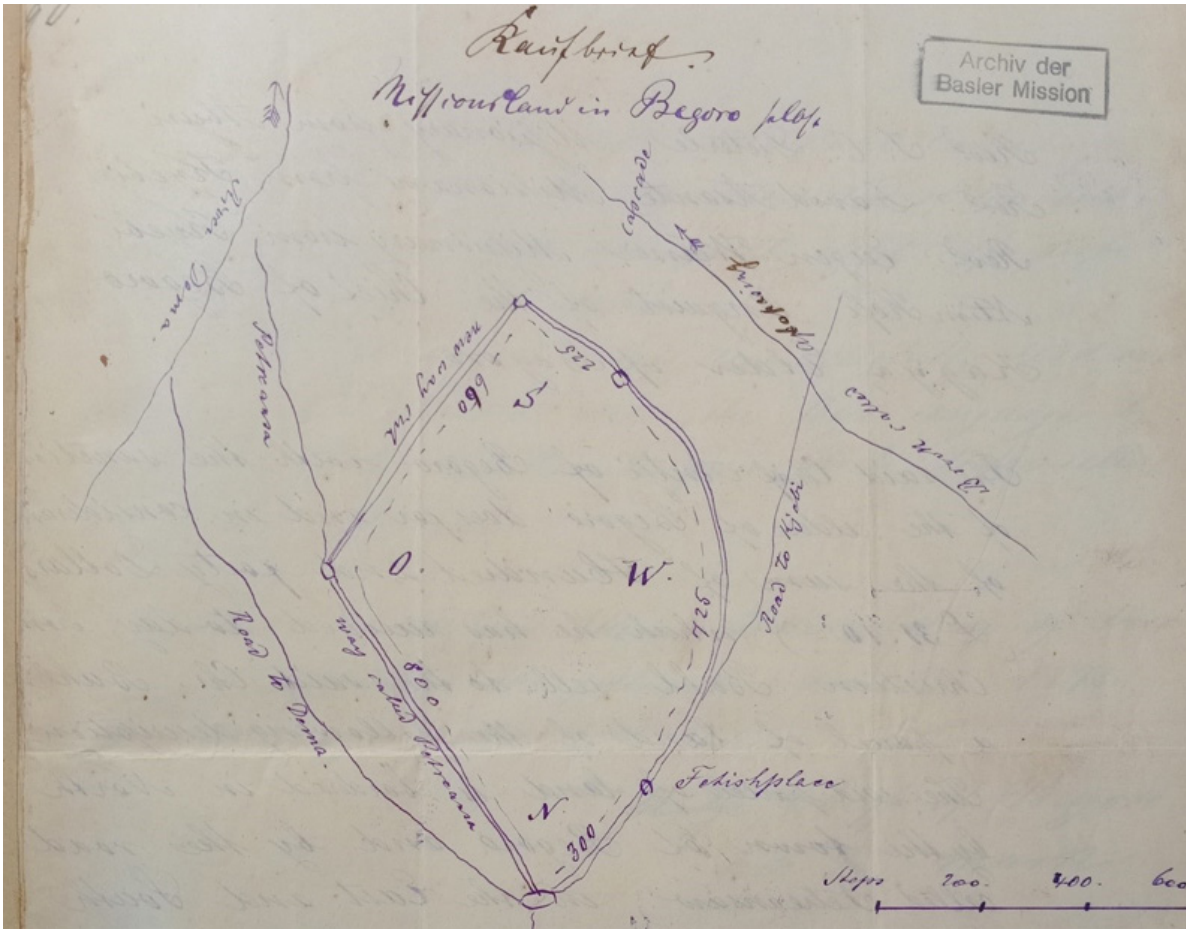

Figure 3: Buhl's sketch of the plot purchased in Begoro conveys an aesthetic of scientific precision without providing precise measurements. Source: "Kaufbrief Missionshaus in Begoro" c. 15 November 1875. (D-31.03.06) Basel Mission Archives.

51 Ofosu-Mensah, "The Politics of Property Rights", 84.

Sacred Land: The Salem

Private property law formed an integral part of the British legal corpus, but there was also a spiritual component of land purchase as Christians followed their divine mandate to "fill the earth and subdue it"[52]. The Basel Mission followed the same ethos of productivity in the spiritual realm as in the material world. Even though the Home Committee was situated in the city of Basel and composed of an urban elite, most of the missionaries themselves hailed from small Pietist farming communities in the southern German region of Württemberg. [53] In their understanding of Christianity, physical land was tied to agricultural productivity as well as Christian righteousness. The Christian creation myth imagined man as "disembodied from nature"[54], an individual dominating the land rather than a creature of the land. Adam may have been made from the land itself, yet God gave him dominion over this land. When buying the land, the missionaries may have been driven by economic and religious considerations alike.[55] God's blessings were manifested in the form of prosperous land and the associated increase in new converts.[56]

The connection between a hard-working farming community and Christianity was intuitive to the Basel missionaries. They were used to living off the proceeds of the land. The Evangelical Basel Mission followed a Pietist understanding of religion, which originated in a revival movement in the 17th century that challenged the institutionalisation of Protestant churches.[57] More important than ritual baptism was the spiritual rebirth marked by internal convictions rather than specific rites. Pietists valued Bible study, asceticism and discipline.[58] Because farming communities required hard work and discipline to sustain their modest lifestyle, they fostered Pietist communities. This rural lifestyle also offered a counterbalance to the rapid changes of industrialisation and urbanisation.

The church that the missionaries established in the Gold Coast tried to emulate the rural Pietist communities of their native Württemberg. Just as the Pietist towns of Kornthal and Wilhelmsdorf protected believers from worldly influences, Christian quarters founded by the missionaries in the Gold Coast were expected to serve that same purpose. The "Salem" or *bronikurom* (town of

52 "The Book of Genesis", in *The New King James Version of the Bible* (1982), 1:28.
53 Jenkins, *Kurze Geschichte der Basler Mission*, 11/12.
54 Bryer, Amanda, *Placing Property: A Legal Geography of Property Rights in Land* (Dublin, Ireland: Palgrave Macmillan UK, 2023), 43.
55 Quartey, *Missionary Practices on the Gold Coast*, 29/30.
56 Joseph Josenhans, *Sechzigster Jahresbericht der evangelischen Missionsgesellschaft zu Basel* (Basel, Verlag der Missionsgesellschaft, 1875), 17.
57 Rudolf Dellsperger, "Pietismus". In: *Historisches Lexikon der Schweiz*, last modified 2010. https://hls-dhs-dss.ch/de/articles/011424/2010-10-19/ (21.05.2025).
58 Linda Ratschiller, *Medical Missionaries and Colonial Knowledge in West Africa and Europe, 1885–1914* (Springer International Publishing, 2023), 49.

Europeans) allowed Christian converts to separate themselves from their non-believing relatives and dedicate their time to worship and agricultural work. [59] The term Salem was derived from the Holy City Jerusalem itself and underlined its religious significance as Holy Land for the promised people.[60] These Salems were meant to become self-sufficient and independent of the surrounding town, guaranteeing an orderly and quiet Christian life under the patriarchal leadership of the missionaries or clergy.[61] Since the Salem was a Christian space, the missionaries held power over who could be there. Excommunication from the church could be followed by removal from the land.[62]

Although the missionaries had begun their missionary work at Osu on the coast in 1828, they moved further inland and up into the hills where the climate was better for the missionaries' health.[63] Akropong became one of the largest and most important mission stations in the Akuapem region. Here, the missionaries started building a church and a school in the 1840s. Since the missionaries valued industriousness, they established a farm to determine which crops and agricultural techniques were best suited to the land.[64] The Basel Mission was focused on modernising the local agriculture and helping the locals become self-reliant through farming, always emulating familiar European farming methods. The establishment of the Basel Mission Trading Company in 1859 and the subsequent sale of cash crops from local and mission plantations followed this same rationale.[65]

Agricultural improvement of the land was one part of the so-called "civilising mission". This was the notion that non-Christian peoples were suffering in spiritual darkness and had to be enlightened and saved from their despotic rulers.[66] This belief was as common among missionaries as it was among British colonial administrators. While the "civilising mission" was framed as a humanitarian and altruistic project, it often furthered exploitation and violence against the local population.[67] The term "civilising" is highly problematic because it presupposed its opposite: "barbarism" or "savagery". Both terms were used in the colonial imagination to justify the

59 Kofi Affrifah, "The Impact of Christianity on Akyem Society, 1852–1887." *Transactions of the Historical Society of Ghana* 16 no. 1 (1975), 70.
60 Anne Beutter and Ernest Sewordor, "A Processual Perspective on Utopia as a Lived Social Project." *Religion* 54 no.3 (2024), 516.
61 Sewordor, *The Basel Mission and the Establishment of a "Model Town" in Ghana*, 43.
62 Sewordor, *The Basel Mission and the Establishment of a "Model Town" in Ghana*, 80.
63 Quartey, *Missionary Practices on the Gold Coast*, 27.
64 Andrea Franc, „Wie die Schweiz zur Schokolade kam: Der Kakaohandel der Basler Handelsgesellschaft mit der Kolonie Goldküste (1893–1960." *Basler Beiträge zur Geschichtswissenschaft* no. 180, (Basel: Schwabe Verlag), 69.
65 Quartey, *Missionary Practices on the Gold Coast*, 27.
66 Jürgen Osterhammel, *Die Verwandlung Der Welt*, 5th ed. (C.H. Beck, 2010), 648.
67 Maria Lugones, "Towards a Decolonial Feminism." *Hypatia* 25 no.4 (2010), 744.

subjugation of people and betrayed the colonial agents' racist assumption that non-Christian cultures were somehow inferior.

The Basel Mission framed the land of the Gold Coast as very fertile and underdeveloped. In a photo book published after decades of mission activity in the area in 1895, the editor wrote in the introduction that "for the culture of the country, however, little is done by its inhabitants", claiming that "what can be found is limited to the coastline and comes at the expense of the English colonial government".[68] The editor went on to write that this state would only change once the blessings of Christianity had been introduced to the entire population. To the author, the connection between Christianity and productive agriculture was self-evident. Similarly, when Johann Mader wrote his report to the Home Committee, he underlined the fact that the people living in Begoro were already farmers, a fact that was intended to demonstrate their morality and receptiveness to Christianity. In his view, the correlation between good Christians and good farmers was reciprocal: Not only were good Christians good farmers, but good farmers would certainly make good Christians.

When describing Begoro, Mader conflated farming skills and Christian virtue, while making clear that there was valuable potential – in the form of crops – in the land. History would later prove him right when the cocoa boom began in Akyem Abuakwa in the 1890s and farmers migrated from Akuapem, Krobo, Shai, Ga, and other places to establish cocoa plantations.[69] Even if the focus of his letter was on preaching the Gospel to the people at Begoro, Mader did reference the economic dimensions of the land. The purchased land possessed not only spiritual value because of the souls that would be reached by the missionaries, but also a clear economic value. The practice of transforming the land into property allowed the missionaries to benefit from both, since the land was now theirs to use.

Establishing a mission station at Begoro meant that the Basel Mission could introduce its methods of land improvement. Although the sources made it clear that farmers were already cultivating produce on the plot of land at Begoro, the missionaries did not regard local cultivation practices as equal to their own or to those of the British. The potential quality of the land lay in its suitability for improvement both in an agricultural and a spiritual sense as the two were considered

68 Fritz Ramseyer, *Achtzig Ansichten von der Goldküste (Westafrika)* (Neuenburg: Verlag von Gebr. Attinger, 1895), IV. Dt. Für die Kultur des Landes aber geschieht wenig von seinen Bewohnern und was etwa davon zu finden ist, beschränkt sich auf die Küstenlinie und kommt auf Rechnung der englischen Kolonialregierung.
69 Franc, *Wie die Schweiz zur Schokolade kam*, 59.

connected. By establishing a Salem in Begoro, they would be able to realise the "colonist utopia" of creating an ideal Christian community on the land that God had given man to dominate. [70]

This Christian belief that God had given the land to man shaped the way that the missionaries interacted with it. Missionary efforts formed part of the colonial lawscape as their religious message conveyed specific normative orders. The missionaries at Begoro applied British property law not only by virtue of being Europeans but also because of their belief in a superior form of societal organisation derived from common Christian values. Agricultural labour became a metaphor for missionary work and God's admonition to till the land turned into a spiritual call: man should not only improve the land through cultivation, but also through Christianity.

Just as the Basel Mission had struggled in the 1820s and 1830s to establish a mission on the Gold Coast, it faced difficulties entering the Kingdom of Asante in the 1870s. The mission had tried and failed to do this for decades, but the war with Britain made this difficult.[71] Mission Inspector Josenhans wrote about this trouble in the annual report of the mission: "Asante is stone and our whole mission is a stone".[72] The missionaries saw themselves as labourers in a difficult field. The land was considered as hard as a rock both for its material conditions – climate, illness and war – and its spiritual ones. While the evangelising mission did not always yield the desired results, the new mission station at Begoro was a symbol of unfettered optimism.[73] The missionaries had been mistaken about the location and usefulness of the new mission station but continued their plans to build it anyway. The missionaries described Asante as "stone" while advancing their projects regardless of setbacks and failures. In the Christian parable of the sower, it was the soil that was responsible if the seeds did not grow. The way Josenhans used the metaphor seemed to imply something else: The local conditions may have impeded the spread of Christianity, but it was missionary labour that would make the difference. Once the land was improved spiritually through Christianity, God would show His favour through agricultural yields.

70 Itohan Osayimwese, "Pietism, Colonialism, and the Search for Utopia: Pietist Space in Germany and the Gold Coast." *Thresholds* 30 (2005), 76.

71 Grant, *Healing and Power in Ghana*, 29.

72 Josenhans, *Sechzigster Jahresbericht der evangelischen Missionsgesellschaft zu Basel*, 20. Dt. Asante ist Stein und unsere Mission ist Stein.

73 Affrifah, "The Impact of Christianity on Akyem Society, 1852–1887", 72.

Conclusion

The plot of land at Begoro described by the missionaries in the 1870s has by now made way for church buildings, concrete streets and car parks as well as some greenery. Both the highly specific materiality and the socio-legal construction of this lawscape have been completely transformed. Centring the land and its lawscape at the time of the land sale allows for a deeper understanding of the changes that accompanied the advent of colonisation in Ghana and whose effects continue into the present. After all, the relationship between people and land is foundational in our legal framework. What was once part of a broad landscape belonging to ancestors and descendants alike became a bounded, alienable commodity that could be sold and resold to the highest bidder.

At the outset of this article, I began in Osu, where the missionaries stepped ashore in 1828. The weathered cross stands there to remind passersby of how the Basel Mission first entered the Gold Coast as sickly Europeans who needed the grace of God to succeed. The cross conveys a narrative in which illness and adversity were overcome by divine protection so that the missionaries could share the Gospel despite their difficulties acclimatising to the Gold Coast. In part, the mission pursued this goal by buying land from local chiefs and having these sales contracts notarised by the British colonial administration. Transforming land into property was a by-product of evangelisation, yet it was also integral to the proselytising mission. Only through land acquisition were the missionaries able to establish Christian quarters or "Salems" where they could cultivate their physical crops and their spiritual flocks.

After the missionaries had assessed the land quantitatively and qualitatively, they purchased the land according to British property law. For this purpose, they had to approach the legal owner of the land. Although the British purportedly supported customary land tenure laws, they simultaneously recognised chiefs as individual owners of the land in a British legal sense. This paradox meant that the chief was able to sell land as private property to Europeans that had previously been part of communal land use. After the preparatory practice of surveying the land, it could be transformed into private property through bureaucratic processes such as drawing boundaries and signing contracts. The boundaries alienated the land from its communal use as it was now excludable, which in turn meant owners could do with their property what they wished.[74] The accompanying contracts which were registered with the British colonial administration gave legal force to the boundaries. If someone were to encroach on the land, the owners could prove and enforce their ownership. As the contract of the land at Begoro stated, the chief and elders

74 Li, "What Is Land? Assembling a Resource for Global Investment", 591.

of Begoro now had to defend "for ever"[75] Buhl's right to dispose of the land as he pleased. The emphasis on the finality of this transaction symbolised a rupture in the Akan belief that land belonged to a family complete with ancestors and descendants, since these would now not be able to lay any claim to the land.[76]

Examining the lawscape in the emerging colonial state of the Gold Coast involved working at the intersection of law and history. In this interdisciplinary approach, I relied on legal theory and micro-historical analysis in the Begoro case study. Legal processes had to be understood within their epistemological framework because the missionaries used law to legitimise their presence in Begoro. Understanding the mechanisms of legal codification and the complexity of legal pluralism is vital to the history of the Basel Mission. I chose to combine theories of both law and history in the notion of lawscape because law is so integral to the shaping of power. The land for the mission station was bought through a legitimised – albeit colonial and Eurocentric – process which reduced the *begorohene's* power to grant and revoke land use in the interest of the community. Binding normative orders, such as sales contracts, reshaped the land as the missionaries were now able to decide how to use their property in both legal and spiritual terms.

In Begoro and elsewhere, the purchase of land by the missionaries detached it from the customary land tenure system and transformed it into private property. In doing so, the missionaries applied modalities of investigation similar to those used by the colonial powers before beginning the legal processes of transformation through rationalisation, boundedness and bureaucracy. The Basel Mission followed colonial practices of transformation in the lawscape of the Gold Coast to establish mission stations, guided by their belief in the Christian missionary mandate. Religious elements remained entangled with legal practice, as religious morality informed the law. The missionaries used British property law to buy land for their Salems, which had to be separate from local towns so that they could establish Christian communities and establish their own normative orders. The Basel missionaries preached Christianity as a universal religion and with this religion came universal property law, thereby disrupting the local lawscape. The plot purchased for the Basel Mission station was the first application of private property law in Begoro, marking the beginning of formalised British colonial rule. Under colonial rule the land was made to fit the laws instead of adapting the laws to the land and its culture.[77] Commodifying land meant stripping it of its unique geography and meaning, making it interchangeable. While this supposed

75 Buhl, "Kaufbrief", 2.
76 Ofosu-Mensah, "The Politics of Property Rights", 89.
77 Graham, *Lawscape*, 124.

interchangeability allowed colonial property law to be superimposed on customary land tenure, it remained a construct. Just as the cross on the Osu coast may have been erected to honour the advent of Christianity, it did not remain untouched by time and climate. The land and its meaning – the lawscape – are always changing and evolving and are ultimately shaped by the interplay of societal norms and nature.

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Aurélie Salamin

Rechenschaft in der Vergangenheitsbewältigung: Eine juristisch-politische Analyse der Aufarbeitung des Einsatzes von Kindern in bewaffneten Konflikten

Accountability and Dealing with the Past: A Legal and Political Analysis of Efforts to Address the Use of Children in Armed Conflicts

Abstract: This article is situated within broader efforts to address the use of children in armed conflicts. It is guided by the overarching objective of ensuring the long-term protection of children from armed conflict. Particular emphasis is placed on aligning post-conflict responses to children's involvement in armed groups with the principle of the best interests of the child. Child soldiering is a multidimensional phenomenon. Because former child soldiers are deemed simultaneously innocent and guilty, their situation challenges established categories and assumptions. Within armed groups, children are often caught in a complex interplay of coercion, instrumentalisation, and personal agency. Reducing child soldiers exclusively to vulnerable victims or witnesses fails to capture the full complexity of their experiences and identities and may also hinder their reintegration into society. Drawing on a nuanced concept of responsibility, this article demonstrates how accountability can be understood and addressed in a manner that is consistent with the best interests of the child.

Keywords: child soldiers, accountability, dealing with the past, reintegration, children's rights

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Einleitung

Im Jahr 2025 erreichte Gewalt gegen Kinder in bewaffneten Konflikten ein ausserordentlich grosses Ausmass. Die Vereinten Nationen verzeichneten im Jahr 2025 insgesamt 38,558 schwere Verstösse, von denen 24,174 Kinder betroffen waren. Dies ist laut Bericht die höchste Zahl von Kindern, die seit Beginn des Mandats betroffen sind. Die meisten Verstösse betrafen die Tötung (6266) und Verstümmelung (7958) von 14 224 Kindern, gefolgt von Fällen der Verweigerung des humanitären Zugangs (8322) und der Rekrutierung und des Einsatzes von 6607 Kindern sowie der Entführung von 4573 Kindern.[1] Mehr als jedes fünfte Kind der Welt lebte 2024 weniger als 50 Kilometer von bewaffneten Kampfgebieten entfernt.[2] Die sich wandelnde Art, Komplexität und Intensität bewaffneter Konflikte, der Einsatz moderner Waffen in bewohnten Gebieten, gezielte oder willkürliche Angriffe auf Zivilisten und zivile Objekte einschliesslich Infrastruktur sowie das Aufkommen neuer bewaffneter Gruppen sind neben akuten humanitären Notsituationen, der eklatanten Missachtung des humanitären Völkerrechts sowie schweren Verstössen gegen die internationalen Menschenrechtsnormen Ursachen für eine alarmierende Zunahme schwerer Verstösse gegen die Rechte von Kindern. Die Rekrutierung von Kindern, unabhängig davon, ob sie freiwillig oder erzwungen erfolgt, wird als ein schwerwiegender Verstoss gegen das Kindeswohl betrachtet. Diese Haltung wird auch vom Internationalen Strafgerichtshof (IStGH) unterstützt, der die Zwangsrekrutierung oder Eingliederung von Kindern als Kriegsverbrechen und als gravierende Verletzung der Kinderrechte in bewaffneten Konflikten einstuft.[3] Dieser Artikel ist in die breitere Auseinandersetzung mit der Aufarbeitung des Einsatzes von Kindern in bewaffneten Konflikten eingebettet. Ausgangspunkt bildet dabei das übergeordnete Ziel, Kinder nachhaltig vor bewaffneten Konflikten zu schützen. Das Kindeswohl nach Art. 3 des Übereinkommens über die Rechte des Kindes (nachfolgend UNO-Kinderrechtskonvention oder KRK) gilt als zentraler Massstab im Umgang mit Kindern. Ein Schwerpunkt liegt deshalb auf der Vereinbarkeit der Aufarbeitung mit ebendiesem Prinzip.

Das öffentliche Bild von Kindersoldat:innen ist oft von stereotypen Darstellungen geprägt. Medien, politische Diskurse und wissenschaftliche Arbeiten neigen dazu, Kindersoldat:innen in extremen Rollen darzustellen. Dabei lassen sich drei Haupttypen unterscheiden: gefährliche Täter:innen, hilflose Opfer und heroische Überlebende. Während die Darstellung von Kindersoldat:innen als barbarische Kämpfer:innen die Vorstellung verfestigt, dass sie nach Konflikten nicht reintegriert

1 UN General Assembly/UN Security Council, Children and Armed Conflict: Report of the Secretary-General, 16. Juni 2026, A/80/723-S/2026/357, Para. 5, 7.

2 Østby, Gudrun, Siri Aas Rustad. *Children affected by armed conflict, 1990–2024, Conflict Trends*, 1. (PRIO. Peace Research Institute Oslo, 2025), veröffentlicht unter https://www.prio.org/publications/14586, zuletzt abgerufen am 26. April 2026.

3 Die Urteile gegen den ehemaligen liberianischen Präsidenten Charles Taylor, den kongolesischen Rebellenführer Thomas Lubanga und den Milizenführer der Tutsi in Nord-Kivu, Bosco Ntaganda sowie das Urteil im Fall Ongwen stellen bedeutende Momente in der internationalen Rechtsprechung dar.

werden können, sondern in einem Kreislauf von Gewalt und Destruktivität gefangen bleiben, birgt die Darstellung der ehemaligen Kindersoldat:innen als hilflose Opfer die Gefahr, Kinder ihrer Handlungsfähigkeit zu berauben. Der dritte Typus, der des heroischen Überlebenden, ist eine neue Erscheinung in der öffentlichen Wahrnehmung. Hier werden die Lebenswege ehemaliger Kindersoldat:innen als inspirierende Erfolgsgeschichten präsentiert. Beispiele wie Ishmael Beah, dessen Memoiren international Beachtung fanden, illustrieren diesen Ansatz.[4]

Während Jungen häufig als bewaffnete Kämpfer im Vordergrund stehen, werden Mädchen in medialen und akademischen Diskursen oft auf Opferrollen reduziert. Sie werden hauptsächlich als Ehefrauen von Kämpfern oder als Opfer sexueller Gewalt wahrgenommen, was ihre vielfältigen und oft aktiven Rollen in bewaffneten Gruppen ausblendet. Tatsächlich nehmen Mädchen in vielen Konflikten unterschiedliche Funktionen ein – von Kämpferinnen über Spioninnen bis hin zu Versorgerinnen. Diese Unsichtbarkeit führt nicht nur dazu, dass ihre spezifischen Bedürfnisse in der Nachkriegszeit übersehen werden, sondern auch, dass sie im Prozess der Demobilisierung und Reintegration benachteiligt sind.[5] Wie die Erzählungen[6] betroffener Jungen und Mädchen deutlich machen, widersprechen ihre Lebensgeschichten den reduzierten Darstellungen in den Medien und der populären Wahrnehmung auf eindrucksvolle Weise. Während die Wahrnehmungen von ehemaligen Kindersoldat:innen häufig durch eine Logik der Extreme konstruiert werden, ist die Realität ihrer Erfahrungen und Identitäten vielschichtiger. Sie bewegt sich in einem ambivalenten und widersprüchlichen Spannungsfeld, das Elemente aller drei Extreme enthält. Besonders in der Nachkriegszeit stellt diese Vielschichtigkeit eine grosse Herausforderung dar, sowohl für die Kinder selbst als auch für die Gesellschaft, die sie wieder aufnehmen soll.

Kinder, die in bewaffneten Konflikten rekrutiert und eingesetzt werden, stehen im Fokus internationaler Aufmerksamkeit. Die Thematik der Kindersoldat:innen im Kontext der Übergangsjustiz bleibt jedoch weitgehend unerforscht.[7] Dies gilt insbesondere für die interdisziplinären Untersuchung der Frage, inwiefern die Aufarbeitung ihres Einsatzes in der Nachkriegszeit mit

4 Ishmael Beah, *A long way gone: memoirs of a boy soldier* (Farrar, Straus and Giroux, 2007).

5 Myriam Denov, *Child Soldiers: Sierra Leone's Revolutionary United Front* (Cambridge University Press, 2010), S. 6–10, 11, 13.

6 Denov untersucht in ihrem Buch die Lebensrealitäten einer Gruppe ehemaliger Kindersoldat:innen aus Sierra Leone, darunter sowohl Jungen als auch Mädchen, und zeichnet deren Schicksale während und nach dem elfjährigen Bürgerkrieg nach. Ihr Ziel ist es, die oft vorhandenen Leerstellen in der öffentlichen Wahrnehmung zu füllen, indem sie die persönlichen Geschichten und Erzählungen der Kinder in den Vordergrund rückt.

7 Erin K. Baines, Complex Political Perpetrators: Reflections on Dominic Ongwen, *The Journal of Modern African Studies* Band 47, Ausg. 2 (2009): S. 163–191, 164; Wendy Lambourne und Vivianna Rodriguez Carreon, Engendering Transitional Justice: A Transformative Approach to Building Peace and Attaining Human Rights for Women, *Human Rights Review* Band 17, Ausg. 1 (2016): S. 71–93; UNICEF Innocenti Research Centre, *ICTJ. Children and Truth Commissions* (United Nations Children's Fund, 2010), S. 6.

dem Prinzip des Kindeswohls in Einklang gebracht werden kann. Der vorliegende Artikel greift deshalb auf eine rechtswissenschaftliche und politikwissenschaftliche Analyse zurück. Die Wahl dieses interdisziplinären Ansatzes ergibt sich aus der Notwendigkeit, das komplexe Phänomen der Aufarbeitung des Einsatzes von Kindersoldat:innen in bewaffneten Konflikten sowohl aus rechtlicher als auch aus friedens- und konflikttheoretischer Perspektive zu erfassen.

Im Folgenden wird zunächst ein kurzer Überblick über die Definitionen und Dimensionen des ‚Kindersoldatentums' gegeben, um den begrifflichen Rahmen der Untersuchung zu erläutern und in die Vielschichtigkeit des Themas einzuführen. Danach wendet sich der Text der rechtlichen Analyse des Kindeswohls nach Art. 3 KRK zu, um die theoretische Grundlage und den Massstab für die nachfolgende Analyse zu schaffen. Da das Kindeswohl stets kontextabhängig interpretiert werden muss,[8] wird die Untersuchung die massgeblichen Normen der UNO-Kinderrechtskonvention sowie die einschlägigen Lehrmeinungen heranziehen, um die rechtliche Ausgestaltung dieses Prinzips im Kontext der Aufarbeitung des Einsatzes von Kindern in bewaffneten Konflikten darzustellen. Der Einbezug einer historischen Komponente ermöglicht eine umfassendere Darstellung des rechtlichen Rahmens und seiner Bedeutung für die Position und den Schutz von Kindern im internationalen Recht. Auf dieser Grundlage wird die Untersuchung durch eine politikwissenschaftliche Perspektive aus dem Feld der Friedens- und Konfliktforschung ergänzt. Anschliessend werden die Grenzen des passiven Opferdiskurses diskutiert, um schlussendlich die Frage zu erörtern, inwiefern die Inverantwortungnahme ehemaliger Kindersoldat:innen[9] mit ihren «best interests» vereinbar ist. Mit der Durchbrechung der klassischen Dichotomie von Opfer und Täter:in beabsichtigt die Untersuchung ein differenzierteres Bild der Aufarbeitung des Einsatzes von Kindern in bewaffneten Konflikten zu zeichnen.

Eine Frage der Definition

Was genau umfasst nun die Beteiligung von Kindern an bewaffneten Konflikten? Weder die UNO-Kinderrechtskonvention noch deren Fakultativprotokoll zum Übereinkommen über die Rechte des Kindes betreffend die Beteiligung von Kindern an bewaffneten Konflikten verwenden den Begriff des Kindersoldaten oder der Kindersoldatin. Vielmehr wird ein Mindestalter für die zulässige Rekrutierung bzw. Teilnahme an einem Konflikt festgelegt. Dieses liegt je nach Regelung

8 UN Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, Para. 1), 29. Mai 2013, CRC/C/GC/14, Para. 48.

9 Die Untersuchung beschränkt sich hier auf eine mögliche Inverantwortungnahme ehemaliger Kindersoldat:innen, welche sich unmittelbar an Feindseligkeiten beteiligt haben.

bei 15 oder 18 Jahren. Auch das Römer Statut des Internationalen Strafgerichtshofs[10] (nachfolgend Römer Statut) gibt keine klare Definition, sondern verweist in Art. 8 Abs. 2 lit. b Ziff. xxvi und 8 Abs. 2 lit. e Ziff. vii auf die Verbrechen der *«Zwangsverpflichtung oder Eingliederung von Kindern unter fünfzehn Jahren in die nationalen Streitkräfte oder ihre Verwendung zur aktiven Teilnahme an Feindseligkeiten»*.

Die Strafkammer des IStGH gelangte im Fall *Lubanga*[11] zu der Einschätzung, dass die Zwangsverpflichtung, Eingliederung und Verwendung von Kindersoldat:innen drei eigenständige Straftaten darstellen. Folglich kann ein Kind zwangsverpflichtet oder eingegliedert werden, unabhängig davon, ob es zu einem späteren Zeitpunkt an Kampfhandlungen teilnimmt. Diese Feststellung ist von besonderer Bedeutung, da die Kammer das Vorbringen der Verteidigung zurückwies, dass die Zwangsverpflichtung und Eingliederung zu dem Zweck erfolgen müssen, das Kind zur aktiven Teilnahme an Feindseligkeiten einzusetzen.[12] Diese Auslegung würde es erlauben, die Situation einer Vielzahl von Mädchen, die oft von bewaffneten Gruppen entführt werden, um als Sexsklavinnen, Köchinnen oder Hausangestellte zu dienen, unter die Begriffe der Zwangsverpflichtung und Eingliederung zu subsummieren.[13] Es spielt dabei rechtlich gesehen keine Rolle, ob ein Kind freiwillig (Eingliederung) oder unfreiwillig (Zwangsverpflichtung) Teil der bewaffneten Gruppierung oder Streitkräfte wurde. Beide Formen sind strafbar und an sich unvereinbar mit dem Prinzip des Kindeswohls.[14]

In Bezug auf das Konzept der Verwendung zur Teilnahme an Feindseligkeiten gibt es verschiedene Terminologien, die unterschiedliche Schutzniveaus für Kinder bieten, welche auf die eine oder andere Weise mit bewaffneten Gruppen oder verbündeten Streitkräften in Verbindung gebracht werden können. Über den Begriff der *unmittelbaren Teilnahme an Kampfhandlungen* gehen die Meinungen auseinander. Auf der Ebene der Menschenrechtsinstrumente[15] wird die unmittelbare Teilnahme so ausgelegt, dass sie nicht nur die aktive Teilnahme am Kampf,

10 Römer Statut des Internationalen Strafgerichtshofs vom 17. Juli 1998, SR 0.312.1.

11 Lubanga, ein Milizenführer aus der Demokratischen Republik Kongo, wurde 2012 schuldig gesprochen, Kinder unter 15 Jahren rekrutiert und in bewaffneten Konflikten eingesetzt zu haben. Dies war der erste Fall des IStGH und markierte einen Wendepunkt in der internationalen Strafjustiz.

12 The Prosecutor v. Thomas Lubanga Dyilo. Judgment pursuant to Article 74 of the Statute, 14. März 2012, ICC-01/04-01/06-2842, Para. 609.

13 Cynthia Chamberlain, *Children and the International Criminal Court: Analysis of the Rome Statute Through a Children's Rights Perspective* (Intersentia, 2015), S. 110.

14 Für eine vertieftere Analyse der rechtlichen Relevanz der Zustimmung u.a. als *valid defence* vgl. Chamberlain, *Children and the International Criminal Court*, S. 109–118.

15 Vgl. Art. 1 des Fakultativprotokolls zum Übereinkommen über die Rechte des Kindes betreffend die Beteiligung von Kindern an bewaffneten Konflikten (OPAC); Art. 38 KRK.

sondern auch militärische Aktivitäten und unmittelbare Unterstützungsfunktionen beinhaltet. Diese Funktionen können nach Auslegungshilfe der UNICEF Aufklärungs-, Spionage- und Sabotagetätigkeiten sowie die Tätigkeiten als Lockvogel, Kurier:in, Träger:in, Köch:in oder Assistent:in an militärischen Kontrollpunkten beinhalten. Ebenso können sie den Einsatz von Mädchen für sexuelle Zwecke oder für Zwangsheiraten umfassen.[16] Diese Auslegung wird jedoch nicht von allen internationalen Akteur:innen geteilt. Auch im humanitären Völkerrecht ist aus der Staatenpraxis und Rechtsprechung nicht klar definiert, was als «*unmittelbare Teilnahme an Feindseligkeiten*» gilt.[17]

Der Begriff der *aktiven Teilnahme*, wie er in Art. 8 Römer Statut genannt wird, soll weiter verstanden werden als die unmittelbare Teilnahme. Der Bericht des Vorbereitungskomitees, *Preparatory Committee*, für die Rom-Konferenz von 1998 führt in dieser Hinsicht aus, dass sowohl die unmittelbare Teilnahme an Kampfhandlungen als auch die aktive Teilnahme an militärischen Aktivitäten zur Unterstützung des Kampfes durch die Terminologie des Art. 8 Abs. 2 lit. b Ziff. xxvi und lit. e Ziff. vii Römer Statut abgedeckt werden.[18] Die aktive Teilnahme kann ebenfalls Aufklärungsmissionen, Spionage, Sabotage und den Einsatz von Kindern als Lockvögel oder Kurier:innen oder für Tätigkeiten an militärischen Kontrollpunkten umfassen. Nicht abgedeckt wären Aktivitäten, die nicht eindeutig mit den Feindseligkeiten in Zusammenhang stehen, wie zum Beispiel Lebensmittellieferungen an einen Luftwaffenstützpunkt oder der Einsatz von Haushaltshilfen in der Wohnung eines Offiziers.[19] So sind nach Rechtsprechung des IStGH Kinder, die von bewaffneten Streitkräften oder Gruppierungen für Haushaltsarbeiten oder zu sexuellen Zwecken eingesetzt werden, von der aktiven Teilnahme ausgeschlossen.[20] Der IStGH

16 UNICEF und Coalition to Stop the Use of Child Soldiers, *Guide to the Optional Protocol on the involvement of children in armed conflict* (UNICEF, Coalition to Stop the Use of Child Soldiers, 2003), S. 14.

17 Das Internationale Komitee des Roten Kreuzes hat 2009 einen Leitfaden dazu publiziert. Folgende drei Voraussetzungen müssen nach der *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* für die *unmittelbare Teilnahme* erfüllt sein: *Threshold of harm; direct causality* und *belligerent nexus*.

18 Es wird verwiesen auf die Begriffe «*using*» und «*participate (actively)*», welche in der engl. Originalversion des Römer Statuts gebraucht werden.

19 UN Preparatory Committee on the Establishment of an International Criminal Court, Report of the Preparatory Committee on the Establishment of an International Criminal Court, 14. April 1998, A/CONF.183/2/Add.1, S. 21, Fussnote 12. Vgl. auch Michael Cottier, Article 8 War Crimes, para. 2 (b) (xxvi), in *Commentary on the Rome Statute of the International Criminal Court*, hg. von Otto Triffterer (C.H. Beck, 2008), Para. 232.

20 Betreffend Haushaltsarbeiten vgl. Prosecutor v. Issa Hassan Sesay, Morris Kallon, Augustine Gbao, Judgment, 2. März 2009, SCSL-04-15-T-1234, Para. 1730 und Prosecutor v. Charles Ghankay Taylor. Judgment, 18. Mai 2012, SCSL-03-01-T-1283, Para. 1411. Hinsichtlich des Einsatzes zu sexuellen Zwecken vgl. The Prosecutor v. Bosco Ntaganda. Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9. Juni 2014, ICC-01/04-02/06-309-ENG, Para. 79. An dieser Stelle sei anzumerken, dass betroffene Kinder für die Zeit des sexuellen Gewaltverbrechens von der aktiven Teilnahme ausgeschlossen sind. Es wird in einem nächsten Kapitel detaillierter darauf eingegangen.

führte in seinem ersten Urteil im Fall *Lubanga* aus, dass bei der Beurteilung, ob ein Kind für die aktive Teilnahme an Feindseligkeiten eingesetzt wurde, der entscheidende Faktor darin liege, ob die von dem Kind geleistete Unterstützung es zum potenziellen Ziel einer gegnerischen Konfliktpartei mache.[21] Das Internationale Komitee vom Roten Kreuz (IKRK) betont wiederum, dass die Begriffe *direct participation* und *active participation* in der Anwendung der Genfer Konventionen die gleiche Bedeutung haben.[22]

Eine Auslegung, die Kindern den grösstmöglichen Schutz bietet, schliesst in das Konzept alle Kinder ein, die mit bewaffneten Gruppen in Verbindung stehen. Ein breit gefasster Begriff der «*Verwendung zur aktiven Teilnahme an Feindseligkeiten*» könnte also, angelehnt an die Ausführungen des IStGH im Fall *Lubanga*, nicht nur die Aufgaben von Kindern innerhalb der bewaffneten Gruppierungen berücksichtigen, sondern auch, wie andere Kriegsparteien diese Kinder wahrnehmen könnten. Denn letztendlich werden alle Kinder, die mit bewaffneten Gruppen in Verbindung stehen, von Aussenstehenden als militärische Ziele betrachtet und sind daher gleichermassen ungeschützt und gefährdet. Kinder, die für nichtmilitärische Zwecke wie Hausarbeit oder sexuelle Ausbeutung eingesetzt werden, könnten sogar noch stärker gefährdet sein, da sie in der Regel unbewaffnet sind.[23]

Die Art. 8 Abs. 2 lit. b Ziff. xxvi und lit. e Ziff. vii des Römer Statuts behandeln Kriegsverbrechen nach humanitärem Völkerrecht. Eine Zivilperson, welche unmittelbar an Feindseligkeiten teilnimmt, verliert für die Zeit der Teilnahme den geschützten Status als Zivilperson.[24] Dies erklärt, weshalb die Definition der unmittelbaren Teilnahme nach humanitärem Völkerrecht eher eng gefasst ist. Eine Lösung wäre es, nicht nur die unmittelbare oder aktive Teilnahme von Kindern, sondern jede Art von Teilnahme von Kindern an Feindseligkeiten zu verbieten.[25] So würde die humanitärrechtliche Definition der Teilnahme dem menschenrechtlichen Kontext angepasst werden.[26] Auf diese Weise können geschlechtsspezifische Komponenten des Verbrechens realitätsgetreu integriert werden. Zudem könnte das Wohlergehen aller Kinder besser geschützt werden. Unabhängig davon, ob die Beteiligung auf dem Schlachtfeld, in der

21 The Prosecutor v. Thomas Lubanga Dyilo. Judgment pursuant to Article 74 of the Statute, 14. März 2012, ICC-01/04-01/06-2842, Para. 628.

22 Nils Melzer, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (ICRC, 2009), S. 43.

23 Chamberlain, *Children and the International Criminal Court*, S. 121–122.

24 Melzer, *Interpretive Guidance*, S. 65, 69.

25 So wie bereits in der ILO-Konvention Nr. 182, welche die Unterscheidung nicht trifft und generell vom «*Einsatz in bewaffneten Konflikten*» spricht, vgl. Art. 3 lit. a ILO Convention Nr. 182.

26 Vgl. Flavia von Meiss, *Die Pflichten der Staaten im menschenrechtlichen Schutz von Kindersoldaten*, SStiR - Schweizer Studien zum Internationalen Recht, 142 (Schulthess, 2014), S. 38–40.

Küche oder in den Schlafquartieren der bewaffneten Gruppe stattgefunden hat, fiele ihr physisches und psychisches Wohlergehen unter den Schutzzweck der Norm.[27]

Eine rechtlich nicht verbindliche Definition liefert das Soft Law Instrument der *Paris Principles*[28]. Gemäss Art. 2 Abs. 1 beschreibt der Begriff Kindersoldat:in «*jede Person unter 18 Jahren, die von einer Streitmacht oder bewaffneten Gruppierung in irgendeiner Funktion rekrutiert oder eingesetzt wird oder wurde, einschliesslich, aber nicht beschränkt auf Kinder, Jungen und Mädchen, die als Kämpfer:innen, Köch:innen, Träger:innen, Bot:innen, Spion:innen oder für sexuelle Zwecke eingesetzt werden oder wurden. Es bezieht sich nicht nur auf Kinder, die direkt an Feindseligkeiten teilnehmen oder teilgenommen haben.*»[29] Bei den *Paris Principles* handelt es sich um ein politisches Dokument, welches Leitlinien zur Demobilisierung und Wiedereingliederung von Kindern, die mit bewaffneten Gruppen in Verbindung stehen, aufstellt. Bei der hier aufgeführten Definition liegt die Altersgrenze für Kindersoldat:innen bei 18 Jahren.[30] Die Definition der *Paris Principles* ist zu weit gefasst, um geeignet zu sein, die individuelle strafrechtliche Verantwortung für die Rekrutierung von Kindern klar zu bestimmen. Dennoch liefert sie ein Konzept, das den komplexen Realitäten bewaffneter Konflikte gerecht wird, in denen Kinder eine Vielzahl unterschiedlicher Rollen übernehmen.

Ein Begriff, der im Zusammenhang mit Kindersoldat:innen häufig aufkommt, ist «*children associated with an armed force or armed group*».[31] Die NGO-Gemeinschaft bevorzugt diesen Begriff, weil er neben der Beteiligung von Kindern an bewaffneten Konflikten auch deren Beteiligung an Bandenaktivitäten oder terroristischen Aktivitäten erfasst. Der vorliegende Artikel beschränkt sich auf die Situation des bewaffneten Konflikts und verwendet den Begriff der *Kindersoldat:innen*, der im internationalen Rechtsrahmen gebräuchlich ist. Die Argumentation dieses Artikels basiert

27 Eine Wunschvorstellung, die kaum in die Tat umzusetzen ist. Viel wahrscheinlicher sind Umwege wie im Fall *Ntaganda*, in dem der IStGH das Problem der sexuellen Gewalt gegen Kindersoldat:innen als Komponente hervorhebt und gleichzeitig spezifische sexuelle Gewaltverbrechen verfolgt. So argumentierte die Vorverfahrenskammer bei der Verfolgung des letztgenannten Verbrechens, dass im Zeitpunkt der Tat keine aktive Teilnahme am bewaffneten Konflikt möglich ist und die Opfer der Tat somit als Zivilist:innen durch den Rechtsrahmen des humanitären Völkerrechts geschützt sind. Mit dem Verzicht auf eine Auslegung der umstrittenen aktiven Teilnahme wurde im Fall Ntaganda ein wichtiger Schritt hin zu erhöhtem Schutz und mehr Gehör für Kindersoldat:innen geleistet. Der Ntaganda-Entscheid durchbricht die einseitige Darstellung von Mädchen als Opfer, indem es sie sowohl als Kindersoldatinnen als auch als Opfer sexueller Gewalt anerkennt. Vgl. The Prosecutor v. Bosco Ntaganda. Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9. Juni 2014. ICC-01/04-02/06-309-ENG.

28 Kinderhilfswerk der Vereinten Nationen (UNICEF), The Paris Principles: Principles and Guidelines on Children associated with Armed Forces or Armed Groups. February 2007, https://www.unicef.org/mali/media/1561/file/parisprinciples.pdf, zuletzt abgerufen am 15. Juli 2026.

29 Aus dem Englischen übersetzt.

30 Dies entspricht auch der Definition eines Kindes gemäss Art. 1 der UNO-Kinderrechtskonvention.

31 Diese Terminologie wird auch in den *Paris Principles* gebraucht.

auf dem Verständnis des Begriffs der Kindersoldat:in nach Art. 2 Abs. 1 der *Paris Principles*, da diese Definition auch all jene Kinder umfasst, die einer bewaffneten Einheit angeschlossen sind, jedoch keinen Kontakt mit Waffen haben. Für die Zwecke dieses Artikels bezeichnet der Begriff «*Kind*» jede Person unter 18 Jahren. Nebst der breiten Auslegung des Begriffes wird der Zusatz «*:innen*» verwendet, um eine möglichst geschlechtergerechte Sprache zu benutzen[32] und um auf die Situation nicht-männlicher Kindersoldat:innen aufmerksam zu machen.

Das Kindeswohl nach Art. 3 KRK

Industrialisierung und Schulpflicht führten rund um die Wende vom 19. zum 20. Jahrhundert dazu, dass die Kinderrechtsbewegung immer mehr Auftrieb erhielt. Kinder wurden als besonders schützenswerter Teil der Gesellschaft angesehen.[33] Zeitgleich entstanden international Kinderschutzbewegungen, die sich für den Schutz und das Wohlergehen der Kinder einsetzten. Die öffentliche Kinderschutzdebatte entwickelte sich. Mit der UNO-Kinderrechtskonvention kam es 1989 zu einem Perspektivenwechsel in der Wahrnehmung des Kindes. Das Kind wird nicht mehr nur als schutzbedürftiges Rechtsobjekt, sondern als eigenständiges Rechtssubjekt wahrgenommen.[34] Im Folgenden wird zunächst detaillierter auf die UNO-Kinderrechtskonvention eingegangen. Der Schwerpunkt soll hier auf dem Prinzip des Kindeswohls (engl. «best interest of the child») liegen. Nach einer rechtlichen Analyse des Art. 3 Abs. 1 der UNO-Kinderrechtskonvention wird abschliessend die Implementierung des Prinzips vertieft behandelt.

Sowohl die Genfer Erklärung von 1924 als auch die Erklärung der Rechte des Kindes von 1959 waren nicht verbindlich. Die Rechtsverbindlichkeit wurde erst 30 Jahre später mit der UNO-Kinderrechtskonvention erreicht. Van Bueren nennt verschiedene Gründe, warum die internationale Gemeinschaft 1989 bereit war, die Kinderrechtserklärung von 1959 durch eine verbindliche Konvention zu ergänzen. Als Beispiel führt sie die grundlegende Veränderung der Einstellung in den nationalen Gesetzgebungen vieler Staaten zu Kindern an, weshalb die bestehende Erklärung den Bedürfnissen der Kinder nicht mehr gerecht wurde. Dies könnte durch die Wahrnehmung eines höheren Schutzbedarfs in bestimmten Lebensbereichen von Kindern erklärt werden. Um eine wirksame Anwendung dieser Rechte zu ermöglichen, war es notwendig, zwei neue

32 Die Verwendung des Doppelpunkts zur Ergänzung des Begriffs «Kindersoldat» ist keine offiziell zulässige Rechtschreibung. Vgl. Leitfaden der Bundeskanzlei zu geschlechtergerechter Sprache (3. Auflage, Stand 13. Juni 2024). Dennoch ist es von Bedeutung, bei jeder Erwähnung des Begriffs an die volle geschlechtliche Spannbreite der Betroffenen zu erinnern. Dies ist auch im Hinblick auf das gleiche Recht aller Kinder von Relevanz.

33 Stefanie Schmahl, *Kinderrechtskonvention mit Zusatzprotokollen. Handkommentar*, 2. Auflage (Nomos, 2017), S. 46, 60.

34 Geraldine van Bueren, *The International Law on the Rights of the Child* (Martinus Nijhoff Publishers, 1995), S. 12.

Prinzipien einzuführen: das Prinzip der *evolving capacities*[35] und das Prinzip des *best interest of the child*.[36] Die UNO-Kinderrechtskonvention stellt das wichtigste Vertragswerk im Bereich des Kinderschutzes dar. Sie ergänzt die allgemeinen Menschenrechtsinstrumente für Kinder und gehört mit den Genfer Konventionen zum humanitären Völkerrecht zu den am häufigsten ratifizierten völkerrechtlichen Übereinkommen. Angesichts der Tatsache, dass bis auf die USA alle UNO-Staaten die UNO-Kinderrechtskonvention ratifiziert haben, dürfen die zentralen Bestimmungen des Übereinkommens, insbesondere Art. 2, Art. 3, Art. 6 und Art. 12 KRK, als Völkergewohnheitsrecht angesehen werden.[37]

Gemäss Art. 3 Abs. 1 des Übereinkommens über die Rechte des Kindes hat ein Kind das Recht, dass bei allen Handlungen und Entscheidungen, die es betreffen, sowohl im öffentlichen als auch im privaten Bereich, sein «*best interest*» als vorrangige Erwägung berücksichtigt wird. Dies bedeutet, dass jede Handlung oder Entscheidung, die Auswirkungen auf ein Kind hat, zunächst unter dem Gesichtspunkt des Kindeswohls bewertet werden muss. Das Konzept des Kindeswohls zielt darauf ab, sowohl den vollen und wirksamen Genuss aller in der Konvention anerkannten Rechte als auch die ganzheitliche Entwicklung des Kindes zu gewährleisten. Für die Definition der ganzheitlichen Entwicklung nimmt der UNO-Kinderrechtsausschuss eine holistische Sichtweise ein, welche die physischen, mentalen und sozialen Komponenten der Entwicklung berücksichtigt.[38]

Rechtliche Analyse des Art. 3 Abs. 1 KRK

> «Bei allen Massnahmen, die Kinder betreffen, gleichviel ob sie von öffentlichen oder privaten Einrichtungen der sozialen Fürsorge, Gerichten, Verwaltungsbehörden oder Gesetzgebungsorganen getroffen werden, ist das Wohl des Kindes ein Gesichtspunkt, der vorrangig zu berücksichtigen ist.»[39]

Die Bedenken bezüglich der Vagheit des Begriffs des Kindeswohls und die ihm zugeschriebene Priorität beschäftigen die Praxis noch heute. Der UNO-Ausschuss für die Rechte des Kindes lieferte eine Reihe von Allgemeinen Bemerkungen. Doch bietet erst die Allgemeine Bemerkung Nr. 14 von

35 Dieses Prinzip erkennt an, dass mit der zunehmenden Entwicklung der Fähigkeiten und Kompetenzen von Kindern der Bedarf an Schutz abnimmt und gleichzeitig ihre Fähigkeit wächst, Verantwortung für Entscheidungen zu übernehmen, die sie betreffen. Die UNO-Kinderrechtskonvention ermöglicht die Anerkennung dessen, dass Kinder in unterschiedlichen Lebenswelten und Kulturen sowie unter dem Einfluss vielfältiger Lebenserfahrungen ihre Kompetenzen in unterschiedlichem Alter entwickeln.

36 Van Bueren, *International Law on the Rights of the Child*, S. 13.

37 Schmahl, *Kinderrechtskonvention*, S. 42–44.

38 UN Committee on the Rights of the Child, General Comment No. 14, Para. 1, 4.

39 Art. 3 Abs. 1 KRK (Übersetzung basierend auf SR 0.107).

2013 eine umfassendere Analyse des Inhalts von Art. 3 Abs. 1 KRK. Im Folgenden wird anhand dieses Kommentars und anderer Literatur eine rechtliche Analyse des Art. 3 Abs. 1 KRK vorgenommen.

Die gesetzliche Verpflichtung gilt für alle Entscheidungen und Massnahmen, die Kinder direkt oder indirekt betreffen. Der Begriff *betreffen* bezieht sich also erstens auf Massnahmen und Entscheidungen, die ein Kind, eine Gruppe von Kindern oder Kinder im Allgemeinen direkt betreffen. Zweitens beinhaltet er andere Massnahmen, die sich auf ein einzelnes Kind, eine Gruppe von Kindern oder Kinder im Allgemeinen auswirken, auch wenn sie nicht die direkten Adressaten der Massnahme sind.[40] Dabei sind *Kinder* im Sinne von Art. 3 Abs. 1 KRK alle Personen unter 18 Jahren, die der Hoheitsgewalt eines Vertragsstaates unterstehen. Dies gilt für einzelne Kinder, für Gruppen von Kindern und für Kinder im Allgemeinen. Das Kindeswohl stellt also sowohl ein kollektives als auch ein individuelles Recht dar.[41] Unter *Gerichten* werden alle Gerichtsverfahren in allen Instanzen verstanden. In allen Verfahren, die Kinder als Beschuldigte, Opfer oder Zeug:innen betreffen, gilt der Grundsatz des Kindeswohls. Der Ausschuss unterstreicht, dass der Schutz des Kindeswohls bedeutet, dass die traditionellen Ziele der Strafjustiz, wie Repression oder Vergeltung, den Zielen der Rehabilitations- und Wiedergutmachung weichen müssen, wenn es um den Umgang mit minderjährigen Straftäter:innen geht.[42]

Der Begriff des *Kindeswohls* ist vielschichtig und sein Inhalt muss von Fall zu Fall neu bestimmt werden. Art. 3 Abs. 1 ist im Einklang mit den anderen Bestimmungen der Konvention auszulegen und anzuwenden. Mithilfe dieses Rahmens legt der Begriff des Kindeswohls daher eine gewisse Flexibilität und Anpassungsfähigkeit an den Tag. Er sollte im Einzelfall angewendet und konkretisiert werden und die besondere Situation des betroffenen Kindes oder der betroffenen Kinder einbeziehen.[43] Diese Flexibilität ermöglicht es auch, für die jeweilige Situation relevante soziale und kulturelle Faktoren zu berücksichtigen. Obwohl diese Anpassungsfähigkeit Vorteile mit sich bringt, wird sie oft als Schwäche dargestellt und als vage und unbestimmt beurteilt.

«*Vorrangig zu berücksichtigen*» ist das Kindeswohl, damit es nicht vernachlässigt wird. Die vorrangige Stellung des Kindeswohls ist durch die besondere Situation des Kindes gerechtfertigt. Seine Abhängigkeit, seine Reife, sein Rechtsstatus und oft auch seine Sprachlosigkeit stellen nach Auffassung des UNO-Ausschusses für die Rechte des Kindes einen Nachteil für Kinder dar. Dieser

40 UN Committee on the Rights of the Child, General Comment No. 14, Para. 19.
41 UN Committee on the Rights of the Child, General Comment No. 14, Para. 21, 23.
42 UN Committee on the Rights of the Child, General Comment No. 14, Para. 27, 28.
43 UN Committee on the Rights of the Child, General Comment No. 14, Para. 48.

zeigt sich darin, dass Kinder im Gegensatz zu Erwachsenen weniger Möglichkeiten haben, ihre eigenen Interessen zu vertreten. Deshalb ist es wichtig, dass diejenigen, die an Entscheidungen über Kinder beteiligt sind, sich der Interessen der Kinder bewusst sind. Das Gebot, das Wohl des Kindes «*vorrangig zu berücksichtigen*», erfordert ein Bewusstsein dafür, welchen Stellenwert die Interessen der Kinder bei allen Handlungen einnehmen müssen, und die Bereitschaft, diesen Interessen Vorrang einzuräumen.[44]

Implementierung: Wie wird das Kindeswohl bewertet und bestimmt?

Der UNO-Ausschuss für die Rechte des Kindes präsentiert eine nicht abschliessende und nicht hierarchische Liste von Elementen, die in eine Beurteilung des Kindeswohls durch Entscheidungstragende einbezogen werden können. Diese soll die Problematik der Unbestimmtheit in der Implementierung des Konzepts des Kindeswohls adressieren. Nicht alle Elemente werden in jedem Fall relevant sein, und verschiedene Elemente können je nach Fall unterschiedlich gewichtet werden.[45] Auf einige, welche in verschiedenen Debatten[46] um die Aufarbeitung des Einsatzes von Kindern in bewaffneten Konflikten auftauchen, wird im Folgenden eingegangen.

Ein zentraler Aspekt bei der Beurteilung des Kindeswohls sind die Ansichten des Kindes. Nach Art. 12 der UNO-Kinderrechtskonvention haben Kinder das Recht, ihre Meinung zu allen sie betreffenden Entscheidungen zu äussern. Jede Entscheidung, bei der die Meinung des Kindes nicht berücksichtigt wird oder der Meinung des Kindes nicht das seinem Alter und seiner Reife entsprechende Gewicht beigemessen wird, missachtet die Fähigkeit des Kindes oder der Kinder, auf die Bestimmung des Kindeswohls Einfluss zu nehmen. Gestützt wird dieses Recht durch die verfahrensrechtliche Garantie, dass das Kind seine Meinung äussern darf. Ein weiterer wichtiger Aspekt ist die Identität des Kindes, die gemäss Art. 8 der UNO-Kinderrechtskonvention bewahrt und bei der Bewertung des Kindeswohls berücksichtigt werden muss. Obwohl die Erhaltung religiöser und kultureller Werte und Traditionen als Teil der Identität des Kindes zu berücksichtigen ist, sind Praktiken, die mit den in der Konvention verankerten Rechten unvereinbar sind, nicht mit dem Prinzip des Kindeswohls vereinbar. Kulturelle Identität kann keine Entschuldigung oder Rechtfertigung dafür sein, dass Entscheidungsträger:innen und Behörden an Traditionen und Werten festhalten, die dem Kind oder den Kindern die in der Konvention garantierten Rechte vorenthalten. Bei der Bewertung und Bestimmung des Kindeswohls soll der Staat dem Kind den

44 UN Committee on the Rights of the Child, General Comment No. 14, Para. 37, 40.

45 UN Committee on the Rights of the Child. General Comment No. 14, Para. 52, 80.

46 Vgl. Baines, Complex Political Perpetrators; Jean Chrysostome K. Kiyala, Responding to Epistemic Injustice against Child Soldiers, *The International Journal of Children's Rights* Band 29, Ausg. 3 (2021): S. 662–700; Kirsten J. Fisher, T*ransitional justice for child soldiers: accountability and social reconstruction in post-conflict contexts* (Palgrave Macmillan, 2013).

nötigen physischen und emotionalen Schutz garantieren. Dazu lässt sich auch der Schutz vor bewaffneten Konflikten subsumieren.[47] Der grösstmögliche Schutz des Kindeswohls besteht darin, dass Kinder nicht für bewaffnete Konflikte rekrutiert und eingesetzt werden.

Kindersoldat:innen: Opfer oder Täter:innen?

Die Wahrnehmung von Kindersoldat:innen hat sich über die Jahrzehnte stark gewandelt, insbesondere im Kontext von rechtlichen und gesellschaftlichen Entwicklungen. Durch die Kinderrechtserklärung von 1959 begann sich abzuzeichnen, dass Kinder nicht länger passive Empfänger:innen, sondern Subjekte des internationalen Rechts sein sollten. Diese Anerkennung betonte, dass Kinder nicht nur Schutz und Fürsorge benötigen, sondern auch eigenständige Rechte haben, die es zu bewahren gilt.[48] Dies legte den Grundstein für einen Schutzansatz, der Kinder in Konflikten in erster Linie als Opfer von Gewalt und systematischen Menschenrechtsverletzungen betrachtet. In den letzten Jahrzehnten hat sich dieser Schutzansatz verstärkt auf ehemalige Kindersoldat:innen ausgeweitet. Kritiker:innen[49] argumentieren jedoch, dass die Darstellung von Kindersoldat:innen als Opfer unvollständig ist und die Rolle von Kindersoldat:innen als Täter:innen in Konflikten vernachlässigt. Sie fordern, dass die duale Rolle von Kindersoldat:innen – als Opfer und als Täter:innen – in der Diskussion stärker berücksichtigt wird. Beispielsweise greift Transitional-Justice-Expertin Erin Baines, basierend auf Erica Bouris' Werk *Complex Political Victims*[50], auf diese Dualität zurück und wendet Bouris' Theorie der *victim agency* auf den Fall der Kindersoldat:innen an. Die Theorie beschreibt, wie Opfer massiver Menschenrechtsverletzungen in der Lage sind, aktiv zu handeln und stellt damit die Passivität infrage, die häufig mit Opferdiskursen verbunden wird. Dadurch werden etablierte Normen aufgebrochen, die Opfer und Täter:innen als klar voneinander getrennte, homogene Gruppen darstellen. Anknüpfend an diese Überlegungen führt Baines den Begriff des *complex political perpetrator* ein, der ebenfalls die Dualität einiger Kindersoldat:innen beschreibt, jedoch den Blick auf die mutmasslich strafbare Handlung von Kindersoldat:innen richtet. Indem ein Kind zum Täter werde, könne es ein gewisses Mass an Kontrolle über das eigene Leben erlangen und einen Raum schaffen, in dem es als politische:r Akteur:in Anerkennung findet.[51]

47 UN Committee on the Rights of the Child, General Comment No. 14, Para. 55, 57, 73.

48 Vgl. u.a. auch ICC, Office of the Prosecutor: Policy on Children, 2023, Para. 38, 39, 41.; vgl. UN. Child Rights Mainstreaming: Call to Action for Human Rights July 2023. Guidance Note of the Secretary-General on Child Rights Mainstreaming, 2023, S. 3.

49 Baines, Complex Political Perpetrators; Leonie Steinl, *Child Soldiers as Agents of War and Peace: A Restorative Transitional Justice Approach to Accountability for Crimes Under International Law* (T.M.C. Asser Press, 2017); Mark A. Drumbl, *Reimagining Child Soldiers in International Law and Policy* (Oxford University Press, 2012).

50 Erica Bouris, *Complex Political Victims* (Kumarian Press, 2007).

51 Baines, Complex Political Perpetrators, S. 177, 179, 180.

Nachfolgend werden, angeregt durch diese Überlegung, mögliche Grenzen des passiven Opferdiskurses erläutert, um anschliessend die Frage zu erörtern, inwiefern die Inverantwortungnahme ehemaliger Kindersoldat:innen[52] mit dem Prinzip des Kindeswohls vereinbar ist. Abschliessend wird auf den Diskurs über die Anerkennung der Handlungsfähigkeit von Kindersoldat:innen eingegangen und für ein alternatives Verständnis von Verantwortung plädiert.

Die Grenzen des passiven Opferdiskurses

Der Diskurs des rein passiven Opfers stösst laut mehreren wissenschaftlichen Forschenden an seine Grenzen. Zum einen beschränkt er die Erfahrungen dieser Kinder auf eine einzige, akzeptierte Identität, die des Opfers, und friert sie gewissermassen in dieser Rolle ein, was eine entmachtende Wirkung hat. Zum anderen entspricht dieses Bild oft nicht der Selbstwahrnehmung der Kindersoldat:innen, die ihre Teilnahme am Konflikt teilweise als bedeutungsvoll empfinden, etwa als Beitrag zu einer politischen Sache.[53] Diese Reduktion kann von den Betroffenen als bevormundend empfunden werden. Entsprechend berichten manche ehemalige Kindersoldat:innen in Sierra Leone, dass ihnen durch die Teilnahme am Konflikt trotz ihres Status als Kinder mit Respekt begegnet worden sei.[54] Auch werden legitime Gründe für die Teilnahme an bewaffneten Gruppen sowie die zugrunde liegenden Konfliktursachen nicht anerkannt, beispielsweise wenn Kinder sich aus einem Gefühl der Vernachlässigung den Streitkräften oder bewaffneten Gruppierungen anschliessen.[55]

Gleichzeitig blendet der passive Opferdiskurs die Bandbreite der Handlungsfähigkeit[56] aus, welche als die Fähigkeit von Individuen definiert werden kann, soziale Erfahrungen zu verarbeiten und selbst unter extremen Zwängen Wege zum Umgang mit dem Leben zu finden. Die Handlungsfähigkeit umfasst sowohl positive als auch negative Dimensionen.[57] Positiv bedeutet, dass Kindersoldat:innen als fähige soziale Akteur:innen betrachtet werden, die an Konflikten und/oder Massnahmen für den Wiederaufbau teilnehmen können. Negativ bedeutet, dass mit ihrer unmittelbaren Teilnahme an bewaffneten Konflikten auch ihre Verantwortung *anerkannt* wird. Das passive Opferbild leugnet beide Dimensionen der Handlungsfähigkeit: die positive, weil ihnen die

52 Die Untersuchung beschränkt sich hier auf eine mögliche Inverantwortungnahme ehemaliger Kindersoldat:innen, welche sich unmittelbar an Feindseligkeiten beteiligt haben.

53 Michael Wessells, *Child Soldiers: from violence to protection* (Harvard University Press, 2006), S. 52.

54 Denov, *Child Soldiers*, S. 112, 113, 143.

55 Vgl. Peters, Krijn, Paul Richards, «Why we fight»: voices of youth combatants in Sierra Leone, *Africa Journal of the International African Institute* Band 68, Ausg. 2 (1998): S. 183–210, 187.

56 Dabei wird in dieser Untersuchung der Begriff der Handlungsfähigkeit nicht im rechtlichen Sinne verwendet.

57 Vgl. Norman Long, From Paradigm Lost to Paradigm Regained? The Case for an Actor-oriented Sociology of Development, *European Review of Latin American and Caribbean Studies* Band 49 (1990): S. 3–24, 8.

Fähigkeit zu eigenständigem Handeln abgesprochen wird, und die negative, weil ihnen jegliche Verantwortung für ihr Handeln während und auch nach Konflikten *abgenommen* wird.

Nicht zuletzt hebt die Politikwissenschaftlerin Kirsten Fisher hervor, dass ein einseitiger Fokus auf die Opferrolle die Reintegration behindern könne, da komplexe Gefühle von Schuld, Scham und Verantwortung, die viele Kindersoldat:innen empfinden, so nicht adressiert würden. Ihnen würde die Möglichkeit genommen, Verantwortung für ihr Handeln zu übernehmen. Dadurch bleiben auch die inneren Konflikte innerhalb der Gemeinschaft ausser Acht, die aus unterschiedlichen Wahrnehmungen von Schuld, Verantwortung und Opferstatus entstehen.[58] In den Gemeinschaften, die sie wieder aufnehmen, findet das rein passive Opfernarrativ oft keinen Anklang. NGOs argumentieren zwar, dass Kinder aufgrund ihres Alters nicht für ihre Taten verantwortlich seien, doch wird diese Perspektive nicht immer akzeptiert. Bedingungslose Vergebung, wie sie gefordert wird, kann die Möglichkeiten lokaler Gemeinschaften übersteigen und ihren Erwartungen widersprechen.[59] Besonders für die Opfer von Kindersoldat:innen kann dieses Narrativ als Einschränkung ihrer Rechte und Interessen empfunden werden. Häufig erleben zurückkehrende Kindersoldat:innen Ablehnung und Stigmatisierung durch ihre Gemeinschaften, deren Reaktionen auf Gefühlen von Trauer, Wut oder Angst beruhen können. Werden diese Emotionen nicht adressiert, bleibt die Stigmatisierung bestehen oder verstärkt sich sogar.[60] Auch betroffenen Kindersoldat:innen selbst wird dieses Bild vermutlich oft vermittelt. Ishmael Beah, ein ehemaliger Kindersoldat, schreibt in seiner Biografie:

> «In the morning I would feel one of the staff members wrap a blanket around me saying, 'This isn't your fault, you know. It really isn't. [...]'», «'none of these things are your fault', she would always say sternly at the end of every conversation. Even though I had always heard that phrase from every staff member – and frankly I had always hated it – I began that day to believe it.»[61]

Einklang mit dem Kindeswohl

Die Kinderrechtskonvention von 1989 sowie deren Zusatzprotokolle bieten eine normative Grundlage, um das Kindeswohl in den Mittelpunkt der internationalen Bemühungen zu rücken. Die erreichte Vereinheitlichung internationaler Standards im Hinblick auf die Rechte des Kindes unterstreicht die Anerkennung von Kindern als eigenständige Rechtssubjekte mit spezifischen Rechten und fördert ihre aktive Teilhabe. Kinder haben das Recht, gehört zu werden, ihre

58 Fisher, *Transitional justice for child soldiers*, S. 59.
59 Drumbl, *Reimagining Child Soldiers*, S. 38, 40.
60 Steinl, *Child Soldiers as Agents of War and Peace*, S. 29.
61 Beah, *A long way gone*, S. 151, 165.

Meinungen zu äussern und an Entscheidungen mitzuwirken, die sie betreffen. Ihre Identitäten und Perspektiven sind zu respektieren und in Entscheidungsprozesse einzubeziehen. Gemäss der Kinderrechtskonvention ist das Kindeswohl prioritär, um eine ganzheitliche Entwicklung sicherzustellen. Die Förderung der Entwicklung von Kindern umfasst physische, mentale und soziale Dimensionen. Dabei ist es wesentlich, gesellschaftliche und kulturelle Kontexte zu beachten, um eine umfassende Entfaltung zu gewährleisten.

Laut UNO-Ausschuss für die Rechte des Kindes ist die Identität des Kindes ein wichtiger Aspekt, der in der Bewertung des Kindeswohls nach Art. 3 der Kinderrechtskonvention berücksichtigt werden muss. Die Identität des Kindes umfasst Merkmale wie Geschlecht, sexuelle Orientierung, nationale Herkunft, Religion und Glaube, kulturelle Identität und Persönlichkeit.[62] Das Prinzip 3.6 der *Paris Principles*[63] spricht die Dualität der Identität straffälliger Kindersoldat:innen an und bekräftigt zugleich die Position der internationalen Gemeinschaft in der Debatte, indem sie Kinder, die wegen völkerrechtlicher Verbrechen angeklagt sind, während sie mit Streitkräften oder bewaffneten Gruppen in Verbindung standen, in erster Linie als Opfer von Verstössen gegen das Völkerrecht und nicht *nur* als Täter:innen betrachtet. So fordert beispielsweise der UNO-Generalsekretär in seinem letzten jährlichen Bericht *Children and Armed Conflict* die Mitgliedstaaten auf, Kinder, die tatsächlich oder mutmasslich mit bewaffneten Kräften oder Gruppen, einschliesslich solcher, die von den Vereinten Nationen als terroristische Gruppen eingestuft werden, in Verbindung stehen, *in erster Linie* als Opfer zu betrachten.[64] Klar wird, dass beiden Identitäten Gehör geschenkt werden kann, wobei die Interessen und das Wohlergehen des Kindes stets im Vordergrund stehen sollten. Dies legt nahe, dass es mit dem Kindeswohl nicht unvereinbar sein kann, wenn ehemalige Kindersoldat:innen für begangene Taten Verantwortung übernehmen.

Die ganzheitliche Anerkennung der Dimensionen der Handlungsfähigkeit ist entscheidend, um neben der physischen und mentalen auch die soziale Entwicklung ehemaliger Kindersoldat:innen zu fördern und ihre Reintegration zu ermöglichen. Der Konflikt in Sierra Leone, geprägt von Gräueltaten, die von sehr jungen Kämpfer:innen verübt wurden, zeigt dies beispielhaft auf.

62 UN Committee on the Rights of the Child, General Comment No. 14, Para. 55.

63 Die *Paris Principles*, mit vollem Namen *Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*, beinhalten Leitlinien zum Schutz von Kindern, die in bewaffneten Konflikten als Kindersoldat:innen eingesetzt werden oder anderweitig mit bewaffneten Gruppen in Verbindung stehen. Die *Paris Principles* sind zwar nicht rechtlich bindend, stellen jedoch einen wichtigen internationalen Standard dar, auf den sich Regierungen, NGOs und internationale Organisationen stützen, um Massnahmen zur Prävention, Demobilisierung und Wiedereingliederung von Kindersoldat:innen umzusetzen.

64 Vgl. UN General Assembly/UN Security Council, Children and Armed Conflict: Report of the Secretary-General, 16. Juni 2026. A/80/723-S/2026/357, Para. 326.

Kindersoldat:innen kämpften in den Reihen der Rebellenbewegung *Revolutionary United Front*, der Zivilverteidigungskräfte und der Militärjunta des *Armed Forces Revolutionary Council*. Die Beteiligung junger Menschen an Gewalt und Kriegsverbrechen hat weitreichende Folgen für die Gesellschaft, die sich nicht nur in unmittelbaren Traumata, sondern auch in langfristigen sozialen Dynamiken niederschlagen. Einige Forschende interpretieren die Stigmatisierung und Diskriminierung ehemaliger Kämpfer:innen als eine subtile Form der Sanktionierung durch die Gesellschaft, die aus dem Fehlen institutionalisierter Alternativen hervorgeht. Zugleich lässt sich die teilweise Akzeptanz dieser Behandlung durch die Betroffenen als Ausdruck von Reue oder implizierter Entschuldigung deuten.[65] Diese Form der Sanktionierung kann zwar zur Bekräftigung verletzter sozialer Normen beitragen, ersetzt aber keine bewährten Mechanismen der Vergangenheitsbewältigung.

Verantwortung neu gedacht

Der Diskurs über die Anerkennung der Handlungsfähigkeit von Kindersoldat:innen bleibt häufig von der Idee der Verantwortung abgekoppelt. Selbst unter Wissenschaftler:innen und NGOs, die die Handlungsfähigkeit von Kindersoldat:innen anerkennen, zeigt sich eine klare Tendenz, das Thema Verantwortung zu meiden.[66] Auch mangelt es an politischem Willen, jene Kindersoldat:innen zur Verantwortung zu ziehen, die nach internationalen und nationalen Standards sowohl als Opfer als auch als Täter:innen gelten.[67] Dies liegt vermutlich daran, dass Verantwortungsübernahme oft eng mit strafrechtlicher Verfolgung und Bestrafung assoziiert wird. Diese Zurückhaltung könnte auf einer zu engen Auffassung des Verantwortungsbegriffs beruhen. Verantwortung zu übernehmen, bedeutet nicht zwangsläufig, dass strafrechtliche Massnahmen[68] ergriffen werden müssen. Während strafrechtliche Verantwortung in bestimmten Fällen eine geeignete und

65 Vgl. Martien Schotsmans, *NO RETURN HOME The (Non-)Reintegration of Youth Ex-Combatants in Sierra Leone as a Challenge to the Contextualisation of DDR and Transitional Justice*, in *Re-Member: Rehabilitation, Reintegration and Reconciliation of War-Affected Children*. Series on Transitional Justice, hg. von Ilse Derluyn, Cindy Mels, Stephan Parmentier, Wouter Vandenhole (Intersentia, 2012): S. 215–242, 226.; vgl. Johanna Boersch-Supan, What the Communities Say: The Crossroads Between Integration and Reconciliation. What Can Be Learned From the Sierra Leonean Experience?, CRISE Working Paper No. 63. (CRISE, 2009).

66 Steinl, *Child Soldiers as Agents of War and Peace*, S. 33–36.

67 Laura C. Gamarra-Amaya, Prosecuting Child Soldiers: Legal Consequences of the Participation of Children in the Colombian Conflict, *Law and Safety* Band 85, Ausg. 2 (2022): S. 131–139, 131.

68 Nach internationalen Standards sollten Kinder nicht individuell strafrechtlich zur Verantwortung gezogen werden, wenn sie das Strafmündigkeitsalter noch nicht erreicht haben. Da dieses Mindestalter im internationalen Strafrecht jedoch nicht festgelegt ist, wenden die Staaten das in ihren jeweiligen nationalen Rechtsordnungen festgelegte Strafmündigkeitsalter an. Das internationale Strafrecht schliesst also nicht aus, dass Kinder für Verbrechen gegen die Menschlichkeit und Kriegsverbrechen strafrechtlich zur Verantwortung gezogen werden. Allerdings betrachten die meisten nationalen Rechtssysteme Kinder unter einem bestimmten Alter als *doli incapax*, d. h. als unfähig, ein Verbrechen zu begehen, und daher aufgrund mangelnder vollständiger individueller Autonomie von der individuellen strafrechtlichen Verantwortung ausgenommen. Vgl. Magali Maystre, The Interaction between International Refugee Law and International Criminal Law with respect to Child Soldiers, *Journal of International Criminal Justice* Band 12, Ausg. 5 (2014): S. 975–996, 989.

sinnvolle Option darstellen kann, können bei Kindersoldat:innen alternative Formen der Verantwortungsübernahme sinnvoller sein. Das Ziel besteht daher nicht vorrangig in der Bestrafung, sondern darin, die Wiedereingliederung der Kinder in die Gesellschaft zu fördern und zu erleichtern sowie die der Problematik zugrunde liegenden destabilisierenden sozialen Dynamiken durch die Aufarbeitung nachhaltig zu verändern. Dafür braucht es aussergerichtliche Räume, in denen die Verantwortung ehemaliger Kindersoldat:innen für begangene Taten anerkannt wird, ohne sie ihnen pauschal abzusprechen.

Das Konzept der Rechenschaftspflicht aus der Perspektive der *Restorative Justice* beispielsweise betont die Rolle der Täter:innen bei der Wiedergutmachung des verursachten Schadens, indem Täter:innen aktiv Verantwortung übernehmen, anstatt passiv durch Bestrafung zur Rechenschaft gezogen zu werden.[69] Die Betrachtung der Verantwortung aus der Perspektive der drei Hauptakteure der *Restorative Justice*, nämlich Opfer, Täter:in und Gemeinschaft, zeigt, dass Rechenschaftspflicht auf die Bedürfnisse aller Beteiligten ausgerichtet sein kann: Für das Opfer bedeutet Wiedergutmachung, dass der/die Täter:in Verantwortung für die begangenen Handlungen übernimmt und den angerichteten Schaden anerkennt. Für den/die Täter:in ist Rechenschaftspflicht notwendig, da sie eine intersubjektive Komponente der Verantwortung darstellt, die sowohl die Reintegration als auch die Verarbeitung von Schuldgefühlen erleichtert. Die Gemeinschaft benötigt Verantwortungsübernahme, um das Fehlverhalten des/der Täter:in zu missbilligen und die Gültigkeit der verletzten Norm zu bekräftigen.[70]

Von solchen alternativen Massnahmen soll nach Ansicht des Kinderrechtsausschusses in den meisten Fällen Gebrauch gemacht werden. Gemeinnützige Arbeit, Beaufsichtigung und Beratung durch Sozialarbeitende oder Bewährungshelfende, Familienkonferenzen und andere Formen der *Restorative Justice*, einschliesslich der Wiedergutmachung und Entschädigung der Opfer, werden beispielhaft genannt.[71] Wichtig bleibt, dass sich diese Massnahmen mit der Beteiligung der Kinder an Gewalt befassen und so die negative Dimension der Handlungsfähigkeit ansprechen, um gleichzeitig die Kinder zu ermutigen, ihre positive Dimension zu nutzen und Teil der Aufarbeitung des Verbrechens und seiner Auswirkungen zu sein. Dieser Ansatz bietet eine differenziertere Auseinandersetzung mit der Kategorisierung von Opfern und Täter:innen und ebnet den Weg für eine transformative Verarbeitung des erlittenen Unrechts durch die Gemeinschaft.

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69 Steinl, *Child Soldiers as Agents of War and Peace*, S. 300.

70 Vgl. Howard Zehr mit Ali Gohar, *The little Book of Restorative Justice* (Good Books, 2003), S. 13–16.

71 UN Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18. September 2019, CRC/C/GC/24, Para. 16–17.

Diskussion und Schlussbetrachtung

Nicht weniger als sechs bindende internationale Verträge[72] in vier Bereichen des internationalen Rechts verbieten den Einsatz und die Rekrutierung von Kindersoldat:innen. Internationale Menschenrechtsübereinkommen, Verträge des humanitären Völkerrechts sowie internationales Arbeits- und Strafrecht stellen Verpflichtungen auf, um Kinder vor Missbrauch im bewaffneten Konflikt zu schützen. Die grosse Zahl von Kindern, die trotzdem rekrutiert und in bewaffneten Konflikten eingesetzt wird, zeigt die fortwährende Aktualität des Problems auf. Dies unterstreicht zugleich die Herausforderung, die mit der Aufarbeitung des Einsatzes von Kindersoldat:innen einhergeht.

Die Entwicklung der Kinderrechtsbewegung markiert einen grundlegenden Wandel im Verständnis von Kindheit und Kindeswohl. Mit der UNO-Kinderrechtskonvention wurde das Kind nicht länger ausschliesslich als schutzbedürftiges Rechtsobjekt verstanden, sondern als eigenständiges Rechtssubjekt anerkannt, dessen soziale Entwicklung gefördert werden soll und dessen Perspektiven zu respektieren und einzubeziehen sind. Um das Kindeswohl umfassend zu gewährleisten, müssen alle Arten und Aspekte des Einsatzes von Kindern in bewaffneten Konflikten berücksichtigt werden. Oberstes kindeswohlbezogenes Prinzip im Kontext von Kindersoldat:innen ist jedoch, Kinder vor bewaffneten Konflikten zu schützen und ihre Beteiligung daran zu verhindern. Die UNO-Kinderrechtskonvention verbietet die Rekrutierung und den Einsatz von Kindern unter 15 Jahren. Das Zusatzprotokoll erweitert diesen Schutz und untersagt die Zwangsrekrutierung von Personen unter 18 Jahren. Die steigende Zahl von Kindersoldat:innen in bewaffneten Konflikten verdeutlicht indes die Dringlichkeit, umfassendere Ansätze zur Aufarbeitung und Prävention dieser Problematik zu entwickeln. Obwohl der IStGH eine zentrale Rolle bei der strafrechtlichen Verfolgung und Prävention von Kriegsverbrechen spielt, sind seine Reichweite und Ressourcen begrenzt. Ein ganzheitlicher Ansatz zur Vergangenheitsbewältigung kann einen wichtigen Beitrag zur Konflikttransformation und Versöhnung leisten.

Ehemalige Kindersoldat:innen sind nicht nur wehrlose Opfer oder skrupellose Kinder, die schreckliche Verbrechen begangen haben. Sie sind auch Kinder, die möglicherweise wichtige Fähigkeiten und Führungserfahrungen entwickelt haben, die ihnen zu grösserem Selbstvertrauen, grösserer Eigenständigkeit und Reife gegenüber Gleichaltrigen verholfen haben können.[73] Gerechtigkeitsmechanismen nach Konflikten sollten die durch die Rekrutierung des Kindes

72 Insbesondere Art. 77 Zusatzprotokoll I und Art. 4(3)(c) Zusatzprotokoll II der Genfer Konventionen; Art. 38 KRK; Art. 1 und 4 des OPAC; Art. 3 lit. a ILO Convention Nr. 182; Art. 8(2)(b)(xxvi) und (e)(vii) des Römer Statuts.

73 Vgl. Angela Veale, The criminal responsibility of former child soldiers: contributions from psychology, in *International Criminal Accountability and the Rights of Children*, hg. von Karin Arts und Vesselin Popovski (Hague Academic Press, 2006): S. 97–108, 100.

verursachte Veränderung der Identität sowohl in der Fremdwahrnehmung als auch in der Selbstwahrnehmung einbeziehen. In diesem Zusammenhang darf die brutale Kindheit ehemaliger Kindersoldat:innen nicht ignoriert werden; ebenso sollten ihre Erlebnisse als Teil einer bewaffneten Gruppe berücksichtigt werden. Obwohl sie ihrem Alter nach noch Kinder sein können, haben sie durch ihre Rekrutierung oft ein Mass an Reife erlangt, das für Gleichaltrige ungewöhnlich ist. Gleichzeitig können sie durch die Verbrechen, die sie erlitten haben, und möglicherweise auch durch die, die sie selbst begangen haben, ihre kindliche Unschuld verloren haben.

Die Auseinandersetzung mit der Vergangenheit zielt darauf ab, kriegsfördernde Strukturen und Machtverhältnisse zu verändern. Daraus leitet sich das Ziel ab, den Einsatz von Kindern in bewaffneten Konflikten nachhaltig zu unterbinden. Ein zentraler Aspekt dieses transformativen Ansatzes im Rahmen der Aufarbeitung des Einsatzes von Kindersoldat:innen besteht in der Überwindung der dichotomen Gegenüberstellung von Opfern und Täter:innen, basierend auf der Anerkennung, dass Identitäten und Beziehungen nicht statisch sind, und dass der Umgang mit der Vergangenheit die Komplexität sowohl individueller als auch kollektiver Erfahrungen einbeziehen muss. Eine ausschliesslich opferzentrierte Betrachtungsweise läuft Gefahr, die Handlungsfähigkeit der betroffenen Kinder auszublenden und bestehende Spannungen innerhalb der Gemeinschaften zu verfestigen. Werden Fragen von Schuld, Verantwortung, Reue und sozialer Anerkennung nicht angesprochen, können Stigmatisierung, Ablehnung und gesellschaftliche Ausgrenzung fortbestehen und die Reintegration erschweren. Darüber hinaus steht die Anerkennung einer gewissen Verantwortlichkeit ehemaliger Kindersoldat:innen für begangene Taten nicht per se im Widerspruch zum Kindeswohl, solange sie nicht primär repressiv verstanden wird. Vielmehr kann eine kindgerechte Form der Verantwortungsübernahme einen wichtigen Beitrag zur sozialen Wiedereingliederung, zur Verarbeitung des erlebten Unrechts und zur Wiederherstellung sozialer Beziehungen leisten. Die Aufarbeitung des Einsatzes von Kindersoldat:innen im Rahmen von Mechanismen der Vergangenheitsbewältigung erfordert daher einen differenzierten Ansatz, der Schutz, Beteiligung und Verantwortungsübernahme zusammendenkt.

Abkürzungsverzeichnis

Art.	Artikel
Engl.	englisch
IKRK	Internationales Komitee vom Roten Kreuz
ILO	International Labour Organization
IStGH	Internationaler Strafgerichtshof
KRK	Übereinkommen über die Rechte des Kindes vom 20. November 1989 (UNO-Kinderrechtskonvention)
NGO	Non-Governmental Organization; Nichtregierungsorganisation
OHCHR	Office of the High Commissioner for Human Rights; Büro des Hohen Kommissars der Vereinten Nationen für Menschenrechte
OPAC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; Fakultativprotokoll zum Übereinkommen über die Rechte des Kindes betreffend die Beteiligung von Kindern an bewaffneten Konflikten
Para.	Paragraph
Römer Statut	Römer Statut des Internationalen Strafgerichtshofs
S.	Seite
u.a.	Unter anderem
UNICEF	United Nations Children's Fund; Kinderhilfswerk der Vereinten Nationen
UNO	Organisation der Vereinten Nationen
ZP I	Zusatzprotokoll zu den Genfer Abkommen vom 12. August 1949 über den Schutz der Opfer internationaler bewaffneter Konflikte
ZP II	Zusatzprotokoll zu den Genfer Abkommen vom 12. August 1949 über den Schutz der Opfer nicht internationaler bewaffneter Konflikte

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Emanuel Sebastian De Seta

Navigating the Age of Giants
The Switzerland-China Free Trade Agreement and Small State Grand Strategy in Times of Great Power Competition

Abstract: Globalisation and the post-Cold War international order are being eroded by great power competition and global economic fragmentation. These trends disproportionately affect small states, which are particularly dependent on international trade. In this context, bilateral free trade agreements (FTAs) entail important strategic implications. Drawing on small states theory, neoclassical realism and international trade theory, I assemble a theoretical framework to describe the grand strategies available to small states in times of great power competition. I then conduct a qualitative case study analysis of the FTA between Switzerland and China. I conclude that, in the current geopolitical and economic environment, bilateral FTAs represent an insurance policy guaranteeing continued market access. Therefore, FTAs can shift the grand strategy of a small state towards closer association with its trade partner. However, this shift must be contextualised within the small state's broader foreign policy, which is also influenced by other (often more significant) imperatives.

Keywords: Small States, Swiss Foreign Policy, Grand Strategy, International Trade, Great Power Competition

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Introduction

The era inaugurated by the fall of the Berlin Wall in 1989 is over. Its two pillars, namely a unipolar international order and economic globalisation, have significantly eroded over the last two decades.

The post-Cold War international order, based on liberal international institutions and American hegemony, is increasingly being eroded by pressure from both its architects and its challengers. In the US and Western Europe, the structural socio-economic divide between those who reaped the benefits of globalisation and those consigned to its margins was exacerbated by the 2008 financial crisis:[1] "Globalization became associated to [*sic*] deindustrialization, unemployment and income inequality."[2] Facing mounting domestic discontent, countries at the core of the international system started to "break with international agreements, institutions, alliances and the global economy to protect distinctly national interests and agendas."[3] In parallel, China and Russia, which had previously shelved their strategic ambitions to pursue integration into the global economy,[4] began openly expressing their dissatisfaction with the US-led international order and embracing distinctly revisionist foreign policies.[5] Overall, the international system appears to be shifting from unipolarity to multipolarity, fuelling the resurgence of global geopolitical competition among great powers.[6]

Great power competition is driving a gradual fragmentation of the global economy. As geopolitical tensions rise, major economic powers such as the US, China and the EU have gradually reframed international trade as a security threat and a source of vulnerability. In particular, these powers are seeking to reduce their reliance on foreign supply chains in sectors that are considered vital to national security (such as advanced technologies), potentially resulting in a gradual economic and technological 'decoupling' worldwide. The US maintains a policy of sustained economic competition with China: in addition to tariffs, Washington leverages heavy subsidies and trade restrictions in high-tech industries to preserve technological superiority through the

1 Dani Rodrik, "Populism and the economics of globalization", *Journal of International Business Policy* 1, nos. 1–2 (2018): https://doi.org/10.1057/s42214-018-0001-4.

2 Hubert Escaith, "From Hyper-Globalization to Global Value Chains Decoupling: Withering Global Trade Governance?", *Journal of Applied Economic Sciences* 17, no. 4 (78) (2022): 406, https://doi.org/10.57017/jaes.v17.4(78).11.

3 Norrin M. Ripsman, "Globalization, deglobalization and Great Power politics", *International Affairs* 97, no. 5 (2021): 1329, https://doi.org/10.1093/ia/iiab091.

4 Ripsman, "Globalization, deglobalization and Great Power politics", 1325–27.

5 Gerlinde Groitl, *Russia, China and the Revisionist Assault on the Western Liberal International Order* (Palgrave Macmillan, 2023), https://doi.org/10.1007/978-3-031-18659-2; Kai He et al., "Rethinking Revisionism in World Politics", *The Chinese Journal of International Politics* 14, no. 2 (2021): https://doi.org/10.1093/cjip/poab004.

6 Hanna Samir Kassab, *Globalization, Multipolarity and Great Power Competition* (Routledge, 2023).

decoupling of supply chains.[7] Since the late 2010s, the EU's position has also hardened: Brussels now considers Beijing a systemic competitor and has adopted measures to disentangle its economy from Chinese imports in critical sectors.[8] Meanwhile, China is seeking a higher degree of economic autonomy by boosting domestic demand (through its 'double circulation' strategy)[9] and reducing its reliance on technology imports (through the 'Made in China 2025' initiative).[10]

Small states are disproportionately affected by the repercussions of great power competition and global economic fragmentation. As I will illustrate, their reliance on international trade makes them especially dependent on geopolitical stability and economic globalisation, which are currently eroding. Understanding how small states navigate today's increasingly challenging global environment is therefore crucial for academics and policymakers alike.

I claim that small states may employ bilateral free trade agreements (FTAs) as a strategic instrument to navigate geopolitical tensions and economic fragmentation. More precisely, I interpret FTAs as an insurance policy aimed at guaranteeing continued access to the domestic market of major economic partners. From this perspective, I argue that the bilateral FTAs concluded by small states have profound strategic implications and must therefore be considered in the broader context of a small state's grand strategy. In particular, FTAs can shift the strategic positioning of a small state towards closer association with its trade partner, especially if the latter is directly involved in the great power competition. However, this shift is not necessarily spectacular, since the small state's foreign policy is also influenced by other – often more significant – strategic imperatives.

To test the validity of my reasoning, I have conducted a qualitative case study of the Switzerland-China Free Trade Agreement (SCFTA).[11] As a small country that benefits from economic globali-

7 David Capie et al., "The Economics-Security Nexus in the US-China Trade Conflict decoupling dilemmas", *Policy Quarterly* 16, no. 4 (2020): https://doi.org/10.26686/pq.v16i4.6627; Kevin Honglin Zhang, "U.S.-China Economic Links and Technological Decoupling", *The Chinese Economy* 56, no. 5 (2023): https://doi.org/10.1080/10971475.2023.2173399; Ze Zhang, "Mapping U.S.-China technological 'decoupling': Beyond U.S.-China relations", *Environment and Planning B: Urban Analytics and City Science* 50, no. 7 (2023): https://doi.org/10.1177/23998083231189938.

8 Zhongping Feng, "Internal and external factors affecting China-EU relations", *China International Strategy Review* 4, no. 1 (2022): https://doi.org/10.1007/s42533-022-00108-z; Duncan Freeman, "The EU and China: policy perceptions of economic cooperation and competition", *Asia-Europe Journal* 20, no. 3 (2022): https://doi.org/10.1007/s10308-021-00609-3; Shuxiao Kuang et al., "The rise and fall of the EU-China Comprehensive Agreement on Investment: 'open strategic autonomy' in action", *Journal of Contemporary European Studies* 32, no. 3 (2024): https://doi.org/10.1080/14782804.2023.2293779.

9 Justin Yifu Lin, "What does China's 'dual circulations' development paradigm mean and how it can be achieved?", *China Economic Journal* 14, no. 2 (2021): https://doi.org/10.1080/17538963.2021.1933053.

10 Derek Adam Levine, "Made in China 2025: China's Strategy for Becoming a Global High-Tech Superpower and its Implications for the U.S. Economy, National Security, and Free Trade", *Journal of Strategic Security* 13, no. 3 (2020): https://doi.org/10.5038/1944-0472.13.3.1833.

11 The abbreviation 'SCFTA', used here to improve readability, is not official.

sation but is not a member of any military alliance or customs union, Switzerland provides an instructive case for my analysis. Among Switzerland's bilateral FTAs, the SCFTA has the most far-reaching strategic implications. China is a key economic partner for Switzerland, ranking third (after the EU and the US) in terms of bilateral trade volumes.[12] At the same time, the geopolitical and economic rivalry between China and the US might make it challenging for Switzerland – whose partnership with the US extends far beyond trade – to maintain close relations with both great powers in the future, especially if technological decoupling intensifies.[13] By researching how the SCFTA relates to Switzerland's strategic positioning in the competition between two of its most important economic partners, I elucidate the relevance of FTAs for small states navigating similar strategic conditions.

My argument comprises a theoretical section and a case study section. In the former, drawing on small states theory, international trade theory and neoclassical realism, I assemble an interdisciplinary theoretical framework to describe the grand strategies available to small states in the context of great power competition and global economic fragmentation. In the latter, I analyse the concrete strategic implications of the SCFTA for Switzerland. My findings rest on a qualitative analysis of approximately 100 official documents published by Swiss authorities (including the text of the agreement, press releases, joint statements, policy papers, government reports and parliamentary debates), as well as publicly available trade data and interviews with two Swiss federal government officials involved in the negotiation of the SCFTA.

Theory: Small States, Trade and Grand Strategy

What are small states?

Before explaining why they are particularly disadvantaged by ongoing global trends, I will provide a working definition of small states and, drawing from the field of small states theory, briefly illustrate the importance of studying international affairs through the prism of state size.

Small states have long been understudied in international relations theory and are seldom defined precisely. Despite constituting the majority of the world's countries, small states are a

12 Source: own calculations; data: Observatory of Economic Complexity (OEC), "HS6 REV. 1992 (1995–2022)", dataset (2024): https://oec.world/en/resources/bulk-download/international (accessed 22 December 2024).

13 Sophie-Charlotte Fischer, "US-China 'tech decoupling': A Swiss perspective", *Policy Perspectives* 10, no. 10 (2022): https://css.ethz.ch/en/center/CSS-news/2022/09/us-china-tech-decoupling-a-swiss-perspective.html (accessed 22 December 2024).

defective category, as they are primarily defined by not being great powers.[14] In addition, every definition of small states is to some extent arbitrary, as there are no 'natural thresholds' in country size.[15]

My objective is not to propose a universal definition of small states, but rather to thematise the challenges and strategic options associated with smallness in the current geopolitical and economic environment. Smallness must be conceived not in absolute but rather in relational terms: a state can only qualify as 'large' or 'small' in comparison with other states.[16] Furthermore, smallness has an important subjective component: a state's position in the international order arises not only from material conditions (such as population, land area, GDP and military capacity) but also from psychological and performative factors (such as international prestige, internal cohesion and ideology).[17] Keohane integrates these nuances by defining a small state as one "whose leaders consider that it can never, acting alone or in a small group, make a significant impact on the [international] system."[18]

Crucially, defining small states as having little influence on international politics is simplistic: one must determine *in which specific contexts* they are capable or incapable of influencing world events. On a thematic level, states possess varying degrees of 'issue-specific power' depending on which particular global issue is at stake.[19] Indeed, even unambiguously small states can 'punch above their weight' in selected fields of international politics.[20] On a geographic level, the global power of a state is often a poor predictor of its ability to act effectively in a particular region, since regional dynamics often differ from global ones.[21] Furthermore, regions themselves

14 Iver B. Neumann and Sieglinde Gstöhl, "Introduction: Lilliputians in Gulliver's World?", in *Small States in International Relations*, ed. Christine Ingebritsen et al. (University of Washington Press and University of Iceland Press, 2006), 4–6.
15 Neumann and Gstöhl, "Lilliputians in Gulliver's World?", 6.
16 Neumann and Gstöhl, "Lilliputians in Gulliver's World?", 6–7; Baldur Thorhallsson, "Studying small states: A review", *Small States & Territories* 1, no. 1 (2018): 19–20, https://www.um.edu.mt/library/oar/handle/123456789/44443 (accessed 22 December 2024); Baldur Thorhallsson et al., "The Small State in International Relations", in *Small States and Shelter Theory: Iceland's External Affairs*, ed. Baldur Thorhallsson (Routledge, 2019), 15.
17 Robert O. Keohane, "Lilliputians' Dilemmas: Small States in International Politics", *International Organization* 23, no. 2 (1969): 295–97, https://doi.org/10.1017/S002081830003160X; Michael Beckley, "The Power of Nations: Measuring What Matters", *International Security* 43, no. 2 (2018): https://doi.org/10.1162/isec_a_00328; Thorhallsson, "Studying small states", 18–19; Thorhallsson et al., "The Small State in International Relations", 16.
18 Keohane, "Lilliputians' Dilemmas", 296.
19 Robert O. Keohane and Joseph S. Nye Jr., *Power and Interdependence*, 4th ed., Pearson, 2011 (1977); Neumann and Gstöhl, "Lilliputians in Gulliver's World?", 8.
20 William Mark Habeeb, *Power and Tactics in International Negotiation: How Weak Nations Bargain with Strong Nations* (Johns Hopkins University Press, 1988); Anders Wivel, "The Grand Strategies of Small States", in *The Oxford Handbook of Grand Strategy*, ed. Thierry Balzacq and Ronald R. Krebs (Oxford University Press, 2021), 498–99, https://doi.org/10.1093/oxfordhb/9780198840299.013.32.
21 Barry Buzan and Ole Wæver, *Regions and Powers: The Structure of International Security* (Cambridge University Press, 2003).

are not a priori defined structures, but mutable social constructions endogenous to international politics: such 'politics of scale' are an integral component of how a state performs its size.[22]

In light of these considerations, I propose the following definition: "*A small state is a state which, in addition to being considered small by most material metrics (population, land area, economy and military), is deemed capable (by itself and by others) of playing an influential role in international politics in only a few specific geographic and/or thematic settings.*" This definition will serve as the starting point of my reflections on the grand strategy of small states and is intimately tied to the concept of comparative advantage, which I discuss in the next subsection.

Small states and international trade

Having defined thematic and geographical specialisation as the main characteristic of small states, I now turn to international trade theory to investigate another crucial phenomenon: their *economic* specialisation. Integrating insights from international trade theory is more than a routine step in research on FTAs: trade is central to small states' strategic imperatives.

Small states' tendency to specialise in a few domains and their subsequent reliance on trade can be explored through Ricardo's classic model of international trade. This model shows that two countries (*Home* and *Foreign**) producing two goods with different levels of productivity benefit from mutual trade, because trade enables each of them to specialise in exporting the good it produces more efficiently and to import the good it produces less efficiently. In other words, trade creates wealth by exploiting relative differences in productivity. These differences, called 'comparative advantages', constitute the core principle of international trade. If Ricardo's model is applied to two countries which significantly differ in terms of size, the smaller country, *ceteris paribus*, has smaller production capabilities and is therefore more likely to use them to produce only the good for which it has a comparative advantage. As a result of this high degree of specialisation, the smaller country "tends to benefit relatively more from trade compared to a large country due to the fact that the relative free-trade price is closer to the opportunity cost of the large country."[23] In sum, the greater the difference in size between the two countries is, the more the small country specialises and the more it benefits from trade.

22 Miriam Prys-Hansen et al., "Regional powers and the politics of scale", *International Politics* 61, no. 1 (2024): https://doi.org/10.1057/s41311-023-00462-8.

23 Rolf Weder, "The Standard Ricardian Trade Model", in *200 Years of Ricardian Trade Theory: Challenges of Globalization*, ed. Ronald W. Jones and Rolf Weder (Springer, 2017), 63, https://doi.org/10.1007/978-3-319-60606-4_4.

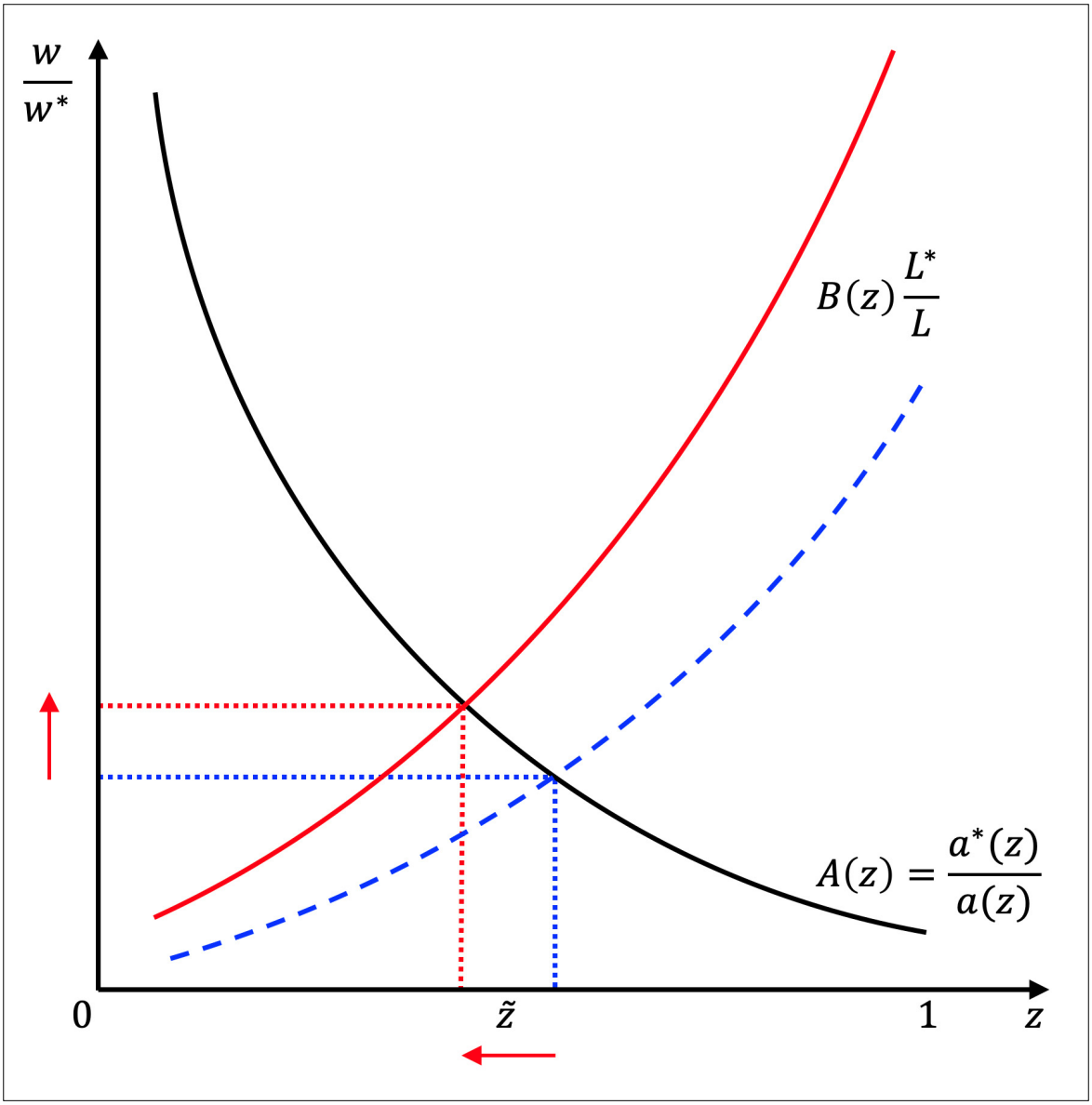

Figure 1: The effects of changing relative size on the Ricardian model of international trade for a continuum of goods. Source: own representation, adapted from Weder, "The Standard Ricardian Trade Model," 63.

The extension of Ricardo's model to a potentially infinite number of goods confirms that, upon trade liberalisation, *ceteris paribus*, a small country specialises in producing a small number of goods and benefits disproportionately from trade. (*Fig. 1*) Ricardo's classical model can be extended to a potentially infinite number of goods by indexing these by z on the continuous interval *[0,1]* according to *Home*'s diminishing comparative advantage *w/w**. This results in the continuous and monotonically decreasing function *A(z)*, graphically represented by the black line. If trade is liberalised and consumer preferences *B(z)* are homogeneous, the most efficient international allocation of labour corresponds to the product of *B(z)* and the relative size of *Home*'s labour *L*/L*, represented by the blue line. The equation *A(z) = B(z)L*/L* identifies the free-trade equilibrium (represented by the intersection of the black and blue lines), whereby goods in the

interval *[0,z̃]* are exclusively produced by Home, good *z̃* is produced by both countries and goods in the interval *[z̃,1]* are exclusively produced by *Foreign**. As depicted, if the relative size of the two countries is changed in favour of *Foreign** (substituting the blue line with the red line), the market equilibrium is altered. Since *L*/L* rises, *z̃* decreases and *w/w** increases. In other words, a smaller *Home* specialises in the production of a smaller number of goods, but, because it enjoys truly strong comparative advantages in those sectors, it becomes relatively wealthier compared to *Foreign**.

According to new trade theory, the actual benefits of trade liberalisation may far surpass those forecasted by classical models: this is particularly true for small states, which disproportionately benefit from trade-induced external economies of scale and competition. Regarding the former, new trade theory predicts that the creation of external economies of scale resulting from the geographic concentration of certain industries in highly specialised districts is favoured and accelerated by trade liberalisation.[24] I claim that such external economies of scale are even more advantageous in small states, since the internal economies of scale that domestic firms can exploit are more limited there. In small economies, international trade enables a few industries to create economic districts of worldwide importance. Regarding competition, new trade theory predicts that, in industries where the assumption of monopolistic competition holds, market opening results in a massive boost in productivity, since international intra-sector competition wipes out the least competitive domestic firms while rewarding the most competitive ones.[25] This principle is particularly powerful when applied to small economies. Indeed, in a small state under autarky, most economic sectors where there are economies of scale are likely to be dominated by very few firms, possibly even by a single monopolist, making an increase in intra-sector competition even more valuable.

While it partially offsets some drawbacks associated with small size, international trade itself constitutes a potential source of vulnerability for small states: I term this insight the 'small state trade strategic paradox'. Indeed, small states are not simply scaled-down versions of their larger counterparts but suboptimal economic units, since their production factors and domestic demand are insufficient to sustain a functional domestic market in most sectors. International trade theory shows that a small state can alleviate this handicap and even thrive by specialising in the few sectors where it enjoys comparative advantages. Specialisation, however, creates a double vulnerability: small open economies rely on foreign markets not only to sell their few

24 Paul R. Krugman et al., *International Economics: Theory and Policy*, 11th ed. (Essex: Pearson, 2018), 179–95.
25 Paul R. Krugman et al., *International Economics*, 198–220.

exports but also to import nearly everything else. In such economies, even slight variations in world prices can generate devastating shocks.[26] The small state trade strategic paradox is at the core of the strategic constraints and opportunities associated with smallness, which I analyse in the next subsection.

Small states and grand strategy

Having examined the characteristics of small states in international politics and economics, I introduce relevant key concepts from small states theory to illustrate how small states are able to mitigate their size-related problems and often even thrive in international affairs.

According to Thorhallsson, small states alleviate their size-related problems primarily by associating with larger entities, from which they 'seek shelter'. The challenges associated with smallness, indeed, are not limited to the small state trade strategic paradox described in the previous subsection but also extend to a country's politics and society. Politically, small states are at a disadvantage because of their vulnerability to military threats, limited diplomatic influence and reduced domestic institutional capacity.[27] Societally, small size "has profound disadvantages for states when it comes to technological, educational and cultural ideas and practices".[28] A shelter-seeking strategy has the chief objective of overcoming the downsides of smallness. This may take many forms, such as entering a military alliance with a great power, joining an international organisation or forming a confederation. Notably, shelter can be provided by both other states and international organisations. Shelter-seeking is often quite costly, as the small state usually surrenders part of its autonomy. Therefore, the costs of shelter must be compared with the costs of its alternatives, including internal compensation measures and alternative shelters.[29]

I argue that the degree of freedom and success with which small states pursue their interests largely depends on the level of shelter provided by the international system. My claim seeks to contextualise opposing theoretical attitudes towards small states. To simplify, realist scholars tend to be pessimistic with regard to them, since, in an anarchic world, smaller capabilities translate into greater vulnerability to coercion and conquest. Liberal authors, by contrast, stressing the mitigation of anarchy through trade and international institutions, deem small states able to

26 Harvey W. Armstrong and Robert Read, "The determinants of economic growth in small states", *The Round Table* 92, no. 368 (2003): https://doi.org/10.1080/750456745; Baldur Thorhallsson and Sverrir Steinsson, "A Theory of Shelter", in *Small States and Shelter Theory: Iceland's External Affairs*, ed. Baldur Thorhallsson (Routledge, 2019), 35–40.
27 Thorhallsson and Steinsson, "A Theory of Shelter", 26–35.
28 Thorhallsson and Steinsson, "A Theory of Shelter", 40–44.
29 Thorhallsson and Steinsson, "A Theory of Shelter", 44–49.

pursue prosperity through an active international agenda.[30] I contend that the validity of one or the other set of assumptions largely depends on the structure of the international system itself. Politically, realism/pessimism is more relevant in periods of instability and great power competition (when small states are concerned with their direct survival), whereas liberal/optimistic accounts more accurately describe periods of geopolitical stability (when small states thrive and multiply).[31] In other words, geopolitical stability and international institutions act as a worldwide political shelter. Economically, reliance on international trade explains why small states prosper when they are able to trade freely with larger entities, while usually suffering otherwise.[32] Economic integration moderates the small state trade strategic paradox by reducing the risks of market opening: liberalising trade multilaterally is less risky than becoming dependent on one or a few trade partners. In other words, globalisation constitutes an economic (and societal) 'supershelter'. Globalisation and the liberal international order have so far mitigated the downsides of smallness by allowing countries to engage in 'supershelter-seeking': small states must now devise strategies to cope with the erosion of these two pillars of the post-Cold War era.

The grand strategy[33] of small states is traditionally represented as a binary spectrum ranging from shelter-seeking to hiding. Shelter-seeking has already been described in depth. 'Hiding' is its antithesis and means somehow 'opting out' of the international system. This generally involves non-alignment, neutrality and prioritising national autonomy. Hiding takes many forms, but it must be maintained in the long term for it to be a grand strategy: not all types of neutrality equate to hiding. Since the actual foreign policy of a given small state is likely to combine elements of shelter-seeking and hiding,[34] the two policies can be represented on a binary spectrum. *(Fig. 2)*

30 Thorhallsson, "Studying small states", 23–25; Thorhallsson et al., "The Small State in International Relations", 16–19.

31 Tanisha M. Fazal and Ryan D. Griffiths, "Membership Has Its Privileges: The Changing Benefits of Statehood", *International Studies Review* 16, no. 1 (2014): https://doi.org/10.1111/misr.12099.

32 Alberto Alesina, "The Size of Countries: Does It Matter?", *Journal of the European Economic Association* 1, nos. 2–3 (2003): 309–12, https://doi.org/10.1162/154247603322390946.

33 By grand strategy, I refer to the fundamental principles organising a state's long-term military, diplomatic and economic policy. (Nina Silove, "Beyond the Buzzword: The Three Meanings of 'Grand Strategy'", *Security Studies* 27, no. 1 (2018): 39–42, https://doi.org/10.1080/09636412.2017.1360073.)

34 Wivel, "The Grand Strategies of Small States", 494–96.

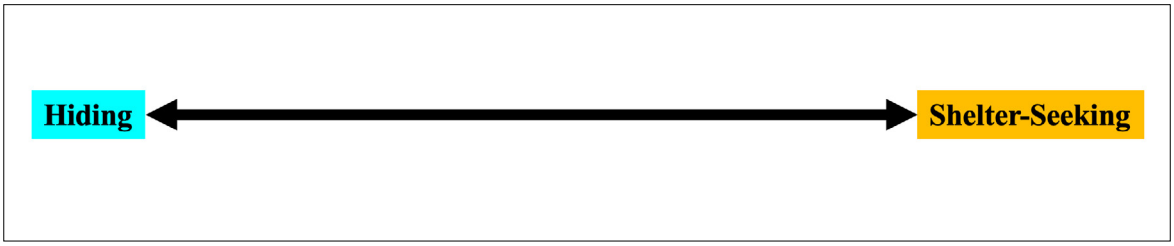

Fig. 2: The hiding vs. shelter-seeking binary spectrum. Source: own work.

The post-Cold War order has diminished the benefits of hiding and enabled small states to employ new combinations of shelter-seeking and hiding, a practice Wivel (building on previous literature) terms 'smart state strategy'.[35] A smart state strategy differs from traditional hiding and shelter-seeking in that it is not defensive, but offensive. In other words, it aims to advance rather than to simply preserve national interests. 'Smart' small states are passive ('hide') with regard to non-essential matters and focus their political capital on niche domains that are key to their idiosyncratic agendas. In so doing, they exploit their own smallness to their advantage: "Because [small states] are weak and viewed as nonconsequential to decision-making, they typically have more leeway to act as mediators, provide technical expertise, and champion solutions for the greater good than great powers".[36] As the post-Cold War order is declining, even 'smart' small states are faced with strategic decisions discussed in the next subsection.

Small states and great power competition

Drawing on neoclassical realist theory (which has dealt extensively with great power competition), I identify which grand strategic options are available to small states in the current international environment. I then position these options on a conceptual triangle which will serve as a basis for the analysis of the case study.

Drawing on Schweller and Kuik, I identify five grand strategies available to small states to navigate great power competition and economic fragmentation: distancing, balancing, bandwagoning, engagement, and hedging.[37] '*Distancing*' corresponds to the application of a hiding strategy to conditions of hegemonic struggle: weak powers attempt to isolate themselves from the negative effects of the rivalry by interacting as little as possible with the competing great powers.[38] '*Balancing*' and '*bandwagoning*' occur when a small state, in an attempt to insure itself against

35 Wivel, "The Grand Strategies of Small States", 498–99.
36 Wivel, "The Grand Strategies of Small States", 498.
37 I base this catalogue on the one proposed by Schweller in his study of hegemonic confrontation, which I modified by omitting two strategies exclusive to great powers ('preventive war' and 'binding') and adding 'hedging'.
38 Randall L. Schweller, "Managing the Rise of Great Powers: History and theory", in *Engaging China: The Management of an Emerging Power*, ed. Alastair Iain Johnston and Robert S. Ross (Routledge, 1999), 16–17.

the risks arising from its vulnerability, seeks shelter from one of the competing great powers. Balancing means cooperating with the current hegemon to maintain the status quo, while 'bandwagoning' means helping the rising revisionist power become the new hegemon in return for advantages.[39] '*Engagement*' "encompasses any attempt to socialize the dissatisfied power into acceptance of the established order",[40] hence mixing 'supershelter-seeking' and hiding (from frontal confrontation). Although their engagement attempts are hardly decisive in averting a hegemonic conflict, small states may use engagement for status-seeking purposes as part of a smart state strategy. A further mixed grand strategy, '*hedging*', was theorised in the 2000s to describe Southeast Asian countries tactically alternating balancing and bandwagoning strategies in the context of the rivalry between China and the US.[41] Hedging chiefly serves as a coping mechanism against systemic uncertainty: unable to forecast the outcome of the hegemonic competition, hedging small states display non-alignment (to minimise risks) while maintaining the possibility of seeking shelter (to maximise security).[42]

In the real world, the grand strategies listed above do not exist as discrete entities; rather, they lie on a continuum. For instance, building on earlier research, Grano and Weber propose to measure Switzerland's grand strategy in response to the rise of China on a binary spectrum ranging from balancing to bandwagoning.[43] Such a categorisation has the merit of introducing the idea of a seamless continuum, but should be extended to include hiding, which it ignores.[44] In fact, I argue that small state responses to the great power competition encompass not one but two dimensions: the level of revisionism (balancing vs. bandwagoning) and the level of involvement in the rivalry (hiding vs. shelter-seeking), which was discussed in the previous subsection.

39 Schweller, "Managing the Rise of Great Powers", 9–12.

40 Schweller, "Managing the Rise of Great Powers", 14.

41 Chien-Peng Chung, "Southeast Asia-China Relations: Dialectics of 'Hedging' and 'Counter-Hedging'", *Southeast Asian Affairs* (2004): https://www.jstor.org/stable/27913250 (accessed 22 December 2024); Cheng-Chwee Kuik, "The Essence of Hedging: Malaysia and Singapore's Response to a Rising China", *Contemporary Southeast Asia* 30, no. 2 (2008): https://www.jstor.org/stable/41220503 (accessed 22 December 2024).

42 Cheng-Chwee Kuik, "How Do Weaker States Hedge? Unpacking ASEAN states' alignment behavior towards China", *Journal of Contemporary China* 25, no. 100 (2016): https://doi.org/10.1080/10670564.2015.1132714.

43 Simona A. Grano and Ralph Weber, "Strategic Choices for Switzerland in the US-China Competition", in *China-US Competition: Impact on Small and Middle Powers' Strategic Choices*, ed. Simona A. Grano and David Wei Feng Huang (Palgrave Macmillan, 2023), 88–92, https://doi.org/10.1007/978-3-031-15389-1_4.

44 The balancing-bandwagoning spectrum has been theorised in the context of Australia, a strategically located middle power for which hiding is not an option. Hence, I argue that, when applied to small states, it should be revised to include hiding.

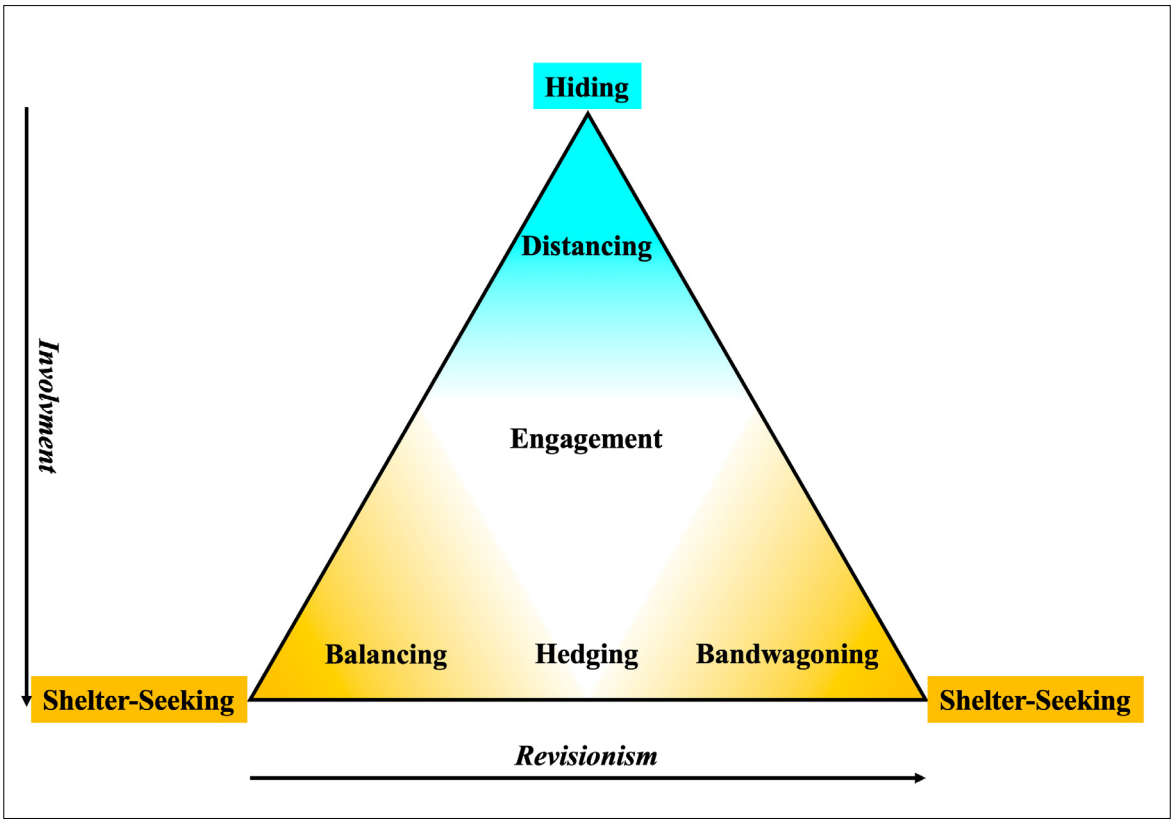

Fig. 3: The grand strategies available to small states in conditions of great power competition. Source: own work.

I propose using a triangle to illustrate the grand strategies available to small states in conditions of great power competition. (*Fig. 3*) The horizontal dimension of the triangle represents the small state's position with regard to the international system: the left side denotes support for the status quo, while the right side denotes revisionism. The vertical dimension displays the level of involvement of the small state in the great power competition: the lower section signifies a high level of involvement, while the upper section signifies a more passive stance. The grand strategies discussed earlier can be arranged on the triangle accordingly. The angles correspond to the broader strategic attitudes of small states: the upper one to hiding, the lower two to shelter-seeking. My triangle serves as a nuanced and exhaustive framework to classify the grand strategy of any small country with regard to present and past great power competition. In the case study section, I will use it to analyse Switzerland's positioning regarding the great power competition between the US and China.

Case Study: The Switzerland-China Free Trade Agreement

Switzerland: a small state in the global context

Having assembled a theoretical framework to describe the grand strategies available to small states in the current global context, I will now apply it to the case study. In order to introduce my analysis of the SCFTA, I briefly describe how Switzerland, given its small size, strategically positions itself in the global geopolitical and economic arena, especially with regard to trade.

Switzerland neatly fits my definition of a small state. The country's population and territory are unambiguously small, and its military capabilities are limited. Even the prosperous Swiss economy, which might qualify as mid-sized on a global scale, is, in typical small state fashion, driven by international trade. In terms of its performative size, Switzerland plays a relatively minor role at the systemic level with regard to most global issues. Most importantly, the Alpine country is deemed incapable (by Swiss elites themselves and by other countries) of tipping the balance of power in the great power competition between China and the US. Overall, the theoretical framework developed in the preceding section can therefore be applied to the case study without difficulty.

Switzerland responded to the challenges posed by its small size by adopting a smart state strategy combining hiding and 'supershelter-seeking'. Politically, Switzerland has maintained its permanent neutrality while carving out for itself a distinctive role in the international community in domains such as diplomatic mediation and humanitarian assistance. Economically, Switzerland refrained from joining economic blocs like customs unions or monetary unions, such as the European Union (EU), while advocating free trade multilaterally and developing a high level of expertise in niche economic sectors.

Switzerland's foreign economic policy strategy confirms the country's self-perception as a small state and is consistent with its smart state strategy. A policy paper asserts that, in the current context of economic fragmentation, "[n]o state-led or state-sponsored repatriation of production processes to Switzerland is to be attempted".[45] Instead, Bern aims to guarantee the resilience of supply chains through open markets, geographic diversification and large economic treaties, noting how other small economies "can also navigate their way successfully without being tied closely to large political blocs."[46]

45 State Secretariat for Economic Affairs SECO, *Switzerland's foreign economic policy strategy* (Federal Department of Economic Affairs, Education and Research EAER, 2021), 40, https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/aussenwirtschaftspolitik/aws.html (accessed 22 December 2024).
46 SECO, *Switzerland's foreign economic policy strategy*, 39.

Switzerland's smart state strategy is complemented by shelter-seeking towards the EU and (to a lesser degree) its bilateral trade partners. Switzerland's numerous and complex bilateral agreements with the EU demonstrate that the country does seek comprehensive shelter from Brussels, albeit in a less radical fashion than EU member states.[47] Bilateral FTAs, however, can also constitute a form of economic shelter-seeking. Indeed, for a small country in an uncertain global economic environment, institutionalising economic relations with a trade partner in order to stabilise international trade flows can be interpreted as a classic strategy of mitigating smallness-related problems. Admittedly, the shelter provided by an FTA is quite limited, but can be relevant, especially when the trade partner has a large economy and bilateral trade flows are substantial. As I demonstrate in the following subsections, this is precisely the case of the SCFTA.

Swiss-Chinese relations and the SCFTA

Before analysing the strategic implications of the SCFTA in the context of the Sino-American rivalry, I delineate the remarkable intensification of bilateral economic relations between China and Switzerland over the last three decades. The SCFTA is both a result and a catalyst of this process.

Economic exchanges have been at the core of Sino-Swiss relations ever since Switzerland's comparatively early establishment of diplomatic relations with the People's Republic of China in 1950. Starting in the 1970s, the reform and opening of the Chinese economy enabled the gradual intensification of exchanges with Switzerland, accelerated by a bilateral trade agreement in 1974.[48] Since the 1990s, bilateral trade volumes have grown exponentially, with a trade balance consistently in favour of Switzerland. (*Fig. 4*) In 2010, China became Switzerland's third most important bilateral economic partner by trade volumes (after the EU and the US), a position it has solidly occupied ever since.[49]

47 The economic shelter provided by the EU is clear: the bloc accounts for more than half of Switzerland's total trade volume. The EU, however, also provides political and societal shelter. In exchange for shelter, Switzerland accepts the loss of a significant degree of autonomy in several areas of decision-making.

48 Michele Coduri et al., "China", *Historisches Lexikon der Schweiz* (2009), https://hls-dhs-dss.ch/de/articles/003405/2009-04-29/ (accessed 22 December 2024).

49 Source: own calculations; data: OEC, "HS6 REV. 1992 (1995–2022)".

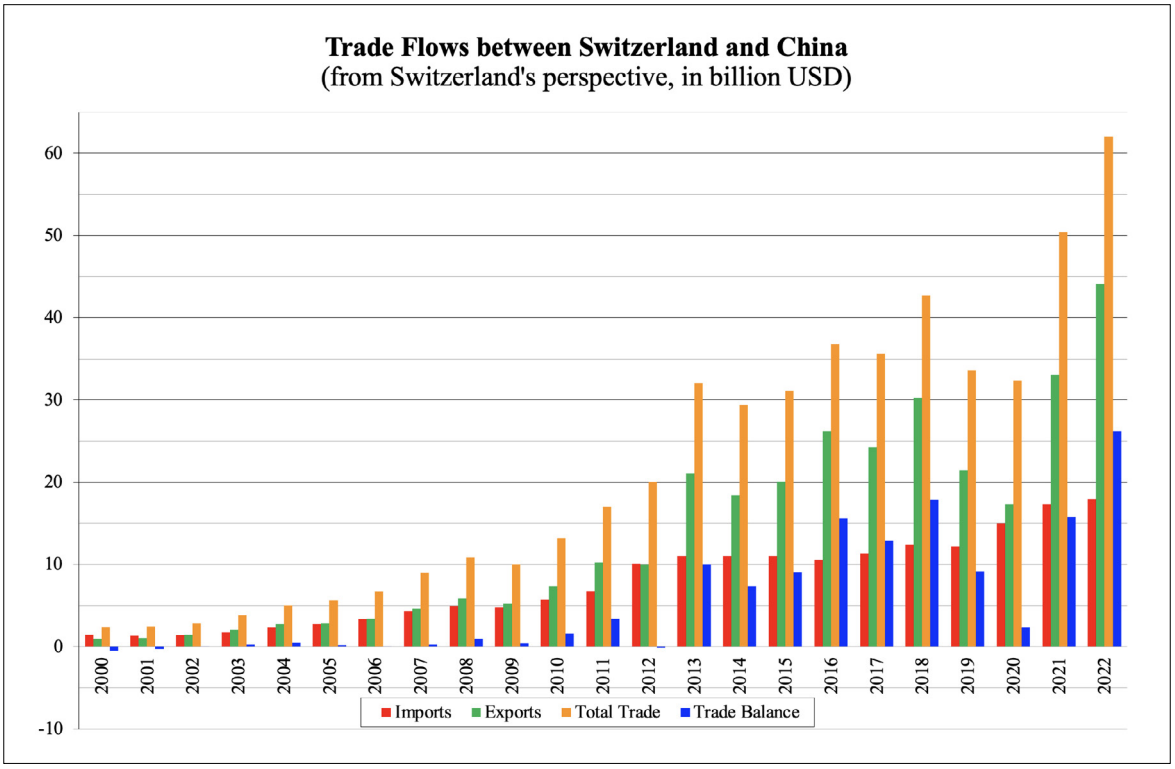

Fig. 4: Trade between Switzerland and China (in billion USD, import/export from the Swiss perspective). Source: own calculations; data: OEC, "HS6 REV. 1992 (1995–2022)".

This booming bilateral trade paved the way for the SCFTA. In 2007, Switzerland recognised China as a market economy and the two countries started exploring the feasibility of an FTA;[50] a Joint Study Group confirmed its feasibility in 2010.[51] On 6 July 2013, after nine rounds of negotiations, Switzerland's Federal Councillor Schneider-Ammann and China's Minister of Commerce Gao signed the SCFTA in Beijing.[52] In March 2014, the Swiss federal government, having obtained approval from the federal parliament, ratified the agreement, which entered into force in July 2014.[53]

50 Federal Department of Economic Affairs, Education and Research EAER, "Doris Leuthard discusses a possible Free Trade Agreement with China and signs a Joint Declaration on economic cooperation", press release (8 July 2007), https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-13594.html (accessed 22 December 2024).

51 Joint Study Group, "Joint Feasibility Study on a China-Switzerland Free Trade Agreement", study (9 August 2010), https://www.seco.admin.ch/dam/seco/de/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/Freihandelsabkommen/Partner%20weltweit/China/chronologie/CH_CN_Finalised_jsg_report.pdf.download.pdf/CH_CN_Finalised_jsg_report.pdf (accessed 22 December 2024).

52 Federal Council, "Message relatif à l'approbation de l'accord de libre-échange entre la Suisse et la Chine et de l'accord sur la coopération en matière de travail et d'emploi entre la Suisse et la Chine du 4 septembre 2013", *Feuille fédérale* (2013): 7332, https://www.fedlex.admin.ch/eli/fga/2013/1592/fr (accessed 22 December 2024).

53 Federal Council, "Free trade agreement between Switzerland and China to enter into force on 1 July 2014", press release (30 April 2014), https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-52819.html (accessed 22 December 2024); interview with Swiss government official A, conducted by the author, 2 December 2024, semi-structured online interview, anonymised.

Sino-Swiss relations continued to intensify in the following years and reached their peak between 2016 and 2019. In 2016, bilateral relations were upgraded to an 'innovative strategic partnership'.[54] In 2017, Chinese President Xi paid a historic visit to Switzerland, during which the cordial nature of bilateral relations was repeatedly highlighted and the intention to upgrade the SCFTA was announced.[55] In 2018, the first bilateral 'strategic dialogue' was held[56] and Switzerland expressed its intention to participate in China's Belt and Road Initiative.[57]

Between late 2019 and mid-2023, Sino-Swiss relations took a downward turn. Bern became decidedly more critical of the human rights situation in China,[58] irritating Beijing. Notably, Switzerland's 2021 *China Strategy* explicitly argued that China's human rights situation had deteriorated and hinted at China's use of international institutions, digital technologies and the Belt and Road Initiative to undermine human rights.[59] High-level contacts and discussions of a potential upgrade of the SCFTA were delayed.

In late 2023 and 2024, Sino-Swiss relations improved again and negotiations to update the SCFTA were launched. After a pause of more than two years, high-level contacts resumed in the run-up to the 75th anniversary of bilateral relations.[60] The starting point chosen for this diplomatic reset was the innovative strategic partnership of 2016, signalling that the depth of relations had returned to its 2016 level (higher than in 2014 but lower than in 2019). In 2024, negotiations for

54 Federal Council, "Joint declaration between the People's Republic of China and the Swiss Confederation on the establishment of an innovative strategic partnership", joint declaration (9 April 2016), https://www.newsd.admin.ch/newsd/message/attachments/43593.pdf (accessed 22 December 2024).

55 Federal Department of Foreign Affairs FDFA, "Chinese President XI Jinping ends state visit to Switzerland", press release (18 January 2017), https://www.eda.admin.ch/eda/en/fdfa/fdfa/aktuell/news.html/content/eda/en/meta/news/2017/1/18/65299 (accessed 22 December 2024).

56 Federal Department of Foreign Affairs FDFA, "Switzerland and China hold first strategic dialogue", press release (3 April 2018), https://www.eda.admin.ch/eda/en/fdfa/fdfa/aktuell/news.html/content/eda/en/meta/news/2018/4/3/70291 (accessed 22 December 2024).

57 State Secretariat for Economic Affairs SECO, "Memorandum of Understanding on Developing Third-Party Market Cooperation between the Federal Department of Finance and the Federal Department of Economic Affairs, Education and Research of the Swiss Confederation and the National Development and Reform Commission of the People's Republic of China", Memorandum of Understanding (29 April 2019), https://www.newsd.admin.ch/newsd/message/attachments/56683.pdf (accessed 22 December 2024).

58 For example: Federal Department of Foreign Affairs FDFA, "Switzerland concerned about the situation in Xinjiang, China", press release (26 November 2019), https://www.eda.admin.ch/eda/en/fdfa/fdfa/aktuell/news.html/content/eda/en/meta/news/2019/11/26/77232 (accessed 22 December 2024).

59 Federal Department of Foreign Affairs FDFA, *China Strategy 2021–2024* (FDFA, 2021), https://www.eda.admin.ch/eda/en/fdfa/fdfa/publikationen.html/content/publikationen/en/eda/schweizer-aussenpolitik/China_Strategie_2021-2024.html (accessed 22 December 2024).

60 Federal Department of Foreign Affairs FDFA, "Switzerland and China renew high-level contacts and deepen relations in the run-up to 75th anniversary", press release (15 January 2024), https://www.eda.admin.ch/eda/en/fdfa/fdfa/aktuell/news.html/content/eda/en/meta/news/2024/1/15/99693 (accessed 22 December 2024); Federal Department of Foreign Affairs FDFA, "Official visit to People's Republic of China by Ignazio Cassis", press release (7 February 2024), https://www.eda.admin.ch/eda/en/fdfa/fdfa/aktuell/news.html/content/eda/en/meta/news/2024/2/7/99971 (accessed 22 December 2024).

the enhancement of the SCFTA were launched.[61] This occasion provides an opportunity to analyse retrospectively how the agreement relates to Switzerland's grand strategy.

Strategic implications of the SCFTA for Switzerland

Having outlined the strategic context and the chronology of Sino-Swiss economic relations, I now present my analysis of the strategic implications of the SCFTA in the context of the great power competition between China and the US.

I claim that the strategic implications of the SCFTA for Switzerland are significant, since the agreement itself is ambitious and involves a substantial liberalisation of bilateral trade with the Alpine country's third most important trade partner. The parties commit to eliminating or drastically reducing tariffs on a long list of agricultural and industrial goods,[62] not raising tariffs, granting each other most-favoured-nation status, liberalising trade in services and removing non-tariff barriers to trade.[63]

Because it has supported the continued growth and increasing complexity of bilateral trade with China, the SCFTA constitutes a form of economic shelter-seeking that intensifies Switzerland's small state trade strategic paradox. Indeed, since 2014, China's share of Switzerland's total trade has remained well above 5 percent; it even surpassed 8 percent in 2022.[64] Even excluding gold transfers, the trade balance is in favour of Switzerland,[65] which is remarkable, since most high-income economies have consistent trade deficits with China.[66] Flows are very diverse in both directions,[67] attesting to both the depth and the complexity of bilateral economic relations.

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61 State Secretariat for Economic Affairs SECO, "Memorandum of Understanding between the Federal Department of Economic Affairs, Education and Research of the Swiss Confederation and the Ministry of Commerce of the People's Republic of China on Launching the Negotiations for the Enhancement of the Switzerland-China Free Trade Agreement", Memorandum of Understanding (1 July 2024), https://www.seco.admin.ch/dam/seco/de/dokumente/Aussenwirtschaft/Internationale%20Organisationen/WTO/20240702%20MoU%20English_signed.pdf.download.pdf/20240702%20MoU%20English_signed.pdf (accessed 22 December 2024); interview with Swiss government official B, conducted by the author, 16 December 2024, semi-structured online interview, anonymised.

62 The tariff reduction and elimination process envisaged by the SCFTA is bilateral, but not symmetrical, since China, due to its higher starting tariff rates, shall cut but not eliminate tariffs on certain industrial goods. (Federal Council, "Message relatif à l'approbation", 7342–43.)

63 State Secretariat for Economic Affairs SECO, "Free Trade Agreement between the Swiss Confederation and the People's Republic of China", international agreement (6 July 2013), https://www.seco.admin.ch/dam/seco/en/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/Freihandelsabkommen/Partner%20weltweit/China/Abkommenstexte/Texts%20in%20English/Switzerland-China%20FTA%20-%20Main%20Agreement.pdf.download.pdf/Switzerland-China%20FTA%20-%20Main%20Agreement.pdf (accessed 22 December 2024); Federal Council, "Message relatif à l'approbation", 7340–67.

64 Source: own calculations; data: OEC, "HS6 REV. 1992 (1995–2022)".

65 Source: own calculations; data: OEC, "HS6 REV. 1992 (1995–2022)".

66 Interview with Swiss government official A, conducted by the author, 2 December 2024, semi-structured online interview, anonymised.

67 Source: own calculations; data: OEC, "HS6 REV. 1992 (1995–2022)".

Furthermore, as discussed, the agreement paved the way for an even closer partnership in the years following its signing. In light of these considerations, the SCFTA can be regarded as a form of economic shelter-seeking towards China. The economic shelter provided by China intensifies Switzerland's small state trade strategic paradox, as it enables Switzerland to better exploit comparative advantages while increasing dependence on trade with China. Admittedly, this dependence is not acute, considering Switzerland's extremely diversified trade relations.

The omission of human rights in the SCFTA, which was Switzerland's most significant concession, can be framed as a moral and reputational cost of shelter-seeking. In light of the importance Switzerland attaches to human rights in its foreign policy, not explicitly mentioning them in the SCFTA represents a substantial concession to China.[68] During discussions on ratification in late 2013 and early 2014, the omission of human rights generated a heated discussion and a minority of the Federal Assembly wished to send the agreement back for renegotiation.[69] This discussion can be interpreted as a strategic cost-benefit analysis of shelter-seeking: the majority of policymakers ultimately decided that the economic benefits of the limited economic shelter provided by China outweighed its moral and reputational costs.

Albeit costly, the SCFTA does not contradict Switzerland's 'supershelter-seeking' endeavours. In fact, the agreement attaches great importance to multilateral cooperation and international institutions.[70] Furthermore, as multilateral trade negotiations have remained stalled for decades, bilateral FTAs have become the mainstay of trade liberalisation.[71] China, as a WTO member, is a relatively unproblematic partner in this respect. Thus, there is no trade-off between limited economic shelter-seeking towards China and Switzerland's continued commitment to international law and multilateralism, which is central to its smart state strategy.

68 Federal Council, "Message relatif à l'approbation", 7339–40, 7372.

69 Federal Assembly, "Accord de libre-échange entre la Suisse et la Chine: Conseil national 09.12.2013 – Premier Conseil", *Bulletin officiel* (2013) : https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=24286 (accessed 22 December 2024); Federal Assembly, "Accord de libre-échange entre la Suisse et la Chine: Conseil national 10.12.2013 – Suite", *Bulletin officiel* (2013) : https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=24710 (accessed 22 December 2024); Federal Assembly, "Accord de libre-échange entre la Suisse et la Chine: Conseil des États 20.03.2014 – Deuxième Conseil", *Bulletin officiel* (2014) : https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=30703 (accessed 22 December 2024); Federal Assembly, "Accord de libre-échange entre la Suisse et la Chine: Conseil des États 20.03.2014 – Suite", *Bulletin officiel* (2014), https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=28957 (accessed 22 December 2024).

70 SECO, "Free Trade Agreement", preamble, Art. 1.2; Federal Council, "Message relatif à l'approbation", 7330, 7372–74.

71 Paul R. Krugman et al., *International Economics*, 297–300; interview with Swiss government official A, conducted by the author, 2 December 2024, semi-structured online interview, anonymised; interview with Swiss government official B, conducted by the author, 16 December 2024, semi-structured online interview, anonymised.

In light of the ongoing fragmentation of the global economy, the SCFTA can be interpreted as an insurance policy guaranteeing that China will continue to give Switzerland access to its massive market in the future. Indeed, Swiss policymakers have conceived the SCFTA from a future-oriented perspective, according to which China's role in the global economy is likely to continue growing.[72] From this viewpoint, securing continued access to the Chinese market represents a prominent strategic goal for Switzerland. The SCFTA contributes to this goal by increasing the legal hurdles – and, due to interdependence, the economic costs – for China to impose unilateral measures that curtail trade flows with Switzerland. This 'insurance policy' admittedly benefits both sides, but Switzerland needs it more, as its small size disproportionately exposes it to external trade shocks.

Against the backdrop of my theoretical framework, I argue that the SCFTA slightly shifts Switzerland's strategic positioning closer to China in the context of the Sino-American rivalry. In the case study, it was not the SCFTA itself that shifted Switzerland's grand strategy, but rather the framework conditions that surrounded its signing. The intensity of Sino-Swiss bilateral trade, the growing importance of the Chinese market and the fact that Switzerland accepted a small loss in prestige and an intensification of its dependence on China hint at the strategic significance of the SCFTA for Switzerland. At the same time, the strategic shift is relatively small. After all, Switzerland's shelter-seeking endeavours towards China remain almost exclusively limited to economic matters and are far less intense than its traditional 'supershelter-seeking' or shelter-seeking towards the EU.

In spite of the SCFTA, Switzerland remains economically and politically closer to Washington than to Beijing on a global scale. Economically, the US represents a more important partner for Switzerland than China. Despite the absence of a bilateral FTA, the US is Switzerland's second-largest trading partner worldwide, accounting for around 13 % of total Swiss trade volume, compared with China's 8 % (3 % excluding gold).[73] The contrast becomes even starker when trade in services is included: 17 % for the USA, 5 % for China.[74] Furthermore, the US remains Switzerland's largest

72 The reasoning of Swiss policymakers was strongly shaped by the consideration of future scenarios. For example, one of their main arguments was that, if China concluded an FTA with an economy whose comparative advantages were similar to Switzerland's (such as the EU), Swiss exporters would be discriminated against. The SCFTA guarantees that Swiss exporters are advantaged (or at least compete on the same level) compared to their peers in third countries. (Federal Council, "Message relatif à l'approbation", 7330, 7333, 7371; interview with Swiss government official A, conducted by the author, 2 December 2024, semi-structured online interview, anonymised; interview with Swiss government official B, conducted by the author, 16 December 2024, semi-structured online interview, anonymised.)

73 Source: own calculations; data: OEC, "HS6 REV. 1992 (1995–2022)".

74 SECO, *Switzerland's foreign economic policy strategy*, 35.

investment partner, accounting for 20 % of Swiss foreign direct investment (FDI)[75] (35 % of the entire Swiss FDI stock).[76] In fact, the US has been a shelter provider for Switzerland for longer than China and, crucially, provides not just economic shelter, but also political and societal shelter.[77] This difference is reflected in the wording used to describe bilateral relations in strategy papers. According to the Swiss government, "[r]elations between Switzerland and the United States are very good. They are based on close historical ties as well as economic, cultural and personal links of a depth not shared with any other non-European country."[78] This enthusiastic description contrasts sharply with the following, which is much more concise and politely highlights disagreements: "Bilateral relations between Switzerland and China are broad, multi-layered and constructive. Differences are addressed openly."[79]

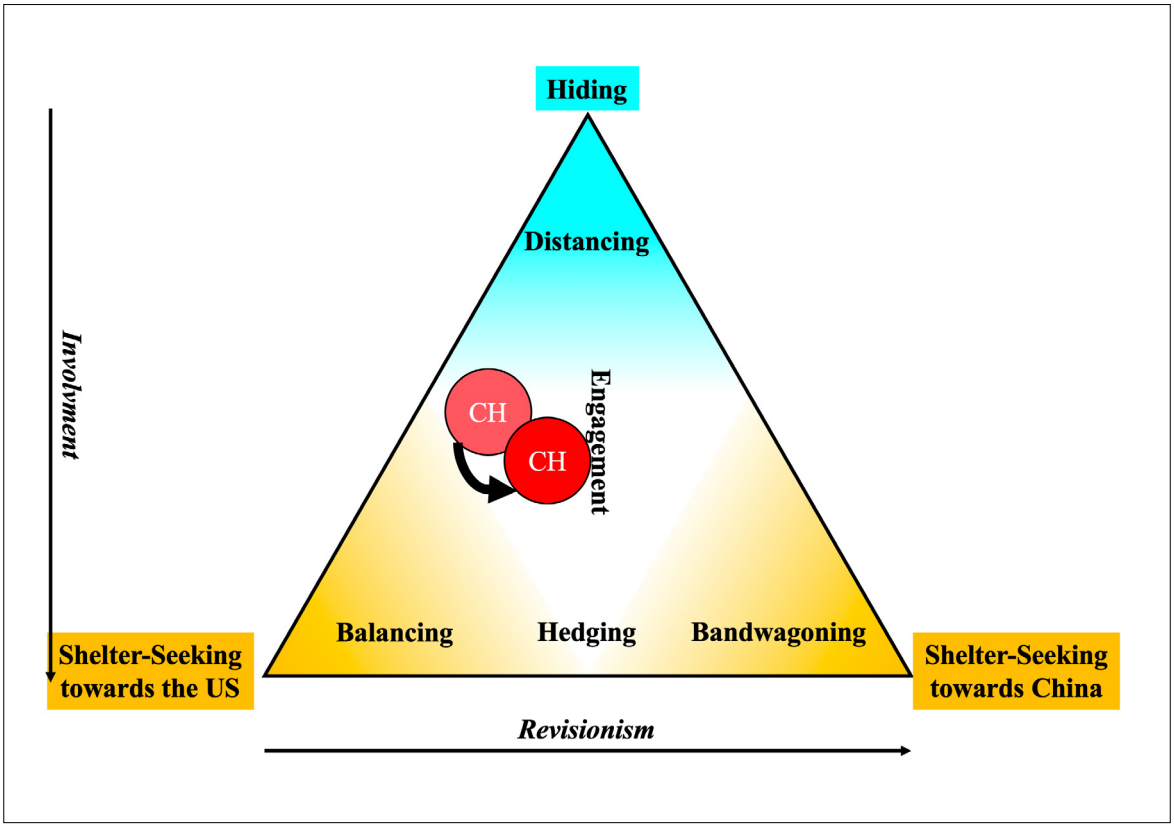

Fig. 5: Switzerland's shifting grand strategy in the context of the Sino-American rivalry. Source: own work.

75 Federal Department of Foreign Affairs FDFA, *Americas Strategy 2022–2025* (FDFA, 2022), 22, https://www.fdfa.admin.ch/publikationen/en/eda/schweizer-aussenpolitik/Amerikas_Strategie_2022_2025.html (accessed 22 December 2024).
76 SECO, *Switzerland's foreign economic policy strategy*, 35.
77 To cite a few examples, Switzerland modelled its parliamentary system on the American one, is heavily influenced by American culture, consumes large amounts of American media, is connected to the US by large mutual migration flows and, at the time of this writing, is buying F-35 fighter jets.
78 FDFA, *Americas Strategy*, 22.
79 FDFA, *China Strategy*, 15.

In light of these considerations, I claim that Switzerland's grand strategy in the context of the Sino-American rivalry, both before and after the SCFTA, can be categorised as a form of engagement. (*Fig. 5*) By maintaining close relations with both China and the US, Switzerland is clearly not adopting a pure distancing, balancing or bandwagoning grand strategy. According to Grano and Weber, "Switzerland's foreign policy strategy and orientation between the US and China seems firmly placed in the hedging zone".[80] The authors come to this conclusion because, as previously mentioned, they use a unidimensional spectrum as their analytical framework. Introducing the vertical dimension of conflict involvement makes it possible to distinguish between engagement and hedging as two separate grand strategies with different levels of entanglement in the hegemonic struggle. Within this framework, I contend that Switzerland's grand strategy constitutes a form of engagement, not hedging. Indeed, hedging would mean seeking a high degree of shelter from both rivals, for example by entering wide-ranging arrangements with both sides or by seeking economic shelter from one and security shelter from the other. This is not the case for Switzerland, whose primary source of shelter is the EU. In fact, Sino-Swiss relations can hardly be understood without taking into account EU-Swiss relations.

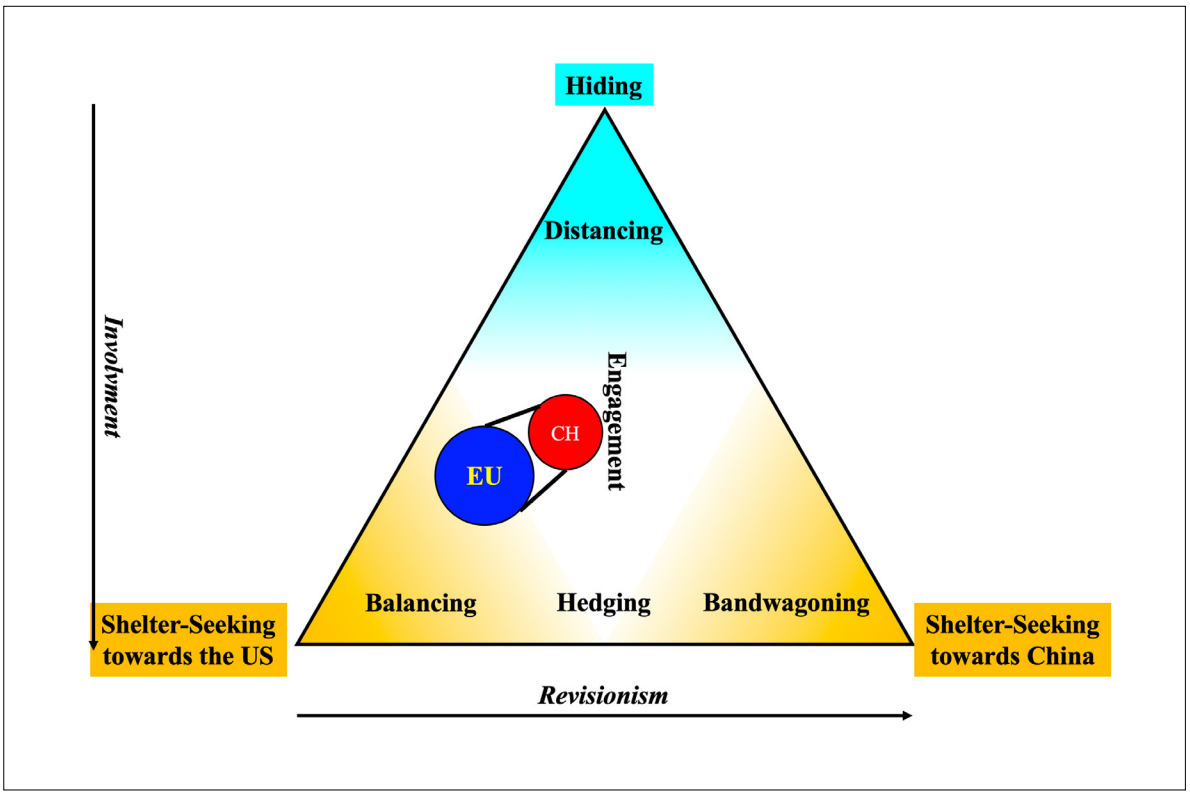

Fig. 6: Switzerland's shelter-seeking towards the EU in the context of the US-China great power competition. Source: own work.

80 Grano and Weber, "Strategic Choices for Switzerland in the US-China Competition", 106.

Considering that the EU provides comprehensive shelter to Switzerland, its own stance on China has important consequences for Sino-Swiss relations. (*Fig. 6*) In the last two decades, while Switzerland was deepening contacts with China, the EU has been growing increasingly dissatisfied with the large trade deficit with the Asian country and now pursues a higher degree of strategic autonomy through a partial decoupling of supply chains in key sectors.[81] Although Switzerland has so far been able to pursue a relatively independent policy towards China, there is a limit to how much Bern's stance on Beijing can diverge from that of Brussels without jeopardising Swiss-EU relations. In sum, a small state cannot navigate the great power competition in complete freedom as long as it is tied to its primary shelter provider by what I conceptualise graphically as a sort of 'leash' or 'safety rope'.

Conclusion

The analysis of the case study shows that the Switzerland-China Free Trade Agreement (SCFTA) carries significant implications for Switzerland's grand strategy. The SCFTA involves a substantial liberalisation of bilateral trade that intensifies Switzerland's economic dependence on China. The agreement was both a result and a catalyst of the sustained deepening of bilateral relations over the last three decades. Switzerland sought the SCFTA – and even accepted a small loss in prestige – because it considers China a pivotal economic partner. Against the backdrop of ongoing great power competition and economic fragmentation, I interpret the SCFTA as an insurance policy aimed at ensuring that China will continue to give Switzerland access to its market in the future. From this perspective, the SCFTA slightly shifts Bern's strategic position closer to Beijing in the context of the global competition between China and the US. However, when Swiss foreign policy is considered in its entirety – especially the close ties with the US – Switzerland's grand strategy can be characterised as a form of engagement. Concretely, the Alpine country maintains good relations and strong economic ties with both China and the US without aligning with either great power. Furthermore, Switzerland's primary economic and political partner remains the EU, whose stance on China has important consequences for Sino-Swiss relations.

I conclude that, in the context of great power competition and economic fragmentation, small states may employ bilateral FTAs as an insurance policy aimed at ensuring continued market access. Therefore, FTAs can shift a small state's grand strategy towards closer association with

81 Feng, "Internal and external factors affecting China-EU relations"; Freeman, "The EU and China"; Kuang et al., "The rise and fall of the EU-China Comprehensive Agreement on Investment".

its trade partner. However, this shift must be contextualised within the framework of the small state's broader foreign policy, which is also influenced by other – often more significant – strategic imperatives. Specifically, the grand strategy of a small state closely associated with an economic bloc is necessarily constrained by the bloc's global strategic positioning.

The set of interdisciplinary theoretical tools I assembled offers a comprehensive framework to analyse the grand strategies of small states navigating a global environment marked by great power competition and economic fragmentation. In particular, the strategic triangle I designed can be used to classify small states' positioning in the context of the Sino-American rivalry and to corroborate, refute or refine my conclusions on the strategic implications of FTAs. The main limitations of my framework are the omission of domestic politics and the limited attention to the relations between the small state and other great powers. Regarding the case study, further research might elucidate the role of internal political actors and EU-Swiss relations in shaping Sino-Swiss relations and the SCFTA. Beyond the case study, promising avenues for research include designing a quantitative study or examining how a small state's membership in a military alliance or a customs union affects its position in international trade and grand strategy. Ultimately, my work illustrates the often-underappreciated negative consequences of great power competition and economic fragmentation. By highlighting the theoretical and practical significance of the issue, this work aims to help policymakers and scholars in small states navigate the challenging environment they will face in the future.

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