



Advocating for a coherent
European foreign policy in
the MENA region

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FOREWORD

“Gaza, summer 2014; Cairo, May 2016; Hodeida, June 2018; Tripoli, since the fateful year of 2011. While the European Union cannot be accused of active transgressions against civilian populations, its passivity in the face of these transgressions certainly make it responsible. In light of the EU’s incapacity to impose consequent sanctions following the assassination of Italian PhD student Giulio Regeni by the Egyptian secret services, its silence on the day following the launch of the Israeli “Operation Protective Edge”, and worse still, witnessing its effective disintegration when dealing with migratory waves departing from the Libyan shores – How can we act surprised when Euroscepticism sweeps the continent?

These are troubling times for the European Union, and our diagnosis is simple: the absence of a united and coherent European foreign policy is and has been a major obstacle to the formation of a stable collective identity transcending national borders. Foreign policy, understood as expression of a common political narrative, is an area where the Union has never excelled. Silence and futile condemnations, embedded in a general state of political inertia, appear to be the EU’s core instruments on the international scene. An image of mediocrity results when respecting and enacting the fundamental principles on which the Union was constructed. The incoherence between the EU’s ethical proclamations, and the content of its external action, is striking.

We, as young Europeans, place our bet on coherence, regionalism, cooperation and ethical evaluation when it comes to European external action. Our focus is the Middle East and North African (MENA) region, given both its immanent proximity to the EU and the security-related, strategic, and humanitarian challenges it faces. What the Union projects on the outside is nothing but a reflection of what it is on the inside: Whether a disintegrated, hesitant and incoherent Union; or a united, determined, solidary and ethical Union. This is the crucial dilemma facing our generation.”



THÉO BEAUCHAMP
President

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PRESENTATION



WHO WE ARE

Sine Qua Non is a think tank advocating for a coherent European foreign policy in the MENA region. Founded in Paris in 2018 by researchers and young professionals, it draws from backgrounds and experiences from all over the European continent and beyond. We, the founding members, represent the first generation growing up with a united Europe operating in an increasingly globalized world. As such, we have not only experienced the European idea in its application within its borders, but also its impact and image outside. The team shares a rigorous training in law and/or in social sciences, a considerable experience in the MENA region, as well as the conviction that the European Union's future depends on the upholding of the principles it proclaims.

WHAT WE DO

Sine Qua Non aspires to analyse the contemporary political reality in areas of concern for European foreign policy and to scrutinize its actions with regards to the EU's proclaimed principles. In doing so, we aim to identify its shortcomings and discrepancies, and present alternative modes of action. Thereout arise the guiding principles of Sine Qua Non's intellectual identity:

- **Commitment to the ideological fundamentals of modern Europe.** See: *Europe as a Rights Culture*.
- **A demand for coherence according to the EU fundamentals in the EU-MENA relations.** See: *A Coherent Foreign Policy as an Instrument for Internal Stability*.
- **The necessity of accountability in the EU External Action.** See: *The Justiciability of European Values in the EU's External Action*
- **Profound need to restore a balanced relationship with the MENA region.** See: *The Multi-Layered Connection Between the MENA Region and Europe*.

Sine Qua Non identifies three variables, which, when observed, motivate an engagement with a respective topic:

1. **The systematic violation of fundamental human rights in a respective area of the MENA region.**
2. **A direct and/or indirect European responsibility concerning the dynamics on the ground.**
3. **A sense of urgency resulting from a sustained failure and ineffectiveness of previous approaches.**

HOW WE DO IT

Sine Qua Non's approach captures realities as *what they are*, as opposed to *what they were* or *how they came to be*, and provides alternatives for how they could *become*. As such, our methodology relies on three steps:

1. Analysis of the facts on the ground,
2. Evaluation of European external action by:
 - a. Identifying incoherencies vis-a-vis European principles
 - b. Assessing the effectiveness of European policies on the ground,
3. Recommendations for reorientation of European external action.

By analysing contemporary realities in disregard of historical particularities we commit to a methodology that certainly requires justification. There are two arguments for a partial de-historization of political analysis. First, there are situations whose current reality surpasses the line to which any historical narrative should influence the approach to the status quo. Effectively, at a specific level of complexity, historical narratives come in the way of identifying the common ground for constructive resolutions. Second, there are situations, where a formalistic analysis tells us more about the current order and potential scenarios than any historiography of the situation's genesis.

Exuberant respect for the past blurs one's vision of the present, and consequently the imagination of the future. Thus, in the face of grave injustice, the objective observation of the scene should precede over historico-political analysis.

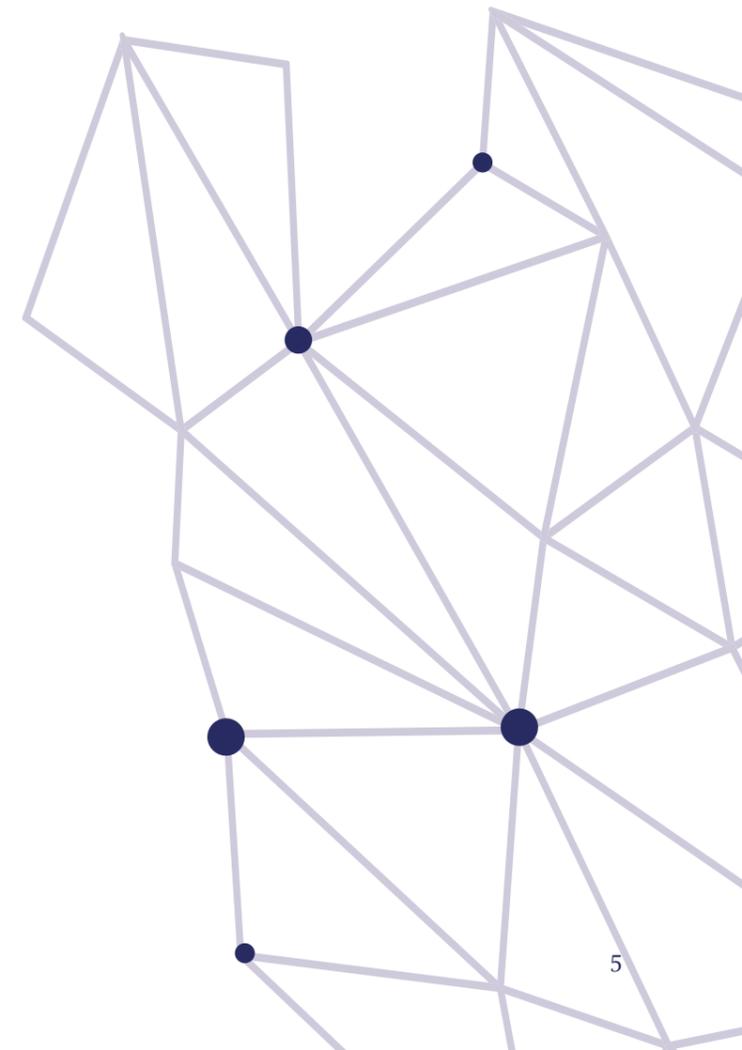
From there SQN commits to a dual approach which it believes to be necessary, one which addresses both the coherence in policy-making vis-a-vis the EU fundamental principles and the effectiveness of the ensuing policies.

WHY WE DO IT

A coherent European foreign policy, i.e. one that holds a test against the EU's ethical foundations both in its design and execution, is a **sine qua non condition** for a viable Union; the **multi-faceted proximity of the MENA region to Europe** renders such an effort even more necessary.

WHO WE TARGET

Sine Qua Non targets policy makers, decision makers in the public and in the private sector, opinion leaders in media and civil society, as well as academic circles.



EUROPE AS A RIGHTS CULTURE

Sine Qua Non aims to foster the notion of Europe as a highly developed *rights culture*. This culture emerges from the Union's development around the core principle of a universal humanism respectful of diversity, which was translated into the gradual construction of its legal order. Thus, the process of European integration saw the Union's recognition of universal human rights as essential in providing moral guidance for its structural deepening.

Sine Qua Non's action is thus inscribed in this rights culture represented by the Union. And its role is to underline the vital nature of this humanism in legitimizing European action within its own borders, and in guiding its foreign policy. In reality, **Sine Qua Non's idea of Europe reflects the one acknowledged by the Union itself in its creation, as it is in fact the only viable paradigm for a European future.**

The European rights culture, forged as a result of a historical process, has guided the path towards integration, enabling Member States to achieve fundamental objectives that had been unanimously perceived as crucial. It was delineated in the set of values enlisted in art. 2 of the Treaty on European Union (2007): respect for human dignity, freedom, democracy, equality, the rule of law and human rights, in a framework intertwined by the conjunction of pluralism, non-discrimination, tolerance, justice, solidarity and gender equality. Moreover, this codification was amplified and implemented by the adoption of the Charter of Fundamental Rights of the European Union (2000), which is now fully recognized as having the same legal force of the Treaties.¹

Furthermore, the guiding role of these values has been built by virtue of subsequent judgements from the Court of Justice of the European Union (CJEU), which oriented the interpretation of the Treaties in a way that unavoidably reflected the common beliefs of Member States. Accordingly, the Amsterdam Treaty (1997) officially laid the protection of those values under the jurisdiction of the Court. It enshrined these by appointing them as fundamental conditions to legitimately join and coexist within the European Union.²

If respect for those principles represents a requisite for Member States, such respect must be an imperative for the EU itself. The Union cannot disregard such boundaries and is expected to pursue both their protection and fulfilment. As the CJEU exquisitely asserted: "*The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community.*"³

The EU's respect of human rights cannot merely depend on their consecration. By virtue of their universal nature, human rights transcend barriers. However, their transcendence is conditional on the willingness of those bodies entrusted with their protection.

As of today, the Union possesses the most efficient, albeit complex, institutional structure to ensure the fulfilment of said rights. Accordingly, it bears a responsibility to translate these rights in its external actions. More precisely, as both the Charter⁴ and the Treaties lucidly state, "*the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement.*"⁵

This is where Sine Qua Non's action lies. If the consecration of universal human rights soon became cardinal for the existence of the Union, Sine Qua Non believes that the future of the Union, as part of an international society, lies in the commitment to such values within its foreign policy.

² Treaty on European Union, 2009, Title I, Art. 7

³ ECJ, 17 december 1970, *Internationale Handelsgesellschaft*, C-11/70, EU:C:1970:114

⁴ Charter of Fundamental Rights of the European Union, Title VII, Art. 51

⁵ Treaty on European Union, 2009, Title V, Chapter I, Art. 21

¹ 6 Treaty on European Union, 2009, Title I, Art. 6

A COHERENT FOREIGN POLICY AS AN INSTRUMENT FOR INTERNAL STABILITY

The European Union is currently facing a political crisis that is threatening its internal stability. This is exemplified by increasing levels of Euroscepticism across its Member States. This crisis is *inter alia* a result of the lack of identification of European citizens with EU institutions, and thus an issue pertaining to the construction of the EU's identity at large. It will be argued here that there is an inherent connection between foreign policy and the inclusiveness of political identity. Accordingly, a unified foreign policy based on the foundational principles of the Union represents an approach to solve its 'identity-problem'. As a consequence, such foreign policy serves as a positive factor for the internal stability of the Union.

IDENTITY FORMATION

In the realm of Psychology, a prime foundation of identity lies in what Lacan calls the *Stade du Miroir* – the subjectification of the individual through the realization of *relative otherness* to the world at large. The underlying process is a cognitive operation of dialectical nature: the subject acknowledges itself as such by learning to separate itself from all things other. In the psychology of development, this operation is a necessity prior to the creation of an individual identity; once the infant grasps his conceptual *otherness*, this *otherness* can be reinforced in a continuous process of identity formation. The individualisation of the self is furthermore a necessary condition to render *voluntary action* possible, as it facilitates the distinction of *subject* from *object*, i.e. the *manipulator* from the *(to be) manipulated*.

This base-psychological concept is elevated to the collective level in the social sciences. In sociology, which regards identity as a multi-layered construction, the baseline operation of identity-construction is always one that is dialectical: the individual (*voluntarily* or

involuntarily) constructs itself by continuously deciding on *association* or *non-association* with a given group. The existence of any given form of collective identity thus has as condition a renouncing of association with other identities. Political science then applies this logic to collective action: for a collective action to take place, the members of a group must identify themselves sufficiently with each other.

The above gains in complexity with regards to governance, especially democratic governance. In democratic states, individuals accept to be both *subject and object* of collective action. This is due to various mechanisms of identification that the state employs, such as citizenship, nationality and votes. The stronger the level of identification with the state, the more stable the community, and the more willing the individual is to accept to be object of collective action.

The true force of the democratic state is thus its collective identity. This implies not only the differentiation of its citizens from all non-citizens, but the unity of citizens behind the state in its actions, which finally pertain to the citizens themselves in the form of laws and policies.

EUROPEAN IDENTIFICATION PROBLEM

The current crisis that the European Union currently faces is, among other factors, due to a lack of its citizens' identification with it. Despite this, the EU's impact on those citizens has increased in magnitude, by virtue of vertical integration. This results in a divergence between the EU's institutional trajectory and the

citizens' acceptance of this trajectory.

In other words, European policies are less and less perceived as *collective action* in the eyes of the European citizens. They are experienced as foreign, top down interventions into an otherwise democratically justified national legal structure. In short, European citizens are alienated from the highest order of legislation that befits them: EU law.

Euro-scepticism has long relied on an argumentation that denounces the oppression of the individual and the sovereign state, accusing a somewhat 'foreign' technocratic elite in Brussels. European policies and laws are decried as not sufficiently democratic, and are consequently rejected as illegitimate. This causes a disconnect between the European collective, as object of EU policy, and the assumed representation of this collective - the EU administration. Therefore, the identity of the European Union is perceived as being opposed to the various identities of national citizens.

THE EU'S COMPLEX IDENTITY

The first measure to be taken on a quest to increasing the stability of Europe is to engage in a comprehensive campaign of fostering identification with the EU. However, the very principles of the Union do not allow for an imagination of the EU as a national community, or any form of ethno-cultural belonging - thus, a different basis for identity construction is needed. As outlined in 'Europe as an Idea', "the only viable paradigm for a European future", and its only possible source of identity, is a set of **universal principles pertaining to the rights of the individual** - or in other words, a normative conviction about justice. As such, the identity of the EU is much more complex than that of the Nation State: it is not *passive*, as national, cultural or ethno-linguistic belonging is; it is an *active* identity, which is constantly re-affirmed by the application of foundational principles. The actuation of its principles must, however, be perceived as *collective action* of the *aggregation of individual subjects* the Union claims to represent. So far, the chronologically previous collectives present in EU territory, i.e. its member states, have been the sole object of this action. The result of this exclusivity is a perceived conflict between EU governance and national sovereignty. Hence, this dynamic needs to be reversed by introducing a different *object* to EU policy, by engaging foreign policy in a unified way.

FOREIGN POLICY AND STABILITY

Foreign policy is a powerful tool for nation building. The identification of the *other* that the nation as *subject* engages unifies the individuals behind the collective; the ugliest example of this being war. Most national identities figure one or more of these glorious 'foreign policy moments'. The EU could profit from this dynamic by rallying its citizens in a similar way. However, as there is no imaginable *national identity* yet, but rather an *identity of principles*, foreign policy gains its identity-constructing-power not by its mere existence, but by its accordance with the principles at the basis of the European community.

The foundational moment of the European Union was, paradoxically, a collection of 'foreign policy moments' - peace for the continent. However, the institution has never left this stage: European affairs are still treated under the umbrella of national foreign policies. Today, this dynamic needs to be overcome in order to protect the primary goal of the Union. Said *overcoming* can only be achieved by taking the next step of the political project by taking a unified stance on *true* foreign policy - i.e. extra-EU matters.

If the EU foundational principles were to be applied in its foreign policy, this unified foreign policy would effectively contribute to the stabilization of the identification processes, and thus challenge the disconnect between EU's administration and its citizens.

For the Union to persist, its citizens must be able to identify thoroughly with it. The absence of a unified foreign policy counteracts this identification. However, for a foreign policy to have a positive effect on identification dynamics (and thus stability), it must be in line with the principles on which EU's identity is constructed. In other words, a coherent foreign policy is a fundamental variable for the Union's internal stability. Therefore, Sine Qua Non has decided to advocate for a coherent and unified performance of the EU in the international sphere.

THE JUSTICIABILITY OF EUROPEAN VALUES IN THE EU'S EXTERNAL ACTION

The question of European values, the question of the human rights culture fostered by the Union in both domestic and external policies, is the core fundament upon which rests Sine Qua Non's action. Central to Sine Qua Non's approach and core objective of the Union's action, the notion of values, often declined through reference to "human dignity, freedom, democracy, equality, the rule of law and respect for human rights"¹ remains nonetheless difficult to construe, especially from a legal perspective, and this despite the increasing role taken by such principles throughout the history of European integration.

The paper will argue that, though undoubtedly constituting the foundation of the Union's action, the absence of a clear, coherent and enforceable definition of these values highly affects the efficiency of the Union's ambitions as global actor, ergo the coherence of its action abroad. As such, exploring the process that has inspired the consecration of these core principles in the contemporary legal order is necessary to shed light on the effective definition of such broad principles with the aim of promoting a culture of accountability - counterpart to the conventionally consecrated obligation on human rights defense and promotion.

THE EUROPEAN UNION AND ITS VALUES, FROM THE JURISPRUDENTIAL TO THE CONVENTIONAL CONSECRATION

Though built upon the core project of economic cooperation, the vertical deepening of the integration process and the horizontal enlargement of the European Communities' reach lead the Court of Justice to mark a shift in its jurisdictional politics, a shift that would definitively change the Union's role as global actor.

Facing the blockage of the German² and Italian³ Constitutional Courts frustrated by the exclusively economic focus of the Union's ambitions, the Court of Justice initiated a process of recognition of European values and fundamental rights whose protection could constitute a legitimate restriction to the economic freedoms that constituted the core of the Union's activity.

Hence, by affirming the essential parallel progression of economic freedoms and human rights guarantees, the Court of Justice reinvigorated the initial impetus that stemmed from The Hague Conferences of 1948, where European States united, in the first truly European federalist moment, in order to affirm the need to ensure the protection of fundamental rights.

Breaking the fictitious barrier dividing fundamental rights and economic freedoms not only

¹ Title I, Art. 2, Consolidated Version of the Treaty on European Union, Lisbon, 2008.

² German Federal Constitutional Court, Solange I, [1974] 2 CMLR 540.

³ Italian Constitutional Court, Frontini [1974] 2 CMLR 372. 9

proved to be essential in order to guarantee the legal principles of primacy and direct effect but, most importantly, it renewed the Union's ambitions as global actor. By allowing the entrance of human rights considerations in its forum, the EU acknowledged that its oeuvre had much greater ramifications. As such, greater attention to the inviolable rights was required for it to retain its legitimacy.

Following its intuition, the Court proceeded to incorporate an ever-greater number of fundamental rights in the European legal order following a tripartite process.⁴ Human Rights were incorporated, initially as General Principles of Community Law⁵, subsequently through the referral to the "national constitutional traditions" thus allowing the Court in Luxembourg to stabilize its relationship with the domestic jurisdictions⁶, *in fine* human rights were guaranteed by referring to international and regional human rights instruments as the European Convention on Human Rights.

The initial praetorian monopoly over fundamental rights gradually opened, allowing the legislative branch to complement and coordinate the jurisprudential rights. The codification of human rights within EU primary law initiated timidly as the Single European Act (1986) made reference to the Union's attachment to "democracy and [...] fundamental freedoms" in its preamble. From the preamble, the reference acquired greater legal stance as it moved to Art. F of the Maastricht Treaty (1992). The 1992 revision also went one step further with the introduction of Art. F(2) which provided normative content to the otherwise problematic notion of "human rights" the treaties previously referred to. Lacking a Communitarian definition of the notion, the treaty incorporated -through referral- the definitions provided by the ECHR, to which all of the Union's Member States are -since 1993- required to be parties.

Again, from a normative perspective, the conclusion of the Nice Treaty at the turn of the century marked a radical step in the Union's attachment to human rights as it coincided with the proclamation of the European Charter of Fundamental Rights. The Charter regroups in six titles (dignity, freedom, equality, solidarity, citizens' rights and justice) fifty human rights, precisely defined in terms of content and implementation

4 Hennette-Vauchez S., Roman D., *Droits de l'Homme et libertés fondamentales*, Hyper Cours, Dalloz, Paris, 2017.

5 CJEC, Judgment of Judgment of the Court of 12 November 1969. *Erich Stauder v City of Ulm – Sozialamt*. Reference for a preliminary ruling: *Verwaltungsgericht Stuttgart – Germany*, Case 29-69.

6 CJEC, Judgment of the Court of 17 December 1970, *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*. Reference for a preliminary ruling: *Verwaltungsgericht Frankfurt am Main – Germany*, Case 11-70.

regime, hereby raised to the level of Fundamental for the Union's action. The Charter's proclamation should be regarded as a landmark in the Union's deepening. First, it complemented the conventional framework with a thorough collection of rights that are distinctive of the Union, thus setting aside the role of the ECHR as mere interpretative reference. Second, it uniquely associates socio-economic and civil and political rights, traditionally object of distinct covenants, in one single document. The innovative structure epitomized by the Charter, however, seems to reflect the same distinction between the first and second-generation rights through the distinction between civil and political rights and socio-economic principles. The latter, more contested, second generation rights, acquiring absolute legal value only when "implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union".⁷

The normative circle opened by the CJEU in the late 1960s was closed with the adoption of the Lisbon Treaty in 2007. The latter not only crystallized the decision to grant to the Charter the same status as the funding treaties; also -and most importantly, it extended the scope of the Union's human rights attachment to European Foreign policy with the introduction of articles 21 and 3(5) TEU. If the Union's ambition as human rights actor domestically had been affirmed long before 2008, its adoption marked the opening of a new era for the Union's external projection as the promotion and advancement of "the universality and indivisibility of human rights and fundamental freedoms"⁸ worldwide became in itself one of the core objectives of the Union's action, an objective which -when breached- could be object of sanctions.

7 Chapter VII, Art. 52(2), Charter of Fundamental Rights of the European Union, 2000.

8 Title V, Chapter I, Art. 21(1), Consolidated Version of the Treaty on European Union, Lisbon, 2008.

EUROPEAN VALUES AND FOREIGN POLICY. THE UNION AS A GLOBAL HUMAN RIGHTS ACTOR

The entry into force of the Lisbon Treaty marked the mainstreaming of human rights considerations as guiding principles of the Union's foreign policy in both primary and secondary legislation.

With the 2007 Treaty, the Union considerably expanded its external competences, primarily through the acquisition of a legal personality⁹, essential for the Union to act on the international arena as a legally existing, independent authority. The adoption of Art. 47 TEU was complemented by the structuring of the Union's institutional framework to match the newly established competence, through the creation of the High Representative for Common Foreign and Security Policy and the European External Action Service.

Drawing from Art. 21 TEU, the Union's attachment to fundamental freedoms increased with the deepening of its external policies on diplomatic, development, humanitarian and trade cooperation with third countries. This attachment clearly emerges from the increasing emphasis put on human rights in the Global Strategies setting the strategical framework for the Union's foreign policy. Thus, the European Neighbourhood Policy, one of the Union's major cooperation efforts, counts the protection and promotion of human rights and fundamental freedoms as its first manifest objective.¹⁰ Likewise, human rights conditionality clauses have been systemized, providing for the suspension of agreements in case of breach of "human rights and democratic principles" in bilateral association agreements or other trade partnerships of the Union.

As European values are not merely a void declaration of intent but a binding obligation, *Sine Qua Non's* action aims to promote the inclusion of human rights considerations in the Union's foreign policy agenda

9 Title VI, Art. 47, Consolidated Version of the Treaty on European Union, Lisbon, 2008.

10 Art. 2(2)(a), Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument, OJ L 77, 15.3.2014, p. 27-43.

as well as to develop a culture of accountability for the respect of such principles. As a matter of fact, *Sine Qua Non's* action will also focus on the notion of effectiveness as, assuming the need for an international policy while failing in achieving its goals, indirectly means renouncing to defend the rights the Union claims as its constitutional basis. In fact, despite the developing of the Union's human rights culture, the thorny question of what these values inherently are, especially in the field of foreign policy, remains unanswered. If the question could be answered, as the treaties did, by referring to the Charter -the only instrument providing a definition of the more abstract concepts of "human rights" or "fundamental freedoms"- its implementation in the field of multilateralism proves to be indeed more complex.

An overview of the Charter, especially its provisions on implementation, seems to provide for a straightforward answer to the issue raised, as Art. 51 underlines that its provisions are binding upon all EU institutions, without any distinction on the competence exercised. However, an examination of the Treaty on European Union and its two main provisions on domestic (Art. 6 TEU) and foreign (Art. 21 TEU) human rights protection will highlight a slight yet crucial lexical difference. As a matter of fact, if the first -domestic- provision explicitly refers to the applicability of the Charter and adopts the expression "fundamental rights" (the same as the Charter), the second provision on foreign policy adopts the definition of "human rights" and excludes any reference to the Charter. Without prejudice to the theoretical preference on the use of such expressions, from a legal perspective, the alternative use of the two has been construed as aiming at excluding the application of the Charter in the Union's foreign policy. The creation of a clear dichotomy would hamper considerably the evaluation of the policies' effectiveness, that *Sine Qua Non* sets as its aim, as no other European act provides for a definition of what these rights that the Union must promote actually are.

As analyzed by Romain Tinière¹¹, the creation of such dichotomy should be attributed to a will to shield the Union from relativist critiques of what could be labelled as a form of ethnocentric universalism and, especially, levelled against the idea of human rights promotion included in Art. 21 and 3(5) TEU. However, Tinière's analysis interestingly advances the idea of an opening to the application of the Charter in the legality review of the Union's foreign policy acts. As pointed out by the author, recent jurisprudential developments attest of the

11 Tinière R., «L'influence croissante de la Charte des droits fondamentaux sur la politique extérieure de l'Union européenne», RDLF 2018 chron. n°02, 2018.

CJEU's willingness to widen the Charter's applicability as its standard of protection was applied in both the direct compatibility review of international agreements¹² and the indirect review of the Union's foreign policy instruments.¹³ Despite the fact that the question of the Charter's general applicability in the Union's foreign policy was never directly answered by the Courts, these decisions seem at least not to contradict our intuition.

Unwilling to ignore this debate, highly relevant for the effective evaluation of the impact of the Union's foreign policy efforts against those principles that we deem as fundamental, *Sine Qua Non* argues in favor of the applicability of the Charter's standard of protection inasmuch as it constitutes the sole material definition of the Union's fundamental rights ambitions. As such, *Sine Qua Non* considers the Charter based on its potential as guiding instrument and our best attempt at ensuring that policies carried on the ground are indeed effective and human rights references do not remain empty declarations of intent. However, without ignoring critiques of relativism, *Sine Qua Non* advocates for a soft applicability of the Charter in the realm of bilateral relations, which pertains to the wider sphere of international law and, by definition, escapes the outright primacy of EU law.

If on the one hand, concerning absolute human rights, *Sine Qua Non* argues for a straightforward application as these are covered by an international consensus against which claims of cultural relativism strain to resist, *Sine Qua Non* stresses the need for the Union to capitalize on the mechanism of justifications provided for by Art. 52(1) of the Charter itself, in order to preserve its essence in foreign policy. This mechanism could be the source of a renewed dialogue over human rights and their definitions, indispensable for the achievement of the Union's human rights objectives and necessary to develop common definitions of values. Such dialogue has the ambition to promote a more interactive and multipolar universalism, one that is universal not only in output, but also in input, contributing to the clarification of a legal framework which is blurry to the least. Clear definitions of human rights boundaries to the Union's acts of foreign policy and bilateral agreements would considerably improve the enforcement and review mechanisms necessary to ensure the effectiveness and coherence of foreign policy. Clearly, human rights considerations should intervene at the phase of elaboration following more transparent and accessible procedures, and at the stage of review through the judicial dialogue over the

¹² CJEU, Opinion 1/15 of the Court (Grand Chamber) 26 July 2017.

¹³ CJEU, Case T-512/12: Judgment of the General Court of 10 December 2015, *Front Polisario v Council*, OJ C 68.

legitimacy of the limitations or the effective breach of the jointly-defined values.

As it clearly emerges from the above, developing a clear image of these rights that the Union proclaims as its own proves to be an arduous task. Indeed, Human Rights are and should be a fluid notion. As their conception and definition has evolved within the Union's deepening, *Sine Qua Non* argues that these should evolve in space, together with the reach of the Union's action, towards fulfilling their ambition of foreign policy objective.

In order to ensure that the Union's foreign policy fulfills the ambitions of Art. 21 TEU, *Sine Qua Non* adopts a case-by-case approach, akin to the CJEU, addressing specific countries' situations in successive case studies. *Sine Qua Non*'s research follows an inductive method, starting from facts on the ground, upstream.

THE JUDICIAL PROTECTION OF HR AND ITS INHERENT CHALLENGES

Protection of human rights implies addressing human rights considerations both at the policy-elaboration level, and *a posteriori*, through appropriate review procedures. Given the opacity over the initial negotiations phase, and the factually limited agency granted to external actors at the elaboration level, the judicial system of review offered by the EU legal order remains a fundamental arena to discuss accountability and ensure that the Union's action is faithful to its objectives.

The first and most visible challenge to an *a posteriori* scrutiny of European acts of foreign policy is represented by the Union's Common Foreign and Security Policy (CFSP), the latter being subject to a regime of judicial immunity. Thus, given its sensitive focus, all CFSP acts, except the individual sanctions targeted by Art. 275(2) TFEU, escape the jurisdiction of the CJEU. The nature of such acts dramatically hampers the justiciability of foreign policy, regularly submitted to the CJEU's jurisdiction, thus frustrating the effectiveness of the European review system.

If the treaties provide for a number of actions to review the validity of the institutions' acts, the main instrument to test the Union's acts of foreign policy

against its conventional human rights obligations is article 263 TFEU's action for annulment. Other mechanisms, as Art. 218 TFEU's treaty review system or Art. 340 TFEU extracontractual liability, are satisfying only partially. As such, the *a priori* review of international agreements, though essential in evaluating the potential impact of the Union's multilateral affairs, constitutes a rather limited instrument as, intervening prior to the entry into force of the contested agreement, its review is exclusively based on predictions. Alternatively, engaging the Union's extracontractual liability could constitute a potential avenue. However, the conditions listed in Art. 340 TFEU considerably limit the utility of such an action.

Holding the EU liable for violations of fundamental rights in foreign policy seems to be uniquely possible through the Union's action for annulment, which now allows individual access to the courts and as such constitutes an important instrument for the practice of rights-claiming through *ex post* review. Yet, to be admissible, an individual action brought under Art. 236 must not only respect the general two-month time-limit, but individuals must prove that they are directly and individually affected by an act, condition which is hardly ever fulfilled when acts -as foreign policy regulations and directives- are by definition of general scope. However, such case scenarios are not utopian as one could envisage as potential plaintiff a natural or legal person benefitting from the Union's grants to implement one of its external policies.

As it emerges from the above, access to the review of instruments of European foreign policy proves to be an intricate exercise whose effectiveness should be addressed to ensure that access to justice and the right to an effective remedy both remain key notions of European law. Nonetheless, if the issue concerning the accessibility of judicial forum should be object of debate, it should be understood that other -non-judicial- avenues are available to discuss the validity and coherence of European foreign policy. Article 20(d) TFEU, introduced by the Lisbon revision presents a number of tools to enhance individual agency and access to the Institutions by granting any European citizens the right to "petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union".

The right to petition the European Parliament can be exercised individually or collectively, by any EU citizen or person residing within the Union's territory, on any matter falling within the scope of the Union's activity. Seemingly covering an extremely wide range of situations, the right is nevertheless limited to the

existence of a direct link between the petitioner and the Union's field of competence at stake.¹⁴

Interestingly, the above procedure does not only provide for a means to promote discussion, but also entrusts in the Parliament the right to request the Commission to seize the CJEU, if it suspects a breach of EU law. As such, the political instrument constitutes itself a bridge to access judicial review. Similarly, the Parliament's decision on inadmissibility or the issuing of an unmotivated opinion both can be subject to appeal.¹⁵

As opposed to the specific framework on the above petition-right, the right to address the Union's institutions is more loosely framed. As such the institutions are not subject to any obligation regarding the form or content of the answer delivered, nor are they under an obligation to respond.

Lastly, the Mediator or European Ombudsman, constitutes one key actor complementing the Union's culture of political review. Innovation of the post-Lisbon era, the Mediator is empowered to review claims of maladministration attributable to the Union's "institutions, bodies, offices or agencies"¹⁶ and directly suffered by any natural or legal person residing in the EU. Again, the primary obstacle to effectively resorting to this mechanism in the realm of foreign policy, are the standing requirements. As for the above, the directness of the link could be regarded as limiting the access when the maladministration is raised in the Union's external action. However, as it is the case for the parliamentary petition, the provision is broadly construed, in order to preserve the essence of the office. Conditions on personal standing could, *vice versa*, constitute a greater challenge as actors, directly concerned by the Union's foreign policy tend to reside outside of its borders. Nevertheless, depending on the treaty interpretation, European citizens or residents could argue in favor of directness basing their complaint on the intrinsic non-justiciability of a number of Union's actions rather than basing a claim on an effective breach of human rights occurring on the ground but outside the Union's territory.

Despite the obstacles, the European Ombudsman has the potential to generate the necessary discussion around the themes advanced, as admissible claims are shared with the concerned institution in order to gather its observations whilst the European Parliament is also provided with a final report. Moreover, depending on the gravity of the case the Mediator disposes of a number of

¹⁴ Chapter I, Section 1, Art. 227, Consolidated Version of the Treaty on the Functioning of the European Union, Lisbon, 2008.

¹⁵ CJEU, Judgment of the General Court (Sixth Chamber) of 14 September 2011, *Ingo-Jens Tegebauer v European Parliament*, Case T-308/07.

¹⁶ Chapter I, Section 1, Art. 228, Consolidated Version of the Treaty on the Functioning of the European Union, Lisbon, 2008. 13

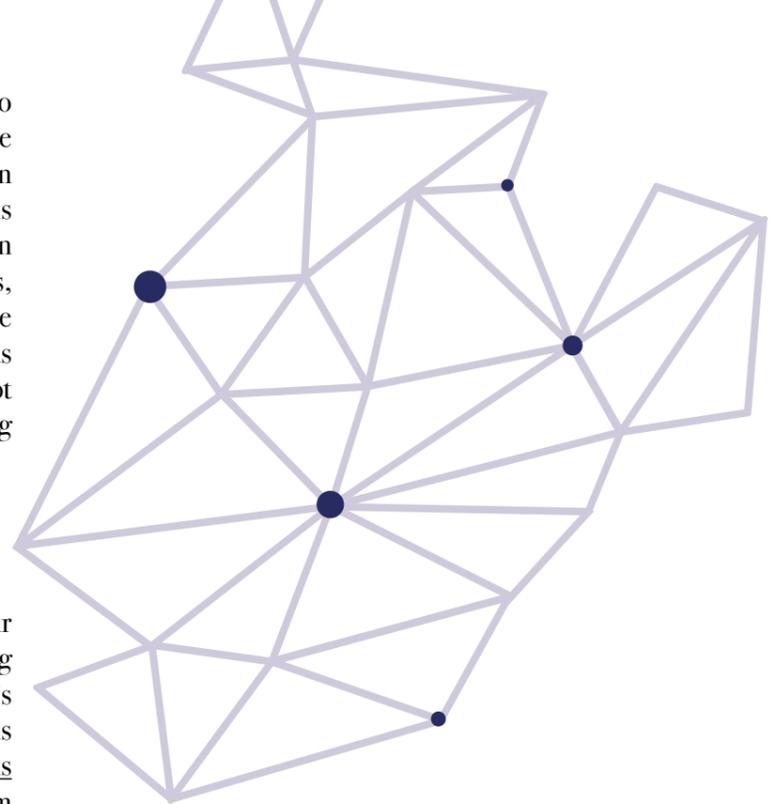
tools to foster dialogue between the parties and it can go as far as organizing reunions between the parties on the issue in order to negotiate an agreement. Weighing on the utility of the mechanism is also the fact that decisions of the European Ombudsman are justiciable and can be object of an appeal before the CJEU. Nonetheless, appeals lodged against the Organ's decisions -as it is the case for parliamentary-petition appeals- will chiefly focus on the satisfactory nature of the remedy offered and not on the main object of the complaint, with form overriding substance.

CONCLUSION

The protection of European values and their promotion on the international scene being a clear concern and binding objective of the Union's external action, the substance of these values remains ambiguous. While the systematic reference to notions as human rights, democracy and the rule of law seem sufficient to convey the general spirit of the Union's approach to value-promotion, the absence of a clear enforceable definition severely hampers the achievement of the Union's objective as it excludes any form of effective review. Given the problematic application of the Charter's normative potential, the relevance of a number of *a posteriori* review-mechanisms should grow in order to obtain guidance from the CJEU in its interpretation prerogative. However, a number of procedural requirements severely obstruct the access to concerned individuals and groups to legal ways of review, access being *de facto* granted almost exclusively to those same institutions in charge of the elaboration of the Union's policies. Access to debate being exclusively available through political means of review, the coherence of the Union's foreign policy chiefly relies on the goodwill of the Union's institutions in applying if anything opaque and complex procedures.

Though opening access to judicial means of review remains one priority in order to ensure accountability -ergo effectiveness- considering judicial review a panacea would be nothing but deception. To the contrary, *ex post* review remains counterpart to the elaboration of clear and precise European foreign policies, mindful of the values the Union adheres to.

Sine Qua Non aspires to revive the debates and discussions around this very important notion in order to foster a common human rights culture governing not only internal European affairs, but also European international affairs. A culture that is not only at the forefront of the Union's doctrine, but also of its action.



THE MULTI-LAYERED CONNECTION BETWEEN THE MENA REGION AND THE EU

Recent political discourse in the majority of the EU member states has increasingly developed into a direction supposing a radical discontinuity between the European continent, and the MENA region. The development relies on an interplay of cultural, political, and historical assumptions that are in many ways essentialist in nature – and reminiscent of what Edward Said, in his 1978 chef d'oeuvre, called out as *Orientalism*¹. This identitarian paradigm that Said attacks, which proposes a fundamental alterity between the 'occidental' Europe and the 'oriental' Middle East, has been solidified by contributions from the realm of International Relations in the tradition of Huntington's *Clash of Civilizations*² – a mode of reflection that appears to remain at the core of contemporary political discourse, as salient fixations with ideas such as the 'China Threat'³, or 'Political Islam' show. It would undoubtedly be an exaggeration to suppose that there is no alterity at all between the states and societies of the MENA region and the EU member states – last but not least due to the effects of centuries of colonialism, and politics tuned to the premises of civilizational difference. Perceptions form realities, much more than the opposite, it has been argued by many. The argument to be made is that **no matter which level or definition of alterity one is willing to accept, this alterity does in no way amount to a paradigmatic boundary that foreign policy should care to consider.** Any border, beyond its 'practical' meaning of demarcating political sovereignties, is only as strong as it is *imagined* to be. The project of the European Union is arguably carried by a radical refusal of the border as anything more substantial than such a demarcation, when it comes to the borders between its member states, and is willing to go even further as the general project of deepening proves. For decades European nationalism relied on

1 Said, Edward. *Orientalism*. London: Verso (1978)

2 Huntington, Samuel. *Clash of Civilizations* New York: Simon & Schuster (1999)

3 For an influential example, see Gertz, Bill *China Threat*. Washington DC: Regency Publishers (2010)

imaginaries of firstly, fundamental political, social (and at times human) alterity neatly divided by national boundaries – which, in its darkest hours, was utilised to instil an imaginary of hierarchy to instigate conflict and destruction. **This imaginary of radical alterity, the assumptions of paradigm and hierarchy, were refused by building a Union based on the political convictions of liberal democracy, rule of law and human rights – while at the same time allowing for alterity in cultural and linguistic practices.**

The story of the European Union is thus, in many ways, the story of the depoliticisation (i.e., a subtraction of any form of normative political command) of the fluid concept of culture, and a gradual weakening of the meaning attached to the notion 'national border'. However, when it comes to its 'outward boundaries', the notion of fundamental alterity still appears to reign – as the ongoing debates on the refugee crisis, and the political spectre of integration show. Müller notes that this dynamic is textualized in European law, which refers to demarcations between member states as frontiers (implying their fluidity), and outer demarcations as borders⁴. The very process which lead to the creation of the inside, appears to be refused when considering the political possibilities of the outside – which, of course, go further than plain accession to the Union. This paper will argue that the Union must overcome this bias, both in order to stay truthful to the ideological content of its foundation, and to face the practical challenges an age of accelerating globalisation has brought. The path to overcome the bias, it will be argued here, leads through the MENA as *intimate neighbour* to the Union, both historically, and in a future-bound perspective.

4 Müller-Graff, P.-C. "Whose Responsibilities are Frontiers?" in M. Anderson and E. Bort (eds.) *The Frontiers of Europe*, London: Pinter (1998).

JUNCTION OR BORDER: EUROPE AND THE MIDDLE SEA

Generations of schoolbooks have proposed the geography of Europe as being naturally bounded by supposedly ‘natural borders’ of the Mediterranean, the Atlantic, the North Sea, and the Ural mountains.⁵ The geography of Europe is thus taught as stable, eternal, as *natural* – and indeed in most cases, the political boundaries of European countries appear to overlap with this geographical supposition. What the schoolbooks omit, however, is that this *specific* geography of Europe is, in a historical perspective, but one of many. The navigators of Greek antiquity – an epoch which as a cultural reference has arguably shaped European references of identity at the core – referred to Europe as the collection of shores west of the Bosphorus, while considering most things north simply as undefined barbarian lands. The Romans, whose empire stretched further north than the Greeks ever could have imagined, refused to accord the label of *Europe* to the lands lying beyond the *limes* border, and thus most prominently modern day Germany. Early Ottoman cartographers, on the other hand, considered Europe to be, essentially, the Balkan peninsula. Even Voltaire tended to consider Sweden, Baltic Germany, Poland, and Russia as part of a geography he simply referred to as *The North*.⁶ Today’s Europe, referred to by the geographical order of *Continent*, is only the last in line of a development of geographies informed by considerations of historical, religious, political and economical sort – and all so often inspired by one or another ideological commitment. The European Union’s ideological commitment, as outlined Europe as a Rights Culture, (should) assume a position of silence to all ideological commitments other than a conviction of cooperation on the basis of the universal human rights, liberal democracy, rule of law, and economic convergence. The EU’s strong bilateral relations with the US and Canada have arguably overcome the ‘natural border’ the Atlantic exemplifies in schoolbooks. The case is more difficult when it comes to Europe’s eastern neighbour, Russia – between an

5 Malatesta, Stefano and Squarcina, Enrico. “Where does Europe end?: The representation of Europe and Turkey in Italian primary textbooks” *Review of International Geographical Education (RIGEO)*, Vol. 1, No. 2, Autumn (2011): 113-140.

6 Pocock, J.G.A. “Some Europes in History” in Pagden, Anthony (ed.) *The Idea of Europe: From Antiquity to the European Union*. Cambridge: Cambridge U Press (2002)

aggressive foreign policy, and the various EU member states’ commitment to NATO, the Ural stands strong. However, looking south, the situation is all but clear.

A central element in all possible localisations of Europe, if functioning as a *perspective* or *border*, has always been a body of water whose name is in many ways, central: the *Mediterranean*. Populist political discourse appears to consider the Mediterranean as the ultimate boundary demarcating *Europe* from the similarly arbitrary continental definitions of *Asia* and *Africa* – with more than one national leader calling for ‘closing’ the Mediterranean route to refugees, etc.⁷ However, attributing this kind of role to the Mediterranean is by no means a historical constant. Scholarship from the developing field of spatial history agrees that the *meaning* of the Mediterranean Sea has historically fluctuated between the notion of *junction* and *border*. While in classical antiquity, Mediterranean maritime routes were at the core of imperial continuity, the middle ages came to consider it as a divisive line between a christian ‘Occident’, and a muslim ‘Orient’. The era of the enlightenment saw a return to the imaginary of the *junction sea*, through the development of colonial and merchant ties with the MENA, eventually returning to the natural boundary assumption during the high times of nationalism in the beginning of the 20th century.⁸ **The coming of the European Union has seen a debate on the position of the middle sea, with numerous initiatives advocating for a deepening of ties between European countries and its southern neighbours** – the most prominent being a late outcome of the 1995 Barcelona Process, the 2008 *Union pour la Méditerranée*, or Union for the Mediterranean⁹, as a substantially revamped version of the chronologically previous Euro-Mediterranean Partnership (EMP). Isaac argues that the EMP’s original outlook included an outright *geographical ambition*, which she terms ‘region building’, and describes as an attempt to create the political, economical, but also social space of the EuroMed – which was then mirrored in the outlook of the UfM.¹⁰ In the above logic, this attempt could be seen to create a form of overlapping ‘junction region’ between the MENA and the EU. Recently, it seems that the pendulum

7 Schmid, Thomas. “Die Zentrale Mittelmeerroute” *Heinrich Böll Stiftung E-Papers* (2016)

8 Blais, Hélène & Florence Deprest “The Mediterranean, a territory between France and Colonial Algeria: imperial constructions” *European Review of History | Revue européenne de l’histoire*, Vol. 19, Nr. 1 (2012): 33-57.

9 Union for the Mediterranean (<https://ufmsecretariat.org>)

10 Isaac, Sally Khalifa “EU Action in the Mediterranean: Structural Impediments Post-2011” *Middle East Policy* Vol. 23, No. 4 (Winter 2016): 92-102. *[it is necessary to note here that Isaac maintains the position that the UfM’s outlook is less ambitious than the original outlook of EuroMed]*

has taken a decisive swing in the opposite direction, when Euro-Mediterranean partnerships are suffocating in the debris of both European, and the MENA region’s political instability.^{11 12} The central question is thus, what meaning should be assigned to the Mediterranean in order to reach a stable, prosperous, and just future. The fact of the matter is that the *meanings* of Europe and the Mediterranean are not only intrinsically linked, but also dependent on each other. If the European continent is to be understood as a geographically, politically and culturally stable entity, then the Mediterranean must necessarily be considered as a boundary between Europe, and what lies beyond. If Europe is to be understood in an ideological perspective, i.e. in one that aims to overcome the deterministic ontology of the border as the EU’s foundational commitments express, the Mediterranean must be regarded as a junction – as the ‘*Middle Sea*’ that languages north, east and west of it describe it as – and thus treated as such. The diversity that is allowed inside the Union must be acknowledged beyond its borders, too; but it must not impede the commitment *to* and acknowledged potential *for* rule of law, human rights and liberal democracy on both sides of the sea. The emblem of the UfM, the Tifinagh letter ⵍ [yaz] which is mirrored on a vertical angle, somewhat illustrates the notion: a symbol describing the *free man (amazigh)*, which reigns on both shores, if in different colours. Lately, the project of the UfM seems to fail – or to change its original outlook. It will be argued that this situation is unsustainable, both for Europe, and for its presence in the MENA region.

11 Kausch, Kristina & Richard Youngs “The end of the ‘Euro-Mediterranean vision’” *International Affairs* Vol. 85, Nr. 5 (2009): 963-975.

12 Youngs, Richard (eds) *Twenty Years of Euromediterranean Relations* London: Routledge (2016)

FROM NEIGHBOURHOOD TO PARTNERSHIP IN A GLOBALISING WORLD: CAPITALISING ON PROXIMITY

While the battle over definitions of boundaries and borders continues in European political discourse, it would be wrong to assume that Europe has at any point fully embraced on extreme or the other. However, the battle of definition appears in full force when the prime distinction between two forms of European proximities is regarded: the *European Neighbourhood Policy*, and the *Enlargement Agenda*. The Enlargement Agenda can be regarded as a continuous attempt to fulfil the vocation for geographic continuity in order to make the EU a united continent¹³, and has in many ways been fruitful. The strategy of conditioning membership with structural changes to political institutions and economic policy lies at the heart of the ambition of horizontal integration, and success stories such as Croatia stand as proud examples of the policy paradigm’s success. When it comes to EA countries (with the meaningful exception of Turkey), the EU actuates its commitment beyond its boundaries. However, in the case of the ENP, **the potential of proximity is currently not capitalised upon – much rather it is treated as a contingent feature to be dealt with in a reactive approach.**

Thus far, the ENP relies on a tripartite differentiation of ‘neighbourhood’: the Eastern Partnership (EaP) Initiative, the Union for the Mediterranean and a range of bilateral frameworks (“Action Plans”) with countries party to the former, with the meaningful exception of Libya who is neither a member to the EaP nor the UfM. The EaP and UfM follow a regionalist logic, while bilateral agreements are strictly Union-to-country. The EaP aims to react to the continental continuity at the margins of ‘Europe’ and ‘Asia’, and represents an ambitious developmental

13 <https://publications.europa.eu/en/publication-detail/-/publication/5c93a9e3-f5b7-4567-88aa-eea55451a0a1>

programme targeting governance, infrastructure and civil society. Despite having prior limitations for EaP members to access EU membership, this has progressively been changing with select members of the EaP, especially from the Western Balkans, being offered membership perspectives. The reason for this limitation has traditionally been security concerns stemming from the sustained influence of Russia in the region¹⁴ – a dynamic which has led to somewhat of a vicious circle, or path dependency, weighing heavily on the foreign policy decisions of the states in question.¹⁵ It is however necessary here to acknowledge the complexity of Eastern Europe and the Caucasus, and the conflictual relationship of post-soviet democratization and re-surfing Russian interventionism. Belarus and Azerbaijan, to cite two prominent EaP countries, are clinging to authoritarianism, whereas Armenia has only recently revamped its democratic potential.

The Union for the Mediterranean was indeed ambitious in outset, but has in recent years increasingly lost its drive, and its scope became ever limited. **The problem at the core of the ENP when it comes to the MENA region could perhaps be illustrated by the deeper meaning of the notion of *Neighbourhood*.** Per Walzer, the neighbourhood is by all intents and purposes, a “random community”¹⁶ – it is this ‘randomness’ that the European Union appears to now embrace in its dealings with its Mediterranean neighbours, with no clear goal of what the ENP truly strives to achieve is in sight. At best, the ENP appears to serve the EU to contain the negative externalities resulting from political instability, by producing incentives for governments to comply with EU proposals: the recent European initiatives in tackling migration, fittingly described as ‘containment-and-storage’ by some, are a clear example of this dynamic.¹⁷ Initial ambitions resulting from the democratic spark that the Arab Spring represented quickly shifted towards a logic of securitization, and the policy goal of *democratization* was, as Harders argues, replaced by the paradigm of *resilience*.¹⁸ What results is a form of top-down approach to foreign policy, where the rich homeowner pays for

his poor neighbour’s fence to keep the dogs at bay. The initial goal of the UfM, which aimed at installing a Euro-Mediterranean regionalism based on a ‘more-for-more’ (i.e. conditional approach), was replaced with a number of bilateral agreements promising technical, short-term relief from the side-products of political turmoil.

The proximity of the MENA with Europe is however by no means random, and allow for a far greater potential than the current securitization paradigm allows for. Indeed, many current security concerns on the agendas of the EUMS are in some way or another linked to the MENA countries: Terrorism, both home grown and imported, is either referencing rogue religious ideologies who blossom in the instability of MENA states, or is instigated by hatred against individuals with presumed ties to MENA countries (and, of course, beyond). MENA ports are furthermore the main departure point for illicit substances and weapons with direction Europe.¹⁹ Also, the MENA remains a prime source for petroleum and natural resources, with security issues inadvertently leading to price shocks and/or shortages. Yet, the security-resilience-stability nexus ignores more sustainable outlooks that are specifically tied to energy, migration, and Environmental protection.

The EU’s energy demand is on an increasing surge upwards, and the question of energy security will be increasingly tied to the possibilities of transition to ‘clean’ (i.e., carbon free) power sources. Numerous studies have outlined the opportunities arising for the EU to achieve such a transition through tapping into the vast potential of the MENA region when it comes to wind, solar and hydro-powered energy.²⁰ The potential is exacerbated by Europe’s proximity to the region, as technologies aiming at minimising losses through large-scale grid energy transport are steadily improving, and trans-mediterranean cables are becoming an ever more valid option.²¹

Migration between the MENA and the EU is haunted by a dual, malicious dynamic: Firstly, migrant flows (both stemming from the MENA, and using the region as a way of passage) are unidirectional, and often uncontrolled upon departure. This leads to avoidable loss of life *en route*, and hinges an equally avoidable burden on the EU’s southern-shore countries, as the task to control

immigration is (through the regulations stipulated in the Dublin Regulation) left to the first-receiver countries. Secondly, labour migration is unbalanced between the EU and the MENA countries, with labourers fleeing high unemployment in the MENA to increasingly saturated economies in the EU. A similar imbalance is prevalent when it comes to the migration of highly skilled labour, resulting in avoidable brain drain effects weighing heavily on the economies and institutional stability of MENA countries.²² Nowhere is the issue of the securitization paradigm more visible than when it comes to migration: efforts are almost uniquely focused on stemming migrant flows (which are centered around an extended jurisdiction to ensure containment paradigm), and have proven either useless or ethically untenable. However, there are virtually no initiatives from the EU’s side to curb the effects of brain drain and skilled migration. To reach a sustainable approach to migration, the EU must look beyond its boundaries, and beyond the security paradigm. Resilience and stability are certainly key, but the long term perspective must prevail – and ethical tenability is crucial.

Climate change and environmental degradation are a global challenge – and water, both in its maritime and sweet-water dimension, is at its core. The Mediterranean sea, source of income and pleasure for individuals on all its shores, as well as central feature of ecosystems south, east and north, is at the breaking point of pollution – with MENA countries’ impact standing in no comparison to European counterparts.²³ In order to attain a sustainable regime to curb environmental degradation, an approach adapted to economic and social practices on both sides of the basin must be achieved; protection must be incentivised, and civil mobilisation encouraged.

Where challenges are common, common solutions must be sought. **The challenges of Europe are common (if not throughout the bank) to the challenges of the MENA, yet Europe is engaging into a politics of neighbourly containment as opposed to a sustainable partnership.** Proximity, by itself, is seen as a challenge, and not as a means to *face* the plethora of challenges shared. It is time for Europe to capitalise on its proximity with the MENA region, as opposed to seeing it as a contingent feature of its geographical position. **Partnership must reign as paradigm, not the securitized neighbourhood.**

22 Docquier, Frederic & Luca Marchiori “The impact of MENA-to-EU migration in the context of demographic change” *PEF* Vol. 11, Nr. (2 April, 2012): pp. 243–284

23 Rajeev K. Goel, Risto Herrala, Ummad Mazhar “Institutional quality and environmental pollution: MENA countries versus the rest of the world” *Economic Systems* Vol. 37, Nr 4, (2013): pp. 508-521.

However, cooperation with the MENA must not only be seen as a necessity, but as an opportunity, too.

A POWERHOUSE FOR UNITED, PRINCIPLED, EFFECTIVE AND AUTONOMOUS FOREIGN POLICY

The MENA has recently been portrayed as the ‘Powerhouse’ of foreign policy²⁴, describing it as necessary for striving global power to engage the region in order to take one’s place in the international theatre.²⁵ As it has been the case since WWI, control of the resourceful and strategic MENA region is disputed among world powers, including European countries, partly ind reminiscence of their late colonial domination. While there is a crucial need for the introduction of a post-colonial perspective in this special relationship outlined above, EU foreign policy drastically needs to gain autonomy. As it is still often held hostage of a ‘Cold War-thinking’, it deeply lacks the true capacities of action required to establish an autonomous foreign policy, notably in the MENA region. Only the development of a ‘True European Defence Union’²⁶ would provide the necessary capacities for the EU to intervene outside, and regardless of, the NATO framework and thus develop a genuinely European-bred strategic culture. As Asseburg argues, it was precisely the turmoil of the Arab Spring that demonstrated the problematic dependence of the EU countries on the US when it comes to safeguarding geopolitical interest²⁷ – a dependence that, in the current state of affairs, is untenable.

However, it is not only mere presence that is needed **to actuate a truly independent foreign policy of Europe** – the desired result is contingent on the nature of this presence. The EU, more than any other global player of the same importance, incorporates notions of a democratic rights culture, and societal compromise,

14 George Christou “European Union security logics to the east: the European Neighbourhood Policy and the Eastern Partnership” *European Security*, Vol. 19 Nr. 3 (2010).

15 Kerikmäe, Tanel & Archil Chochia (eds.) *Political and Legal Perspectives of the EU Eastern Partnership Policy*. Heidelberg: Springer (2016)

16 Walzer, Michael. *Spheres of Justice*. London: Basic Books (1983): p 36

17 “EU and the failure of ‘containment-and-storage’ policies.” *Mediterranean Affairs* (March 6, 2016)

18 Harders, Cilja *et al.* “Europe and the Arab world: neighbours and uneasy partners in a highly conflictual context” *Intergnational Politics* Vol. 54 (2017):434-452.

19 Barzoukas, Georgios “Drug trafficking in the MENA” *EUISS* (November 2017)

20 Haller, Markus & Sylvie Ludig, Nico Bauer “Decarbonization scenarios for the EU and MENA power system: Considering spatial distribution and short term dynamics of renewable generation” *Energy Policy* Vol. 47 (2012): pp 282-290

21 For the recent project: <https://www.euroasia-interconnector.com>

24 Filiu, Jean Pierre & Stephane Lacroix eds. *Revisiting the Arab Uprisings*. Paris: CERI/ SciencesPo (2018)

25 Filiu, Jean Pierre, Personal Communication, October 2016.

26 Howorth, Jolyon. “For a True European Defence Union.” *European View*, vol. 17, no. 1, 2018

27 Asseburg, Muriel. “The Arab Spring and the European Response” *The International Spectator* Vol. 48, Nr. 2 (2013): 47-62¹⁹

as opposed to ‘pure’ national interest. While unity in foreign policy within the EU remains a mirage, reactive, securitized policies may serve the short-term interests of individual member states. However, in the long run it sustains autocratic regimes in the region; a method of conducting foreign policy that currently shreds the region to pieces, as it is ferociously employed by the US and Russia alike. Schlumberger goes as far as arguing that the current European policies – through its exclusion of societal voices in favor of a uniquely government-centered approach, and the resulting depoliticization²⁸ of partnership – served as a ‘triple victory’ for Arab autocratic regimes.²⁹ Seeberg comes to similar conclusions by quoting Eberhard Kienle: “In practice, the Union has frequently preferred immediate stability in the south, and thus authoritarian rule and repression, to slow and possibly messy regime transformation”.³⁰ The fact of the matter is that Europe is in the unique position to engage into a different foreign policy that goes beyond geopolitical interest, as it is itself the very outcome of such a dynamic. In a minimalist reading, the Arab Spring was a call for negotiation between governments and population – the EU’s economic power could be more coherently used to enhance dialogue between governments and constituency, through incentivization of participatory processes, and pluralist governance. Manners’ much disputed conceptualization of European soft power could find a true example in the contemporary MENA. Such an approach of encouraging compromise, is in many ways the luxury of the European Union, as it is itself the product of a collection of such negotiations and processes – as the EA showed. As outlined in *Europe as a Rights Culture*³¹, the set of values on which the very foundation of the EU rests is enlisted in art. 2 of the Treaty on European Union (2007): respect for human dignity, freedom, democracy, equality, the rule of law and human rights, in a framework intertwined by the conjunction of pluralism, non-discrimination, tolerance, justice, solidarity and gender equality. Given it is gifted with decisive tools such as mandatory conditionality of aid and cooperation, including defence cooperation, these

²⁸ Understood as a subtraction of normative commands of democratic participation and egalitarian socio-economic values achieved through regime development imposed in partnerships (or, in EU speak, conditionality). For a similar definition, see: Seeberg, Peter. “Pragmatism and depoliticization in European-Mediterranean relations” DJUCO - Working Papers No. 3 (December 2011).

²⁹ Schlumberger, Oliver “The Ties that do not Bind: The Union for the Mediterranean and the Future of Euro-Arab Relations” *Mediterranean Politics* Vol. 16, No. 1 (2011): 135-153

³⁰ Kienle, Eberhard. “Introduction. Democracy Building and Democracy Erosion.” in *Political Change North and South of the Mediterranean*. (Kienle eds.) London: Saqi Press (2009): 9-18. in Seeberg, Peter. “Pragmatism and depoliticization in European-Mediterranean relations” DJUCO - Working Papers No. 3 (December 2011).

³¹ *Sine Qua Non* “Europe as a Rights Culture”, 2018.

values are to be the lighthouse guiding the principled foreign policy the EU should deploy in the MENA region, should a true political will emerge to uphold it.

Additionally, the EU is not only in the unique position of being able to overcome pure, national interest convincingly by uniting its members states behind a common set of principles and normative convictions, but also finds itself in the face of a unique opportunity – that of a benevolent regard of local populations. Recent surveys show that, especially the inhabitants of MENA region, are looking favorably at the Union.³² There is not only a necessity for the EU to engage itself thoroughly in the MENA, but also a fruitful soil to do so – a benefit that no global players appear to have at the moment.³³ Despite these appealing figures, **the current security-resilience nexus paradigmatically enforced in the EU-MENA relationship forbids European countries from seizing this opportunity of rethinking their relationship with their southern neighbors.** As counterterrorism or defence cooperation activities such as intelligence-sharing remain key to Europe’s security, effective and principled development policies in the MENA are just as vital to its long-term security, in the framework of a reborn relationship.

CONCLUSION: A EUROPEAN PARADIGM OF FOREIGN POLICY, ACTUATED IN THE MENA REGION

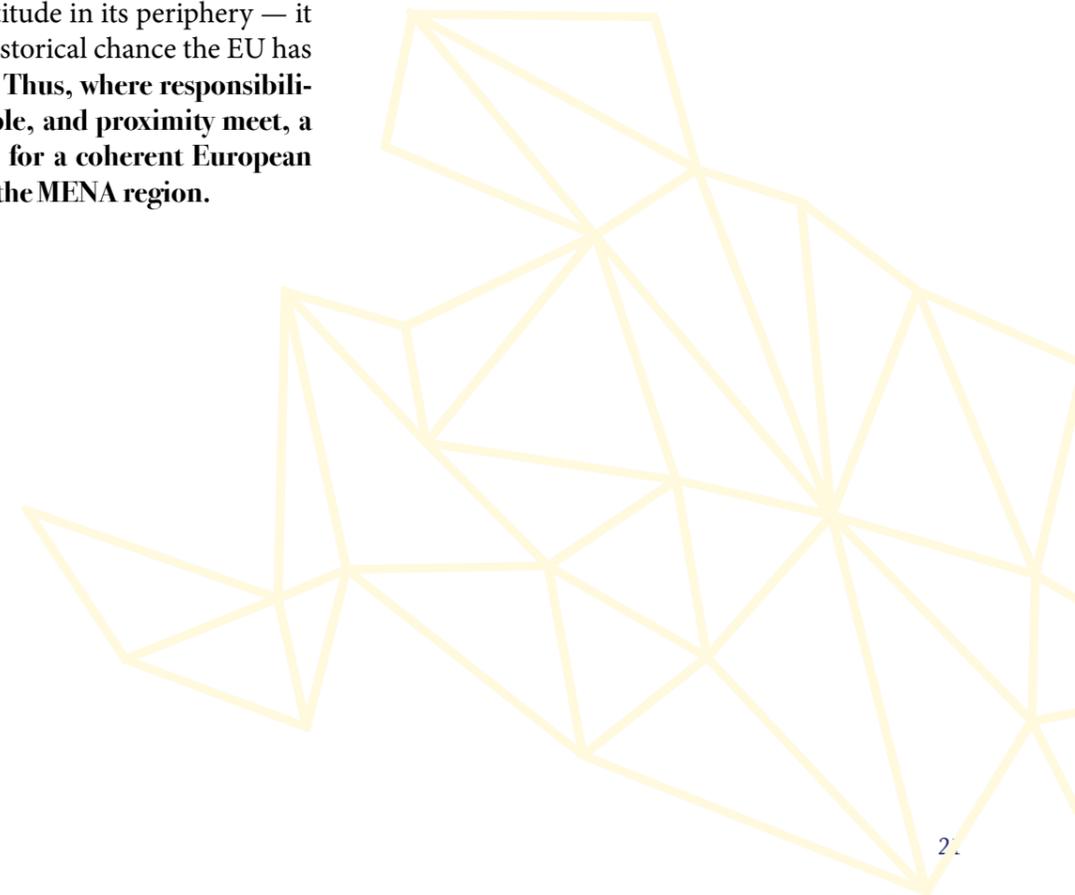
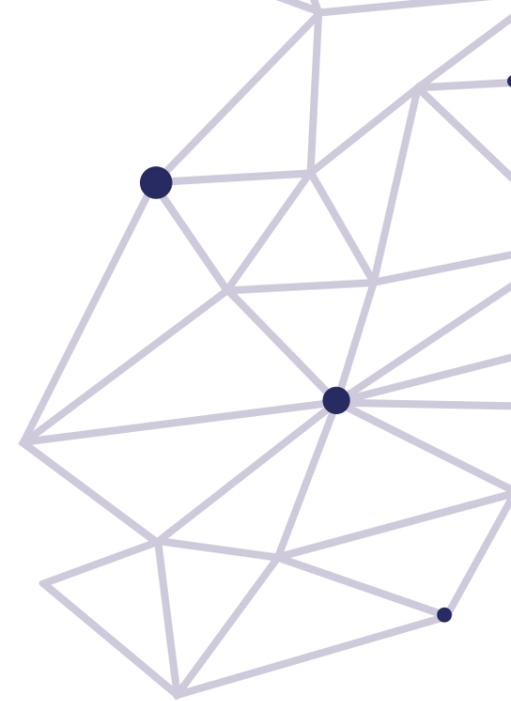
The European Union’s core principles give a clear guideline on how to claim its place in the world. (As outlined elsewhere, it is indeed key that it does.) Europe’s proximity to the MENA makes the region the first and foremost priority in this necessary process. The recent development of European political discourse into the direction of regarding the MENA as a place of radical alterity in the face of a stable European ‘continental’ politico-cultural monolith are not only historically misinformed, but also untenable when regarding the principal identity of the Union as a project aiming to

³² Arab Barometer 2018 Survey (<http://www.arabbarometer.org/topics/international-relations/>)

³³ *Ibid.*

sacrifice the paradigmatic meaning of the border for a higher common ideal. Furthermore, the proximity of the MENA to the European project gives rise to a presence of a common set of challenges, which can only be addressed through a notion of partnership on equal terms opposed to the current securitization paradigm. The notion of partnership is at the core of the European project, so it must prove this commitment beyond its outer boundaries. Yet, the partnership must go beyond government-to-government accords: if a European foreign policy is to be truly independent, and coherent with its principles, it must engage civil society, and if necessary intervene (in peaceful terms) to protect it from repression. The MENA region’s civil society is in utter need of a partner in the world, and the EU is in the unique position of offering support. In short, the MENA region exemplifies the untapped potential of a coherent European foreign policy – and a true commitment to such an approach could reap benefits for all sides involved. And still, there is a last point to make, pertaining to responsibility. The EU overcame nationalist tensions inside the ‘continent’ - indeed, this maneuver lies at the core of the project.

However, the injustices of nationalism were not only felt within the space the Union aims to unite, but also (and at times perhaps more so) beyond, through the spectre of colonialism. The renewal of Europe’s face in the world has apparently lead to a forgiving attitude in its periphery – it is this attitude that is the historical chance the EU has to capitalize on the most. **Thus, where responsibility, commitment to principle, and proximity meet, a unique opportunity arises for a coherent European Foreign Policy, starting in the MENA region.**



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