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Balancing human rights and security in the EU foreign policy: the case of Libya.

Human rights violations in a refugee crisis context.

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Abstract

Libya's conflict is one of the lengthy unsettled conflicts currently existent in the international order. The European Union (EU), as a core international actor supporting the resolution of the conflict, has provided a response in human rights (HR) issues as well as security. These two areas are essential in EU foreign policy (EU FP), which operates simultaneously with one another, considering the different positions of both inside EU FP - human rights being a legitimate aim and a value, whereas security a goal and priority. Nevertheless, in the situation of the refugee crisis context (from 2015 onwards) in Libya, areas under the field of security – such as border management – have experienced not only some issues when following their mandate due to the fragile situation in the country, but also the need to consider human rights in the centre of their activities. This is because human rights violations can create insecurities and in order to deal with them, military power is not enough to guarantee stability and security in the country. While the EU already specifies its activity as both, the research aims to demonstrate why more intersection between the fields of human rights and security under EU FP will benefit not only the position of the EU as an international actor in the conflict but more importantly, will promote a step forward on supporting the achievement of a political settlement as well as to guarantee sustainable peace in Libya.

Keywords: Libya, European Union Foreign Policy, European Union, Human Rights, Security, Human Security

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*To my family, Mama, Iñigo, Abuelo,
Abuela, my endless support and love.*

Table of Abbreviations

AFSJ: Area of Freedom, Security and Justice

AU: African Union

CFSP: Common Foreign and Security Policy

CFDP: Common Foreign and Defence Policy

CM: Crisis Management

ECHR: European Convention on Human Rights

ECJ: European Court of Justice

EEAS: European External Action Service

EEC: European Economic Community

EIDHR: European Initiative for Democracy and Human Rights

ENP: European Neighbourhood Policy

EP: European Parliament

EPC: European Political Cooperation

ESS: European Security Strategy: A Secure Europe in a Better World of 2003

EU: European Union

EUBAM: European Union Border Assistance Mission in Libya

EU FP: European Union Foreign Policy

EUGS: A Shared Vision, Common Action: A Stronger Europe – A Global Strategy with regard to Human Rights and Security Policy

EULPC: EU Liaison and Planning Cell

HR: Human rights

HR/VP: European Union High Representative for CFSP

HS: Human Security

IDP: Internally Displaced People

IcSP: Instrument Contributing to Stability and Peace

LPA: Libyan Political Agreement

MS: (European Union) Member States

MSF: Médecins sans Frontières

NATO: North Atlantic Treaty Organisation

NTC: National Transitional Council of Libya

OCHA: Coordination of Humanitarian Affairs

TEU: Treaty of the European Union

TFEU: Treaty on the Functioning of the EU

UN: United Nations

USA: United States of America

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I. CHAPTER I: INTRODUCTION

‘As European Union, we believe it is high time to put an end to this military conflict, right on our doorstep, and manage a proper transition in Libya. We must preserve the country as one single Libya – a united, stable, prosperous and reliable partner for all.’ – HR/VP Josep Borrell

‘The rights of every man are diminished when the rights of one man are threatened.’ – John F. Kennedy

1.1. Research problem

The case of Libya has reflected the very need of finding a common line between HR and security strategies from international actors such as the EU. The need to combine both fields as core drivers for encouraging both stability and long-lasting peace is essential to encourage a “sustainable democracy”¹ in said country.

The 2011 Libya crisis begun after the Arab Spring², in February 2011, when Colonel Gaddafi started to use force against civilians as a response to the uprising against his authoritarian government.³ Fabbrini⁴ accurately described the 2011 Libya crisis as the ‘first foreign-security test for the Lisbon Treaty, the most serious international crisis the EU had had to deal with after the approval of the Treaty.’⁵ According to this analysis, ‘the test was not satisfactory.’ Keukeleire and Delreux further developed the argument that Libya was considered ‘a blunt example of the failure of CFSP and CSDP to serve as a framework for effective EU FP, despite European countries taking the lead.’⁶ Because there was a big discrepancy on the use of military means by the EU’s different member states,⁷ which in effect led to an ineffective response as it put into question the

¹ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell*, (27 July 2018) <<https://www.statewatch.org/media/documents/news/2018/aug/eu-sophia-libya-overview-11471-18.pdf>> accessed 30 June 2020.

² Ibid.

³ Ludovica Marchi, ‘The EU in Libya and the collapse of the CSDP’ (2017) 14 US-China Law Review Journal 1.

⁴ Fabbrini (n 4) 1.

⁵ Ibid 1.

⁶ Stephan Keukeleire and Tom Delreux, *The Foreign Policy of the European Union*, (2nd edn, The European Union Series 2014) 167.

⁷ Keukeleire and Delreux (n 6) 167.

EU's capability to deal with conflict prevention and crisis management (CM). As the European Security Strategy: A Secure Europe in a Better World of 2003 (ESS), stipulated that there was a need for 'mainstreaming human rights issues in all activities in this field, including ESDP missions, through a people-based approach coherent with the concept of human security (HS)'⁸ This is also supported by Stavridis,⁹ pointing at the European Parliament (EP) which declared that relations between the EU and Libya were not progressing in terms of HR dialogues, fundamental rights and democracy. Only after the refugee crisis in 2015 in Libya¹⁰, has the EU become more aware of its position as a global actor in the conflict and is advocating for considering HR in the security measures applied in Libya to deal with CM as part of an integrated approach to EU FP. The EU has re-doubled its efforts in protecting and promoting HR in EU FP, and security is therefore not an exception. The EU is undertaking training activities to Libyan authorities for the protection and promotion on HR, such as in its Common Foreign and Defence Policy (CFDP) mission in Libya (EUNAVFOR MED Operation Sophia, EU Border Assistance Mission in Libya (EUBAM) and EU Liaison and Planning Cell (EULPC), but still, these missions own military personnel, who are the ones taking the role of promoting HR - together with other multilateral efforts such as partnerships with NGO's, civil society and other international actors (e.g. United Nations (UN) and its agencies in Libya) - and there is not still a proper HR due diligence impregnated in the teaching of the European authorities, since migration is still highly securitised¹¹.

Considering the particular situation of the case of Libya and looking at the problem from a wider perspective, HR are both a legitimate aim and a purpose of EU FP. Even though 'HR are supposed to be promoted in all areas of the EU's external action.'¹², HR

⁸ Council of the European Union, 'European Security Strategy: A Secure Europe in a Better World' (2003) <<https://www.consilium.europa.eu/media/30823/qc7809568enc.pdf>> accessed 17 June 2020, 22.

⁹ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 7.

¹⁰ For more information on the refugee crisis context see: <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>.

¹¹ Elena Topulli, 'Securitisation of Migration and Human Rights in Europe' (23-24 September 2016) 10th International Congress on Social Sciences, European University of Tirana <http://journals.euser.org/files/articles/ejms_may_aug_16/Enela.pdf> accessed 16 June 2020.

¹² Karen E. Smith, *European Union Foreign Policy: In a Changing World*, (3rd edn, Polity Press 2014) 117.

are not considered a priority in EU FP in practice when dealing with the externalisation of migration practices and security¹³. Nevertheless, the EU intends to strengthen its security and defence through a full compliance with HR to ensure the security of European people and territory, but also to obtain prosperity and guarantee democratic states.¹⁴ Although HR are present in EU FP as a principle, value and objective; HR are however not a priority in the implementation of the Common Foreign and Security Policy (CFSP).¹⁵ More specifically, even though the EU has placed HR at the very centre of its 2016 security strategy, A Shared Vision, Common Action: A Stronger Europe – A Global Strategy for the EU’s Foreign and Security Policy (EUGS), this is not a HR strategy per se, but primarily a security strategy.¹⁶ EUGS tends to cover a broad range of issues from an increasing challenging geopolitical context in the current international order¹⁷ and considers security as a priority. The development of EU HR policies can therefore at best only be considered as secondary to security¹⁸. For instance, when mentioning the migration policy in the EUGS, it establishes the need for a ‘balanced and HR-compliant policy mix’¹⁹, but at the same time, as Altafin, Haász & Podstawa present ‘the EUGS does not pay particular attention to HR compliant management of migration flows; instead, it focuses on the access to asylum conceived of as the right that puts a spotlight on the actions of the border regions.’²⁰ Considering this, the main focus of this research is not to question the intentions of the EU to promote and protect HR in its foreign policy, but to discuss to what extent a balance between HR and security in EU FP is possible and desired.

HR violations are considered as serious challenges for the international community²¹, and therefore, a source of insecurity²². Global challenges, such as HR abuses, are

¹³ Chiara Altafin, Veronika Haász and Karolina Podstawa, ‘The new Global Strategy for the EU’s Foreign and Security Policy at a time of human rights crises (2017) Netherlands Quarterly of Human Rights.

¹⁴ Toby King, ‘Human Rights in European Foreign Policy: Success or Failure for Post-Modern Diplomacy’ (1999) 10 EJIL <<http://ejil.org/pdfs/10/2/583.pdf>> accessed 30th June 2020.

¹⁵ Altafin, Haász and Podstawa (n 13).

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ European External Action Service (EEAS), ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (June 2016) <http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf> accessed 17 June 2020, 50.

²⁰ Altafin, Haász and Podstawa (n 13) 130.

²¹ Smith (n 12).

stimulated by both state and non-state actors²³, and even if the EU exposes in many occasions in its discourse a position with the purpose to support HR as objectives of EU FP²⁴, this does not correspond to its practice when dealing with security and migration containment in third countries. There is a perception of lacking capabilities as a military power due to its dependency in security matters on other international actors – such as NATO and the USA, which in consequence, makes practices of EU FP in third countries more security centred²⁵. This positioning is driven by the perception that the EU's international credibility is supported by the increase of security and defence capabilities²⁶. Therefore, documents such as the EUGS, do align more the EU's credibility with strengthening the role of the EU in security and defence abroad rather than with developments of HR-related policies²⁷.

To examine this tension between HR and security, this research will a case-study on Libya, one of the countries which is part of the European Neighbourhood Policy (ENP) in the Southern Neighbourhood of the EU²⁸. The case of Libya is relevant to this research because it shows the present tension found between HR and security when dealing with a CM situation by EU FP. It enhances an increasing number of HR violations²⁹ that occurred since 2011 and that brought the EU into a position to start integrating HR as a guidance of its security strategy for Libya³⁰. Hence, the research problem entails analysing how to balance HR and security in EU FP in order for the EU to be more effective in CM. Both HR and security need to find a balance to promote a legitimate, consistent, coherent and effective EU FP in Libya.

²² Ibid.

²³ For more information about non-state actors see: https://www.jcie.org/researchpdfs/Role_Nonstate/4_Chapter%203.pdf.

²⁴ EEAS, 'Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union's Foreign and Security Policy' (n 19).

²⁵ Smith (n 12).

²⁶ Altafin, Haász and Podstawa (n 13) 127.

²⁷ *ibid* 127.

²⁸ European Movement International, 'Policy Position the EU and the Southern Neighbourhood: more than crisis-management.' (December 2017) < https://europeanmovement.eu/wp-content/uploads/2017/12/EMI_16_PolicyPosition_17_South_Final.pdf> accessed 11 May 2020.

²⁹ For more information see: <https://www.ecoi.net/en/file/local/2003685/MDE1999192019ENGLISH.pdf>.

³⁰ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1).

1.2. Research questions and aims

The general research question of the research will be: *To what extent does the EU need to balance its approach towards HR and security policy in order to be more effective when dealing with CM in Libya?* Furthermore, specific questions of the research will be in line with the two following chapters (Chapter II & III) provided in this research. *Where can an imbalance between both concepts in crisis situations be found towards more pro-security solutions?* (Chapter II) *How are HR and security linked in the context of the EU response in Libya? and how could the EU appreciate this nexus in the application of EU FP in Libya to obtain more success?* To answer these questions, the aims of this research need to be specified. The general aim of this research will be to understand and explain the reasons why a more balanced approach in HR and security is needed by the EU to be more effective when managing the crisis in Libya, as well as to consider the EU's capabilities to achieve this. The specific aims will be firstly, to identify what is the understanding of HR and security in the EU FP in crisis situations and to identify the tensions between HR and security. Secondly, to analyse the response of the EU in Libya in terms of HR and security, and to evaluate the EU's contribution for the promotion and protection HR and security. Thirdly, to perform an analysis of the link between HR and security in the context of the EU response in Libya by focusing on HR violations and establish in which ways the EU could consider this nexus in the application of EU FP in Libya to be more successful.

1.3. Methodology

The methodology used in this social sciences research will be twofold: a quantitative analysis and a qualitative analysis. On the one hand, a small piece of quantitative analysis between the two main EU strategies is performed under the CFSP: the ESS and the EUGS. Through a comparative method, a content and text analysis has been undertaken with the purpose to consider the importance of language in the ESS and EUGS. To achieve this, language is interpreted, performing a word counting on the unigram "security" and bigram "human rights." Word counts are performed in

paragraphs and sentences of both documents³¹. On the other hand, most of the research has been examined through a qualitative analysis considering diverse methods with the purpose to enrich it. Taking into consideration the descriptive and analytical method used in the introductory chapter of this research (Chapter I), for the second Chapter (Chapter II) an initial part (2.1) was performed through an historical/periodical method analysing both the role of HR in the EU and more specifically, in EU FP through an analysis of primary sources such as the EU Charter of Fundamental Rights and the European Convention of HR as well as secondary sources such as EU factsheets, authors from books and authors from academic journals. In the same line, the second part on security of the EU (2.2) was analysed through a descriptive and analytical method (2.2.1) and followed by a descriptive, analytical and comparative method in the security in EU FP part (2.2.2), based particularly on secondary sources such as authors from academic journals, authors of books but also primary sources were considered, e.g. the ESS and the EUGS. In the third part (2.3), the nexus between HR and security is analysed through a comparative method (2.3.1), which is deepened through an introduction of HS as the driver of the relation between HR and security (2.3.2) examined through an analytical method and eventually tested by an analysis (2.3.3) using a comparative method combined with discourse analysis. In this part, primary sources such as the ESS and EUGS have been primarily in-depth used, as well as other secondary sources, such as authors from academic journals, authors from books. Eventually, Chapter III analyses the case of Libya considering the Johan Galtung's *ABC Triangle of Conflict*. In its sub-chapter 3.1, it provides a contextual background (contradiction) on the EU's role in Libya through a descriptive, historical/developmental and analytical discourse method. In addition, the EU's attitude is presented through an analysis of the EU-Libya relations (3.2), this is approached through a comparative and analytical discourse method. In 3.3, the EU's response (behaviour) in security and HR is addressed through a discourse analysis, eventually highlighting in 3.4 the HR and security nexus of EU FP in Libya. This chapter is approached through different primary sources: declarations from the Council of the EU (EU) - mainly the Strategic Review -, and other secondary sources, such as reports from

³¹ Jonathan Slapin, 'Three Basic Steps of Quantitative Analysis' (2018) <<https://www.methodspace.com/three-basic-steps-quantitative-text-analysis/>> accessed 21 May 2020.

civil society, Human Rights Watch and Amnesty International, and reports from other countries (the US, and the Netherlands). Eventually, an e-correspondence through an exchange of e-mails with the EU Delegation to Libya (Annex 3) has enriched the methodology of this research.

1.4. Hypotheses

The hypotheses of the research are the following:

H1: The imbalance between HR and security can be attributed to the fact that HR are not given priority in the CFSP, whereas security is.

H2: The securitisation of HR issues, such as the refugee crisis, favours the imbalance between HR and security because it is being approached from a security perspective and not from a HR perspective.

H3: The presence of intergovernmentalism in EU FP and the lack of a specific common foreign and HR policy creates difficulties for the effectiveness of EU's efforts to promote and protect HR when performing activity on the ground, as it is in the case of Libya.

1.5. Theoretical Framework: HR under Constructivism and Post-Structuralism and the concept of HS

Post-structuralism has led to some contentious ideas that will be analysed in this research. The post-structuralist approach, as mentioned by Ari 'can be defined as a worldview or even an anti-worldview suspicious about the fact that events in the world cannot be explained without grand theories.'³² The post-structuralist approach in international relations presents core ideas, such as the understanding of foreign policies,

³² Tayyir Ari and Özge Gökçen Çetindişli, 'Post-Structuralism in International Relations' in Tayyir Ari and Elif Toprak (eds), *Theories of International Relations II* (1st edn, Anadolu University 2019) <https://www.researchgate.net/publication/332145103_Post-Structuralism_in_International_Relations> accessed 20th July 2020.

as processes driven by the mobilisation of specific identities (cultural, racial and political) by authors like Michael J. Shapiro. David Campbell further examined speech, identity and foreign policy from an American perspective, which have been mutually constructed processes largely ignored by poststructuralism.³³ To these ideas, the “creation of the state”³⁴ is an important element that post-structuralism approaches, as it believes in the state’s identity as an outcome of the construction of discourse practices such as foreign and domestic policies, security and defence strategies and membership in an international organisation.³⁵ Nevertheless, while post-structuralism presents relevant ideas to consider for this research, these could be considered as secondary, since the central part of this research is to analyse ideas on how to balance HR and security as fields of foreign policy. Post-structuralism finds problems in universalism³⁶, and when it comes to HR this is an issue to consider, since universalism is the essence of HR³⁷. In this regard, constructivism, which is sociological, constituent and includes in its discourse positivist and post-positivist methods when analysing the international system³⁸, seems to provide a wider scope when dealing with HR. What is interesting about constructivism, is that as critically inclined scholars mention within the discipline; it has the required sociological and empirical tools to deal with the abstract view of some issues in international relations, such as HR³⁹. These also insist on the need for identity⁴⁰ to ensure the representation of these values⁴¹. Despite the lack of expression of constructivism as a value-normative by other approaches such as the English School⁴², one must consider that ‘there can be no single answer, just as there is no single constructivism, nor is there any single claim to HR’⁴³ and that ‘if HR are a transformation of the international system, then constructivism needs to be able to theorise them as such.’⁴⁴ Interestingly, Hayman further identifies HR as norms that are

³³ Ari and Gökçen Çetindişli (n 32) 4.

³⁴ *ibid* 4.

³⁵ *ibid* 4.

³⁶ *ibid* 4.

³⁷ Paul Alexander Hayman, ‘Constructivism and human rights locating values in a divided approach’ (Doctoral thesis, Durham University 2008) <<http://etheses.dur.ac.uk/2905/>> accessed 20th July 2020.

³⁸ Hayman (n 37).

³⁹ *Ibid*.

⁴⁰ *ibid* 39.

⁴¹ *ibid* 39.

⁴² *ibid* 1.

⁴³ *Ibid* 10.

⁴⁴ *ibid* 70.

representatives of the values in the international system⁴⁵, which the reason why he insists on the need of constructivism for theorising them, to avoid risks of being undermined to a contemporary expression of values⁴⁶. Considering the provisions post-structuralism and constructivism provide to this research in terms of linking identity with foreign policy, and the development of value-normative ideas such as HR, the concept of HS with a particular focus on HR aims to be used for the development of this research. Despite the lack of agreement of what HS represents: whether it is a new paradigm for scholars and practitioners or merely a practical guide for academic research or governmental policymaking⁴⁷, HS is essential for this research because it provides an intersection between HR and security.⁴⁸ But apart from this, and particularly relevant for this research, as Javier Solana ex-VP/HR mentioned when referring to CM in the EU, ‘neither solely theoretical approaches nor purely practical ones can be employed to create a perfect model that can be implemented successfully.’⁴⁹ Because of this, the concept of HS can provide this added value when trying to find a balance between HR and security in EU FP. The concept was established for the first time in the UN Development Programme 1994, Human Rights Report, presenting HS by four main elements: people-centred, it is of universal concern, its components are interdependent and encourages a preventive approach to guarantee effectiveness⁵⁰. But the concept was further developed by the Commission on Human Security (CHS) 2003 report, Human Security Now, highlighting its concern with human beings⁵¹. More particularly, core characteristics of the interlink between HR and HS are provided in the table below:

⁴⁵ *ibid* 69.

⁴⁶ *ibid* 362.

⁴⁷ Cristina Churrua Muguruza, ‘Human Security as a policy framework: Critics and Challenges’ (2007) 4 Yearbook of humanitarian action and human rights <<https://dialnet.unirioja.es/servlet/articulo?codigo=2387973>> accessed 20th July 2020.

⁴⁸ Churrua Muguruza (n 47) 1.

⁴⁹ George Christou, ‘The European Union’s Human Security Discourse: Where are we now?’ (2014) Department of Politics and International Studies, University of Warwick <https://www.researchgate.net/publication/262584071_The_European_Union's_human_security_discourse_where_are_we_now> accessed 27 March 2020.

⁵⁰ Churrua Muguruza (n 47) 21.

⁵¹ *ibid* 20.

Table 2

Relation between Human Rights and Human Security

	Human Rights	Human security
Interconnected motivation	<ul style="list-style-type: none"> • Universal and fundamental human rights 	
Interconnected motivation	<ul style="list-style-type: none"> • Violence and poverty • Identification and promotion of central facets of human lives 	
Different obligations	Basic framework of universal human rights	Cross-section of human rights
Different approach	Indivisibility of human rights, equal priority of all human rights	Open-ended prioritisation of human rights

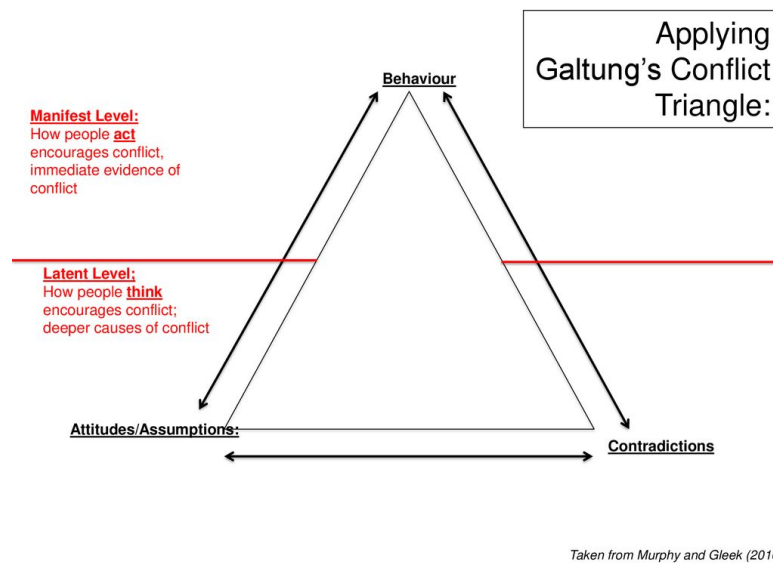
Source: Churrua Muguruza (n 47).

Eventually, in the third chapter of the research, the Johan Galtung's *ABC Triangle of Conflict*⁵² is adopted as a core tool to analyse the involvement of the EU as a main external actor in the Libya's conflict, both in terms of HR and security under EU FP.

The Galtung's triangle is divided in three parts. The behaviour (B) on the top of the triangle, which represents the visible aspects and responses from the actor being analysed. The attitude (A) and contradiction (C) down in the triangle. Attitudes represent feelings and perceptions of actors while contradiction represents the context. In the case of this research, the Galtung's triangle will be adopted to the case of the EU, as a core external actor involved in the conflict in Libya. Being a triangle, all parts affect each other, but the order of analysis will be: Contradiction (C) → Attitude (A) → Behaviour (B)⁵³.

⁵² Named in the research as "Galtung's triangle of conflict management". Nicole A. Hoffman, 'Reconciliation in the Transformation of Conflict' (2010) 11 CCS Working Papers <https://www.files.ethz.ch/isn/119660/Nicole_A_Hofmann_CCS.pdf> accessed 15th July 2020.

⁵³ Hoffman (n 52).



1.6. Timeframe and Content Limits

This research pretends to analyse the link between HR and security in EU FP. The focus of the analysis is on the crisis in Libya (since 2011), with special attention to the refugee crisis (from 2015 on). The EU migration policy will only be mentioned because cooperation in migration is the main (security) interest in the current EU-Libya relations, but it is not the focus of the research. It will only be highlighted to provide a better understanding of the refugee crisis context in which an EU security response and an EU HR response is given in Libya as part of the application of EU FP in the country. Apart from this, in terms of content, the research does not aim to perform an in-depth analysis of the conflict in Libya prior to 2011 and between 2011 and 2014, but to provide a background on the conflict to understand the role the EU has led in it until now, only in the areas of HR and security.

1.7. Relevance

The relevance and contribution of this research lies primarily in two factors. The first is related to the theoretical framework, the research has examined the balance between HR and security focusing on HS and its interlink to HR as an approach. Considering the underestimation of HS as a paradigm, the research aims to highlight the

importance of this concept as main driver of the link between HR and security, primarily in situations of multidimensional insecurities, such as the case of Libya. As mentioned by Rolan:

[H]uman security is the latest of in a long line of neologisms – including common security, global security, cooperative security and comprehensive security- that encourage policymakers and scholars to think about international security as something more than the military defence of state interests and territory.⁵⁴

Considering this information, the second factor is the application of this approach to the case of Libya. Libya has been an example in which several conflicts, sometimes even encouraged by the intervention of international actors, have led to an even more unstable situation, with a multidimensional level of challenges and insecurities. Prior approaches for supporting re-building the country have not led to a better situation, but the conflict has worsened with the latest escalation of the conflict, which occurred in Tajoura 2019⁵⁵. To deal with such a conflict, CM by the EU has to ensure it covers all areas of insecurity in practice, because if not, long lasting peace will not be covered.

1.8. Structure

Following the structure of the introductory chapter, this research will present three additional chapters (Chapter II and Chapter III). In the second chapter, the role of the EU with HR will be developed to understand the position of HR within the regional organisation. The mainstreaming of HR in EU FP will be examined through a periodical overview of the EU HR Policy since the Pre-Maastricht Treaty, to appreciate the beginning and the current presence of HR in the EU. The periodical overview will be followed by a sub-chapter focused on analysing the link between HR and security in the EU FP, both main fields for the study of this research. To understand the position of HR and security within EU FP, a new sub-chapter will be accomplished on EU FP. First, the

⁵⁴ Roland Paris, 'Human Security: A Shift or Hot Air?' (2001) 26(2) International Security <<http://users.metu.edu.tr/utuba/Paris.pdf>> accessed 20th July 2020, 1.

⁵⁵ Sam Turner, 'A Night in Which Our Worst Fears Would Come To Pass' (2019) Médecins Sans Frontières (MSF) <<https://www.msf.org/first-hand-account-fatal-airstrike-tajoura-detention-centre-libya>> accessed 20th July 2020.

definition of HR and security within the EU FP will be provided. Second, a comparative quantitative analysis will be executed analysing the two strategies developed by the CFSP: the ESS and the EUGS. In the third chapter, a historical context (contradiction in 3.1) will be provided on the EU's role in the crisis in Libya. Considering this, the subchapter (3.2) will address the attitude of the EU in the EU-Libya relations. In subchapter 3.3, the research aims to provide the EU's response to HR and security in the current refugee crisis context, to eventually analyse its effects and achievements in both fields. Eventually, the balance between HR and security will be established in the subchapter 3.4. The research will conclude the main points addressed following the main and specific research questions.

II. CHAPTER II: MAINSTREAMING HR AND SECURITY IN THE EU'S FOREIGN POLICY

2.1. HR in EU's Foreign Policy

2.1.1. HR in the EU

2.1.1.1. *Pre-Maastricht Treaty*

Since the creation of European Economic Community (EEC) with the Treaty of Rome in 1957, EEC's main objective was the performance of the Common Market. The dedicated no space for fundamental rights, and because of this, HR were not a pressing problem in the treaty, as the main founding fathers believed these were not to be considered in a treaty established uniquely for economic purposes⁵⁶. In the law of European Community, there was not a guarantee for the protection of HR, whereas in national constitutions of the European Community, these were considered⁵⁷. Nevertheless, there are some HR provisions that are present in the treaty in an indirect form. Considering the Articles 48, 49, 51, 60, 135 refer to the freedom of movement and residence of workers⁵⁸. Article 119 however, was representing the 'equal pay for equal work.'⁵⁹ Nonetheless, Defeis⁶⁰ stresses that these provisions were not included with the purpose to promote and protect HR but for an economic rights-orientated reasons. In 1969, the European Court of Justice (ECJ) acknowledged that its jurisdiction should be in line with HR⁶¹. The core statement to be highlighted is that the ECJ created a strict jurisprudence on HR protection cherished in the general principles⁶² of

⁵⁶ Sionaidh Douglas-Scott, 'The European Union and Human Rights after the Treaty of Lisbon' (2011) <<http://www.corteidh.or.cr/tablas/r27635.pdf>> accessed 29th March 2020, 647.

⁵⁷ Smith (n 12) 95.

⁵⁸ Art. 48,49,60,135 of the Treaty of Rome. European Commission, 'Treaty of Rome' (1957) <https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf> accessed 16 June 2020.

⁵⁹ Art. 119. European Commission, 'Treaty of Rome' (n 58).

⁶⁰ Elizabeth F. Defeis, 'Human Rights, the European Union, and the Treaty Route: From Maastricht to Lisbon' (2017) 35(5) Fordham International Law Journal <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2597&context=ilj>> accessed 16 June 2020.

⁶¹ Smith (n 12) 97.

⁶² Douglas-Scott (n 56) 648. See the link for further information on the significance of 'general principles of law': <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1001&context=annlsurvey>.

Community law and it would be protected by the Court⁶³. This was a keystone in the legal nature of HR in the EU, because these changed to be binding instruments.

In 1977, the EP, Council and Commission created a declaration on HR for the purpose of acknowledging that ‘in exercise of their powers and in the pursuance of the aims of the European Communities they respect and will continue to respect fundamental rights’⁶⁴ placed both in the constitutions of the Member States (MS) and the European Convention on Human Rights (ECHR)⁶⁵. Nonetheless, even if in this moment there were some other particular treaty provisions that valued fundamental rights, such as the ones previously mentioned in the TEU.⁶⁶

2.1.1.2. From Maastricht Treaty to Lisbon Treaty

With the TEU or the Maastricht Treaty in 1993, Article 2 established that the ‘respect of fundamental rights was one value on which the EU is founded’⁶⁷, including also minorities⁶⁸. But it was not until the foundation of the Amsterdam Treaty in 1997 when the EU’s internal HR framework was strengthened⁶⁹ through the EU’s commitment to HR, acknowledging them in the identity of the EU⁷⁰. This was done through the inclusion of a particular affirmation in the TEU that mentions ‘the Union is founded on the principles of liberty, democracy, respect for HR and fundamental freedoms, and the rule of law, principles which are common to the Member States.’⁷¹ Defeis⁷² found that the Maastricht Treaty in 1994 gave formal treaty recognition to HR,

⁶³ Defeis (n 60).

⁶⁴ Ibid, 97.

⁶⁵ Official Journal of the European Communities (OJEC), ‘Joint Declaration by the European Parliament, Council and the Commission concerning the protection of fundamental rights and the ECHR’ (1977) C 103

<https://www.cvce.eu/en/obj/joint_declaration_by_the_european_parliament_council_and_the_commission_on_concerning_the_protection_of_fundamental_rights_and_the_echr_luxembourg_5_april_1977-en-9b6086c8-9763-4355-bf66-3699f1d78b79.html> accessed 20th July 2020.

⁶⁶ OJEC (n 65).

⁶⁷ Douglas-Scott (n 56) 646.

⁶⁸ Ibid.

⁶⁹ Smith (n 12) 95.

⁷⁰ Defeis (n 60) 1208.

⁷¹ Ibid 1208.

⁷² Ibid.

based on the ECHR⁷³ considering the constitutional traditions from MS as general principles of Community law⁷⁴.

2.1.1.3. Lisbon Treaty and Post-Lisbon Era

After the entering into force of the Lisbon Treaty in December 2009, the evaluation of the achievements in terms of fundamental rights was eventually possible because the Lisbon treaty brought new competences in relation to HR: The Charter of Fundamental Rights of the EU's binding force acquisition, the capability of the ECJ to have more judicial review⁷⁵ and the accession of the EU to the ECHR⁷⁶. Because of this, since 2010, the European Commission has annually performed a report to analyse the application of the EU Charter of Fundamental Rights in the EU member states⁷⁷.

2.1.2. HR in the EU FP

2.1.2.1. Definition and Position of HR in EU FP: HR as a principle, value and objective

The position and nature of HR in EU FP is a core issue in understanding the margin of manoeuvre for the application of HR provisions in practical terms when developing EU FP. In the Art.21(1) of the TEU,⁷⁸ HR are already denominated as principles that were the core guidelines that inspired the creation of the Union, and its functioning. Not only that but, the fact the universality and indivisibility of HR and fundamental freedoms is already present on this article, makes HR a core value of the EU, which have been present from the creation of the EU as to the development.

⁷³ Smith (n 12) 95. See the following link for further information on the European Convention of Human Rights: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁷⁴ Defeis (n 60).

⁷⁵ European Parliament, 'The Protection of Fundamental Rights in the EU' (2020) <https://www.europarl.europa.eu/ftu/pdf/en/FTU_4.1.2.pdf> accessed 16 June 2020, 646.

⁷⁶ Smith (n 12) 95. See the following link for further information on the European Convention of Human Rights: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁷⁷ Ibid 95.

⁷⁸ Official Journal of the European Union (OJEU), 'Consolidated Version of Treaty of the European Union (TEU)' (2012) C 326/13 <https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF> accessed 20th July 2020.

Moreover, the Article 21(2) of the TEU⁷⁹ gives further information on the position of HR as main objectives of the EU FP. This position is mentioned as the second objective, which consists of consolidating and supporting democracy, the rule of law, HR and principles of international law.⁸⁰ While in the treaties the position of HR in terms of EU FP is firmly grounded, the TEU provides no methodology on how to reach this objective.⁸¹ This creates problems in terms of aligning policy-making with the practice of full compliance with HR. This adds to the complexity of the EU FP is multifaceted, meaning that it presents a framework of different policies, strategies, instruments applied to different fields with an external focus that can have cross-cutting interests and purposes.⁸²

2.1.2.2. From Maastricht Treaty to Lisbon Treaty

The Maastricht treaty established the pillar structure⁸³ and created the CFSP, which had as an objective the ‘respect for HR and fundamental freedoms.’⁸⁴ This is considered as the milestone that made HR to be an objective of EU FP, e.g. in the EU’s relations with third states.

Among the instruments established for the purpose of guaranteeing respect for HR and fundamental freedoms, is the HR clause developed in 1995.⁸⁵ The HR clause in relations between the EU and third countries has two sides. First, an ‘essential elements’ clause, which it presents the commitment of the parties to respect international standards. Second, a ‘non-execution’ clause in which parties need to establish appropriate measures in case the other party does not comply to the obligations of the agreement⁸⁶. An example of this is found in the European Neighbourhood Policy

⁷⁹ OJEU, ‘Consolidated Version of Treaty of the European Union (TEU)’ (n 78).

⁸⁰ *ibid* 28.

⁸¹ *Ibid*.

⁸² Keukeleire and Delreux (n 6).

⁸³ European Parliament, ‘The Maastricht and Amsterdam Treaties’ (2020) <https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.3.pdf> accessed 16 June 2020.

⁸⁴ European Parliament, ‘The Maastricht and Amsterdam Treaties’ (n 83) 2.

⁸⁵ Smith (n 12) 111.

⁸⁶ Lorand Bartels, ‘The EU’s human rights obligations in relation to policies with extraterritorial effects’ (2014) 25 (4) The European Journal of International Law EJIL 1071.

(ENP), in which a ‘more for more’⁸⁷ approach has been promoted⁸⁸. There is not a certainty on what is the legal effect of the clause⁸⁹, nevertheless, it is assumed that the clause contains several binding obligations for both parts. Considering this, Bartels⁹⁰ claims it is extremely difficult to differentiate between internal and external policies. Bartels further expresses that because of this it is unworthy to divide internal and external policies and therefore, in legal terms, the extraterritoriality of the clauses shall be considered⁹¹. If the suggestions of Bartels are followed in order to achieve more efficiency in the development of HR clauses, this could definitely lead to dwindling the internal/external gap⁹² in the promotion of HR in the EU FP. The purpose of the extraterritoriality of the clauses is to consider HR as a broad topic – universal and indivisible⁹³. The relevant point of this argument, is that if the use of HR clauses can in consequence facilitate the mitigation of the gap between the internal and external policies, this can indeed balance the incoherence sometimes produced by the fact that the EU FP is intergovernmental⁹⁴ and there can still be some checks and balances on national vs. external policies.

However, Smith⁹⁵ determines that the EU’s foreign policy priority is first to create an environment for dialogue and to promote engagement. This means in effect, that the development of agreements with some third countries and not with others is not

⁸⁷ Which means more integration and financial assistance in exchange for more reforms. European Commission, ‘Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach’ (Joint Communication) COM (2011) 886 final, 9.

⁸⁸ European Parliament, Factsheet ‘Human Rights’ (2020) <https://www.europarl.europa.eu/ftu/pdf/en/FTU_5.4.1.pdf> accessed 20 July 2020, 3.

⁸⁹ Bartels (n 86).

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² The manifestation of the internal/external gap is present in “the EU’s relation to international human rights law. One of the sources of law which provide the basis for Community action are those international obligations which are ‘common’ to all member states. Yet, externally, the EU bases its human rights conditionality on international human rights treaties that not all of the member states have ratified. Furthermore, the EU is not a party to any of the core international human rights treaties (though it is about to accede to the ECHR). While it projects human rights values internationally, the EU’s human rights practices are not subject to international review...can be criticized for practicing double standards – clouding their messages for human rights... The EU’s promotion of human rights externally does not stem from the EU’s experiences and practices, but from those of its member states. They are using the EU to promote human rights, but those principles were not developed within the EU context.” Smith (n 12) 98-99.

⁹³ Bartels (n 86).

⁹⁴ Smith (n 12).

⁹⁵ Ibid.

determined by HR standards. Examples of it can be found in the cases of China and Russia⁹⁶, both extremely criticised due to their poor HR and democracy records⁹⁷. Concerning this, the EP accurately determines that when signing an agreement, the third country needs to already respect international HR standards before signing it⁹⁸. Because of this, a strong and binding HR mechanism is necessary to guarantee that the imbalance between EU objectives does not have an effect on the promotion of HR. This reinforces the legal necessity of guaranteeing the effect of HR clauses in third countries to prevent HR violations. To perform this, a clear narrative by the EU FP should be established when developing the agreement⁹⁹, because this is crucial for re-balancing relations between the EU and third countries in terms of HR and other EU FP purposes, such as security.

In addition to the development of HR clauses, the creation of the European Initiative (which later changed to be Instrument) for Democracy and Human Rights (EIDHR) provided funds for aid in third countries with the purpose of enhancing both HR and respect for democracy records. Inside this instrument, the EU Guidelines on Human Rights¹⁰⁰ were highly considered as a pathway for action. Even though these are not legally binding documents, they are an important basis for the representation of HR in external action as they represent a toolkit for the promotion of HR and democracy¹⁰¹. As specified by UNCHR,¹⁰² the role of the Council on promoting these guidelines on specific HR issues needs to be highly in line with the function of the EP in engaging the other institutions and both MS and third states on HR issues. A challenge to this link can be found again in the fact that EU FP is still foremost intergovernmental¹⁰³, hence this contributes to the difficulty of coordinating the internal and external policy

⁹⁶ Ibid, 110.

⁹⁷ Ibid, 110.

⁹⁸ Ibid.

⁹⁹ Mary Kaldor, Mary Martin, and Sabine Selchow, 'Human Security: A European Strategic Narrative' (2008) Friedrich-Ebert-Stiftung <<https://library.fes.de/pdf-files/id/ipa/05172.pdf>> accessed 29 March 2020.

¹⁰⁰ European Commission, 'Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach' (n 87).

¹⁰¹ Ibid.

¹⁰² United Nations Human Rights Office of the High Commissioner (UNCHR) Europe Regional Office, 'The European Union and International Human Rights Law' <https://europe.ohchr.org/Documents/Publications/EU_and_International_Law.pdf> accessed 30 March 2020, 21.

¹⁰³ Smith (n 12).

decisions between EU MS and the EU vis-à-vis the implementation of HR in third countries¹⁰⁴. Moreover, it should also be mentioned that the positioning of the CFSP as the second pillar in the pillar structure of the EU¹⁰⁵, promoted a toolbox in which CFSP declarations and demarches were one of EU's main goals, as well as the strengthening of HR dialogues¹⁰⁶.

Apart from this, the establishment of a representative of HR under the figure of the High Representative for the CFSP in 2005 was a highly relevant achievement. Even if an official position for the representation of HR was still not present at the EU level at that moment in time, the institution of the representative was aimed at fostering the mainstreaming of HR by the use of other relevant instruments to promote HR at the EU level, such as dialogues and consultations with third states¹⁰⁷.

It could be stated that the period from Maastricht treaty until the Lisbon treaty was crucial not only for the mainstreaming of HR, but also for the development of strategies inside the EU FP to promote HR – as they were started to be considered as objectives and values of the EU.¹⁰⁸

2.1.2.3. Lisbon Treaty and Post-Lisbon Era

The Lisbon Treaty gave the EU legal personality as such and facilitated the creation of an institutional architecture for the external service, as well as it eliminated the EU's pillar structure¹⁰⁹. In analysing the achievements of the Treaty of Lisbon, it should also be mentioned the development of several CFSP actors¹¹⁰ such as the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the Commission, as well as the creation of the European External Action Service

¹⁰⁴ Ibid.

¹⁰⁵ OJEU, 'Consolidated Version of Treaty of the European Union (TEU)' (n 78).

¹⁰⁶ Keukeleire and Delreux (n 6).

¹⁰⁷ Smith (n 12) 115.

¹⁰⁸ Altafin, Haász and Podstawa (n 13).

¹⁰⁹ European Parliament, 'Foreign Policy: Aims, Instruments and Achievements' (2019) Factsheets of the European Union <<https://www.europarl.europa.eu/factsheets/en/sheet/158/foreign-policy-aims-instruments-and-achievements>> accessed 29 March 2020, 1.

¹¹⁰ European Parliament, 'Foreign Policy: Aims, Instruments and Achievements' (n 109) 1.

(EEAS) and the upgrading of the CSDP¹¹¹. These developments in terms of EU FP permitted the better promotion of HR. This treaty represents a long process in which the EU has tried to settle both HR and democracy as main aims of its foreign policy as well¹¹². This statement can be supported by the development of the following new policies and instruments flourished under the framework of EU FP in this period of time: Strategic Framework on Human Rights and Democracy, which was established in 2012 by the Council of the EU, at first instance, and two action plans¹¹³ that have been developed since then.

Examining the EU Strategic Framework, the EU declares itself ‘a strong defender of HR and democracy.’¹¹⁴ Nevertheless, considering the outcomes on the previously mentioned action plans¹¹⁵, this statement may be valuable as to what the theory refers to. In reality, there is an incoherence between internal and external policies¹¹⁶, which is named already previously in this research by Smith as the internal/external gap¹¹⁷. While the Action Plan 2015-2020, focuses on mainstreaming HR in all areas of external action¹¹⁸, the Action Plan 2020-2024 deals with the issue of integrating HR in all the internal policies (which are externalised in third countries) in areas of migration and security, applying a ‘rights-based approach.’¹¹⁹

¹¹¹ “The common security and defence policy (CSDP) set the framework for EU political and military structures, and military and civilian missions and operations abroad.” European Parliament, Factsheet ‘Common Security and Defence Policy’ (2020) <https://www.europarl.europa.eu/ftu/pdf/en/FTU_5.1.2.pdf> accessed 26 June 2020.

¹¹² Felipe Gómez Isa, Ester Muñoz Nogal, María Nagore, Łukasz Szoszkiewicz, Katrin Wladasch, Wenhai Dai, Si Lv, Xiaojing Nie, Zirong Zhou, Diego Armando Uchuypoma Soria, Chiara Marinelli, Renato Constantino, ‘Challenges to the Effectiveness of EU Human Rights and Democratisation Policies’ (3 June 2016) 12.3 FRAME < <http://www.fp7-frame.eu/wp-content/uploads/2016/09/Deliverable-12.3.pdf>> accessed 30 March 2020, 12.

¹¹³ The first for 2015-2019 and the second for 2020-2024. European Parliament, Factsheet ‘Human Rights’ (n 88).

¹¹⁴ European Commission, ‘EU Action Plan on Human Rights and Democracy 2020-2024’ (Joint Communication) JOIN (2020) 5 final.

¹¹⁵ Council of the European Union, ‘EU Action Plan on Human Rights and Democracy 2015-2019’ (December 2015) <https://www.consilium.europa.eu/media/30003/web_en_actionplanhumanrights.pdf> accessed 29 March 2020.

¹¹⁶ Smith (n 12)

¹¹⁷ Ibid.

¹¹⁸ Council of the European Union, ‘EU Action Plan on Human Rights and Democracy 2015-2019’ (n 115).

¹¹⁹ “The EU has a firm political commitment to integrate human rights principles into development activities with partner countries.” European Commission, ‘International Cooperation and Development: Human Rights’ <https://ec.europa.eu/international-partnerships/topics/human-rights_en> accessed 30 March 2020.

The EU intends to ‘contribute to achieving a stronger Europe in the world’¹²⁰, but this cannot be done without providing a solid narrative towards the EU FP¹²¹. As specified by Kaldor, Martin & Selchow¹²² conceptual coherence should acknowledge the multidimensionality of EU FP as a necessary condition for a clear outcome on shared goals and principles in order to guarantee commitment. The “rights-based approach” is an important intent to mainstream HR in all of the EU’s external action. However, this approach only provides guidelines for the area of development¹²³ and because of that, might cause some difficulties when dealing with other areas such as migration and security. This is because in countries in which migration and security are the main reasons why the EU develops external relations, such as Libya, a rights-based approach, might not be effective. The EU needs to provide a proper European Narrative Strategy for EU FP¹²⁴, because without it, coordination and coherence will be difficult to diminish the lack of coordination between internal and external policies¹²⁵. In this respect, negotiations for the containment of migration might lead to conditionality¹²⁶ and this can have a negative effect on civilians. In fact, as claimed by Altafin, Haász & Podstawa¹²⁷, the rights-based approach to migration is rarely effective, as usually statements in policies are vague and relying on international standards without specifying measures to balance the security-related reasons in terms of border management and HR.

The Action Plan 2020-2024 provides highly relevant lines of action to be implemented, among them the empowerment of individuals, the resilience-building in societies, the promotion of a global system for HR and democracy, the use of new technologies for addressing new challenges¹²⁸. The EU Action Plan 2020-2024¹²⁹, mentions the

¹²⁰ Ibid 1.

¹²¹ Kaldor, Martin and Selchow (n 99).

¹²² ibid 8.

¹²³ European Commission, ‘Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach’ (n 87), 9.

¹²⁴ Kaldor, Martin and Selchow (n 99).

¹²⁵ Smith (n 12).

¹²⁶ More information about conditionality in Smith (n 12) 110-113.

¹²⁷ Altafin, Haász and Podstawa (n 13) 139.

¹²⁸ European Commission, ‘EU Action Plan on Human Rights and Democracy 2020-2024’ (n 114).

¹²⁹ European Commission, ‘EU Action Plan on Human Rights and Democracy 2020-2024’ (n 114), 5.

possibility of using a new EU global HR sanctions regime, although a detailed information about its creation is missing. Nevertheless, as it is specified by Smith:

[N]egative measures do not necessarily address the causes of HR violations and can even worsen the situation. Governments may not be able to respond to outside pressure. Sanctions can antagonize states and hurt populations or cause it to rally to the government's support."¹³⁰

This is particularly the case in states where there is a lack of state infrastructure (e.g. fragile states or failed states), and the capability of dealing with HR violations. In these cases, the situation should be dealt with 'quiet diplomacy, friendly advice and technical cooperation.'¹³¹

Another important element in the document is also the essential role of the EU Delegations in third countries as promoters of HR and democracy. The document acknowledges the importance of civil society in guaranteeing change in a sustainable way and for reviewing progress, with EU Delegations and Offices at the forefront in the implementation of HR and democracy¹³². Nevertheless, based on what Altafin, Haász & Podstawa stress 'resilience will need to be accommodated by the European HR policy makers.'¹³³ Although EU Delegations may be at the forefront in the implementation of HR and democracy, the main actors needing to participate are the local people.

Additionally, in the EU strategic framework, instruments already used by the EU to encourage the role of HR have been further strengthened. In the case of HR dialogues, as expressed in the EU Action Plan 2020-2024, 'Over the years, HR dialogues established with more and more countries have proven to be a key tool for advancing the EU's HR agenda as part of its broader political relationships.'¹³⁴ A more discreet policy tools, such as démarches have also been used more often¹³⁵. However, these

¹³⁰ Smith (n 12) 109.

¹³¹ *ibid* 109.

¹³² European Commission, 'EU Action Plan on Human Rights and Democracy 2020-2024' (Annex to the Joint Communication) JOIN (2020) 5 final, 6.

¹³³ Altafin, Haász and Podstawa (n 13) 126.

¹³⁴ European Commission, 'EU Action Plan on Human Rights and Democracy 2020-2024' (n 114).

¹³⁵ *Ibid*.

remain controversial, as démarches are commonly used for accusations of HR abuses¹³⁶ in third countries, which creates a difficulty when reporting about these violations and when trying to find measures to condemn them.

To sum up, the development of policies and instruments to guarantee the promotion and protection of HR within the framework of EU FP, has been approached by the EU through the following methods or strategies. On the one hand, by a bottom-up approach which is used for the application of EU HR policies in the field¹³⁷. This approach puts an emphasis on the centralisation of the position of the local in all steps of this application, supported by the EU and the third country's government, as well as civil society and other non-state actors¹³⁸. This is essential in order to deal with issues of capacity-building, resilience, etc. which are measures that encourage the protection of HR and the prevention of HR violations¹³⁹. But also, and more relevant to this research: to balance adequately HR with other interests in partnerships between the EU and third countries.

On the other hand, multilateral forums are considered an important part in the promotion of HR by the EU because through these the EU shows its compliance as a "HR defender."¹⁴⁰ Nonetheless, as stated by Thompson,¹⁴¹ the EU still considers states as primary security providers in the multilateral forums. This state-centric approach can negatively affect or be incompatible with a bottom-up approach¹⁴². The reason why multilateralism is relevant to the promotion of HR, is because multilateralism is considered the practice used to seek cooperative perspectives to global challenges. In the case of the EU, Clapham precisely claimed that multilateralism can definitely strengthen the promotion of HR because:

¹³⁶ European Commission, 'EU Action Plan on Human Rights and Democracy 2020-2024' (Annex) (n 132) 6.

¹³⁷ Kaldor, Martin and Selchow (n 99).

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ European Commission, 'EU Action Plan on Human Rights and Democracy 2020-2024' (n 114).

¹⁴¹ Benjamin C. Thompson, 'The European Union's Human Security Discourse: Conceptualization and Justification' (2016) 14 (1) The Korean Journal of International Studies <http://www.kjis.org/journal/download_pdf.php?doi=10.14731/kjis.2016.4.14.1.161> accessed 29 March 2020.

¹⁴² Kaldor, Martin and Selchow (n 99).

[I]f states wish to take an active/reactive HR policy line they may find joint action more effective, but they can use the ‘shield effect’ not only to ward off internal objections but also to reassure themselves that they will not be singled out for a ‘cooling’ in bilateral relations or even counter-measures.¹⁴³

2.2. Security in EU FP

2.2.1. Security in the EU

Two main important events changed the dynamics and position of security within the EU. The context of security in the EU has changed since the end of the cold war, in which the change of the international order provided a need for the EU to strengthen its role as an international actor, also in terms of security. Because of this, the CFSP was introduced as the second pillar of the Maastricht Treaty (TEU)¹⁴⁴. Interestingly, the socio-political and military drivers that led to the creation of the CFSP under the TEU, were not considered in its development. The increased challenge of international instability and the rise of nationalism in the EU’s internal affairs, both in the Community and individually by member states, made the CFSP a policy created to guarantee the integration and the union of the community, particularly aimed to ensure the stability of the union at the economic level¹⁴⁵. Some years later, in 2001, with the 9/11 attacks, the view on security within the EU changed as well as it did in the whole international community. On the one hand, non-state actors were capable of being and promoting global security challenges¹⁴⁶. The vision of security changed, and so it did when referring to other EU fields. Here comes the phenomenon of securitisation. Topulli¹⁴⁷ defines an act of securitisation to the classification of a phenomena, people or entities as existential threats, that need urgent measures, which affects in the case of the

¹⁴³ Ruby Gropas, ‘Is a Human Rights Foreign Policy Possible? The case of the European Union’ (1999) 16th Annual Graduate Student Conference: ‘The Changing Face of Europe’, at the Institute on Western Europe, Columbia University, NY, 22.

¹⁴⁴ European Parliament, ‘The Maastricht and Amsterdam Treaties’ (n 83) 2.

¹⁴⁵ Floorika Fink-Hooijer, ‘The Common Foreign and Security Policy of the European Union’ (1994) 5 EJIL <<http://www.ejil.org/pdfs/5/1/1237.pdf>> accessed 21 July 2020.

¹⁴⁶ Council of the European Union, ‘Javier Solana, EU High Representative for the CFSP, responds to report by Study Group on Europe’s Security Capabilities’ (16 September 2014) <https://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/declarations/81931.pdf> accessed 18 June 2020.

¹⁴⁷ Topulli (n 11).

EU both to legitimacy and HR and fundamental freedoms. Securitisation is strengthened (as previously stated) in the EU with the events of September 11th, in which security issues are redefined and enhanced. At that moment, the nexus between security and migration is nourished. Due to the close interlink between migration control and security, the last one became highly relevant while HR were very limited. Torelli¹⁴⁸ found a tension between the Universal Declaration of Human Rights and the state's sovereignty in the right to control of their borders. In fact, she uses a phrase by Fauser in which defines the liberal paradox as 'the contradictory principles of state sovereignty, the interest to control the borders and the obligation of HR.'¹⁴⁹

2.2.2. Security in the EU FP

When analysing the Art 21(2) of the TEU¹⁵⁰, "security" is found within the first objective, with the same priority as values, fundamental interests, independence and integrity. Considering that both HR and security are considered inside the same level of relevance, seems to still be a tendency in the EU leaning more towards security in crisis situations than HR. This is because of the following reasons.

First of all, on many occasions' security is found as a priority, whereas HR are not.¹⁵¹ Indeed, this can be even more overseen in crisis situations in neighbouring countries¹⁵², because they are perceived as insecurities that can affect the EU. Second of all, the military perspective of the EU in the CFSP¹⁵³. Military capabilities, as well as the civilian ones, are still perceived as core methods the EU has for conflict management. Hence, this vision towards the CFSP, demonstrates that being HR core aims to aspire to, the CFSP primary priority is to strengthen the EU's security, as well as to obtain peace and stability¹⁵⁴. However, the core fact that brings an imbalance between security and

¹⁴⁸ *ibid*, 76.

¹⁴⁹ *ibid*, 76.

¹⁵⁰ Official Journal of the European Union, 'Consolidated Version of Treaty of the European Union (TEU)' (n 78).

¹⁵¹ Altafin, Haász and Podstawa (n 13).

¹⁵² Smith (n 12).

¹⁵³ European Union External Action (EEAS), 'Common Foreign and Security Policy (CFSP)' (25 November 2019) < https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/420/common-foreign-and-security-policy-cfsp_en > accessed 14 May 2020.

¹⁵⁴ *Ibid*.

HR in EU FP is based on the approach taken to apply it, which will be developed further on this research.

As presented by EU-Lex, and defined in the Article 294 of the Treaty on the Functioning of the EU (TFEU), EU decisions are taken by the ‘Community’ method as a general rule, used in the ordinary legislative procedure.¹⁵⁵ Whereas the intergovernmental method, is used in primarily in the CFSP and police and judicial cooperation when performing decision-making.¹⁵⁶

The EU has developed by two security strategies, the ESS 2003 and the EUGS 2016. The first one promoted by Javier Solana, ex-Secretary General of the Council of the EU / High Representative for the CFSP was created in 2003, some years under the scope of the events of the 9/11 attacks, which will be further analysed in this research. Javier Solana, at this moment, highlighted in 2004 that considering the arise of non-state actors such as the terrorist group Al Qaeda - who committed the 9/11 attacks - as main challenges, ‘experience has shown that a military response is not enough to deal with the new threats and challenges faced by the international community.’¹⁵⁷ The EUGS in 2016, followed this line in a new international context, in which events such as the global economic crisis, the rise of nationalist movements, pandemics, the awareness for climate change and the Brexit occurred. Hence, the perception of the EU as a normative/civilian power, as well as military power was strengthened, with a higher focus on getting independence in military terms from its lengthy partners – US and NATO¹⁵⁸. Lucarelli¹⁵⁹ expressed that the 2016 EUGS has focused particularly on the defence¹⁶⁰. This made the EU turn into a more traditional security actor recognising the

¹⁵⁵ EUR-Lex, ‘Community and Intergovernmental Methods’ (2020) <https://eur-lex.europa.eu/summary/glossary/community_intergovernmental_methods.html> accessed 30 June 2020.

¹⁵⁶ EUR-Lex, ‘Community and Intergovernmental Methods’ (n 155)

¹⁵⁷ Council of the European Union, ‘Javier Solana, EU High Representative for the CFSP, responds to report by Study Group on Europe’s Security Capabilities’ (n 146).

¹⁵⁸ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19).

¹⁵⁹ Sonia Lucarelli, ‘The EU as a securitising agent? Testing the model, advancing the literature’ (2018) West European Politics <https://www.researchgate.net/publication/329455992_The_EU_as_a_securitising_agent_Testing_the_model_advancing_the_literature> accessed 17 June 2020, 2.

¹⁶⁰ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19).

need to use all available means for effective policy results through pragmatism. This is the reason why HR are principles, values and objectives while not priorities, whereas security is.¹⁶¹ Nevertheless, at the same time, it must be mentioned that the EU started considering security as part of a integrated approach that comprises both the sharing understanding of the why (HS) and the how (by integrated policies)¹⁶², with the purposes of getting a culture of coordination¹⁶³ in which the CFDP¹⁶⁴ is included.

2.2.3. The European Neighbourhood Policy in Southern Neighbouring Countries

The ENP in the Southern countries has its main focus on performing an improvements on the political and economic structures through financial aid in the following countries: Algeria, Egypt, Israel, Jordan, Libya, Morocco, the Palestinian Authority, Syria and Tunisia.¹⁶⁵ Considering that the realisation of it was encouraged since the rise of the Arab Spring, the region has been characterised by instability and insecurity.¹⁶⁶

Insecurity can be mainly perceived in the following ways. On the one hand, in terms of political insecurity. Meaning that, insecurity is felt due to poor political structure in the countries of the Southern region. This political insecurity has been covered through the development of programs for the consolidation of governance and to provide electoral support, military and police cooperation and sanctions. Nevertheless, Kostayan¹⁶⁷ is accurate in mentioning that sanctions and negative conditionality imposed in Southern neighbours by the EU were not performed to stop the bloody conflicts and hence to promote respect for HR, but to press for regime changes in countries to obtain stability and maintain the security of the EU. Lehne¹⁶⁸ further establishes that the EU's relations

¹⁶¹ Ibid.

¹⁶² Margriet Drent, 'The EU's Comprehensive Approach to Security: A Culture of Co-ordination?' (2011) 64(2) *Studia Diplomatica* <https://www.clingendael.org/sites/default/files/pdfs/20111000_sd_drent_approach.pdf> accessed 20 July 2020.

¹⁶³ Drent (n 162).

¹⁶⁴ European Parliament, Factsheet 'Common Security and Defence Policy' (n 111).

¹⁶⁵ European Movement International, (n 28).

¹⁶⁶ Ibid.

¹⁶⁷ Hrant Kostayan, *Assessing European Neighborhood Policy: Perspectives from the Literature*, (CEPS & Rowman and Littlefield International 2017).

¹⁶⁸ Stefan Lehne, *Time to Reset the European Neighbourhood Policy*, (Carnegie Europe 2014), 10.

with most of the Southern countries has been diminished because there is not enough progress and sometimes not even intentions to perform democratic reforms, which can be transformed into a source of more insecurity and more instability in the neighbourhood and also, in the EU. Kostayan¹⁶⁹ provides a valid statement regarding the use of negative conditionality in tackling political insecurity in the case of Syria. He argues that if sanctions would have been limited, Al-Assad would have had greater reason to dwindle the use of force in order to guarantee his legitimacy in the international community, and hence, HR abuses would have been diminished.

In the case of Libya, sanctions were performed to create political pressure against Gaddafi and promote a democratic transition, but it certainly did not have an effect on ending the conflict¹⁷⁰. On the other hand, insecurity is perceived through the presence of illegal migration as a source of flourished crime. A paradox is found between the theory and the practice. While the EU claims that its core aim is to protect the HR of migrants, refugees and internally displaced people (IDPs)¹⁷¹, the main EU response to this challenge has been in terms of border management, which clearly demonstrates the perception of the EU towards security – a more hard power response to the challenge¹⁷². Nonetheless, European Movement International¹⁷³ is not wrong in claiming that relations EU-Southern Neighbourhood should not be determined through migration and security unease but on a real partnership of joint interests and priorities to consider the objectives of Southern partners as well as the EU's – with a focus of impacting positively on both sides. In this way, an equal level of cooperation will be developed and not uniquely a dependent partnership – because the last will also lead to the decrease of legitimacy from the EU in the Southern countries by the local population¹⁷⁴, but also creates further difficulties in local capacity-building intentions due to conditionality measures that could lead to HR violations¹⁷⁵. To acquire this equal level of partnership, it is essential that partnership priorities and association agendas are

¹⁶⁹ Kostayan (n 167) 22.

¹⁷⁰ Ibid.

¹⁷¹ European External Action Service (EEAS), 'Libya and the EU' (12 May 2016) <https://eeas.europa.eu/delegations/libya/1447/libya-and-eu_en> accessed 15 May 2020.

¹⁷² EEAS, 'Libya and the EU' (n 171).

¹⁷³ European Movement International, (n 28).

¹⁷⁴ Smith (n 12).

¹⁷⁵ Kostayan (n 167).

established in all countries, because Syria and Libya still do not have association agreements with the EU¹⁷⁶.

2.3. The HR and Security Nexus in the EU FP

2.3.1. Explanation of the nexus

The nexus between HR and security within EU FP began with the creation of the CFSP¹⁷⁷. One of the main issues the CFSP¹⁷⁸ has focused on is that strengthening internal purposes of security in the EU do not diminish its expectations as a normative power in the international arena¹⁷⁹. When analysing the externalisation of several fields related to security in the EU, Trauner¹⁸⁰ presents an example on the institutionalisation of the external aspect of the area of freedom, security and justice (AFSJ)¹⁸¹. He stresses that because there has always been a security rationale in this process, the promotion and protection of HR and fundamental freedoms has been let aside. This has been enhanced with the episodes of the violation of the principle of non-refoulement by EU MS over asylum seekers, abusing the refugee protection regime.¹⁸² In fact, the EP denounced the lack of HR clauses in readmission agreements with third countries as a reason why HR abuses were committed by the third country in question.¹⁸³ As it can be seen, when linking security with other fields of EU FP aimed to be externalised, there seems to be a security rationale by the EU under this linkage, and this can undermine HR purposes. Even if the EU tries to diminish the impact of irregular migration, instability and radicalisation, this approach can definitely complicate the mainstreaming of HR, because the primary purposes are to eradicate irregular migration, instability and

¹⁷⁶ European Movement International, (n 28).

¹⁷⁷ Official Journal of the European Union (OJEU), 'The Consolidated version of Treaty on European Union (TEU)' (n 78).

¹⁷⁸ European Parliament, 'The Maastricht and Amsterdam Treaties' (n 83) 2.

¹⁷⁹ Florian Trauner, 'The internal-external security nexus: more coherence under Lisbon?' (March 2011) 89 European Union Institute for Security Studies <
https://www.iss.europa.eu/sites/default/files/EUISSFiles/op89_The_internal-external_security_nexus_0.pdf> accessed 16 June 2020, 19.

¹⁸⁰ Trauner (n 179) 20.

¹⁸¹ European Parliament, 'An area of freedom, security and justice: general aspects' (2020) <
<https://www.europarl.europa.eu/factsheets/en/sheet/150/an-area-of-freedom-security-and-justice-general-aspects>> accessed 16 June 2020.

¹⁸² Trauner (n 179) 20.

¹⁸³ *ibid* 20.

radicalisation through a process of securitisation¹⁸⁴. Securitisation has an impact on HR. Hence, it is necessary to understand where the security approach arises in EU FP, which can be reflected through the development of areas of tension in foreign policy. Keukeleire¹⁸⁵ pointed out that the EU's nature has changed from a civilian and military power, having failed as a military one more notably during the military campaign against the conflict in Libya in 2011 with the dictatorship. The position of the EU as a civilian power and a military power symbolises the debate between HR and security, because the nexus between these two tensions has always existed in EU FP. Considering this situation, Keukeleire¹⁸⁶ offers a highly valuable statement specifying that analysing the current multi-polar international arena, the EU needed to strengthen their role as a normative power to guarantee its presence in the international order considering its lack of capabilities as a military power. The EU should implement in its foreign policy the promotion of new political, legal and socio-economic structures to comply with its position as a normative power. Nevertheless, this was not the case in the ENP¹⁸⁷, because the EU did not focus the relations with Eastern and Southern countries in the ENP with the aim of encouraging change for the protection of HR in these regions. Why did the EU have problems on this performance? Indeed, because security is still a priority of EU FP, while HR are not.¹⁸⁸ In relation to this, a problem between rhetoric and practice is present when applying EU FP in third states which can have negative consequences over the legitimacy factor in third countries¹⁸⁹, because HR are considered objectives inside the CFSP, but as mentioned before, these are not priorities¹⁹⁰. In consequence, as established by Smith¹⁹¹, there is a perception in the 'global south' that the 'global north' performs double standards, meaning that it penalises or rather compensates countries based on strategic interests and not HR records, such as border management and migration containment. To avoid these situations, it is important to develop a concrete strategic approach focused on HR because the EU has proved to be rather a more civilian power than a military power in

¹⁸⁴ *ibid*, 20.

¹⁸⁵ Keukeleire and Delreux (n 6).

¹⁸⁶ *Ibid*.

¹⁸⁷ *Ibid*. The European Neighbourhood Policy in the Southern countries is developed in page 34 of the research.

¹⁸⁸ Altafin, Haász and Podstawa (n 13).

¹⁸⁹ Smith (n 12).

¹⁹⁰ Altafin, Haász and Podstawa (n 13).

¹⁹¹ *Ibid*.

practical possibilities¹⁹², so this approach is accurate and realistic to the capabilities of the EU in terms of security, being only a 3% of the EU budget invested in security¹⁹³. Also, this proves to be accurate to the diplomatic strategies the EU wants to gain as a global power through the promotion of multilateralism and EU values¹⁹⁴. Taking a consistent approach that goes in line with the diplomatic strategy developed by the EU¹⁹⁵, will not only provide more legitimacy in the third countries through which the EU develops partnerships, but also more effectiveness, as it proves to be working under its capabilities¹⁹⁶. The following phrase presented by Altafin, Haász & Podstawa¹⁹⁷ represents the notable existence of double standards:

[I]n particular, a ‘credible Union’ hinges on its own unity, achievements, enduring power of attraction, the effectiveness and consistency of its policies, and adherence to its values. However, investing in the EU’s credibility is called for by emphasising increased security and defence capabilities.¹⁹⁸

The tension between the intergovernmental and community method in EU FP notably affects in the EU mainstreaming and protection of HR because the intergovernmental nature of EU FP is seen as an issue when trying to set HR as goals in EU FP areas, more specifically, those more related to security-related issues, such as border management and migration containment.¹⁹⁹ Another latent area of tension is found on the external and internal objectives. Trauner²⁰⁰ pointed out the necessity to balance external and internal priorities appropriately, because while EU’s foreign and security policy aimed to contribute for regional integration and facilitate good relations with the neighbouring states, the EU justice and home affairs have been focused on closing external borders and maintaining the problems outside of those parameters. This situation diminishes the position of HR because as mentioned, security-related purposes are found to be priorities. Eventually, the analysis of the tension found between European integration

¹⁹² Keukeleire and Delreux (n 6).

¹⁹³ See Annex 1.

¹⁹⁴ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19).

¹⁹⁵ Ibid.

¹⁹⁶ See Annex 1.

¹⁹⁷ Altafin, Haász and Podstawa (n 13).

¹⁹⁸ Ibid.

¹⁹⁹ Keukeleire and Delreux (n 6).

²⁰⁰ Trauner (n 179) 20.

objectives and Atlantic solidarity is crucial to understand the nexus between HR and security in the EU. After the Second World War, considering the events that were undertaken in that period, the threat of the Soviet Union and its territorial closeness to the EU member states, the Cold War, the existent military weakness of Western Europe, the military superiority of the United States, made both NATO and the US to be the security providers to the majority of EU member states. This situation explains why in the 1970s the European Political Cooperation (EPC), predecessor of the CFSP, when tasked with developing a common foreign policy intended, at that time the European Community (EC) was defined as a civilian power. This dependency was determining not only the defence policy but also other member states' foreign policies and the EPC.²⁰¹ This background on the areas of tension in EU FP and how it affects to the balance between HR and security in it, provides a view to understanding the reasons why a security rationale was largely impregnated in the EU FP.

2.3.2. Introduction of HS: bridging the gap between HR and security in EU FP

In the EU context, the term HS has been applied multiple times and named by important figures in the history of the EU FP. It was first used by Javier Solana in the EU, EU High Representative for CFSP (HR/VP) in the post-Amsterdam Treaty era (after 1999). The EU approach forms part on the second generation of advocates (SGAs)²⁰², which believe on a population-centred approach towards HS and analyse the development of the concept in the EU sphere, as to whether the concept has emerged or has been diminished and blurred in the EU FP in terms of security.²⁰³ From this view, both the Barcelona Report (presented in September 2004) and later, the Madrid Report (2007) were performed to encourage the HS approach in the EU FP, considering the following principles: primacy of HR, legitimate political authority, a bottom-up approach, effective multilateralism and an integrated regional approach.²⁰⁴

²⁰¹ Keukeleire and Delreux (n 6) 20.

²⁰² For more information about the first and second generation of advocates see Christou (n 49) 3.

²⁰³ Ibid.

²⁰⁴ Thompson (n 141).

The nexus of HR and HS can be found through the analysis of the gaps and criticism of the HS approach in the EU context. Concerning this, the first point is that there are some MS in the Council, as well as officials in several Directorates-General (DG)²⁰⁵, who believe²⁰⁶ that the concept is highly ambiguous, and it does not provide a settlement to create a specific strategy. This characterisation of the concept leads to the unwillingness of many officials to promote it, and because of this, HS is not present when performing public diplomacy by main commissioners neither in the core EU documents, such as the EU priorities at the UN²⁰⁷. Nevertheless, this criticism is generated due to other in-depth issues that will be covered on further in this research. Texts such as the EUGS promoted by the ex- HR/VP Federica Mogherini²⁰⁸, demonstrate that the concept of HS is indeed penetrated in EU FP, even if HS is not a proper security narrative that guides the strategy²⁰⁹. The fact of having an ambiguous perception towards the concept in the EU context, demonstrates that the legitimacy, credibility and effectiveness of the EU will continue to be damaged if gaps found in EU policies in relation to HR are not eventually covered²¹⁰. Because of this, the nature of HS relies on HR, and ensures that these gaps are closed. The second point specifies that before, there were figures like Javier Solana that could be entrepreneurs of the normative aspect of HS and this absence makes it difficult for the concept to reobtain both its presence and the possibility of turning into a narrative for strategy development, as it is mentioned by Thompson.²¹¹ Thompson²¹² establishes an explicit statement, but it is a matter that currently, the HS approach has indirectly been penetrated in the EU FP. Because in the EU context, it has been perceived that HR violations can be indeed an issue of international security and challenge the stability of both the international system and the state security.²¹³ Kaldor, Martin & Selchow also expressed that the HS approach 'is more realistic than traditional national security approaches since it

²⁰⁵ The division of the Commission in several policy departments. European Commission, 'How the Commission is organised' (2020) <https://ec.europa.eu/info/about-european-commission/organisational-structure/how-commission-organised_en> accessed 20 July 2020.

²⁰⁶ Christou (n 49).

²⁰⁷ Ibid.

²⁰⁸ EEAS, 'Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union's Foreign and Security Policy' (n 19).

²⁰⁹ Christou (n 49).

²¹⁰ Smith (n 12) 121.

²¹¹ Thompson (n 141).

²¹² Christou (n 49).

²¹³ Kaldor, Martin and Selchow (n 99).

represents the only possible approach to the kinds of insecurities the human beings face in the contemporary global era.’²¹⁴ Promoting and protecting HR puts an end to developing insecurities to states. Considering that current EU FP is intergovernmental,²¹⁵ the HS approach guarantees the substance and presence of the promotion and protection of HR more than traditional state security do, hence being more accurate to the EU FP development. The third point is the fact that as mentioned before, HS first principle is ‘to ensure respect for HR; to secure the safety, dignity and welfare of individuals and the communities in which they live.’²¹⁶ This argument strengthens the idea that the EU has been taking a HS approach in its foreign policy, as it mentions in the EU Action Plan ‘the EU will promote HR in all areas of its external action without exception.’²¹⁷ This idea specifies the intense commitment of the EU on developing all the external action with the main principle of protecting and promoting HR, being also the first purpose of the HS approach. It can be claimed, that even if the HS approach, once properly mentioned through figures such as Javier Solana and Benita Ferrero-Walner, still lives in the EU’s intentions on promoting a foreign policy in accordance to the former values of the EU on HR.²¹⁸ Furthermore, HS focuses on the HR of ‘freedom from fear’ and ‘freedom from want’, both mentioned in the United Nations Human Development report in 1994.²¹⁹ These two rights were first established at the San Francisco Conference in June 1945, and they were representing the two blocks of the Cold War, in which following the Western bloc, victory would mean ‘freedom from fear’, while on the Eastern bloc, victory will have as a significance ‘freedom from want.’²²⁰ These two concepts were considered in the Barcelona Report. Nevertheless, the report was mainly focused on the physical insecurity of citizens by the concept on ‘freedom from fear’ instead of the wider integration of the concept of

²¹⁴ *ibid* 2.

²¹⁵ Smith (n 12).

²¹⁶ Kaldor, Martin and Selchow (n 99) 2.

²¹⁷ Council of the European Union, ‘EU Action Plan on Human Rights and Democracy 2015-2019’ (n 115), 10.

²¹⁸ More info about EU values to be found at: https://europa.eu/european-union/about-eu/eu-in-brief_en. European Union, ‘Goals and values of the EU’ (31 March 2020) < https://europa.eu/european-union/about-eu/eu-in-brief_en > accessed 27 March 2020.

²¹⁹ United Nations Development Programme (UNDP), ‘Human Development Report 1994’ (1994) Oxford University Press <http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf> accessed 29 March 2020.

²²⁰ UNDP (n 236)

‘freedom from want.’²²¹. By this, it can be determined that even if the EU acknowledges its alliance with international standards, it has truly a particular position when dealing with its foreign policy. Even if the EU establishes that HR will be incorporated in all the policies of the external action²²², the EU selects when and how to incorporate these policies, because there is still not a defined strategic narrative that determines it, even if HS factors are present. With this regard, and also in the EU Action Plan, the EU stands for effective multilateralism, being ‘committed to a strong multilateral HR system which can monitor impartially implementation of HR norms and call all States to account’²²³, which is indeed, one of the main principles of HS, promoting effective multilateralism.²²⁴ Moreover, a bottom-up approach has been considered inside the EU Action Plan, aiming to boost ownership of local actors.²²⁵ The bottom-up approach is one of the core purposes of the HS approach at European level to propose a European Strategic Narrative, considering that the intensive consultation of local people is required to be more empathetic with the situation, to understand it better, but more importantly, to let the communities find ways to create stability and peace.²²⁶

2.3.3. Analysis of the ESS 2003 & the EUGS 2016

2.3.3.1. *Quantitative analysis*

In this part of the research, a text analysis methodology will be performed. The purpose of this analysis is to identify and explain the imbalance between security and HR in the CFSP EUGS 2016²²⁷ in comparison to the ESS²²⁸.

²²¹ Christou (n 49).

²²² Council of the European Union, ‘EU Action Plan on Human Rights and Democracy 2015-2019’ (n 115).

²²³ *ibid* 13.

²²⁴ Kaldor, Martin and Selchow (n 99).

²²⁵ Council of the European Union, ‘EU Action Plan on Human Rights and Democracy 2015-2019’ (n 115).

²²⁶ Kaldor, Martin and Selchow (n 99).

²²⁷ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19).

²²⁸ Council of the European Union, ‘European Security Strategy: A Secure Europe In A Better World’ (n 8).

Table 1: ESS 2003

	Human rights	Security
Foreword	0	5
Executive Summary	1	8
Introduction	0	2
Global Challenges and Key Threats: Introduction	0	1
Global Challenges and Key Threats: Proliferation of Weapons of Mass Destruction	0	2
Global Challenges and Key Threats: Terrorism and Organised Crime	1	1
Global Challenges and Key Threats: Energy Security	0	2
Global Challenges and Key Threats: Climate Change	0	2
Building Stability in Europe and Beyond	1	8
Europe in a Changing World: Introduction	0	1
Europe in a Changing World: A more Effective and Capable Europe	1	4
Europe in a Changing World: Greater Engagement with Our Neighbourhood	1	3
Europe in a Changing World: Partnerships for Effective Multilateralism	2	6
A secure Europe in a better world: Introduction	0	4
The Security Environment: Global Challenges	0	3
The Security Environment: Key Threats	1	2
Strategic Objectives: Introduction	0	1
Strategic Objectives: Addressing the Threats	0	0
Strategic Objectives:	0	3

Building Security in Our Neighbourhood		
Strategic Objectives: An International Order Based on Effective Multilateralism	1	7
Policy Implications for Europe	0	7
Conclusion	0	0
Total	9	72

In Table 1, it can be seen that the ESS²²⁹ has a limited presence of HR in comparison to security, which is mentioned on the areas related to key threats in terrorism and organised crime, building stability, a more effective Europe, a greater engagement the EU neighbourhood and creating partnerships for effective multilateralism. Indeed, in the areas more related to the promotion of the EU as a normative and civilian power. The distribution of HR in the different parts from ESS is more unequal than security, considering that in some parts HR are not mentioned. This has also to do with the length of the document.

Table 2: EUGS 2016

	Human rights	Security
Foreword of Federica Mogherini	1	7
Executive Summary	3	16
Shared Vision, Common Action: Introduction	0	2
Shared Vision, Common Action: A Stronger Europe: A global strategy to promote our citizens' interests	2	9
The Principles guiding our External Action	2	1
The Priorities of our External Action: Security of the Union	2	29
The Priorities of our	5	11

²²⁹ Ibid.

External Action: the state and societal resilience to the East and South		
The Priorities of our External Action: An integrated approach to conflicts and crises	1	13
The Priorities of our External Action: The cooperative regional orders	7	28
The Priorities of our External Action: Global governance for the 21 st century	5	9
From Vision to Action	3	10
Total	31	135

In this table, the appearance of HR and security in the EUGS has been increased since the creation of the ESS²³⁰. Nevertheless, even if the number of times in which HR are present has been raised, security remains having more presence than HR in the document. While in the ESS HR are more unequally distributed in the different parts of the document, EUGS presents HR more equally through the different parts. In addition, being the document lengthier, the EUGS provides more ways to include the representation of HR.

2.3.3.2. Qualitative analysis

In both strategies there is an imbalance between HR and security, with security being mentioned more than HR. Security remains a priority of the CFSP, while HR are mainly addressed as values, objectives and principles that guide the application of it.²³¹

The two strategies were performed in notable different contexts in which the EU had different purposes in its external action in line with the perceivable challenges occurring in the international arena. The ESS²³², was performed two years after the events of the

²³⁰ Ibid.

²³¹ Altafin, Haász and Podstawa (n 13).

²³² Council of the European Union, 'European Security Strategy: A Secure Europe In A Better World' (n 8).

9/11 which changed the perception of international security and therefore, also the European security²³³, developing a new EU counter-terrorism strategy in 2005 and the Europeanisation of the main areas of cooperation²³⁴. This means that the dependency with NATO and the US was intended to be diminished at the same time as obtaining a more strengthened global cooperation²³⁵. It is to mention, as previously introduced on this research, that a securitisation process was particularly nurtured on the main fields of EU FP as a result of a strong security rationale.²³⁶ With this context, Javier Solana, ex-Secretary General of the Council of the EU / High Representative for the CFSP highlighted in 2004 that considering the arise of non-state actors such as the terrorist group Al Qaeda - who committed the 9/11 attacks - as main challenges: ‘experience has shown that a military response is not enough to deal with the new threats and challenges faced by the international community. The EU's CM policy and operations have always taken into account the complementarity of civilian and military means.’²³⁷ Javier Solana already acknowledged the importance of maintaining the balance of the EU as a normative power and at the same time insisted that a ‘military-civilian balance has been imbedded in our European Security and Defence Policy since its very beginning.’²³⁸

In the context of the EUGS presented by the ex- High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the European Commission Federica Mogherini²³⁹, the EU had gone through an economic crisis and was experiencing an intensive refugee crisis and the rise of populism and Eurosceptic movements. The previous years before the outcome of the EUGS were years of

²³³ European Commission, ‘EU Response to the 11 September: European Commission action’ (3 June 2002) < https://ec.europa.eu/commission/presscorner/detail/en/MEMO_02_122 > accessed 18 June 2020.

²³⁴ Police and Intelligence Cooperation, Judicial Cooperation, Infrastructure and Transport Protection, Customs and Border Security, Response Management, Anti-terrorism Financing, Anti-radicalisation and Terrorist Recruitment and External Relations. Javier Argomaniz, ‘The European Union Post 9/11 Counter-terror policy response: An Overview’ (2010) 140 Research Institute for European and American Studies (RIEAS) < <https://www.rieas.gr/images/rieas140.pdf> > accessed 18 June 2020.

²³⁵ Argomaniz (n 234).

²³⁶ Trauner (n 179) 20.

²³⁷ Council of the European Union, ‘Javier Solana, EU High Representative for the CFSP, responds to report by Study Group on Europe’s Security Capabilities’ (n 146).

²³⁸ Ibid.

²³⁹ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19).

consistent economic and social insecurities, putting into question the unity of the EU.²⁴⁰ As Papaioannou and Passari mention, the cultural backlash for progressive values like cosmopolitanism and multiculturalism and the economic insecurity, raised from globalisation and the increasing unemployment in Europe in the aftermath of the economic crisis in 2011²⁴¹, clearly had an effect on how security was viewed inside and outside Europe as it is in the case of the EUGS²⁴². It was particularly perceived as an impulse to use the CFSP as a way to encourage the unity of the EU²⁴³, demonstrating the importance of a common action and the sharing of common interests and values.²⁴⁴

In the foreword by Javier Solana, ex-Secretary General of the Council of the EU / High Representative for the CFSP expressed clearly the willingness for ‘advancing its security interests, based on our core values.’²⁴⁵ With values, Solana means HR among others, such as democracy and the rule of law²⁴⁶. The main focus of this strategy is security as it can be perceived, but Javier Solana already at this time was a promoter of the concept of HS – which was at the same time giving importance to the main interest of the CFSP – security - but centring it on the individual.²⁴⁷ Federica Mogherini still acknowledges HS as an approach to be considered in the EUGS²⁴⁸. Nevertheless, she clearly expresses the recognition of the EU as a civilian and normative power as well as a military power through the following reference: ‘the EU currently deploys seventeen military and civilian operations, with thousands of men and women serving under the European flag for peace and security – our own security, and our partners. For Europe, soft and hard power go hand in hand.’²⁴⁹

²⁴⁰ Elias Papaioannou & Eugenia Passari, ‘The European Trust Crisis and the Rise of Populism’ (2017) Brookings Papers on Economic Activity < <https://www.brookings.edu/wp-content/uploads/2018/02/algantextfa17bpea.pdf>> accessed 18 June 2020.

²⁴¹ Papaioannou & Passari (n 240) 310.

²⁴² EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19).

²⁴³ Smith (n 12).

²⁴⁴ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19).

²⁴⁵ Council of the European Union, ‘European Security Strategy: A Secure Europe In A Better World’ (n 8) 4.

²⁴⁶ European Commission, ‘The EU values’ (2020) < <https://ec.europa.eu/component-library/eu/about/eu-values/>> accessed 18 June 2020.

²⁴⁷ Thompson (n 141).

²⁴⁸ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19).

²⁴⁹ Ibid 4.

She balances security as a priority with HR as values, objectives and principles. In this regard, Mogherini mentions that ‘it focuses on military capabilities and anti-terrorism as much as on job opportunities, inclusive societies and HR.’²⁵⁰ Interestingly, Mogherini uses the word “peace-building” as an interaction among both HR and security, which as mentioned by Galtung²⁵¹, it creates sustainable peace why analysing the origins of conflict and supports local population for capacity-building for peace management and conflict resolution: ‘it deals with peace-building and the resilience of States and societies, in and around Europe.’²⁵²

In the ESS 2003, the main topics are to establish the key threats for the EU, the importance of building stability both inside and outside the EU, the understanding of the EU as an actor in a changing world and the relevance of building a secure Europe.²⁵³ While in the EUGS 2016, creating a shared vision and a common action, establishing the principles as guidance and the priorities of the external action through an integrated approach are the main parts.²⁵⁴ The change of priorities is evidential due to the two different scopes in which both strategies were developed. On the one hand, HR were the main basis for the development of the strategy in 2003: ‘Our partnership should be based on respect for common values, notably HR, democracy, and rule of law, and market economic principles as well as on common interests and objectives.’²⁵⁵

While in the EUGS 2016, HR were not only the main basis and objectives but also the main guidance of the strategy:

²⁵⁰ Ibid 4.

²⁵¹ United Nations, ‘UN Peacebuilding: An Operation.’ (September 2010) <https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/peacebuilding_orientation.pdf> accessed 15 May 2020.

²⁵² EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19) 4.

²⁵³ Council of the European Union, ‘European Security Strategy: A Secure Europe In A Better World’ (n 8).

²⁵⁴ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19).

²⁵⁵ Council of the European Union, ‘European Security Strategy: A Secure Europe In A Better World’ (n 8) 23.

[W]e will take responsibility foremost in Europe and its surrounding regions, while pursuing targeted engagement further afield. We will act globally to address the root causes of conflict and poverty, and to champion the indivisibility and universality of HR.²⁵⁶

Whereas the ESS 2003 focuses more in the protection of HR and the importance of HR as a basis in EU FP: ‘the best protection for our security is a world of well-governed democratic states (...) establishing the rule of law and protecting HR are the best means of strengthening the international order.’²⁵⁷ In the EUGS 2016, the main focus is the promotion of HR when mainstreaming HR, and not only this determination is important, but also the EUGS 2016 provides the ways to promote them ‘the EU will therefore promote HR through dialogue and support, including in the most difficult cases. Through long-term engagement, we will persistently seek to advance HR protection’²⁵⁸ and the methods used are the following:

[W]e will reach out more to cultural organisations, religious communities, social partners and HR defenders, and speak out against the shrinking space for civil society including through violations of the freedoms of speech and association... We will nurture societal resilience also by deepening work on education, culture and youth to foster pluralism, coexistence and respect.²⁵⁹

Not only that but the EUGS 2016 stresses the multilateral cooperation in terms of HR²⁶⁰ and the importance of preventive peace ‘we will therefore redouble our efforts on prevention, monitoring root causes such as HR violations, inequality, resource stress, and climate change – which is a threat multiplier that catalyses water and food scarcity, pandemics and displacement’²⁶¹ and pre-emptive peace ‘long-term work on pre-emptive peace, resilience and HR must be tied to crisis response through humanitarian aid, CSDP, sanctions and diplomacy’²⁶², which is extremely important to guarantee both

²⁵⁶ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19) 17.

²⁵⁷ Council of the European Union, ‘European Security Strategy: A Secure Europe In A Better World’ (n 8) 37.

²⁵⁸ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19) 26.

²⁵⁹ *ibid* 27.

²⁶⁰ *Ibid* 42.

²⁶¹ *ibid* 29.

²⁶² *ibid* 51.

short-term and long-term goals in terms of HR. The position shown in the 2016 EUGS demonstrates the identification of HR as a source of insecurity ‘solving conflicts and promoting development and HR in the south is essential to addressing the threat of terrorism, the challenges of demography, migration and climate change, and to seizing the opportunity of shared prosperity’²⁶³, but also recognises some of the tensions perceived in EU FP and the way to address them and global challenges, such as the refugee crisis:

[W]e must become more joined-up across internal and external policies. The migration phenomenon, for example, requires a balanced and HR compliant policy mix addressing the management of the flows and the structural causes... we will make different external policies and instruments migration-sensitive – from diplomacy and CSDP to development and climate – and ensure their coherence with internal ones regarding border management, homeland security, asylum, employment, culture and education.²⁶⁴

On the other hand, security is still the main priority in both strategies, therefore a more significant emphasis is existent comparing it to the presence of HR, as it can be viewed in the quantitative analysis tables previously presented in this research. Nevertheless, even if the perception towards security seems not to be altered from one strategy to the other, how to address it has changed, particularly because the mainstreaming of HR has been strengthened in the EUGS 2016. The perception of the threat is one of the main features which remains quite similarly addressed in both strategies. In the EUGS 2016, the phrase ‘our Union is under threat’²⁶⁵ is highlighted. It represents the vision of the international relations for the development of this strategy – the perception of the other “as a threat” while at the same time, “win-win solutions” were going to be invested in, letting aside the traditional approach to international relations based on “a zero-sum game.”²⁶⁶ Nevertheless, this paradox is reflected accurately when applying EU FP in practice – because while the intend of the strategy is to collaborate with partners, the perception of the other is still felt as a “threat.”²⁶⁷ Therefore, the approach present in the EUGS is still primarily security based. In the ESS 2003, the perception of threat is the

²⁶³ *ibid* 34.

²⁶⁴ *ibid* 50.

²⁶⁵ *Ibid* 6.

²⁶⁶ *ibid* 4.

²⁶⁷ *Ibid* 6.

same ‘the world around us is changing fast, with evolving threats and shifting powers.’²⁶⁸ Even if HS is present in both documents, the reality is that the perception of “external threats” is still very much based on a traditional state-security perspective. As claimed by Rubenstein²⁶⁹, the main aim of the EU is to protect against forthcoming threats, approving or accepting the use of force to perform it if necessary. However, some of the main threats have changed from the ESS 2003 to the EUGS 2016. In the ESS 2003 proliferation of weapons of mass destruction, terrorism and organised crime, energy security, climate change²⁷⁰. While in the EUGS 2016 it is established that:

[Y]et today terrorism, hybrid threats, climate change, economic volatility and energy insecurity endanger our people and territory. The politics of fear challenges European values and the European way of life...we will strengthen ourselves on security and defence in full compliance with HR and the rule of law.²⁷¹

In relation to this statement, both prevention and peacebuilding are given particular emphasis in a multidimensional perspective, hence understanding more comprehensively which role the EU should provide as an actor. Nonetheless, in the 2003 strategy, it is asked for the EU to be ‘more active in pursuing our strategic objectives (...) This applies to the full spectrum of instruments for crisis management and conflict prevention at our disposal. Active policies are needed to counter the new dynamic threats.’²⁷²

In conclusion, Chapter II has provided a response to the first specific research question: *Where can an imbalance between both concepts in crisis situations be found towards more pro-security solutions?* The answer to it has been covered through a periodical overview for the understanding of the position of HR and security in the EU and

²⁶⁸ Council of the European Union, ‘European Security Strategy: A Secure Europe In A Better World’ (n 8) 26.

²⁶⁹ Richard E. Rubenstein, ‘State Security, Human Security and the problem of Complementarity’ in Jacob, Edwin Daniel (eds), *Rethinking Security in the Twenty-First Century* (1st edn, Palgrave Macmillan US 2017).

²⁷⁰ Council of the European Union, ‘European Security Strategy: A Secure Europe In A Better World’ (n 8).

²⁷¹ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19) 18-19.

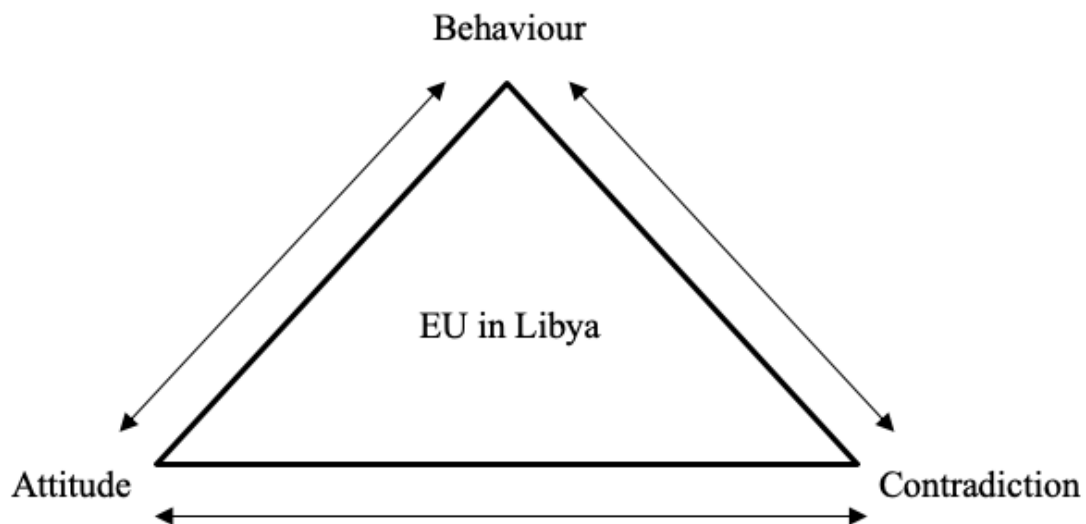
²⁷² Council of the European Union, ‘European Security Strategy: A Secure Europe In A Better World’ (n 8), 39.

particularly, EU FP. The position of HR itself, in comparison to security, increases this imbalance. In addition, a qualitative and quantitative analysis of the two strategies – ESS & EUGS – has provided with significant conclusions that identify where the imbalance is found.

III. CHAPTER III: CASE ON LIBYA

This section will analyse the EU as an actor promoting conflict management in Libya²⁷³. To perform this, the EU's response to the conflict will be taken into consideration²⁷⁴, through the Galtung's triangle on conflict management analysis. With this analysis, the position of HR and security in the three phases of conflict present in the triangle (Contradiction, Attitudes and Behaviour)²⁷⁵ will be analysed chronologically in three periods: from the 2011 crisis until 2014, from 2014 until the refugee crisis of 2015, and from 2015 on). The tensions between HR and security will be considered in order to better understand the EU conflict management response in Libya under the EU FP. After this - in section 3.4 - the balance between HR and security will be undertaken.

Title: Galtung's Triangle on Conflict Management of the EU in Libya



Source: Adopted based on Galtung.

²⁷³ Smith (n 12)

²⁷⁴ Ibid.

²⁷⁵ Conflict prevention, crisis management and peacebuilding. Ibid.

3.1. Contradiction: Historical context of the Libyan crisis and the position of the EU

The EU has been one of the main international actors having a role in Libya since the beginning of the Libyan crisis in 2011²⁷⁶. This is also supported by Koenig²⁷⁷, expressing that Colonel Muammar Gaddafi concluded trade agreements and other deals with core Western powers (such as Italy) – with the purpose of fighting together against terrorism and illegal migration, which are the main security objectives of the prior and current EU FP in Libya.²⁷⁸ The presence of the EU has been continuous before and since 2011. In 2011, the EU and Libya were developing negotiations on a Framework Agreement²⁷⁹, with the main objective of providing Libya a place in the current international order and reintegrating the country in international relations – both bilateral and multilateral– primarily through the use of political dialogues²⁸⁰ seeking to establish an equal level partnership²⁸¹. But the EU-Libya negotiations for a Framework Agreement ended as soon as the Arab Spring began²⁸². The Arab Spring uprisings represented the revolutionary wave of violent and non-violent demonstrations and protests against the authorities, as well as an opposition to the civil wars in the Arab states that started in 2010.²⁸³ The uprisings lead to a further escalation of tensions in the country, and this affected on the development of EU relations with Libya. Capasso²⁸⁴

²⁷⁶ European Commission, ‘ENP Package Libya’ (27 March 2014) <https://ec.europa.eu/commission/presscorner/detail/en/MEMO_14_228> accessed 24 March 2020. For more information of the Libyan conflict since 2011 until nowadays, see: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.462.690&rep=rep1&type=pdf>.

²⁷⁷ Nicole Koenig, ‘The EU and the Libyan Crisis: In Quest of Coherence?’ (July 2011) 11(19) Istituto Affari Internazionali (IAI) Working Papers <<http://www.iai.it/sites/default/files/iaiwpl1119.pdf>> accessed 25 June 2020.

²⁷⁸ European External Action Service (EEAS), Factsheet ‘EU-Libya relations’ (25 September 2019) <https://eeas.europa.eu/headquarters/headquarters-homepage_en/19163/EU-Libya%20relations> accessed 25 June 2020.

²⁷⁹ More information to be found at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011XP0020&from=EN>.

²⁸⁰ See page 30-31 on this research for further information.

²⁸¹ Nicole Koenig, ‘The EU and the Libyan Crisis: In Quest of Coherence?’ (n 277).

²⁸² Stelios Stavridis, ‘EU incoherence and inconsistency in Libya: evidence to the contrary’ (2019) 89 *Cahiers de la Méditerranée* <<https://journals.openedition.org/cdlm/7767>> accessed 25 June 2020.

²⁸³ Elfaith. A. Abdel Salam, ‘The Arab Spring: Is origins, evolution and consequences...four years on’ (2015) 23(1) *Intellectual Discourse* <<https://journals.iium.edu.my/intdiscourse/index.php/islam/article/view/660/520>> accessed 25 June 2020, 121.

²⁸⁴ Matteo Capasso, Jędrzej Czerep, Andrea Dessì and Gabriella Sanchez, ‘Libya Country Report’ (2018) EU-LISTCO

claims that there was a perception in the conflict dynamics in Libya that the EU was hugely divided which was reflected both, in the unilateral actions taken by MS and the lack of a coherent EU policy in Libya. On the one hand, states such as the UK and France cut diplomatic relations with Libya as early as ten days after Arab Spring protests occurred which additionally increased the social discontent about the fragile economic situation in the country²⁸⁵. On the other hand, these unilateral actions were not supported by other MS, who believed that these would create difficulties in an attempt to develop a common EU strategy towards the National Transitional Council of Libya (NTC)²⁸⁶.

This situation was exacerbated by the intergovernmental nature of the EU FP and its effect on EU relations with Libya. Fabbrini²⁸⁷ and Marchi²⁸⁸ point out the idea that the intergovernmental nature of EU FP has been a main driver for the failure of the presence of the EU in the conflict. There was a perception that the intervention in Libya by the EU was a failure of CFDP, because:

[T]he EU's lack of response to Libya is perceived as a result of the eroded influence of the EU structures, which have been affected by the nationalism of the member states. The latter's unwillingness to sponsor a joint action within the EU framework was the emerged outcome."²⁸⁹

With respect to human rights, EU's involvement is even less clear. Efforts have been performed in humanitarian action²⁹⁰ to guarantee human rights, but the problem arises in the fact that the measures in humanitarian terms²⁹¹ have not prevented HR violations²⁹², and this has contributed to Libya's poor human rights records²⁹³.

<<https://www.cidob.org/ca/content/download/74684/2379356/version/1/file/Libya%20Country%20Report.pdf>> accessed 27 June 2020, 6.

²⁸⁵ Capasso and others (n 284) 6.

²⁸⁶ *ibid* 8.

²⁸⁷ Fabbrini (n 4) 178.

²⁸⁸ Marchi (n 3).

²⁸⁹ *Ibid*, 2.

²⁹⁰ The humanitarian response was to create the mission/operation EUFOR Libya that was not eventually activated by demands of the United Nations. Fabbrini (n 4) 187.

²⁹¹ The EU was the first humanitarian donor in Libya investing 152 billion euros for humanitarian aid and civilian protection. Fabbrini (n 4) 188.

²⁹² EEAS, Factsheet 'EU-Libya relations' (n 278).

The scope of the EU as a core international actor in the conflict changed dramatically in 2014 when the main figure leading the conflict (Gaddafi) was executed on the 20th October 2020²⁹⁴. As a consequence, an alteration in the EU's response to the Libyan crisis was characterised by a change in the focus of EU FP in the country. This meant that while in 2011 the EU was centred on a CM response (following the UN demands), in the period between 2011 and 2014 the EU policies were focusing more on supporting the process of post-crisis recovery and institution-building. Nonetheless, he further mentions that the escalation of tensions in 2014, demonstrated that a strategy based on post-crisis recovery was not suitable, since the conflict did not end.

This situation worsened with the refugee crisis from 2015 onwards. Undoubtedly, the refugee crisis has affected Libya in terms of HR and security, and it could definitely be considered as the key factor that destabilises security and HR in EU FP in Libya nowadays. This is the reason why, the EU as an actor not only focuses on protecting migrants, refugees and IDP in Libya but also supports local communities to deal with this challenge²⁹⁵. In this period, the UN achieved the Libyan Political Agreement (LPA) with the purpose of supporting new sets of governing institutions, including the Government National Accord (GNA), supported by the EU.²⁹⁶ Since Gaddafi's assassination in 2011, Libya has been subject to channels of human smuggling in Northern Africa, as it has been used as the principal transit area for migrants and asylum-seekers on their way to the EU, which has caused an undefined number of human rights violations.²⁹⁷ As Zampagni and others²⁹⁸ mention, it is perceived that the

²⁹³ Ibid. Considering the report of *Freedom of the World 2020*, Libya is ranked as 9/100 points for freedom status. Whereas in 2017, three years before, Libya was ranked as 13/100. In both cases the country was considered as "not free." Freedom House, 'Freedom in the World 2020: Libya' <<https://freedomhouse.org/country/libya/freedom-world/2020>> accessed 14 July 2020.

²⁹⁴ Mikel Ayestaran, *Oriente Medio, Oriente roto*, (2nd edn, Peninsula 2017).

²⁹⁵ For more information on cooperation on migration see: https://eeas.europa.eu/delegations/libya/1447/libya-and-eu_en.

²⁹⁶ Roderick Parkes, 'Nobody move! Myths of the EU migration crisis' (December 2017) 143 Chaillot Paper <https://www.iss.europa.eu/sites/default/files/EUISSFiles/CP_143_Migration_0.pdf> accessed 26 June 2020.

²⁹⁷ Parkes (n 296).

²⁹⁸ Francesca Zampagni, Hassan Boubakri, Remadji Hoinathy, Leander Kandilige, Hamidou Manou Nabara, Sara Sadek, Mohamed ElSayeh, Mahamadou Zongo and Maegan Hendow, 'Migrants in Countries in Crisis' (2017) International Centre for Migration Policy Development

effects of the violence occurred in Libya will keep being re-echoed, as migrants and displaced people will always seek a peaceful refuge.

The position of the EU as an actor in the conflict could be categorised as evolving, but not progressive. Considering 2011, a tension between multilateralism and bilateralism has affected the purpose of the EU in the response of the crisis during the Arab Spring, which eventually lead to the division and a lack of coherence in EU's response and hindered a more effective involvement of the EU in Libya²⁹⁹. Additionally, a lack of emphasis on multilateralism in EU FP has reverberated on existing divisions and incoherence. Although since 2014 the EU CM strategy was to be less focused on crisis response and more on a post-crisis recovery, this was not the case for two reasons. The first one was that more emphasis on a bottom-up approach would have been benefiting for this phase of the conflict. The second one, and more importantly, was the concept of time. Was it the right time to promote a post-conflict recovery strategy? Could the crisis already be considered as a post-conflict situation? The current circumstances after the events of 2019 in Tajoura³⁰⁰ reflect it was not. The conflict was escalated due to internal, but also external factors. The refugee crisis in Libya occurring from 2015 until nowadays, has demonstrated that re-covering security in Libya through a political settlement is necessary to guarantee stability in the country.

3.2. Attitude: EU-Libya relations

In 2011, as noted by Ekiz³⁰¹, the EU aimed to let UN and NATO be the leading institutions concerning the military and CM issues. This decision was based on the fact that both incoherence and indecision were notable among EU MS in terms of military issues. The provision of humanitarian aid by the EU was only a short-term measure, and did not address long-term issues in Libya in terms of HR such as, supporting civil society, developing state institutions and a state building strategy.³⁰² The concept of

<https://micicinitiative.ion.int/sites/default/files/resource_pub/docs/libya_casestudy_final.pdf> accessed 20 July 2020.

²⁹⁹ Fabbrini (n 4).

³⁰⁰ More information here: <https://www.msf.org/first-hand-account-fatal-airstrike-tajoura-detention-centre-libya>.

³⁰¹ Seyma Ekiz, *The Role of the EU and Member States in the Arab Spring*, (1st edn, Nomos 2018).

³⁰² Ekiz (n 301).

time analysed by Zartman is important to consider in this case³⁰³, because this created a feasibility problem of developing short-term strategies for long-term objectives.

The EU's attitude also changed in 2014. In local terms, the division of the country into two rival camps and the expansion of insecurity obliged the EU to focus back on crisis definition and response, including the relocation of international actors as well as the EU delegation. This was a common response the EU gave, however some EU MS participated actively in the conflict focusing on their own personal interests – and not on a common crisis response to overcome the insecurity spread throughout the country due to the division and illegitimacy of local actors in the country³⁰⁴. As Mezran & Varvelli established, 'In Libya, the interference of international powers and regional actors contributed to dividing the country and made it more difficult to undertake a true process of national reconciliation.'³⁰⁵ Even if since 2014, EU MS aimed to coordinate their agendas by the LPA and the whole political process that brought to it³⁰⁶, the reality is that incoherence was the consequence of the behavior by EU member states. Italy was performing intense diplomatic activity trying to de-escalate the conflict between Tobruk and Tripoli collaborating with actors such as municipal representatives, civil society, local actors and tribal leaders. The reasons why Italy was interested on being a mediator and intended to re-build the political and military situation in Libya, is because of Italy's political, commercial, economic and energy posts in Libya situated in Tripolania. An example can be found on the investments made by the Italian oil company ENI in the country at that time.³⁰⁷ Another example can be found in the United Kingdom. On the one hand, France, Germany, Italy, the UK, and the US established a formal contact group and issued numerous "joint statements" supporting the UN position with al-Serraj. Nevertheless, this formal support for the UN mediation was never complemented by an effective and common response. On the other hand, the UK, formally a part of the group supporting the UN-backed al-Serraj government, supported the revision of the

³⁰³ W.I. Zartman, 'The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments' in J. Darby, & R. Mac Ginty, *Contemporary peacemaking* (pp. 19-28) (Palgrave Macmillan 2003).

³⁰⁴ Chiara Loschi, 'The EU response to the Libyan crisis: shallow impact with a short-term vision' (2018) Open Democracy <<https://www.opendemocracy.net/en/north-africa-west-asia/eu-response-to-libyan-crisis-shallow-impact-with-short-term-vis/>> accessed 26 June 2020.

³⁰⁵ Karim Mezran and Arturo Varvelli, *Foreign Actors in Libya's Crisis*, (1st edn, Ledizioni LediPublishing 2017), 13.

³⁰⁶ *ibid* 10.

³⁰⁷ *ibid* 20.

LPA and the strengthening of the role of Haftar.³⁰⁸ A similar case was the one of France. Although being inside the formed group, in reality France joined the backing of Haftar together with Egypt, the United Arab Emirates and Russia.³⁰⁹ These divisions were even more evident when the refugee crisis occurred in 2015, in which a migration containment response³¹⁰ was given, but without a proper and comprehensive consideration of the internal scope of the Libyan conflict³¹¹. A common approach on how to deal with the crisis in Libya was neither feasible, since the already established divisions of the MS for an EU FP response were present when developing a proper integrated response, necessary to promote the multidimensional security need of Libya.

In a nutshell, the attitude of the EU in 2011 in Libya was more focused on letting the UN and NATO as the main players. This was occurring due to the internal problems the EU was facing, e.g. a high level of division between MS when it comes to agreeing in a military response. In fact, the more MS were present in the country, the more evident were the different interests of MS in it³¹². This situation did not provide support on the way to achieve stability and security, since the refugee crisis increased the expansion of insecurity in the country.

3.3. Behaviour and The Refugee Crisis Context: An Analysis of the EU's role in Security and HR

In relation to the behaviour, the EU reacted in the 2011 Libyan crisis in the following ways. In terms of security, the EU, in cooperation with the UN, supported a call for an intervention, in line with the UN Resolutions 1970 and 1973³¹³. Apart from this, the EU backed the “rebels” in the conflict denouncing the exercise of power by Gaddafi, with the opening of a liaison office in Benghazi with the Transition National

³⁰⁸ Ibid 21.

³⁰⁹ Ibid 21.

³¹⁰ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1).

³¹¹ See Contradiction, page 61-64.

³¹² Annex 2.

³¹³ For more explanation on the Resolution 1970 and 1973 see: <https://www.un.org/press/en/2011/sc10200.doc.htm>.

Council the 22 of May³¹⁴. FRONTEX³¹⁵ was also activated in Italy and Greece³¹⁶. In terms of HR, the EU was supposed to carry out EUFOR Libya which was a military operation that supporting humanitarian assistance, nevertheless there was no UN call to activate this mission supported by some discrepancies found in MS such as Sweden³¹⁷. It can definitely be stated that the development of measures from the EU in terms of a common security approach has been controversial and caused division in MS. Furthermore, the emphasis on developing common security standards has been highlighted as an issue that created controversy among MS in the case of Libya.

While considering the behavior in 2014, the EU aimed to support the stabilisation in the country – EU MS were performing bilateral relations that were not in line with the common position the EU aims to project. The research performed by Loschi³¹⁸ reveals that the approach taken by the EU to the Libyan crisis in its overall has particularly persisted the way it was since the acknowledgement in 2014 of the security crises occurring in Libya. Considering the Political Framework for a Crisis Approach of 2014, the EU was developing a primarily diplomatic strategy as a normative power³¹⁹. This was also confirmed by the European Council stating that the use of force was never going to be a solution to the Libyan crisis³²⁰. The position of the EU has been controversial due to its incoherence between rhetoric and practice. In this respect, Mezran & Varvelli note that ‘European leadership is needed if the international community seeks to stabilize Libya and address the issues that led to the conflict’³²¹, and hence prevent HR violations.³²² The behavior of the EU since the refugee crisis in 2015, was marked by a more comprehensive security response, which will be analysed in the following parts.

³¹⁴ Stavridis (n 282).

³¹⁵ European Border and Coast Guard Agency. For further information about Frontex see: <https://frontex.europa.eu/>

³¹⁶ Stavridis (n 282).

³¹⁷ Ibid.

³¹⁸ Loschi (n 304).

³¹⁹ Council of the European Union, ‘Libya, a Political Framework for a Crisis Approach’ (1 October 2014) <<https://www.statewatch.org/media/documents/news/2014/nov/eu-council-libya.pdf>> accessed 14 July 2020

³²⁰ Loschi (n 304).

³²¹ Mezran and Varvelli (n 305) 10.

³²² Smith (n 12).

3.3.1. EU's security response: defence and border management

The EU developed three missions under the CSDP mainly to respond to the challenge of global migration and the refugee crisis.³²³ The mandate of EUBAM Libya, created in May 2013 as an integrated border management mission in Libya³²⁴, was to provide guidance to the Libyan border guard personnel.³²⁵ Not only at this time but particularly in 2015 with the development of the refugee crisis, the Libyan coastguard was a main focal point to cover EU's migration control wills. The Libyan coastguard was reflecting the east-west split present in Libya and the lack of a strong political architecture.³²⁶ As supported by Parkes³²⁷, the EU's narrow control focus was only a little piece of all the institution-building and the establishment of rule of law. The Libyan coastguard seemed to represent Libya's issues and divisions, and how the EU thought about this was based on the fact that establishing again the Libyan coastguard would mean to master eventually east-west tensions. Apart from this, as Parkes³²⁸ further explains, migration control, as a primary goal of EU MS, in cooperation with the Libya's coastguard could definitely favour EU MS engagement – all EU MS were performing a diplomatic strategy similar to the EU-Turkey deal³²⁹. This situation reflects indeed that more than acquiring a political settlement for a stabilisation of Libya, the EU was interested in migration containment and border management in Libya³³⁰.

In 2015, Operation Sophia naval mission was carried out in which the purpose was to destroy people-smuggling networks³³¹ in the context of the global migration and refugee crisis. Apart from contributing to catching 151 suspected smugglers and traffickers, it

³²³ EEAS, Factsheet 'EU-Libya relations' (n 278).

³²⁴ Ibid.

³²⁵ Parkes (n 296).

³²⁶ ibid 71.

³²⁷ Ibid.

³²⁸ Ibid 71.

³²⁹ For more info on the EU-Turkey deal: European Commission, 'Implementing the EU-Turkey Agreement-Questions and Answers' <https://ec.europa.eu/commission/presscorner/detail/it/MEMO_16_1494> accessed 20 July 2020.

³³⁰ For more information see: https://eeas.europa.eu/headquarters/headquarters-homepage/19163/eu-libya-relations_lv

³³¹ Parkes (n 296) 71.

has rescued about 44.900 lives³³². The operation was performed outside Libyan waters in order to keep disrupting the smuggling business³³³. However, this was not enough as expressed by Parkes³³⁴. Even if the two CSDP missions made a huge effort to ensure that the work of local political actors was to encourage an eventual political settlement in Libya, in reality the EU risked fastening territorial divisions supporting the coastguard. The reason behind it was that smuggling groups and militias present in northern Libya gave more importance to the territorial reason rather than the money. One of the main motives why militias were interested in the control of migration flows is because in this way territory and population could be controlled, and hence this would lead to putting pressure for recognition from the current weak UN-backed Libyan government. If these tried to cooperate with the coastguard, it was with the purpose of facilitating the acquisition of territory for them³³⁵. Indeed, ‘if Europeans now worked with militias, no matter how indirectly, they would be legitimising this.’³³⁶ In 2014, EUBAM needed to be relocated to Tunis due to the increasing tensions in Libya³³⁷, which eventually started to have a wider presence in Tripoli in December 2017. In addition, EULPC was established in April 2015 by the EEAS in collaboration with the UNSMIL, as an ad hoc settlement to advocate in terms of Libyan security issues by providing support on military intelligence and planning, as well as local support and partnership with other EU actors.³³⁸

3.3.1.1. *Effects and achievements*

Following the Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EULPC presented on 27th July 2018 by the Council of the EU, the threat rating in Tripoli was determined as “high”, while the situation in Libya was assessed as “critical.”³³⁹ The EU is therefore still using CSDP missions to promote the

³³² EEAS, Factsheet ‘EU-Libya relations’ (n 278).

³³³ Parkes (n 296) 73.

³³⁴ Ibid 73.

³³⁵ Ibid 74.

³³⁶ Ibid 74.

³³⁷ Ibid 73.

³³⁸ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 67-68.

³³⁹ Ibid, 22.

de-escalation of the conflict by providing stability through a security-based strategy.³⁴⁰ Through them the EU aims to cooperate with the Libyan authorities to re-establish rule and order, to build a national security architecture, to develop state security institutions and forces, promote border control and management, arms control and counter terrorism, human trafficking, smuggling and organised crime.³⁴¹

Considering the data provided by the Strategic Review, EUNAVFOR MED Operation Sophia³⁴² in 2019 has apprehended 151 suspected smugglers and traffickers who have been delivered to the Italian authorities and has counteracted 550 assets³⁴³ employed for criminal motives. Apart from this, following the provisions of the UNSCR 2292 resolution³⁴⁴, the presence of the Operation Sophia on the high seas has led to the inspection of three vessels suspected of being used for migrant smuggling or human trafficking, more than 1,700 hailings and 100 friendly approaches.³⁴⁵

In terms of supporting the detection and monitoring of migrant networks, the Strategic Review has primarily noticed a very strong reduction in the possibility of smugglers to develop their activities on the high seas and have limited their operations only in Libyan territorial waters³⁴⁶. Because of this, in relation to capacity-building, Operation Sophia has conducted training activities which began in October 2016 to 213 personnel of the Libyan coast guard and navy at sea and in the MS facilities³⁴⁷ (particularly, Greek, Italian and Maltese facilities), and additional 100 personnel (from courses in Spain, Italy and Croatia) ended performing this training at the end of 2018³⁴⁸.

³⁴⁰ European Parliament, Factsheet ‘Common Security and Defence Policy’ (n 111).

³⁴¹ European Commission, ‘ENP Package Libya’ (n 276) 3.

³⁴² EEAS, Factsheet ‘EU-Libya relations’ (n 278). For more information about the mandate see: <https://www.statewatch.org/media/documents/news/2018/aug/eu-sophia-libya-overview-11471-18.pdf>.

³⁴³ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 25.

³⁴⁴ For more information consult: United Nations Security Council Resolutions (UNSCR), ‘Resolution 2292: The situation in Libya’ <<http://unscr.com/en/resolutions/2292>> accessed in 20 July 2020.

³⁴⁵ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 25.

³⁴⁶ *ibid* 26.

³⁴⁷ *ibid* 25.

³⁴⁸ *Ibid* 32.

Even if the results seem to be satisfactory for the EU, there are a number of challenges that may question the positive results. Even if there is a Memorandum of Understanding (MoU) signed by the OpCdr and the Libyan technical Committee of Experts, which owns PSC approval to develop training activities to Libyan personnel³⁴⁹ and hence the possibility of the European authorities to operate in Libyan territorial waters under the consent of Libyan authorities (GNA) or with an applicable UN Security Council Resolution as demanded by some MS³⁵⁰, the question of sovereignty remains a sensitive issue in Libyan politics when developing these activities. As specified in the Strategic Review, foreign military involvement is not perceived as positive in many occasions, however, it is still used as a powerful statement to convince domestic opinion³⁵¹. In fact, as expressed in the document of the Council of the EU named “Libya, a Political Framework for a Crisis Approach”³⁵², Libyan transitional authorities still call for an approach considering the principles of “no boots on the ground” and “national ownership.”³⁵³ Hence, this approach can be contradictory to the mandate of Operation Sophia particularly on the statement based on ‘building of an effective Libyan coastguard capacity’³⁵⁴ and in effect, difficult to accomplish.

Apart from this, following the bottom-up approach perspective presented by the EUGS³⁵⁵, there seems to be a primary top-down approach in the determination of the activities promoted by the Operation Sophia, since capacity building efforts are performed centring the role of the European authorities in the framework of training Libyan personnel, still challenged by the question of sovereignty and the threat to obtain the contrary effect to the purpose of the Operation, which is to get more stability and security in the country, in this case in the territorial waters of Libya.³⁵⁶

³⁴⁹ Ibid 32.

³⁵⁰ Ibid 38.

³⁵¹ Ibid 38.

³⁵² Council of the European Union, ‘Libya, a Political Framework for a Crisis Approach’ (n 319) 5.

³⁵³ Ibid 5.

³⁵⁴ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 39.

³⁵⁵ EEAS, ‘Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union’s Foreign and Security Policy’ (n 19).

³⁵⁶ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1).

Concerning HR standards, the training provided to the LNCG aims to provide HR as a key issue to be aware of – nevertheless, the training provided by European military forces, has been criticised by HR civil society stakeholders due to episodes of violence against migrants.³⁵⁷ Despite efforts by the EU to promote an integrated approach in Libya, a closer coordination between actors such as the IOM, UNHCR and the Libyan authorities is required to promote a continuous progress. Although intentions to combine security responses with humanitarian assistance have had some results, the reality remains that the GNA still struggles to have influence outside Tripoli and poor stability makes a multidimensional approach less effective.³⁵⁸

In terms of intelligence and sharing information, Operation Sophia is largely dependent on the willingness of MS to share information – this aims to be controlled through the Crime Information Cell pilot project that has the purpose to provide a better interaction and exchange information with JHA agencies, such as Frontex.³⁵⁹ But considering the intergovernmental nature of EU's foreign policy, the nurturance of it still needs to be confirmed. Furthermore, legal gaps are found in terms of disembarkation and processing smuggling criminals under the mandate of Operation Sophia.³⁶⁰ A certainty in disembarkation needs to be provided, because even if search and rescue operations are not covered under the mandate of Operation Sophia, these can be asked to intervene in life saving operations by the EU following international obligations.³⁶¹ In the case of apprehended suspected smugglers in the high seas as authorised by the UNSCR 2240 (2015), 2312 (2016) and UNSCR 2380 (2017), individuals are processed by the Italian authorities³⁶². However, considering that smuggling and human trafficking is not

³⁵⁷ European Commission, DG Migration & Home Affairs, 'A Study on smuggling of migrants: Characteristics, responses and cooperation with third countries' (September 2015) Final Report <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/study_on_smuggling_of_migrants_final_report_master_091115_final_pdf.pdf> accessed 14 July 2020, 82.

³⁵⁸ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 42.

³⁵⁹ *ibid*, 40.

³⁶⁰ *Ibid*.

³⁶¹ *Ibid* 37.

³⁶² *Ibid* 38.

subject to universal jurisdiction³⁶³, if apprehensions are carried out by Operation Sophia in Libyan territorial waters, an acceptable legal end needs to be settled and agreed.

The EU Integrated Border Management Assistance Mission in Libya (EUBAM Libya) has faced more difficulties than EUNAVFOR Operation Sophia because the poor Libyan border management system has affected negatively on the possibilities of the Mission³⁶⁴ to develop its role³⁶⁵. As the Strategic Review specifies ‘the Mission’s ability to deliver on its mandate is challenged by the lack of real Libyan ownership and the non-ability of the Libyan institution to absorb capacity building measures.’³⁶⁶

The achievements in terms of planning, mapping liaison and coordination have been notable because of the light presence of the Mission in Tripoli since December 2017³⁶⁷. Apart from this, the Mission has strengthened its relations with the UNSMIL and other international actors on the ground, which it means that in terms of mapping, the Mission has been effectively completed in its tasks and it does not need to take them forward in the next mandate. Moreover, the evolution of the “Concept Note towards a White Paper” which enhances a more efficient integrated approach to border management, has also been relevant and significant when it comes to the trust Libyan authorities have in EUBAM³⁶⁸. Nevertheless, the document highlights several challenges the EUBAM faces. In terms of the legal status of the Mission, a Status of mission agreement needs to be settled with the Libyan authorities to promote the Mission’s capability to work effectively. Indeed, in terms of the Concept Note, the problems found for the next mandate are based on the lack of a central control, equipment and infrastructure from the Libyan border management system as well as on the necessity to keep Libya aware of the partnerships with the EU and other international actors, as in cooperation with Libyan agencies.³⁶⁹ Concerning law enforcement and criminal justice, the Mission faces challenges when ensuring participation from senior engagement both at the Ministry of

³⁶³ Ibid 38.

³⁶⁴ Ibid, 56.

³⁶⁵ Ibid, 59.

³⁶⁶ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 59.

³⁶⁷ Ibid.

³⁶⁸ Ibid, 55.

³⁶⁹ Ibid, 57.

Interior and the Ministry of Justice, with which the mission aims to work on through training.³⁷⁰ In addition, both the Penal Code and the Criminal Procedure Code are necessary to be revised, because maintaining judicial independence is essential to obtain stability in the country.³⁷¹ This creates difficulties in terms of HR, as the poor separation of powers can damage the work of the PC's Working Group on Justice and HR in which the EUBAM participates as a member, to support on the creation of an strategic plan for justice and security.³⁷²

In terms of border management, the Mission presents evidential difficulties to working in Tripoli, because of the increase in the mobility and force protection defiance. In fact, the relations with the core actors in Libya are again stressed in terms of security, but this needs to be approved by the EU member states, considering the UNSMIL premises and the fragile political situation in the country.³⁷³ This remains difficult since EU FP remains intergovernmental³⁷⁴. Moreover, a new Libyan authority has been established ruled by members of the Special Deterrence Force (SDF), which is as specified in the document 'a militia with a questionable HR record.'³⁷⁵ This authority has gained competence in border management, law enforcement and criminal justice,³⁷⁶ which considering its challenging position in HR, can indeed create difficulties in this sense. There is also a general challenge faced by EUBAM in terms of HR when performing border management: the lack of a HR' due diligence, an efficient gender and HR-based approach, creates difficulties for the protection of individuals when it comes to border management. Even if the EU insists on the necessity to keep making efforts for the integration of gender and HR in all Mission's activities as part of the mandate³⁷⁷, the Human Rights Watch (HRW) analyses through an NGO's Joint Statement published the 28th April 2020 the situation, claiming that:

³⁷⁰ Ibid, 57-58.

³⁷¹ Ibid, 58.

³⁷² Ibid, 53.

³⁷³ Ibid, 59.

³⁷⁴ Smith (n 12).

³⁷⁵ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 58.

³⁷⁶ Ibid, 58.

³⁷⁷ Ibid, 60.

[T]he EU should review and reform the bloc's policies of cooperation with Libya on migration and border management and control. During the past three years, these have facilitated the containment of tens of thousands of women, men and children in a country where they have been exposed to appalling abuse.³⁷⁸

The EULPC has faced several challenges due to the lack of progress in the political and security situation in the country. Because of this, there has been a lack of impulse in the security related planning in Tripoli³⁷⁹, due to the lack of Libya's authority engagement in issuing visas on time and the need of strengthening bilateralism for championing MS to give permission for travelling on an individual basis. In addition, the fact that there is a high amount of change of personnel sent by member states, creates even more difficulties when it comes to the development of an institutional memory and concerning the maintenance of partnerships with the Libyan interlocutors gained by UNSMIL.³⁸⁰

3.3.2. The EU's HR response: the refugee crisis context

3.3.2.1. *Detention centres*

In the report provided by Médecins sans Frontières (MSF) on the 23rd December 2019, the situation of migrants and refugees has been deteriorated since the escalation of the conflict between the General National Accord (GNA) and Libyan National Army (LNA) in April 2019, which has had an effect on the EU policy towards forced return and containment.³⁸¹ In 2019, the official estimation expressed by MSF established that there are among 3,000 and 5,000 migrants and refugees in detention centers, which are controlled under the Libyan Ministry of Interior based in Tripoli in collaboration with the agency focused on dealing with illegal migration (DCIM). It must be stated that

³⁷⁸ Human Rights Watch (HRW), 'EU: Time to review and remedy cooperation policies facilitating abuse of refugees and migrants in Libya.' (28 April 2020) NGOs Joint Statement <<https://www.hrw.org/news/2020/04/28/eu-time-review-and-remedy-cooperation-policies-facilitating-abuse-refugees-and>> accessed 14 July 2020, 1.

³⁷⁹ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 69.

³⁸⁰ *ibid* 69.

³⁸¹ Médecins sans Frontières (MSF), 'Trading in suffering: detention, exploitation and abuse in Libya' (23 December 2019) <<https://www.msf.org/libya%E2%80%99s-cycle-detention-exploitation-and-abuse-against-migrants-and-refugees>> accessed 14 July 2020.

most of these are listed with UNCHR and looking for asylum.³⁸² However, as expressed by MSF in December 2019, while the official number of people in detention centres establishes 6,000, the estimated one in late 2017 was 20,000³⁸³. The problem is the fact that the 'official' number of people in detention centres is far from the estimated number of people. This is because there is a high non-known number of people in clandestine prisons and warehouses ruled by smugglers and traffickers.

To this situation, the EU was responding through an African Union (AU)-EU-UN Task Force created in 2017 with the aim to press Libyan authorities to end their system of arbitrary detention as it has created situations of inhumane conditions to migrants and refugees, and to comply with international standards, particularly when dealing with asylum and migration.³⁸⁴ Considering that Libya has ratified through accession³⁸⁵ the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) but not to its Optional Protocol (OP-CAT), which creates difficulties at institutional level when trying to press the Libyan authorities to comply with preventive measures when it comes to deprivation of liberty in detention centres. The EU delegation in Libya has also helped in establishing a Post-Tajoura Working Group contributing to the support of the Tajoura event survivors³⁸⁶ and the intention of demilitarising detention centres. Nevertheless, considering the lack of a HR' due diligence in the CFDP missions in Libya³⁸⁷, it is difficult to promote a HR-based approach when training Libyan authorities in this regard. In addition, the Council of the EU has insisted in supporting the EU in partnership with the IOM and the UNCHR is displaying to protect and aid in detention centers, disembarkation point and

³⁸² MSF (n 381).

³⁸³ Ibid.

³⁸⁴ Council of the European Union, 'Libya and the surrounding area: current situation and need for immediate action' (4 September 2019) <<https://www.statewatch.org/media/documents/news/2019/sep/eu-council-libya-11538-19.pdf>> accessed 14 July 2020, 10.

³⁸⁵ "'Accession' is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification." United Nations Treaty Collection, 'Glossary: Accession' <https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml> accessed 5th August 2020.

³⁸⁶ More information here: <https://www.msf.org/first-hand-account-fatal-airstrike-tajoura-detention-centre-libya>.

³⁸⁷ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1).

communities³⁸⁸. Nevertheless, in terms of disembarkation, as previously stated in this research, the presence of legal gaps³⁸⁹ creates struggles to the efforts performed by the EU for the protection of individuals.

3.3.2.2. *The judicial system*

Concerning legal gaps and abstractness of the Libyan law, another issue that generates the need of the EU to intervene for the protection of HR is the need for an independent judicial system in Libya. As determined by the Council of the EU³⁹⁰, HR organisations have expressed their concerns about the independence of the judiciary and the importance of reconciliation and transitional justice for it to happen.³⁹¹ Considering that ensuring “law and order” is a priority also within the security field of the EU in Libya³⁹². The EU has designed ways to encourage the independence of the judiciary through accords of the EU with the Ministry of Justice (MoJ) by EUBAM, which aims to support to the transition of the Libyan judicial system³⁹³. EUBAM has viewed the training of criminal justice actors as the solution to this issue, as well as the proposition of a new leadership³⁹⁴. Nevertheless, as defined in the same document ‘capacity building within the MoJ, as in other ministries, is desperately needed.’³⁹⁵ Particularly, because a non-solid judiciary system can create problems when dealing with the gaps in terms of disembarkation³⁹⁶ - in which the EU is intending to create an agreement with the Libyan authorities on this topic – but it can indeed have consequences on the future development of it, as it has been mentioned with regard to HR violations in detention centres. Not only that, but it can have an impact on the compliance with gender-based violence, children’s rights, torture and inhuman treatment, freedom of expression and

³⁸⁸ Council of the European Union, ‘Libya and the surrounding area: current situation and need for immediate action’ (n 384).

³⁸⁹ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1)

³⁹⁰ Council of the European Union, ‘Libya, a Political Framework for a Crisis Approach’ (n 319).

³⁹¹ Ibid.

³⁹² European Commission, ‘ENP Package Libya’ (n 276).

³⁹³ Council of the European Union, ‘Libya and the surrounding area: current situation and need for immediate action’ (n 484).

³⁹⁴ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 68.

³⁹⁵ *ibid* 58.

³⁹⁶ Ibid.

association, minority rights and refugee rights, which are in fact the core areas stressed when determining HR violations in Libya³⁹⁷.

3.3.2.3. *Migrants, IDP's and asylum-seekers*

The EU in terms of migration management has been purely focused on supporting voluntary return to migrants by the IOM and to promote humanitarian evacuations of refugees by the UN Refugee Agency (UNHCR). To perform this, the EU has created a taskforce with the AU and the UN has allowed in December 2017 the evacuation of refugees to the transit centre in Niamey, Niger with the purpose of obtaining the full refugee status and an eventual arrangement in a third country³⁹⁸. Even if the intentions were to ensure the coordination on migration, in 2019, there were still thousands of people locked in Libya, particularly refugees and migrants under the business of human trafficking and smuggling³⁹⁹. As Altafin, Haász & Podstawa conclude, the main issue is that:

[E]ven though the humanitarian efforts and broad cooperation give a very admirable image of the EU migration policy in its external facet, they do not indicate that the activities undertaken have a HR base. In this context, the only right mentioned explicitly is that to asylum.⁴⁰⁰

In fact, MSF establishes that taking into account the escalation of the conflict in Libya in April 2019 between the GNA and the LNA, has definitely not experienced effect on the EU policy of forced return and migration containment in Libya.⁴⁰¹ Additionally, an NGOs Joint Statement has insisted on this issue due to several challenges that may increase HR violations in migrants and refugees, because as Human Rights Watch (HRW) has stated, these 'are calling on EU institutions to stop any actions trapping people in a country where they are in constant, grave danger.'⁴⁰²

³⁹⁷ Council of the European Union, 'Libya, a Political Framework for a Crisis Approach' (n 319) 23.

³⁹⁸ MSF (n 381).

³⁹⁹ *ibid.*

⁴⁰⁰ Altafin, Haász and Podstawa (n 13) 138.

⁴⁰¹ MSF (n 381).

⁴⁰² Human Rights Watch (HRW), 'EU: Time to review and remedy cooperation policies facilitating abuse of refugees and migrants in Libya.' (n 378) 1.

In relation to this, it needs to be stated that Libya is not within the list of safe countries considered by the EU⁴⁰³, but neither is Niger, to which refugees are evacuated at first instance and wait for a settlement in a third country⁴⁰⁴. The focus of the EU in migration containment has in consequence lead to HR violations such as inhuman and degrading treatment that superficial measures, as claimed by HRW, have not been avoided.⁴⁰⁵

Apart from this, considering that Libya is not a safe country for the disembarkation of people rescued at the sea can be performed, following the case *Hirsi Jamma and Others v. Italy*, about maritime pushbacks from Italy to Libya, this leads to the issue that the cornerstone of the efforts for capacity-building and training to the Libyan Coast Guard and Port Security (LCGPS) by the EU are aimed to guarantee that the action of finding people at the sea and disembarking in Libya is performed by actors who do not belong to the EU⁴⁰⁶. This is because the relocation of any individual to a country in which its rights and freedoms are in danger is forbidden under international, and EU law⁴⁰⁷. Not only that, but also an issue of sovereignty. The point is that even if training is provided to Libyan authorities by the EU with the purpose to diminish HR abuses⁴⁰⁸, HR due diligences are necessary to ensure this training. As it is admitted in the “action fiche” International Border Management (IBM) programme, ‘under the existing Libyan legislation, once rescued, irregular migrants generally end up in detention centres with generate international concerns.’⁴⁰⁹

⁴⁰³ European Commission, ‘An EU ‘Safe Countries of Origin’ List’ <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_safe_countries_of_origin_en.pdf> accessed 14 July 2020.

⁴⁰⁴ European Commission, ‘An EU ‘Safe Countries of Origin’ List’ (n 403).

⁴⁰⁵ Human Rights Watch (HRW), ‘EU: Time to review and remedy cooperation policies facilitating abuse of refugees and migrants in Libya.’ (n 378) 3.

⁴⁰⁶ *ibid* 3.

⁴⁰⁷ *ibid* 3.

⁴⁰⁸ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1)

⁴⁰⁹ Human Rights Watch (HRW), ‘EU: Time to review and remedy cooperation policies facilitating abuse of refugees and migrants in Libya.’ (n 378) 5.

3.3.2.4. Freedom of Expression and Association

The strengthening of civil society is one of the core goals of the EU Action Plan for Democracy and Human Rights 2020-2024⁴¹⁰, therefore the focus on civil society is a also key feature for the promotion and protection of HR, particularly the right to freedom of expression and association. In Libya, under the regime of Gaddafi, civil society organisations were not able to work and be created⁴¹¹. Nevertheless, the European Commission, highlights that the situation has changed, because the Libyan authorities believe civil society is an essential element for a democratic transition.⁴¹² Even if the EU through EUBAM has as a purpose to engage with NGOs and Civil Society Organisations - as well as with criminal justice actors encouraging women's rights through tightening relations with the university in Tripoli by training on HR in universities, schools and in the society⁴¹³ - following data statistics provided by *Freedom of the World 2020*⁴¹⁴, Libya is categorised in terms of freedom of non-governmental organisations with one point over four points, justified by the fact that the amount of NGO's has been diminished in the last few years due to the escalation of the conflict in Libya during 2019 and the departure of international actors, because militias (from political, tribal and geographic affiliations) have abused civil society activists with indemnity. Many NGO workers have stopped their activism due to threats against themselves and their families.⁴¹⁵ This occurs particularly in the places known as hotspots by smugglers (e.g. Bani Walid, Sabha, Sabrata, Surman and Tripoli), more specifically inside and outside detention centres, when HR defenders intend to provide humanitarian and medical assistance to migrants and asylum-seekers⁴¹⁶. Considering this complex situation, the EU is aware and emphasizes on the necessity to continue integrating gender and HR approach, but also from a preventive and "do not harm"

⁴¹⁰ European Commission, 'EU Action Plan on Human Rights and Democracy 2020-2024' (n 114).

⁴¹¹ European Commission, 'ENP Package Libya' (n 276).

⁴¹² *ibid* 5.

⁴¹³ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 54.

⁴¹⁴ Freedom House, 'Freedom in the World 2020: Libya' (n 293).

⁴¹⁵ *Ibid*.

⁴¹⁶ United Nations Support Mission in Libya (UNSMIL) and Office of the High Commissioner for Human Rights (OHCHR), 'Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya.' (20 December 2018) <<https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>> accessed 14 July 2020, 54.

perspective in order to mitigate possible risks. For this, the EU is strengthening partnerships with the HR Division of UNSMIL through encouraging a HR due diligence and with civil society, as well as with EU CFDP missions in Libya and EU MS⁴¹⁷.

This approach encourages the necessity of developing partnerships with the civil society organisations, in order to promote a bottom-up approach. There are a number of networks of NGOs in Libya, such as the Migrants' Rights Network, established in April 2018, that promotes advocacy, humanitarian assistance and training in HR-related issues (e.g. migrants and refugee rights).⁴¹⁸ Particularly, as it has been encouraged by the EU since 2018, the emphasis should be put on strengthening the network of Libyan civil society organisations.⁴¹⁹

In relation to freedom of expression, *Freedom of the World 2020*⁴²⁰ considers that free and independent media is poor, with one point over four points in the scale. This is because most of the media outlets support one of the country's political and military parties, this is due to the fact that the escalation of the conflict between groups has endangered the position of journalists when reporting objective information, being in consequence detained and intimidated. An example of this occurred in January 2019, in which a photographer was murdered when performing his job enclosing a conflict between militias in the south of Tripoli⁴²¹. Comparing it to the report of *Freedom of the World 2017*⁴²², the situation has not changed in 2019. It establishes that 'media freedom is increasingly limited by political and criminal violence that has made objective reporting dangerous.'⁴²³

⁴¹⁷ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1) 60.

⁴¹⁸ United Nations Support Mission in Libya (UNSMIL) and Office of the High Commissioner for Human Rights (OHCHR), 'Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya.' (n 416) 54.

⁴¹⁹ EU Neighbours South, '27 Libyan Civil Society Organisations trained with EU support' (29 October 2018) < <https://www.euneighbours.eu/en/south/stay-informed/news/27-libyan-civil-society-organisations-trained-eu-support> > accessed 14 July 2020.

⁴²⁰ Freedom House, 'Freedom in the World 2020: Libya' (n 293).

⁴²¹ Ibid.

⁴²² Freedom House, 'Freedom in the World 2017: Libya' < <https://freedomhouse.org/country/libya/freedom-world/2020> > accessed 14 July 2020.

⁴²³ Freedom House, 'Freedom in the World 2017: Libya' (n 422).

3.3.2.5. Women's rights, minorities

In this situation, women's rights and children's rights are particularly affected, both from migrants and refugees as well as locals. On the one hand, the EU is supporting trainings and projects to the CFDP missions with the purpose of encouraging protection against all forms of Gender Based Violence (GBV)⁴²⁴, because as expressed by Human Rights Watch⁴²⁵ many prisons in Libya have bad conditions, are overcrowded, experience cases of ill-treatment and lack particular services for women and children, among them educational and leisure services, as well as medical care. As highlighted previously on this research, the CFDP missions of the EU are following trainings with the purpose of advocating with gender-based violence and promote a gender approach.⁴²⁶ On the other hand, in terms of women participation, a Constitutional Declaration encouraged by the EU has led to the full participation of women and minorities, but the fragile situation of the country in social, cultural and security terms has prevented the proportional participation and the wanted results⁴²⁷. As presented on the *2019 Country Reports on Human Rights Practices* in Libya provided by the United States, has established that the current election law in Libya encourages representation of women in the House of Representatives reserving 32 seats to women over 200. However, only 21 women took the seats because of discrepancies in terms of resignations⁴²⁸. The EU encourages a transparent and democratic process of election supporting the High National Electoral Commission (HNEC)⁴²⁹, but as established by Stavridis⁴³⁰, the EU still needs to encourage the participation of women and HR when focusing on future electoral processes.

⁴²⁴ See Annex 3.

⁴²⁵ Human Rights Watch, 'Libya Events of 2018' (22 September 2018) <<https://www.hrw.org/world-report/2019/country-chapters/libya>> accessed 14 July 2020.

⁴²⁶ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1).

⁴²⁷ U.S. Department of State, '2019 Country Reports on Human Rights Practices: Libya' (2019) <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/libya/>> accessed 14 July 2020.

⁴²⁸ U.S. Department of State, '2019 Country Reports on Human Rights Practices: Libya' (2019) <<https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/libya/>> accessed 14 July 2020.

⁴²⁹ EEAS, 'Libya and the EU' (n 171).

⁴³⁰ Stavridis (n 282) 10.

In conclusion, the behavior of the EU has been changing since 2011 until nowadays considering the continuous escalations of the conflict in Libya, which have affected the EU's response in HR and security under EU FP. Following the second specific research question, *How are HR and security linked in the context of the EU response in Libya?*, this part has responded it through a periodical perspective. For that, the evolving conflict and the EU's role in the whole process have been taken into consideration. In 2011, the EU supported a call for intervention in terms of security, but when performing this, HR were only considered in the short-term. In 2014 a more established leadership from the EU is seen, acting properly as a normative power, as the stabilisation of the country was perceived to be obtained by considering the multidimensionality of security, which also covers human rights. Nevertheless, even if this awareness was already present in the EU FP, in reality, the methods to comply with a more integrated response to the conflict in Libya were not started to be developed until the period of the refugee crisis context (from 2015 on). Probably, because interrelated external factors to the conflict - like the refugee crisis - highlighted that security no longer should only come in the form of defence, since human rights violations are challenges that can create insecurity in the individuals living in a state, but also to the state per se. Considering that Libya is still a non-resolved conflict, new forms of understanding security are required. Furthermore, new methods to encourage the interrelation of HR and security are necessary for long-term sustainable peace and stability.

3.4. The Balance between HR and Security in Libya

This part deals with the balance between HR and security in the EU FP strategy in Libya in the short-term, long-term and whole-term basis. Based on the theoretical framework of this research, the nexus between HR and HS will be reflected in the analysis. This is the main proposal of the research when it comes to finding ways to balance HR and security in the EU FP in Libya. Considering the overall situation, it can be acknowledged that the measures provided by the EU have not led to a long-term prevention of HR violations. HR records are still not satisfactory and processes in dialogue are decelerated⁴³¹, worsened by the ongoing conflict and the effects of the refugee crisis⁴³².

3.4.1. Short-term

In the short-term, the nearly established civilian CSDP mission⁴³³ is definitely a way to balance HR and security, as well as encouraging HR due diligence. As expressed by the Council of the EU, the mandate of the mission:

[C]ould be to further support police capacity in Tripoli in the interim and, when conditions allow, contribute to longer term efforts on SSR (including through mapping) of the Libyan Police and Libyan Law Enforcement and Criminal Justice Sector across Libya (including relevant border management authorities), thus enabling the EU, the UN and the IC to coordinate their joint efforts in assisting the GNA with more overarching reforms likely to be needed after the interim phase.⁴³⁴

To guarantee this, it is important to perform a HR due diligence in the whole security structure of the EU in Libya. As reported by the UNSMIL and UNCHR, these consider

⁴³¹ EEAS, Factsheet 'EU-Libya relations' (n 278).

⁴³² Nicole Koenig, 'The EU and the Libyan Crisis: In Quest of Coherence?' (n 277) 3.

⁴³³ For more information: <https://www.consilium.europa.eu/en/press/press-releases/2020/06/30/council-extends-the-mandates-of-eu-csdp-civilian-missions-for-one-more-year/>.

⁴³⁴ Council of the European Union, 'Planning for a possible non-executive Civilian CSDP mission in Libya' (1 April 2016) < <https://www.statewatch.org/media/documents/news/2016/may/eu-eeas-plan-for-libya-7491-16-1-4-16.pdf> > accessed 14 July 2020, 12.

the HR due diligence policy⁴³⁵ necessary to contribute to reporting and advocating by the EU. This is particularly necessary in training, to ensure a high-level advocacy, monitoring and reporting⁴³⁶. This is also applicable to the need to settle an agreement on disembarkation terms to end with the existing legal gaps on this regard.⁴³⁷

In relation to this, a focus on the bottom-up approach would be required. On the one hand, following the EU guidelines on HR, more emphasis should be put on other vulnerable groups' HR⁴³⁸, such as the protection of children's rights, minorities and the rights of the LGTBI community. This is because these can be present inside the aforementioned groups (detainees, migrants, refugees, etc.)⁴³⁹. For instance, the EU has specified targeting for a child-friendly justice when supporting the independence of the judicial system in Libya, but focus should be put on the necessity children have to access to medical care and both educational and leisure activities in cases of deprivation of liberty⁴⁴⁰. Apart from this, as specified by the *Country Report on Human Rights Practices 2019*⁴⁴¹, there are still cases of child soldiers in non-state actors armed groups in forced-labour activities, like cooking and cleaning. Other important cases to consider are more related to the fragile judicial system, examples of losing nationality in case their father's nationality has been revoked, since children have their nationality deriving from their father⁴⁴². Other cases for the protection of children's rights are education, early and forced marriage, sexual exploitation of children and international child abductions.⁴⁴³ In the case of minorities, more attention should be focused on the

⁴³⁵ "The global United Nations due diligence policy, issued by the United Nations Secretary-General in 2011, applies to the United Nations system in Libya, including concerning migration related programmes largely funded by the European Union." United Nations Support Mission in Libya (UNSMIL) and Office of the High Commissioner for Human Rights (OHCHR), 'Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya.' (n 416).

⁴³⁶ *ibid* 19.

⁴³⁷ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1).

⁴³⁸ Government of the Netherlands, 'Libya: Vulnerable Groups' (20 December 2014) <<https://www.government.nl/documents/reports/2014/12/20/libya-vulnerable-groups>> accessed 14 July 2020.

⁴³⁹ For more info: <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/libya/>.

⁴⁴⁰ Human Rights Watch, 'Libya Events of 2018' (n 425). For more information on children's needs in Libya see the following data from January-March 2020: https://www.unicef.org/appeals/files/UNICEF_Libya_Humanitarian_Situation_Report_No_1_January_March_2020.pdf

⁴⁴¹ U.S. Department of State (n 428).

⁴⁴² *Ibid*.

⁴⁴³ *ibid*, 19-20.

religious minorities in the country, considering that Libya is a particular homogeneous country in terms of religion, with a Sunni Muslims majority⁴⁴⁴. Nowadays, the tensions between Sufi Muslims and Salafi Islamists has increased since the fall of the Gaddafi regime⁴⁴⁵. The consideration of the polarisation of the religious society is necessary to consolidate a political agreement, particularly considering the current conflict escalated in Tripoli in April 2019 in which the EU has intensified its efforts for a ceasefire⁴⁴⁶. Eventually, the LGTBI community is essential to be protected. For now, NGO's have focused on the LGTBI community rights, such as Amnesty International⁴⁴⁷, which in their Annual Report of Libya in 2019 specified that received 'numerous reports of people being blackmailed, abducted, detained or otherwise targeted by security forces, armed groups and militias because of their sexual orientation.'⁴⁴⁸ In the Libyan law, the rights of the LGTBI community are discriminated since same-sex sexual activity can result in three to five years in prison⁴⁴⁹.

Despite not being the focus of this research, humanitarian aid and development should go hand in hand to promote this change in the society, but as a short-term – medium-term goal. Considering that the EU Emergency Trust Fund for Africa⁴⁵⁰ has contributed for €408 million in projects in Libya, but for now 1/3 of it is provided to the stabilization of Libyan authorities, a higher emphasis is necessary to guarantee the country's capacity-building⁴⁵¹. Furthermore, the continuous promotion of capacity-building of local NGO's and civil society, as well as support for HR defenders⁴⁵² is the core to guarantee advocacy and protection of HR at a local level, supported by a multilateralist approach, closely in coordination with the UN and the AU, as it has been done until nowadays.

⁴⁴⁴ Government of the Netherlands (n 438).

⁴⁴⁵ Ibid.

⁴⁴⁶ EEAS, Factsheet 'EU-Libya relations' (n 278).

⁴⁴⁷ Amnesty International, 'Libya 2019 Annual Report' (2019) <<https://www.amnesty.org/en/countries/middle-east-and-north-africa/libya/report-libya/>> accessed 14 July 2020.

⁴⁴⁸ Amnesty International (n 447) 5.

⁴⁴⁹ U.S. Department of State (n 428).

⁴⁵⁰ For more information see: https://ec.europa.eu/trustfundforafrica/region_en.

⁴⁵¹ See Annex 3.

⁴⁵² See Annex 3.

3.4.2. Whole term

In the whole term, emphasis on the presence of the local population is the key to get a political settlement in order to ensure security in the country. This can be done through election monitoring. Considering that the Head of the Presidential Council (PC), Fayez Al-Sarraj met on the 31st of May 2020, with the purpose of preparing the Commission for dealing with the next elections, in which the EU supported on the analysis of the way to maximise the benefit from technical assistance⁴⁵³. In the elections of 2012, the EU decided to get involved in election observation through EU EAT, which is more limited than a EU Electoral Observation Mission (EU EOM), since the first one is for a short-term period (more or less two weeks before election day), whereas the second is intended to promote a comprehensive approach to the whole electoral process, which encompasses (between six to eight weeks before the election way)⁴⁵⁴. This is an example that an emphasis should be put on the representation of the locals, and the freedom of expression, particularly to encourage the participation of women and minorities⁴⁵⁵. With this, the requisite of an independent judiciary needs to be continuously supported by the EU to guarantee the rule of law. For now, it has been demonstrated that the judicial system has not been able to offer access to civil remedies for HR abuses⁴⁵⁶. Despite the existence of the Law of Transitional Justice, it is proved by the US Department of State that even if supported fact finding, accountability and victim's reparations, it was not eventually performed in practice⁴⁵⁷.

High-level HR dialogues and HR advocacy both in a top-down level by the EU to the ground as well as bottom-up by capacity-building development of local NGO's and civil society is necessary to promote HR education in the society, together with trainings to Libyan authorities, following continuously the HR due diligence by EU security authorities in Libya. A comprehensive approach in terms of HR and HS is necessary to guarantee both the prevention of HR violations as well as to ensure the

⁴⁵³ The Libyan Observer, 'Al Sarraj and Al-Sayeh discuss preparations for upcoming elections' (6 July 2020) < <https://www.libyaobserver.ly/inbrief/al-sarraj-and-al-sayeh-discuss-preparations-upcoming-elections>> accessed 14 July 2020.

⁴⁵⁴ Stavridis (n 282) 10.

⁴⁵⁵ U.S. Department of State (n 428).

⁴⁵⁶ Ibid 7/24.

⁴⁵⁷ Ibid 7/24.

high development of the obtainment of security and stabilization in the country. Furthermore, multilateralism is a solution to perform an EU integrated approach. Efforts in strengthening the multilateral approach with other international actors is something that has been done during the CM strategy of the EU in Libya⁴⁵⁸, and is meant to be done in the future, following the activity of the EU Delegation of Libya⁴⁵⁹ and the EUGS⁴⁶⁰. There is the necessity of settling an EU-Libya Association Agreement⁴⁶¹ is necessary, not only because it will provide HR pressure through HR clauses and negative measures in cases of HR violations⁴⁶², but it will also promote preventive diplomacy⁴⁶³, because both parties have established their agreement on it. It will also provide the possibility of reporting⁴⁶⁴ HR violations and abuses to the public, and hence better knowledge of the HR situation will be provided.

3.4.3. Long-term

In the long-term, three main features balance the EU approach in HR and security on Libya: the political stabilization of the country, a two-side legitimacy between the EU and Libya, and to consider HR as priorities inside EU FP, not only as values, objectives, and legitimate goals. Political settlement is required for the well-performance of the EU's role in Libya⁴⁶⁵. More emphasis on stabilising the country is needed rather than on migration management, to obtain security in Libya. As recommended by El Zaidy, the EU needs to 'seek support for political efforts to ensure a peaceful transition of the political leadership to a newly elected government, one

⁴⁵⁸ EEAS, Factsheet 'EU-Libya relations' (n 278).

⁴⁵⁹ European External Action Service (EEAS), 'EU Delegation of the European Union to Libya' (2020) <https://eeas.europa.eu/delegations/libya_en> accessed 14 July 2020.

⁴⁶⁰ EEAS, 'Shared Vision, Common Action: A Stronger Europe: A Global Strategy for the European Union's Foreign and Security Policy' (n 19).

⁴⁶¹ EEAS, Factsheet 'EU-Libya relations' (n 278).

⁴⁶² Smith (n 12).

⁴⁶³ 'Preventive Diplomacy as a term in itself has the meaning of prevention of conflicts, internal and external, which means the prevention of conflicts within states, and between states as well.' Besnik Murati, 'The Role of Preventive Diplomacy' (January 2018) <https://www.researchgate.net/publication/334327363_THE_ROLE_OF_PREVENTIVE_DIPLOMACY> accessed 14 July 2020. For more information see: https://www.researchgate.net/publication/334327363_THE_ROLE_OF_PREVENTIVE_DIPLOMACY.

⁴⁶⁴ Delegation of the European Union of Libya, 'ENP Progress reports' (18 August 2015) <https://eeas.europa.eu/delegations/libya/8409/enp-progress-reports_en> accessed 14 July 2020.

⁴⁶⁵ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1).

which may hopefully have a better chance at creating the required policy reforms and holding more control over various territories in Libya.’⁴⁶⁶

Because of this, other two features mentioned are key to encouraging a meaningful pathway to get to it. One of them, a two-sided legitimacy, is necessary to strengthen relations between the EU and Libyan authorities. As mentioned before, this can be performed through an EU-Libya Association Agreement. But other conditions are essential, such as investing more on instruments that seek to encourage stability and peace, such as the Instrument Contributing to Stability and Peace (IcSP)⁴⁶⁷ and championing more coherence in the EU’s action. Since as Koenig acknowledged ‘the lack of coherence has repeatedly been identified as the main obstacle to an effective EU FP.’⁴⁶⁸ She further analyses that the problem is not only bringing together both internal and external EU policies and instruments, but guaranteeing coordination in those policies and instruments between member states, being “coherence” one of the core purposes of the Lisbon Treaty.⁴⁶⁹ Koenig’s statement in coherence is highly relevant: horizontal coherence, institutional coherence and vertical coherence management is needed. In practical terms, horizontal coherence in Libya focuses on the lack of coherence in the interlink between HR, humanitarian policies and migration management’s measures use⁴⁷⁰. Institutional coherence refers to the necessity of finding a common EU voice to the Libyan crisis, because as Koenig insists, if there are controversies among different statements, the EU’s credibility suffers⁴⁷¹. While vertical coherence has referred to the incoherence found when inconsistencies are found in MS towards the agreement on diplomatic wording established in the EU level⁴⁷². Another last one mentioned by Koenig is the multilateral coherence, a core feature to promote

⁴⁶⁶ Zakariya El Zaidy ‘EU migration policy towards Libya’ (June 2019) <<http://library.fes.de/pdf-files/bueros/tunesien/15544.pdf>> accessed 14 July 2020, 18.

⁴⁶⁷ The IcSP is one of the EU foreign policy instruments and “will pursue the same broad political objectives in terms of its focus on crisis response, crisis preparedness and conflict prevention to better contribute to the EU’s comprehensive approach to external conflicts and crises.” European Commission, ‘The EU’s Instrument contributing to Stability and Peace (IcSP)’ (3 April 2014) <https://ec.europa.eu/fpi/news/eu%E2%80%99s-instrument-contributing-stability-and-peace-icsp_en> accessed in 20 July 2020.

⁴⁶⁸ Nicole Koenig, ‘The EU and the Libyan Crisis: In Quest of Coherence?’ (n 277) 6.

⁴⁶⁹ *ibid* 6.

⁴⁷⁰ *ibid* 7.

⁴⁷¹ *ibid* 8.

⁴⁷² *Ibid* 9.

and strengthen multilateralism⁴⁷³. These are meant to encourage EU's legitimacy in Libya as an actor who is supporting the stabilisation process of the country, while considering it from the other perspective, investing in training and in the process of stabilisation could lead to a better control of the Libyan authorities of the territory of Libya over militias and smugglers⁴⁷⁴. Hence, the EU perception of Libya's legitimacy could be inversely changed since the first one will suffer less issues for the complexion of its different mandates⁴⁷⁵. The performance of an Association Agreement could favour this.

The last issue to be covered in the long-term, is based on the valuable statement established by Altafin, Haász & Podstawa: 'let us remember that HR are not only aspirational values, but above all binding standards.'⁴⁷⁶ It is important that HR are considered as priorities inside EU FP, not only as values, objectives, basis and legitimate goals. Because the whole balance will not be obtained until the discourse, perspective and interpretation of HR is changed.

In a nutshell, the division of proposals in three periods of time – short-term, whole-term and long-term- aims to provide a better comprehension of the interrelation between HR and security and aims to respond to the third specific research question: *how could the EU appreciate this nexus in the application of EU FP in Libya to obtain more success?*. The short-term strategy is focused on issues that need to be settled to develop a lengthy strategy that balances both HR in security, such as strengthening the role of the new civilian CSDP mission, implementing a HR due diligence policy, settling legal gaps on disembarkation, the need to develop a bottom-up approach to put more emphasis on other vulnerable groups such as children's rights, minorities and the rights of the LGTBI community. In addition, a change on the response to migration management through the externalization of migration policies is necessary; not only because the current approach focuses on controlling EU external borders as an effective response⁴⁷⁷,

⁴⁷³ *ibid* 11.

⁴⁷⁴ El Zaidy (n 466) 18.

⁴⁷⁵ Council of the European Union, *Strategic Review on EUNAVFOR MED Operation Sophia, EUBAM Libya & EU Liaison and Planning Cell* (n 1).

⁴⁷⁶ Altafin, Haász and Podstawa (n 13) 143.

⁴⁷⁷ El Zaidy (n 466).

but because it is focused on the short-term but not on the long-term; and the focus needs to be centred on the better integration of the population as well as in a HR approach, since HR violations create insecurity, and this insecurity also contributes to the fragile security situation in Libya; creating more difficulties to enhance stability in the country. In the whole-term, it is essential to focus on the participation of the “local” as a way to achieve security in the country back again, from a bottom-up to a top-down approach, both with an EU integrated approach, as well as with the efforts to strengthen local Libyan NGO’s and civil society for the purpose of acquiring a two-side legitimacy in the EU-Libya relations. While in the long-term, a way to settle this process is definitely by the creation of a future EU-Libya Association Agreement, as well as investing on EU instruments that can bring stability and peace to the country, such as the IsSP. Coherence at EU level is essential for the well-performance of this process. Investing on improving horizontal coherence, institutional coherence, vertical coherence and multilateral coherence is indispensable for ensuring a consistent progress to stability and security in Libya.

HR are long-term goals, but actions in HR need to be considered since the beginning of the involvement in the country. A HR education is necessary to promote a HR culture, both in the EU’s internal and external action in Libya. A HR culture can promote long-lasting peace, encourage the individual’s security, and hence state’s security. Not only that but in consequence, it can restore security in Libya. Of course, this does not mean that the activity of other sectors within the field of security should be diminished (e.g. Defence), but the purpose is to provide a new view in which HR as normative standards⁴⁷⁸, provide methods⁴⁷⁹ to comply with those and need to be used to guarantee security in a multidimensional perspective, in the long-term. As it has been historically demonstrated in this research, Libya is an unresolved conflict with different peaks of escalation or various successive conflicts within the same country. From the side of the EU as one of the main powers involved supporting the resolution of the conflict, a response given in the three main periods stated – 2011, 2014, 2015 on – has not been enough to encourage a change towards a resolution of the conflict. Even if efforts have

⁴⁷⁸ *ibid* 143.

⁴⁷⁹ Ex. HR dialogues, HR clauses, etc.

been performed, the obtention of a multidimensional level of security is necessary to reach stability in Libya, and the use of military power through border management is not enough to achieve it. Territory and population are two elements⁴⁸⁰ that make a state sovereign. Territory is necessary for a state to exist, but this cannot survive in the long-term without its population's well-being. HR violations create insecurity, and this, in consequence, encourages insecurity in the state and prevents the state to be completely sovereign. Ensuring the population's wellbeing cannot be done without considering HR in the field of security. In addition, a multidimensional understanding of security is necessary to prevent challenges coming from interrelated external factors (e.g. the refugee crisis), and particularly, from non-state actors, such as human smugglers. To achieve this, the role of multilateralism is crucial. Not only to encourage HR education and in consequence, HR culture, but to guarantee and contribute to a political settlement. In the end, to obtain the population's welfare, HR need to be considered as allies in the field of security.

⁴⁸⁰ Territory, population and government are the four elements that define state's sovereignty. Fowler MR and Bunck JM, "What Constitutes the Sovereign State?" (1996) 22 *Review of International Studies* 381. <https://www.cambridge.org/core/journals/review-of-international-studies/article/what-constitutes-the-sovereign-state/871C8D681D9DCCD519F0B209787B3E7E>

IV. CONCLUSIONS

In conclusion, Chapter I has provided to the research the core foundation to the thesis – the main and three specific research questions as well as the three hypotheses developed will be considered to understand the core findings obtained in the research. The main research question, *to what extent does the EU need to balance its approach towards HR and security policy in order to be more effective when dealing with CM in Libya?* Has been responded through the following parts of the conclusion.

Chapter II has answered to the first specific research question: *Where can an imbalance between both concepts in crisis situations be found towards more pro-security solutions?* To this question, the following two facts have been established. On the one hand, Chapter II has provided to the research with an understanding of the two fields analysed – HR and security – in the EU and more particularly, EU FP. The periodical review performed in this chapter has issued the first fact of this research: from a general overall perspective (theory), the position of HR in EU FP in comparison to the one of security limits the capacities of the EU to provide a consistent response in terms of HR. This in effect, encourages more pro-security-based responses. To this finding, it should be noted that the fact that the EU is trying to detach the military dependency from actors such as the USA and NATO, has incentivised the position of the EU towards more pro-security responses when dealing with crisis situations. HR are not positioned as priorities⁴⁸¹, whereas security does. This positioning in effect highlights a gap between rhetoric and practice when applying EU FP in third countries, which can have negative consequences over the EU's legitimacy when dealing with CM situations⁴⁸². Considering the two EU FP strategies (ESS and EUGS) analysed in this research, the focus on HR is still lower than security, which made the EU response to the CM of the conflict in Libya, to be highly security-based since 2011 until nowadays. On the other hand, from a more specific approach (practice), an imbalance can be found when linking security with other fields that have been externalised, such as migration. There seems to be a traditional security rationale by the EU under this linkage, and this can

⁴⁸¹ Altafin, Haász and Podstawa (n 13) 143.

⁴⁸² Smith (n 12).

undermine HR purposes. In the case of Libya, the response of the EU in terms of border management and migration control as well as detecting smuggling, has been primarily centred on migration containment, letting HR as secondary purposes. Therefore, the first hypothesis of this research, *the imbalance between HR and security can be attributed to the fact that HR are not given priority in the CFSP, whereas security is*, can be acknowledged. At this point, the theoretical approach used in this research provides some ways to encourage the position HR considering its position in EU FP. First, being HR values under EU FP, constructivism identifies that values need to be linked to identity. Particularly, HR are identified as values of the international system, which are at the heart of the nature and identity of the EU. Second, HR are also norms - which is something that needs to be considered when developing CM strategies in third countries- and a transformation of the international system. Hence, theorising them is necessary to guarantee a more substantial position of HR at the level of EU FP. In addition, the concept of HS is essential to understand the cross-section of HR, in this case with security. An imbalance is found when this cross-section is non-existent, and HS is the link between HR and security.

Chapter III provides a response to the second and third specific research questions. First of all, to the specific research question: *How are HR and security linked in the context of the EU response in Libya?* the analysis of this research specifies that the EU response in Libya has been characterised mainly by a migration containment and border management reaction. Nevertheless, considering the situation of the conflict in Libya, in which a multidimensional level of insecurity is expanded throughout the country, makes a military response not effective to deal comprehensively with the conflict situation of the country. It has provided short-term effects, short-term security. This is one of the main reasons why even if intends have been performed by the EU to promote stability, the results have not been as expected in terms of HR. To obtain sustainable peace and a political settlement, international actors supporting the resolution of the conflict such as the EU, need to consider responses that understand security in a comprehensive way. This has as a significance that security needs to be centred on the population. A top-down approach has been already highly developed, now a bottom-up approach needs to be given emphasis – through the focus on civil society, support to HR defenders,

support to education. The security of individuals determines the security of a state, and HR violations are challenges to the security of individuals. In the case of Libya, this is essential to re-cover stability and to guarantee sustainable peace in the long-term. In addition, as the post-structuralist approach mentions, the identity of individuals of the particular conflict needs to be considered when applying EU FP. Second of all, the third research question, *how could the EU appreciate this nexus in the application of EU FP in Libya to obtain more success?* The EU could appreciate this nexus through the integration of HR inside security and vice versa. The strategies developed in the text in the short-term, whole-term and long-term, provide a comprehensive understanding of the nexus between the two fields -HR and security- since both fields operate together in the conflict under the EU domain. The concept of time is essential to appreciate the nexus. HR have not been given priority parallelly to security in the short-term, but they need to be considered in the short-term to guarantee HR in education, politics and culture in the near future. Long-term goals need long-term practices that begin correspondingly with short-term purposes. In the short-term, the answer to do this is through the integration of HR inside the security field. In the case of Libya, more emphasis on training activities of EU military and Libyan personnel, as well as ending legal gaps on disembarkation - among others - are specific issues that can provide this response. Considering these findings, the second hypothesis, *The securitisation of HR issues, such as the refugee crisis, favours the imbalance between HR and security because it is being approached from a security perspective and not from a HR perspective*, can be confirmed, since the interaction between HR and security in EU response in Libya has not been present until recently (2018-2019), and still needs to be developed. Moreover, the refugee crisis and its consequences in Libya, has demonstrated that a HR approach needs to be encouraged because this crisis is a key issue that has increased insecurity in the individuals (migrants, refugees, IDPs and Libyan population) and has had devastating effects in Libya, increasing the escalation of tensions in the conflict. While the third hypothesis of this research, *the presence of intergovernmentalism in EU FP and the lack of a specific common foreign and HR policy creates difficulties for the effectiveness of EU's efforts to promote and protect HR when performing activity on the ground, as it is in the case of Libya*, can be rejected because of two reasons. On the one hand, as it has been analysed in the research, EU

FP's intergovernmentalism does not encourage an effective military response, but it does neither create difficulties when it comes to a HR response. This is because defence has always been a polarising topic at the EU's internal level while HR is at the heart of the values of the EU. In the case of Libya, in terms of humanitarian assistance, issues were not found when trying to establish common positions between MS. As the EU response in Libya was mainly a military response, not only was it considered a failure of CFDP - primarily due to intergovernmentalism -, but it also encouraged the bilateral intervention of EU MS in the conflict, which increased the divisions in an already fractured Libya. Because of this, on the other hand, the lack of a proper common foreign and HR policy is not the core concern limiting the effectiveness of the EU response in terms of HR, since HR are not an issue when developing multilateral strategies. One should remember that HR are international standards⁴⁸³. This is the reason why a whole-term HR-based strategy is necessary for Libya to ensure security and long-term peace.

'A right delayed is a right denied.' – Martin Luther King, Jr.

⁴⁸³ Altafin, Haász and Podstawa (n 13) 143.

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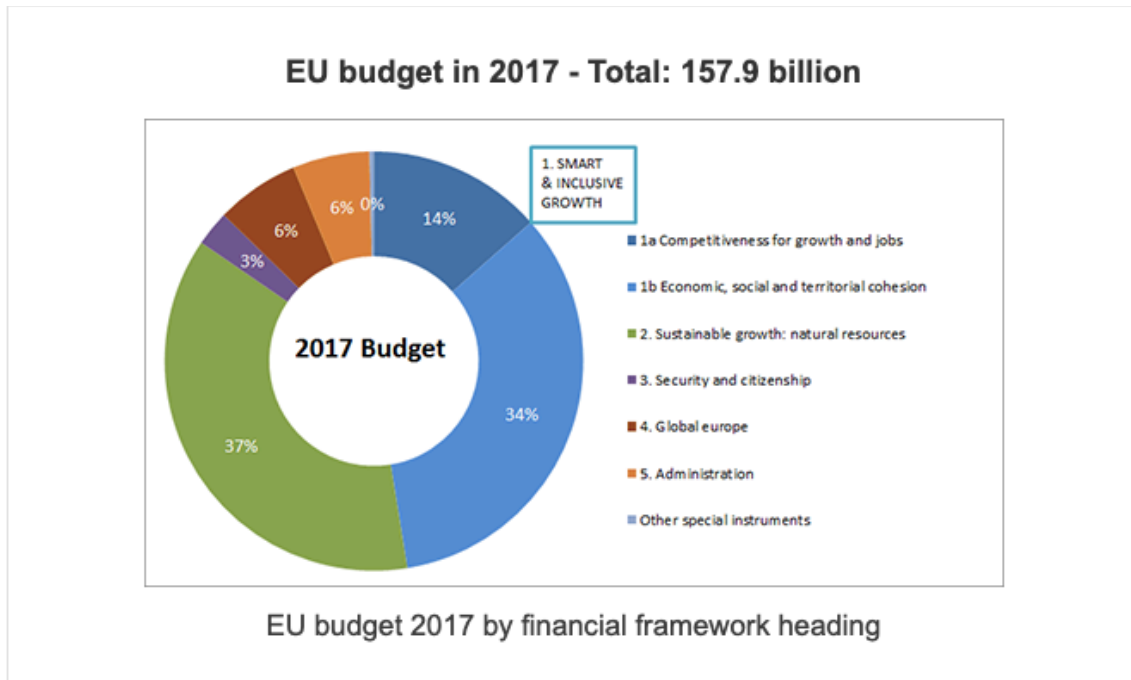
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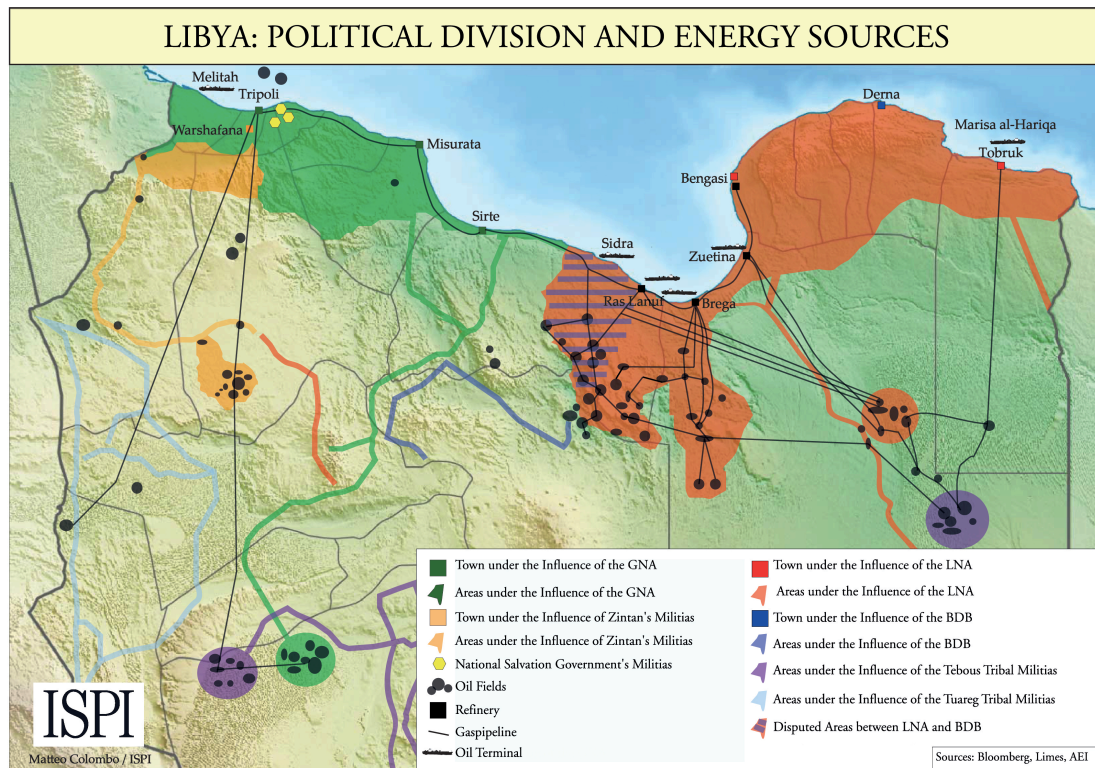
ANNEX 1



The table shows the annual EU budget for the year 2017. Security, together with citizenship, represents a 3% of the total budget.

Source: European Union, 'How the EU budget is spent' (2020) <https://europa.eu/european-union/about-eu/eu-budget/expenditure_en> accessed 10 May 2020.

ANNEX 2



The map demonstrates the political divisions in Libya, and it represents the division of the country's sovereignty. Apart from this, it also constitutes the divisions of the current political sphere, showing the different parts of the territory attached to the different Libyan local political actors. In addition, the division of energy sources is also covered in this division.

Source: Karim Mezran and Arturo Varvelli, *Foreign Actors in Libya's Crisis*, (1st edn, Ledizioni LediPublishing 2017).

ANNEX 3: Exchange of e-mails from the author to the EU Delegation to Libya

From: Author

To: EU Delegation to Libya

“Dear Sir or Madam,

My name is Paula Rozadilla, I am a student from the European Master’s Degree in Human Rights and Democratisation at the Global Campus of Human Rights (Venice), which is co-founded by the European Union. I am currently performing my Master thesis which analyses human rights violations in Libya and the work of the European Neighbourhood Policy on this regard. If possible, I would appreciate if you could provide me some data (also statistical) on how the European Union is applying measures to comply with human rights standards in Libya (based on the priorities of the European Union in Libya- migration management, crisis management, etc.) and some reports that ensure the effectiveness of these methods through a human rights records analysis.

Thanking you in advance for your appreciated attention and time, I am looking forward to hearing from you soon.

Kind regards,
Paula Rozadilla.”

From: EU Delegation to Libya

To: Author

“Dear Ms. Rozadilla,

Thank you for your message and interest towards the EU's human rights work in Libya. I trust that you are well aware of the very challenging human rights situation in Libya. The EU is deploying efforts and considerable assistance in several sectors, which all contribute to supporting increased respect for human rights in Libya. The EU's overall assistance strategy in Libya focuses on support to the transition towards a stable, democratic and united Libya, based on a strong partnership promoting the interest of EU and Libyan citizens alike. More than €365 million in bilateral support to Libya is being provided through 43 projects ongoing across a wide range of sectors, namely: civil society support, good governance, access to health-care and education, youth empowerment, migration management and community stabilization, protection, humanitarian aid, security and mediation. In addition, with the Instrument contributing to Stability and Peace (IcSP), the EU supports projects aimed at preventing, mitigating and resolving armed conflicts through dialogue and mediation at local level.

Human rights and democratisation are guiding principles for the European Union. To shape a strong and efficient human rights policy, we are acting in many fields: political and policy dialogue, statements, campaigns, or public events. The EU has specific instruments like the European Instrument for Democracy and Human Rights (EIDHR), and the EU has developed guiding documents like the eleven thematic guidelines on human rights, which we operationalize through our programmes and actions. The thematic guidelines cover the death penalty, freedom of religion or belief, freedom of expression online and offline, LGBTI rights, human rights dialogues, human rights defenders, policy towards third countries on torture and other cruel, inhuman or degrading punishment or treatment, promoting compliance with international humanitarian law, children and armed conflict, promotion and protection of the rights of the child, violence against women and girls, implementation and evaluation of restrictive measures, and a common approach in the fight against terrorism.

In addition, the EU has adopted a right-based approach to development cooperation. All EU programmes worldwide are based on the rights-based approach, which means that all our programmes are tested to ensure that they do not contribute to violation of fundamental freedoms and human rights, that they ensure inclusive approaches and help to empower duty bearers to protect and defend rights while

strengthening awareness among rights holders on their actual rights. For Libya specifically, that means we have for example programmes that promote the participation of men, women and youth in national and local decision-making processes, as well as programmes that seek to contribute to ensuring decent livelihoods, safe drinking water and access adequate health care and education in Libya.

The EU has very recently published an Action Plan on Human Rights and Democracy 2020-2024 that aims at promoting a values-based agenda on the world stage. Its operational measures will be implemented at country, regional and multilateral level, taking account of local circumstances and specificities. The Action Plan provide strategic focus around five interlinked and mutually reinforcing lines of action: Protecting and empowering individuals; building resilient, inclusive and democratic societies; promoting a global system for human rights and democracy; “New technologies: harnessing opportunities and addressing challenges”; and delivering by working together.

In addition to the aforementioned documents and guidelines, EU action in the area of human rights in Libya is guided by a set of specific strategic priorities set out in the current EU Human Rights and Democracy Country Strategy for Libya for 2019-2020. The EU Delegation coordinates actively with EU Member States to implement this ambitious, inclusive and holistic strategy that has been drafted on the basis of consultations with international organisations, CSOs and other relevant stakeholders. Based on the strategy, the EU implements specific financial and technical assistance programmes in Libya, focusing on the promotion of human rights, the rule of law and good governance. The strategy is confidential and so are the EU human rights programmes; confidentiality is necessary to protect the beneficiaries, the implementing partners and human rights defenders, who carry out the EU’s human rights work in Libya. We describe the areas and projects in general terms in the document for your research purposes without breaching this confidentiality.

The programmes include for instance the protection of human rights defenders, where necessary by availing access to financial aid or temporary relocation. We do capacity building of civil society organisations (CSOs) with the aim of equipping local stakeholders with tools, knowledge, skills and secure work environments to be agents of change and influence the human rights situation in Libya. The EU also provides support to victims of violence. The EU implements programmes to improve rule of law and equal access to justice, training programmes and support for Libyan judicial authorities with the aim of strengthening the capacities and functioning of the justice system. In 2020, the EU intends to roll out a programme specifically targeting child-friendly justice and law enforcement in Libya. To uphold freedom of expression, association and peaceful assembly, the EU provides training and capacity building to journalists and media outlets, as well as places particular focus on (online) hate speech and disinformation.

The EU finances projects and trainings that strengthen protection against all forms of Gender Based Violence (GBV), and support women participation in political, economic and social life. We continue to advocate for the rights of women and incorporate gender perspectives in our programmes and trainings with Libyan authorities. The EU is working with UN agencies and International NGOs to provide life-saving assistance to, and enhance the protection environment of vulnerable IDPs, minorities, irregular migrants, refugees and asylum seekers. Since its creation at in November 2015, the EU Emergency Trust Fund for Africa has been the EU’s main tool for actions to support migration related issues in Libya. The Trust Fund has mobilised so far €408 million in projects in Libya, out of which almost half goes to protection and assistance to migrants, refugees and internally displaced people. Around one third goes to stabilisation of Libyan municipalities. Around one fifth goes to integrated border management. All projects are implemented by international partners on the ground, such as UN agencies, EU Member States and their cooperation agencies and non-governmental organisations. We address the needs of specific vulnerable groups such as victims of sexual and gender based violence, victims of human trafficking, children and women on the move, and people in detention, among others. In addition to the life-saving assistance and protection programmes, the EU is supporting vulnerable migrants to voluntarily return and reintegrate in their countries of origin, and creating legal pathways to Europe for those in need of international protection. Thanks to a joint UN-AU-EU Tripartite Task Force to better address migration challenges, the EU has supported the International Organisation for Migration (IOM) Voluntary Humanitarian Return programme, which since November 2017 has enabled the return of 31,411 migrants to their countries of origin. In 2019 the number of people returned with EU funds is 8,644. With the support of the UN High Commissioner for Refugees (UNHCR), 5,506 vulnerable refugees and asylum-

seekers departed since November 2017 from Libya. In 2019, 2,427 individuals left from Libya including 893 resettled and 1,534 evacuated. On the 1st of January 2020, the EUTF launched the "Third Party Monitoring of Local Impact in Libya" project. This exercise focuses on a do-no-harm analysis and human rights compliance assessment. The overall objective of the project is to enhance the knowledge and understanding of the current trends and to provide timely Do No harm Assessments of EUTF programming in Libya.

The EU has repeatedly called for ending the policy of arbitrary detention and for the closure of migrant and refugee detention centres, while promoting the establishment of reception centres and migration management procedures that meet international standards. The EU supports the IOM, UNHCR and the UN Children's Fund (UNICEF) to promote alternatives to detention through advocacy and the establishment of safe spaces to address the needs of the most vulnerable (children, women, victims of trafficking or gender-based violence). In July 2019, the EU condemned the deplorable attack on a detention facility in Tajoura that killed over 50 people. We also continue calling upon Libyan authorities to ensure the humane treatment of refugees and migrants as well as compliance with international human rights standards, in addition to highlighting the need for an unconditional access of humanitarian actors throughout Libya. In short, the EU advocates for and supports the implementation of a rules-based and transparent legal framework compliant with international human rights standards on irregular migration.

To fight trafficking and smuggling, we engage with the Libyan Coastguard to provide training, including on human rights, and to enhance their capacity to save lives in Libyan territorial waters. The training programme includes an important human rights/ refugee law component, which is delivered jointly with IOM and the UNHCR. The EU also has at its disposal the instrument of autonomous sanctions and restrictive measures to target identified persons and entities involved in the trafficking and smuggling and other violations of international human rights and international humanitarian law.

The EU continues to call for and work towards a political solution to end the conflict, and actively raise human rights issues with Libyan authorities, political and security actors, as well as civil society representatives in Libya. The EU Delegation has pursued dialogue with Libyan authorities on the need to adopt legislation in line with international standards providing protection and space for civil society and human rights work. Active EU advocacy and silent diplomacy has delivered results and potentially even saved lives. Simultaneously, the EU, jointly with the Member States and international community, issues public statements either locally or from Brussels to react for example to grave violations of international human rights law and international humanitarian law. Recently, the EU has called for the immediate cessation of hostilities and humanitarian truce over the COVID-19 crisis and Ramadan. Finally, the EU has repeatedly called for the immediate release of victims of abduction and enforced disappearance in Libya, and urged for urgent investigations into these cases, including that of Member of Parliament Mrs. Siham Sergiwa.

The EU Delegation maintains an active outreach to Libyans to advocate for human rights issues, for instance by organising events, sometimes together with the wider international community. Outreach events in the past year include a Film Festival in Tunis focusing on human rights and gender equality, or a two-day workshop for Libyan journalists on countering hate speech and disinformation, gender-sensitive reporting, and investigative journalism on human rights. The EU brought Libyan participants to a two-day workshop on gender and women's rights for the International Women's Day in the beginning of March. Since March, the planned public activities in Libya and Tunisia, such as a film festival, have been postponed due to COVID-19.

This spring, The EU has taken decisive and extensive actions in the COVID-19 health crisis to steer support to fighting the pandemic and addressing the numerous humanitarian and human rights concerns that stem from this crisis. These actions include diplomatic advocacy, funding for health projects and governance support initiatives. EU Emergency Trust Fund for Africa (EUTF) in Libya continue to provide together with its partners on the ground essential emergency medical assistance, including distribution of hygiene kits, to the most vulnerable groups such as migrants, refugees, asylum-seekers, IDPs, host communities including those in detention centres as well as in urban locations. In addition, some specific/ adapted ongoing actions include fumigation and sterilization campaigns in detention centres, disembarkation points and urban areas to prevent the spread of the COVID-19. Awareness-raising initiatives with the aim to encourage migrants to adopt good sanitation and hygiene practices have

also been launched: development and distribution of printed materials showcasing positive hygiene behaviors, phone counselling/ hotline capacities with outreach through community leaders as well as sensitization campaigns for COVID-19 targeting detention centres as well as LCG staff involved in search and rescue. Essential personal protective equipment is being also procured. The equipment being purchased includes medical gloves, protective equipment, nylon protective suits, silver emergency blankets, hand sanitizers, disinfectants, handheld infrared thermometers, and thermometer cameras, protective goggles and facemasks.

Dear Ms. Rozadilla, We hope this has shed light on the actions that the EU, often in coordination with its Member States, carries out in Libya. We trust that you understand the confidential nature of the EU human rights programmes, which is necessary to protect the beneficiaries, the implementing partners and human rights defenders who carry out this work in Libya. Thanks to this confidentiality, the EU together with our partners is able to continue the valuable work despite the many challenges, the ongoing conflict, and the recurrent human rights violations in Libya. We take pride in our successes, even if our achievements cannot always be publicized for the aforementioned reasons. Ultimately, the EU works relentlessly to support the Libyans and the United Nations in finding a political solution to end the conflict and complete Libya's political transition to a safe, democratic and prosperous country. We hope you continue to be interested in the work of the EU and we wish you the best of success for your studies.

Best regards,
EU Delegation to Libya"