

2014 GR:EEN-GEM MANOUBA SUMMER SCHOOL REPORT

During the summer 2014, the GEM PhD School joined forces with the GR:EEN FP7 Research project, the Université Euro-Méditerranée and the Manouba University to organise its annual Summer School in Tunis (Tunisia).

While GEM is both a PhD research and training programme, GR:EEN is a research project considering training and interacting with the next generation of social science researchers as an important component of its mission and the Université Euro-Méditerranée (UEM) is an international and interdisciplinary Masters' level summer university - resulting from a partnership between the Université Libre de Bruxelles, the Fondation Bernheim and the Université la Manouba in Tunis - offering a wide comprehension of the Euro-mediterranean issues at the interface between sociology, history, anthropology, literature, law, political science and economics.

This partnership resulted for the first time in an interdisciplinary summer school at both MA and PhD levels. While the Université Euro-méditerranée focussed on the MA level, the GR:EEN-GEM partners managed the PhD share of the summer school.

The GR:EEN-GEM summer school aims at resulting in Doctoral Working Papers, which thus provide a privileged platform for on-going doctoral research to be published and discussed, thereby enriching the discussion within both GEM and GR:EEN and strengthening the shared Epistemic Community. Doctoral papers published in this series are done so under the joint auspices of the GR:EEN project and the GEM PhD School.

The present report proposes an overview of the latest GR:EEN-GEM Summers School aims, program, and results.

2013 SUMMER SCHOOL PROGRAMME

La Manouba International Summer School

Human Rights & Democratic Transition: Between Hopes & Risks

August 18-23 2013



GR:EEEN - GEM PhD SUMMER SCHOOL

The Arab Spring, Domestic Democratic Transitions
and the Evolving Euro-Mediterranean Framework

PROGRAMME



جامعة المنوبة
Université de la Manouba



European Commission
**ERASMUS
MUNDUS**

FORMAT OF THE PhD WORKSHOPS

Overall the Summer school will see a succession of 4 thematic days focusing on the international implications and comparative perspectives associated with societies in transition, be they: (1) Specific Human Security Questions ; (2) Human and Fundamental Rights Instruments; (3) Challenges born from Democratic Transition; and (4) Hopes and Risks when moving forward. Each theme will see a public conference in the morning and a series of 3 doctoral workshops in the afternoon.

The PhD School's afternoon workshops are reserved to the selected PhD students and consist of a series of 45min sessions which will alternatively include either a lecture by a participating academic or a presentation by one of the doctoral paper-givers.

Each workday will see three lectures given by attending academics. These contributions will seek to provide the community in attendance with the opportunity to discuss a pertinent topic of their choice – be it of a methodological nature or the insights gleaned from recent research. A 5 min biographical introduction and a 15min Q&A session book-end each 30min academic lecture. The preceding short biographical presentation of the Academic Speaker is given by the student having prepared the relevant poster; whereas the 15min Q&A session involves all attendants.

All academic lectures will be followed by a paper presentation by a given PhD students. As papers will have been circulated in advance, students are given 15min to highlight the key points and/or questions they wish to raise. Subsequently, both the session's academic lecturer and a designated fellow PhD student will be given 10min each to act as discussants and to detail the comments they prepared beforehand. Finally, a 20min Q&A session will allow for further discussion.

PAPERS

Papers were selected on the basis of the submitted abstracts. The presented work is expected to be a finished or at least completed initial draft of the full paper as described in the abstract. All papers will be circulated in advance (failure to submit one's paper in a timely fashion will lead to the exclusion of a given presentation) and will therefore only need a brief introduction by the author as all participants will have read the text prior to their arrival. Finally, after the end of the school, deserving papers will be offered the opportunity to be published in the GEM-GREEN working papers series.

DISCUSSANT'S COMMENTS

Each presented paper will at least enjoy the feedback provided by both an attending academic and a fellow PhD student. To encourage maximal engagement with the presented work, and structure subsequent exchanges, discussants will be asked to submit a standard comment card prior to their arrival. Following the presentation of the paper they commented on in writing, a discussant will be given 10min to further their feedback.

POSTERS

A standard poster format (downloadable from the Summer School's website) is made available to all participants. The slightly deferent template for Academic and Student Posters seek to guide the students in their efforts to compile information on a member of the attending community. All students will be expected to submit a given number of posters with an eye on seeing them displayed throughout the week. A further aim of this exercise is to see students reach out to the other community members even before the school has started with an eye on gathering the information they need.

DRAFT SCHEDULING

SUNDAY 18th AUGUST 2013

SUMMER SCHOOL OPENING CONFERENCE

18:30 - 20:30 HUMAN RIGHTS AND DEMOCRATIC TRANSITION: BETWEEN HOPES & RISKS

@ CENAFFE, Chapelle, 12 rue de l'Amphithéâtre, 2016 Cartghae, Tunisia

Chair: Pr. Habib KAZDAGHLI - Dean, Humanities Faculty, Université de la Manouba

Speakers: Pr. Mario TELO' - Vice Pdt. Institut d'Etudes Européennes de l'Université Libre de Bruxelles - IEE-ULB
Pr. Gilbert ACHCAR - Prof. at the School of Oriental and African Studies - SOAS
M. Alexandre ZAFIROU - Chargé d'Affaires - EEAS Delegation in Tunisia

MONDAY 19 AUGUST 2013

SPECIFIC HUMAN SECURITY QUESTIONS

PUBLIC CONFERENCE

- 09:00 - 11:30** Chair Pr. Jihane SFEIR (IEE-ULB, BE)
Pr. Kmar BENDANA (Université de la Manouba, TU)
- Speakers Pr. Christian OLSSON (IEE-ULB, BE)
Pr. Laleh KHALILI (SOAS, UK)
Name TBC (EEAS Delegation in Tunisia, EU)

11:30 - 12:30 LUNCH BREAK

PhD WORKSHOP SESSION 1

12:30 - 13:20 ACADEMIC LECTURE

- 12:30 - 12:35 Session introduction by M. ZHU Xu (Nankai University, PRC)
- 12:35 - 13:05 Academic Lecture by Pr. Mario TELO' (IEE-ULB, BE)
[Multilateralism Matters: Democratization Process and External Framework](#)
- 13:05 - 13:20 Q&A Session

13:20 - 14:15 DOCTORAL PRESENTATION

- 13:20 - 13:35 Doctoral Presentation by Ms. Alistair BRISBOURNE (Royal Holloway University London, UK)
[Practicing the Euro-Mediterranean Space: Political Constructions, the Meso-Link and Transnational Practices](#)
- 13:35 - 13:45 Academic Discussant - Pr. Mario TELO' (IEE-ULB, BE)
- 13:45 - 13:55 Doctoral Discussant - Ms. Julia SIMON (Universität Trier, GER)
- 13:55 - 14:15 Q&A Session

14:15 - 14:30 COFFEE BREAK

PhD WORKSHOP SESSION 2

14:30 - 15:20 ACADEMIC LECTURE

- 14:30 - 14:35 Session introduction by Ms. Imène Amandine HAFSAOUI (IEP d'Aix en Provence, FR)
- 14:35 - 15:05 Academic Lecture by Pr. Nicolas POUILLARD (Institut Français du Proche Orient, FR)
TBC
- 15:05 - 15:20 Q&A Session

15:20 - 16:15 DOCTORAL PRESENTATION

- 15:20 - 15:35 Doctoral Presentation by M. Markus HOLDO (Uppsala University, SWED)
[Challenges of Inclusion under Post-Islamist Conditions](#)
- 15:35 - 15:45 Academic Discussant - Pr. Nicolas POUILLARD (Institut Français du Proche Orient, FR)
- 15:45 - 15:55 Doctoral Discussant - M. Gökhan DUMAN (Rovira I Virgili University, SP)
- 15:55 - 16:15 Q&A Session

16:15 - 16:30 COFFEE BREAK

PhD WORKSHOP SESSION 3

16:30 - 17:20 ACADEMIC LECTURE

- 16:30 - 16:35 Session introduction by Ms. Juanita CEESAY (IEP de Paris, FR)
- 16:35 - 17:05 Academic Lecture by Pr. Christian OLSSON (IEE-ULB, BE)
[Why do rebelling men \(sometimes\) resort to violence?](#)
[A confrontation between the theoretical literature and the sociological realities of contemporary "Arab revolutions"](#)
- 17:05 - 17:20 Q&A Session

17:20 - 18:15 DOCTORAL PRESENTATION

- 17:20 - 17:35 Doctoral Presentation by M. Bappah Habibu YAYA (Ahmadu Bello University, NIG)
[ECOWAS and the Promotion of Democracy and Human Rights in West Africa: Some Lessons for the Arab Maghreb Union in the Post-Arab Spring Era](#)
- 17:35 - 17:45 Academic Discussant - Pr. Christian OLSSON (IEE-ULB, BE)
- 17:45 - 17:55 Doctoral Discussant - M. Gustavo GAYGER MÜLLER (IEE-ULB & University of Warwick, BE & UK)
- 17:55 - 18:15 Q&A Session

TUESDAY 20 AUGUST 2013

HUMAN AND FUNDAMENTAL RIGHTS INSTRUMENTS

PUBLIC CONFERENCE

- 09:00 - 11:30** Chair M. Pierre GALAND (Centre d'Action Laïque, BE)
 Speakers Ms. Simone SUSSKIND WEINBERGER (Actions in the Mediterranean, BE)
 Ms. Radhia NASRAOUI (Human Rights Lawyer, TU)
 Ms. Basma KHALFAOUI - TBC (TU)

11:30 - 12:30 LUNCH BREAK

PhD WORKSHOP SESSION 1

12:30 - 13:20 ACADEMIC LECTURE

- 12:30 - 12:35 Session introduction by M. Omar FASSATOUI (IEP d'Aix en Provence, FR)
 12:35 - 13:05 Academic Lecture by Pr. Eva BREMS (Universiteit Gent, BE)
 TBC
 13:05 - 13:20 Q&A Session

13:20 - 14:15 DOCTORAL PRESENTATION

- 13:20 - 13:35 Doctoral Presentation by M. Emmanuel DE GROOF (European University Institute, IT)
[Analysis of the EU's Involvement with 'Transitional Authorities'](#)
 13:35 - 13:45 Academic Discussant - Pr. Eva BREMS (Universiteit Gent, BE)
 13:45 - 13:55 Doctoral Discussant - Ms. Clélia AMALRIC (Université Paris X La Défense, FR)
 13:55 - 14:15 Q&A Session

14:15 - 14:30 COFFEE BREAK

PhD WORKSHOP SESSION 2

14:30 - 15:20 ACADEMIC LECTURE

- 14:30 - 14:35 Session introduction by M. Predrag ZENOVIC & Ms. Clélia AMALRIC
 (LUISS-Guido Carli & Université de Genève and Université Paris X La Défense, IT & CH and FR)
 14:35 - 15:05 Academic Lecture by Pr. Ghazy GHRAÏRI - TBC & Ms. Jinan LIMAM (Université de la Manouba, TU)
 TBC
 15:05 - 15:20 Q&A Session

15:20 - 16:15 DOCTORAL PRESENTATION

- 15:20 - 15:35 Doctoral Presentation by Ms. Mona ORABY (Northwestern University, USA)
[Citizenship in Transition: Identity Cards, Media Advocacy and the Renegotiation of Religious Difference](#)
 15:35 - 15:45 Academic Discussant - Pr. Ghazy GHRAÏRI - TBC & Ms. Jinan LIMAM (Université de la Manouba, TU)
 15:45 - 15:55 Doctoral Discussant - Ms. Didem DOGANYILMAZ (Rovira I Virgili University, ES)
 15:55 - 16:15 Q&A Session

16:15 - 16:30 COFFEE BREAK

PhD WORKSHOP SESSION 3

16:30 - 17:20 ACADEMIC LECTURE

- 16:30 - 16:35 Session introduction by M. Gökhan DUMAN (Universidad Rovira I Virgili, ES)
 16:35 - 17:05 Academic Lecture by Pr. George CHRISTOU (University of Warwick, UK)
[The EU and the Arab Spring](#)
 17:05 - 17:20 Q&A Session

17:20 - 18:15 DOCTORAL PRESENTATION

- 17:20 - 17:35 Doctoral Presentation by Ms. Krystel WANNEAU (ULB, BE) & Ms. Margaux VAGHI (ULB, BE)
[Human Security in Transition: Rupture or Continuity of Water Discourses in the Middle East?](#)
[The Cases of Egypt and Libya before, during and after the Political Transitions of Arab States](#)
 17:35 - 17:45 Academic Discussant - Pr. George CHRISTOU (University of Warwick, UK)
 17:45 - 17:55 Doctoral Discussant - M. Adel ABDEL GAFAR (Australian National University, AUS)
 17:55 - 18:15 Q&A Session

WEDNESDAY 21 AUGUST 2013

JOINT EXCURSION

NB: Definitive logistical aspects related to the Summer School's joint excursion remain to be defined. Information included below aims at providing participants with a foretaste of what is to be expected.

--- MORNING ---



VISIT OF THE BARDO NATIONAL MUSEUM

www.bardomuseum.tn

The museum's building was originally a 13th-century Hafsid palace, located in the suburbs of Tunis.

It contains a major collection of Roman mosaics and other antiquities of interest from Ancient Greece, Tunisia, and the Islamic period.



VISIT OF THE TUNISIAN PARLIAMENT

--- LUNCH AT THE MEDINA ---



--- AFTERNOON ---

VISIT OF THE DAR BACH HAMBA MUSEUM

www.fondazioneorestiadi.it/it/fondazioneit/dar-bach-hamb.html

The Dar Bach Hamba is a 17th-century palace whose most outstanding feature is its grand courtyard. The palace belonged to the Tunis bourgeoisie before it was acquired by a sect of the Catholic Church in 1923.

It was then renovated into a museum by the Orestiadi Foundation of Sicily, and today its galleries display historical and artistic items from many Mediterranean countries.



THURSDAY 22 AUGUST 2013

CHALLENGES BORN FROM DEMOCRATIC TRANSITION

PUBLIC CONFERENCE

09:00 - 11:30	Chair	Pr. Leila BLILI (Université de la Manouba, TU)
	Speakers	Pr. Leyla DAHKLI (Centre National de la Recherche Scientifique, IREMAM, FR)
		Pr. Nicolas POUILLARD (Institut Français du Proche Orient, FR)
		Pr. Kmar BENDANA (Université de la Manouba, TU)

11:30 - 12:30 LUNCH BREAK

PhD WORKSHOP SESSION 1

12:30 - 13:20 ACADEMIC LECTURE

12:30 - 12:35	Session introduction by M. Mehmet OZKAN (Istanbul Üniversitesi, TURK)
12:35 - 13:05	Academic Lecture by Pr. Gilbert ACHCAR (School of African and Oriental Studies, UK) Challenges born from Democratic Transition: A Closer Look at the Case of Egypt
13:05 - 13:20	Q&A Session

13:20 - 14:15 DOCTORAL PRESENTATION

13:20 - 13:35	Doctoral Presentation by M. Alexander MARTIN (Durham University, UK) Building a Common Ground for Democratization in Tunisia through the Development of Civil Society and Civil Political Culture
13:35 - 13:45	Academic Discussant - Pr. Gilbert ACHCAR (School of African and Oriental Studies, UK)
13:45 - 13:55	Doctoral Discussant - M. Dario CRISTIANI (King's College London, UK)
13:55 - 14:15	Q&A Session

14:15 - 14:30 COFFEE BREAK

PhD WORKSHOP SESSION 2

14:30 - 15:20 ACADEMIC LECTURE

14:30 - 14:35	Session introduction by M. Gustavo GAYGER MÜLLER (IEE-ULB & University of Warwick, BE & UK)
14:35 - 15:05	Academic Lecture by Pr. August NORTON (Boston University, USA) TBC
15:05 - 15:20	Q&A Session

15:20 - 16:15 DOCTORAL PRESENTATION

15:20 - 15:35	Doctoral Presentation by M. Andris BANKA (Birmingham University, UK) American Drone Strikes in the Middle East and North Africa: Weakening of the Norm against Assassination?
15:35 - 15:45	Academic Discussant - Pr. August NORTON (Boston University, USA)
15:45 - 15:55	Doctoral Discussant - Ms. Juanita CEESAY (IEP de Paris, FR)
15:55 - 16:15	Q&A Session

16:15 - 16:30 COFFEE BREAK

PhD WORKSHOP SESSION 3

16:30 - 17:20 ACADEMIC LECTURE

16:30 - 16:35	Session introduction by Ms. Julia SIMON (Universität Trier, GER)
16:35 - 17:05	Academic Lecture by Dr. Tereza NOVOTNA (IEE-ULB, BE) The Waves of (R)evolutions and Transformations in Central and Eastern Europe & the MENA
17:05 - 17:20	Q&A Session

17:20 - 18:15 DOCTORAL PRESENTATION

17:20 - 17:35	Doctoral Presentation by Ms. Maili VILSON (Tartu Ülikool, EE) The "More for More" Approach in Practice: the Case of the Southern Neighbourhood
17:35 - 17:45	Academic Discussant - Dr. Tereza NOVOTNA (IEE-ULB, BE)
17:45 - 17:55	Doctoral Discussant - M. Eduardo BERIONI BERNA (LUISS-Guido Carli, IT)
17:55 - 18:15	Q&A Session

FRIDAY 23 AUGUST 2013

HOPES AND RISKS MOVING FORWARD

PUBLIC CONFERENCE

09:00 - 11:30	Chair	Pr. Jean-Philippe SCHREIBER (ULB, BE)
	Speakers	Pr. Abaher EL SAKKA (Birzeit University, PAL)
		Pr. Francesca CORRAO (LUISS-Guido Carli, IT)
		Pr. Philippe DROZ-VINCENT (IEP de Grenoble, FR)

11:30 - 12:30 **LUNCH BREAK**

PhD WORKSHOP SESSION 1

12:30 - 13:20 **ACADEMIC LECTURE**

12:30 - 12:35	Session introduction by M. Dario CRISTIANI (King's College London, UK)
12:35 - 13:05	Academic Lecture by Pr. Philippe DROZ-VINCENT (IEP de Grenoble, FR)
	TBC
13:05 - 13:20	Q&A Session

13:20 - 14:15 **DOCTORAL PRESENTATION**

13:20 - 13:35	Doctoral Presentation by M. Amro SADELDEEN (ULB & LUISS-Guido Carli BE & IT)
	Local Democracy in the Absence of the State Authority: the Self-management of a Liberated City in Northern Syria
13:35 - 13:45	Academic Discussant - Pr. Philippe DROZ-VINCENT (IEP de Grenoble, FR)
13:45 - 13:55	Doctoral Discussant - Ms. Soufia GALAND (Université du Québec à Montreal, CAN)
13:55 - 14:15	Q&A Session

14:15 - 14:30 **COFFEE BREAK**

PhD WORKSHOP SESSION 2

14:30 - 15:20 **ACADEMIC LECTURE**

14:30 - 14:35	Session introduction by Ms. Didem DOGANYILMAZ (Universidad Rovira I Virgili, ES)
14:35 - 15:05	Academic Lecture by Pr. Francesca CORRAO (LUISS-Guido Carli, IT)
	TBC
15:05 - 15:20	Q&A Session

15:20 - 16:15 **DOCTORAL PRESENTATION**

15:20 - 15:35	Doctoral Presentation by Ms. Alexandra NEAME (Northwestern University, USA)
	Worldlessness and World-building: Conspiracy, Deliberative Politics and the Public Realm
15:35 - 15:45	Academic Discussant - Pr. Francesca CORRAO (LUISS-Guido Carli, IT)
15:45 - 15:55	Doctoral Discussant - M. Mehmet OZKAN (Istanbul Üniversitesi, TURK)
15:55 - 16:15	

16:15 - 16:30 **COFFEE BREAK**

PhD WORKSHOP SESSION 3

16:30 - 17:20 **ACADEMIC LECTURE**

16:30 - 16:35	Session introduction by M. Eduardo BERIONI BERNÀ (LUISS-Guido Carli, IT)
16:35 - 17:05	Academic Lecture by Dr. Leyla DAHLI (Centre National de la Recherche Scientifique - IREMAM, FR)
	TBC
17:05 - 17:20	Q&A Session

LIST OF DOCTORAL PARTICIPANTS

SURNAME	Name	INSTITUTION	TITLE OF PRESENTED PAPER /OR/ NAME OF DISCUSSED PAPER GIVER	ACADEMIC POSTER PRESENTED	STUDENT POSTER PRESENTED	EMAIL
BRISBOURNE	Alistair	Royal Holloway University of London	Practicing the (Euro)Mediterranean space: political constructions, the meso-link and transnational practices	N/A	C. AMALRIC	aebribsbourne@gmail.com
HOLDO	Markus	Uppsala Universitet	Challenges of Inclusion under Post-Islamist Conditions	N/A	S. GALAND	markus.holdo@statsvet.uu.se
YAVA	Bappah Habibu	Ahmadu Bello University Zaria	ECOWAS and the Promotion of Democracy and Human Rights in West Africa: Some Lessons for the Arab Maghreb Union in the Post-Arab Spring Era	N/A	J. CEESAY	habibyb@yahoo.com
DE GROOF	Emmanuel	EUI	The analysis of EU involvement with 'Transitional authorities'	N/A	J. SIMON	Emmanuel.DeGroof@EUI.eu
ORABY	Mona	Northwestern University	Citizenship in Transition: Identity Cards, Media Advocacy and the Renegotiation of Religious Difference	N/A	O. FASSATOU	monaoraby2015@u.northwestern.edu
WANNEAU	Krystel	ULB	Human security in transition: rupture or continuity of water discourses in the Middle East? The cases of Egypt and Libya before, during and after the political transitions of Arab states	N/A	G. GAYGER MÜLLER	kwanneau@ulb.ac.be
VAGHI	Margaux	ULB		N/A	E. BERIONNI BERNA	margauxvaghi@hotmail.com
MARTIN	Alexander	Durham University	Building common ground for democratization in Tunisia through the development of civil society and civil political culture	N/A	N/A	a.p.martin@durham.ac.uk
BANKA	Andris	Birmingham University	American Drone Strikes in the Middle East and North Africa: Weakening of the norm against assassination?	N/A	ZHU X.	andrisbanka@inbox.lv
VILSON	Maili	Tartu ÜNIKOOL	The "more for more" approach in practice: the case of the Southern neighbourhood	N/A	A. ABDEL GAFAR	Maili.Vilson@ut.ee
SADELDEEN	Amro	ULB & LUISS	Local Democracy in the Absence of the State Authority: The Self-Management of a Liberated City in Northern Syria	N/A	K. WANNEAU	amro.sadeldeen@erasmusmundus-gem.eu
NEAME	Alexandra	Northwestern University	Worldlessness and World-Building: Conspiracy, Deliberative Politics and the Public Realm	N/A	S. AHMED-HASSIM	alexandraname2014@u.northwestern.edu
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Pr.	SFEIR, Jihane	Université Libre de Bruxelles	jsfeir@ulb.ac.be
Pr.	TELO', Mario	Université Libre de Bruxelles	mtelo@ulb.ac.be

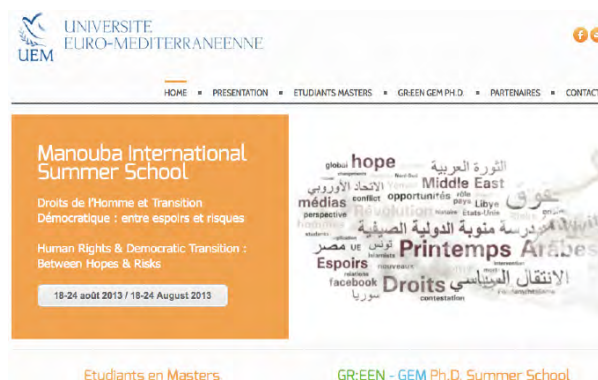
TEMPLATES & DOCUMENTS

As a reminder (pls cf. Logistical Guidebook), participants will find all necessary documentation on the Manouba International Summer School's website:

www.uem-iee.org

The following general information is to be found here:

- Presentation of the Euro-mediterranean University
- Presentation of the past Euro-mediterranean summer schools
- A portal to the 2013 MA Summer School
- A portal to the 2013 GR:EEN GEM Summer School



PhD SPECIFIC INFORMATION

The following PhD specific information can be found here:

- PhD Summer School's Programme
- PhD Summer School's Format and Principles
- PhD Summer School's Scientific Agenda
- Access to the PhD Summer School's Participants' Area where one can download the following:
 - Programme including participants' presentations
 - Templates and documents:
 - * Programme & Logistical Guidebook
 - * List of participants
 - * Participating academics and doctoral candidates' presentation posters
 - * GR:EEEN-GEM Paper layout template
 - * Working papers' series explanation booklet

CONTACTS

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FULL SET OF WORKING PAPERS



LA MANOUBA INTERNATIONAL SUMMER SCHOOL

18TH – HORD OF AUGUST 2013,

(LA MANOUBA UNIVERSITY, TUNISIA)

FULL SET OF SUBMITTED

GR:EEN-GEM DOCTORAL WORKING PAPERS

1

MONDAY – AUGUST 19TH 2013

- **SESSION 1:** WORKING PAPER BY A. BRISBOURNE (ROYAL HOLLOWAY UNIVERSITY, UK)
- **SESSION 2:** WORKING PAPER BY M. HOLDO (UPPSALA UNIVERSITY, SWED)
- **SESSION 3:** WORKING PAPER BY B. H. YAYA (AHMADU BELLO UNIVERSITY, NIG)

Practicing a Mediterranean space: transnational practices, the meso-link and civil society

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Abstract

The Euro-Mediterranean space is variously constructed according to political, economic and symbolic interactions marked primarily by the agency of the European Union and its various instruments. The discursive, institutional, imaginary and symbolic constructions of the region have received increasing attention, however the actual practices involved are often more implicit. At the same time the role of civil society actors in the construction of the region has generated more interest but also has been limited. This presentation will combine these two concerns by considering the transnational practices of civil society actors who are engaged in regional activities by asking the question: Do regional forums allow for the cultivation of transnational practices in the Mediterranean? Specifically I am interested in the role of the Anna Lindh Foundation (ALF) in promoting interaction (and networking) amongst regional civil society organisations. This paper will contribute towards an understanding of the Mediterranean region as a site of overlapping practices that are simultaneously constituted by political developments and creating space for adaptation. The focus on practice denotes a substantive understanding of the Mediterranean as a realm of cross-border interaction contextualized by the evolution of political discourses. One avenue for these interactions is participation in regional forums such as the recent ALF Civil Forum. I will begin by exploring the ALF and its 2013 Civil Forum as a meso-link for establishing transnational engagement among member organizations. Second, I will consider the influence of the political construction of the region on the Civil Forum and its adaptation and/or rejection by participants. From this discussion it will be possible to investigate the ways in which constructions of the region contextualize and approve certain practices while filtering out undesirable forms. Finally, I will consider the specificity and sustainability of transnational practices established through this forum and the ALF.

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The Euro-Mediterranean is a political construction according to territorial, symbolic and institutional approaches (Jones 2011). Civil society actors are also integrated into the construction of the region through the work of regional bodies and institutions. In so doing the idea of the Mediterranean space is also potentially transformed into a transnational imaginary (Wilson and Dissanayake 1996) or experience that is constructed through the practice of exchange and interaction between political, social, cultural and economic actors. This is evident in the responses of participants of regional activities who waver between an historical and physical understanding of the Mediterranean, dominated by Europe, and the experience of moving, communicating and exchanging experiences across the region. This paper explores the way in which the Anna Lindh Foundation (ALF) frames and organizes its own work and that of its members and how those members and participants come to view their own position through working with the ALF. The actorness of the ALF is important but it is also influenced by the identities, goals and values that member organizations bring to it. Several questions lay the basis for this study: what does the ALF bring to regional integration, what role does it play in the development of a common regional identity and what role do member organizations play? The Euro-Mediterranean is a political construction that as an imaginary exists as the basis of the ALF's activities and organizational identity. So what is the relationship between organizational influence and member's understandings? How do they influence each other? This paper will focus on these two questions first by setting up an understanding based on transnational practices followed by the introduction of three different responses towards the (Euro) Mediterranean by actors who are members of the ALF and who took part in the 2013 ALF Civil Forum or recent regional activities. The purpose is not to construct a typology or give a definitive account of transnational experience in the region but to offer some initial observations of material obtained from a limited number of actors who have engaged in transnational work across the region and from which it will be possible to propose some advantageous insights for ongoing study. It is not possible to definitively determine the significance of different routes without undertaking a much more lengthy investigation so instead I will introduce each avenue and relate them back to the perspectives and work of civil society actors who are members of the ALF and who have participated in regional activities.

Thinking about transnationalism

Steven Vertovec (1999) provides a useful breakdown of the themes raised by the study of transnationalism. He identifies six ways of discussing transnationalism: as social morphology, type of consciousness, mode of cultural reproduction, avenue of capital, site of political engagement and as a reconstruction of place (Vertovec 1999: 2). This characterization raises not only the multitude of ways in which transnationalism has been approached but also the essentially contested nature of the concept (Guarnizo and Smith 1999; Vertovec 1999; Glick-Schiller 2004; Waldinger and Fitzgerald 2004; Levitt and Khagram 2007). While a significant portion of the literature has been oriented

towards studying the mobility of migrants and diasporic networks there have also been attempts to generate insight and utilize the concept to understand political projects and identities (Roniger 2011; Featherstone 2008), regional politics (Rogers 2004; DeBardeleben and Hurrelmann 2011), advocacy and norms (Keck and Sikkink 1998) and cultural transformations (Hannerz 1996; Ong 1999). The purpose of this section is not to provide a comprehensive categorization of transnational phenomena or related approaches within the field. Instead it will present three interpretations of transnationalism that will provide a basis from which to investigate interactions across the Mediterranean space: as networks, as experience, and as a set of practices. These three interpretations blend together disparate approaches to transnationalism from political and geographical to sociological and anthropological accounts. This position is intentional and is based on the understanding, as argued by DeBardeleben and Hurrelmann (2011), that these different approaches can be mutually beneficial. There needs to be a concerted effort on the part of political studies to engage with the insights provided in a more profound understanding of the systemic, structural and ideational impacts of transnationalism (DeBardeleben and Hurrelmann 2011: 28-32) all of which contribute to a nuanced understanding of the context in which practices are produced. An appropriately broad definition to act as a starting point is provided by Victor Roudometof who defines transnational “interactions as taking place among people and institutions in two or more separate ‘containers’ or nation-states” (Roudometof 2005: 119). Far from justifying a discrete approach to transnationalism this would ensure an understanding of the interplay of local and global processes. As argued by Giulianotti and Robertson (2009) transnationalism realizes this by recovering the ‘social in the global’ (Giulianotti and Robertson 2009: 134). But this form of bottom-up connectivity (Rumford 2011) is also subject to intervention on the part of organizations and institutions. While there have been some instructive studies of transnationalism across the Mediterranean (Gandolfini 2010) there has been very little attention paid to the interplay between the development of regional institutions and social and cultural programmes and civil society actors engaging in transnational practices. Thinking the Mediterranean region historically, transnationalism provides a uniquely appropriate approach as it is within this region that many of the early forms of transnational interaction and diasporic activity originated. Today, focusing on the practice(s) of transnationalism will provide an element of social ‘thickness’ (Kurasawa 2007) to understanding of the Mediterranean region and can inform the ongoing development of approaches to further integration and cooperation across the region. The section will conclude on the elaboration of transnational practice as a way to focus on the substantive nature of the relations and phenomena that make up the core of this research project. Such practices can be understood as the essential basis on which categories of global action exist as global (and transnational) civil society, multinational corporations, global governance etc. all produce and are produced by different types of transnational practice.

There are three ways in which regional organizations might help to sustain transnationalism in the Mediterranean: construction of a common experience, building transnational networks, developing transnational practices. We cannot altogether treat these as discrete phenomena or processes. However for the purposes of analytical clarity I will introduce them individually.

Experiences

The construction of a common identity takes place through sustained interaction and a general affinity between the participants. Considering transnationalism as an experience entails the integration of a wide array of considerations on the types of consciousness, cultural impacts and types of engagement pursued by different transnational actors. Anthropologist Ulf Hannerz expresses the impact of transnationalism well: "It is these dispersed institutions and communities, groupings of people regularly coming together and moving apart, short-term relationships or patterns of fleeting encounter, which offer the contexts in which globalization occurs as the personal experience of a great many people in networks where extremely varied meanings flow" (Hannerz 1992: 47). What I want to focus on here is the (re)production of culture and meaning through transnational engagement. Both Luin Goldring (1998) and Robert Smith (1998) in *Transnational from Below* point out how transnationalism is not just local, but is 'trans-local' and based in multiple contexts from different points of origin. However, the primary role of locality in many areas of lived experience goes against the more forceful suggestion of Arjun Appadurai that transnationalism and the global cultural economy have led to a 'steady erosion of the relationship...between spatial and virtual neighbourhoods' (Appadurai 1995: 213). Yet this insight should not be dismissed immediately. There is a distinctly transformative potential in the movement of people and ideas between localities that necessitates a crucial awareness of the 'trans-local' production of cultures and identities. Based on this fact there has been a general move towards considering the concept of 'transnational social space' in order to delimit the realm of inquiry and to further conceptualize these relationships (Pries 2001; Faist and Özveren 2004). This is a fruitful exercise for studying the impact of migrant transnationalism as they form relatively autonomous, reciprocal and fluid networks but it is perhaps less relevant for the study at hand which is more politically and practice-oriented. Instead, It is worth considering the concept of the 'meso-link' as it has been introduced in transnationalism research. This refers to migrant organizations, supranational organizations, welfare foundations, INGOs, and transnational social movements (Köngeter 2010), which can act both as a potential site for political engagement and of collective meaning construction. The organizational perspective can provide an important link between understanding the individual (micro) level experiences and the governance (macro) level that structures transnational interactions (Pries 2008: 18). Smith and Guarnizo (1998) also point to the importance of identifying the meso-structural level in which "institutions interact with structural and instrumental processes (Smith and Guarnizo 1998: 25). Identifying and including this level within transnational research can help to answer important questions related to how trust and solidarity is constructed across borders, the discourses and practices that this entails and the sociocultural basis on which these ties are maintained (Ibid: 26).

Networks

Transnational networks can extend over a wide space and have very different numbers of participants. They might entail mobility or simply the exchange of communication and information. Fluctuations in the density or intensity of

networks suggests that on the whole they may be less likely to result in firm commitments or common affinities unless combined with more concrete practices and interactions. The attractiveness of network approaches lies in the ability to discover 'sparsely knit and spatially dispersed' forms of community (Wellman 1999) as well as draw comparisons and learn from other areas of inquiry such as urbanism in the MENA region which suffers from similar problems of low levels of integration, weak ties and sustained hierarchies (Stanley 2005). Following Featherstone, Phillips and Waters, networks are best understood as: "the overlapping and contested material, cultural and political flows and circuits that bind different places together through differentiated relations of power" (Featherstone, Phillips and Waters 2008: 386). This approach offers insight into the types of space and the formation of or resistance to identities through social structure, ideas and relations (Castells 1996). In line with Castells' thinking, the network offers an effective integration of technological developments within our understanding of social, political, economic and cultural interactions. The network is also a useful way to invoke the social patterns associated with the movements of transnational migrants and diaspora and the maintenance of complex communities across national boundaries through the exploitation of communication technologies. On this basis the discourse and practice of maintaining transnational networks: "can be viewed as affecting the formation of character, identity, and acting subjects at the same time that identity can be seen as fluctuating and contingent, as the contexts through which people move in time-space change and are appropriated and/or resisted by acting subjects" (Guarnizo and Smith 2009: 21). The network provides a useful descriptive category for tracing this transformation of social structure. For example, the weak ties thesis put forth by Mark Granovetter "suggests ways in which a person's indirect social connection are often important channels through which ideas, influences or information are reached" (Vertovec 2009: 35). *The Strength of Weak Ties* (1973) points to the relations beyond primary groups and the diffusion of influence and information between groups. Diffusion in this case travels further and more extensively through weak ties than through strong ties, which are more limited. As a result, removing weak ties limits the distance traveled greater than removal of the average strong link (Granovetter 1973: 1366). This is an important analytical insight to the significance of the network for identifying meaning construction and common practices. Another useful concept appropriated from social network analysis is that of multiplexity – "the degree to which relations between participants include overlapping institutional spheres" (Portes 1995: 9). This is a useful way of identifying patterns in relations. Significantly it can also be useful for establishing border effects. The multiplexity of cross-border social networks can bring out interesting insights into the type and extent of connectivities (Woolhiser 2005). Borrowing these analytical tools for analyzing transnational relations can contribute important insights.

According to Marston, Jones and Woodward (2005), the focus on networks challenges vertical accounts of scale that privilege boundaries between scales and assume greater agency of official channels and state practices. As such, we also move away from the depiction of globalization that focuses on the pervasiveness of global capitalism and the global economy and recognizes the political construction of scale according to dominant interests. That being said this approach does not follow the claim that transnational practices necessarily mean that there is an erosion of the importance of place or the nation (Featherstone, Phillips and Waters 2008: 386). As Stephen Calleya has already pointed out, regional fragmentation means that local identities and national spaces remain central to political and social action in the Euro-Mediterranean. This fragmentation, however, is decisively political in most circumstances

and does not account for underlying dynamics of social and political contestation that occur across national constructs. David Featherstone argues for a greater appreciation of the role of networks historically for transnational political action. Central to this is the ability to evoke a transnational history for particular actors and/or issues (Featherstone 2007). This understanding points towards the role of common politics and projects in the construction and maintenance of transnational networks, which is of significance for the development of regional integration. Jünemann's (2005) analysis of the Civil Forums established under the EMP framework points towards the potential initiation of a political identity based on particular political issues for those actors involved. The impact of selection processes can put a limit on the involvement of actors and organizations from southern Mediterranean countries but on the other hand, as Sari Hanafi points out, the selection process can also benefit transnational networks by engaging with alternative actors and organizations that under normal conditions may be subject to local divisions or clique gatherings. Furthermore, networking at the regional level increases southern actors' influence through agenda setting and alliance building (Hanafi 2005). Hanafi's anthropological approach to North-South civil society relations helps to understand the significance of the regional scale for social actors. This can be enhanced by considering the significance of different scales of action and the variability of networks such that they consist not only of material flows or of physical migrations but also of common affinities, imaginations, identifications, politics and projects (Featherstone, Phillips and Waters 2008). Furthermore, it may offer the possibility of engaging in 'relational thinking' (Paasi, in Johnson et al 2011), that is, to contextualize socialization and bordering practices through emphasis on social interactions. By conceiving of space in terms of social relations (and social relations with regard to space) it is possible to reveal an inherent dynamism and process of transformation at the heart of these interactions (Massey 1992). But in order to progress this type of thinking it is necessary to go beyond the metaphor of the network, whose inherent relationism is important but should be tempered by a focus on the contextual lives of networked actors as well as their contingent experiences with transnational phenomena.

Practices

Transnational practices may take the form of exchanges, mobility and meetings/forums. Thus there are different types of practice temporally, spatially and in intensity but they very often develop through political engagement or contestation. The benefit of studying transnationalism based on practice lies in the ability to account for structural and systemic changes that affect everyday lives and politics and thus also the cultural impact of these experiences for the actors involved. Transnational practices are manifold and engaged in by various actors, which has led to increased interest in the practice of transnationalism. Work on the transnational capitalist class and global capitalism (Sklair 2003), the work of global justice (Kurasawa 2007) and the role of civil society and non-state actors (Koehn and Rosenau 2002; Berry and Gabay 2009) have revealed the importance of understanding transnationalism through practice. Peggy Levvitt's (2001) book *Transnational Villagers* made a step forward in understanding transnationalism by exploring how the transnational becomes integrated into the lives of migrants such that the experiential is built upon the transformation of specific transformations of ideas and ways of living thus producing a tangible change in the everyday practices of these communities. This type of ethnography highlights the importance of paying attention to the consequences to processes and developments, which may originate inside or outside the specific context. The approach undertaken can always be modified for appropriateness.

Transnational practices also offer a way to counter the difficulties of understanding different trajectories of transnationalism and to bridge the gap between 'transnationalism from below' and 'transnationalism from above' (Smith and Guarnizo 1998) by revealing the way in which strategies are constituted by developments at both the level of institutional politics and communities. Furthermore, we can resist critiques that limit transnationalism to being a social and political phenomenon that is outside the realm of statist and regional politics. On the contrary, states can also participate in transnational practices through intermediary channels and competencies, of course suggesting a change in the strategies of governance. Maintaining the necessary distinction between transnationalism and the state risks uncritically reaffirming the conflation of state with nation whereas one of the major benefits of transnational research is in overcoming this assumption. In fact, states have historically been involved not only in international but also transnational relations by engaging non-state actors such as social movements and private and political foundations. The conceptual clarification used by Steven Vertovec is useful in this regard. He similarly identifies transnational relations as "referring to sustained linkages and ongoing exchanges among non-state actors based across national borders" but also suggests that transnationalism includes the "processes of formation and maintenance, and their wider implications" (Vertovec 2009: 3). A comprehensive understanding of these aspects would necessarily include the actions and participation of state actors in governance and the promotion and engagement with such networks. This is evident in the Mediterranean region where the EU and regional governments have partnered with civil society actors and regional institutions to foster limited forms of transnational activity. Naturally, this is not the autonomous transnationalism referred to in much of the literature concerned with social movements or migration but it is a significant feature of the regional landscape and potential source of further development. In other words, states are not transnational actors in themselves but can take part in the formation, maintenance or extent of transnationalism. Examples of this are also noted by Vertovec (2009) such as the El Salvadorean government's provision of free legal assistance to El Salvadorean refugees to remain in the United States, contributing significant annual remittances (Mahler 1998). There is a complex relationship between the worlds of states and transnationalism oftentimes based on a subtle interaction between the two.

Another reason to focus on transnational practices is to avoid conflating the actions and participation of civil society groups across the region with more mobile and essential forms of transnationalism such as migration or to characterize these actors as automatically representative of a transnational (or global) civil society. Practices, on the other hand, are highly contextual and can be employed strategically but they also have a reciprocal effect. Moving away from the specific study of transnationalism Kurasawa's (2007) book on the work of the global justice movement is instructive in understanding both the importance of practice that is conducive to considering transnational practices as they have been considered thus far. According to Kurasawa: "a practice...represents – and simultaneously produces – a pattern of materially and symbolically oriented social action that agents undertake within organized political, cultural and socio-economic fields, and whose main features are recognizable across several temporal and spatial settings" (Kurasawa 2007: 11). Paola Gandolfi's study of Euro-Moroccan mobility shows how transnational migratory networks and civil society actors add an extra layer to existing approaches to the Mediterranean by exposing the important ways in which migrants "promote social changes, identifiable as 'development processes from below', and they contribute to spreading informal development dynamics" (Gandolfi

2010: 377). In so doing, migrants and civil society actors employ new practices of “*exploiting, taking advantage of frontiers and borders*” (ibid: 383). One of the ways they do this is through their ability to circulate and locate themselves ‘in-between’ localities and by taking advantage of networks of similar actors through which meanings and practices are constituted.

The meso-link and a transnational Mediterranean: The Anna Lindh Foundation

The Anna Lindh Foundation (ALF) represents a significant achievement in cooperation and partnership arising out of the social and cultural basket of the Euro-Mediterranean Process (EMP). Despite great expectations following the 2003 High Level Advisory Group meeting (‘Group des Sages’), optimism towards the Foundation remained low among many observers given the difficulty surrounding budgetary negotiations and remaining political constraints (Pace 2006: 86). However, despite immense difficulty, as well as having to withstand an uncertain institutional context and political wrangling over the creation of the Union for the Mediterranean, the ALF has evolved in its early years into an intriguing institution and a potential source of development on socio-cultural issues and intercultural dialogue in the region. Originating out of the considerations and prescriptions of the Report of the High Level Advisory Group (‘Groupe des Sages’) in 2003, the structure and goals of the ALF contain both a normative and functional basis. The Anna Lindh Foundation functions as a central node in a network of national networks for civil society organizations that exist across European and Mediterranean members of the UfM. Its primary objective is to promote intercultural dialogue, which in practice consists of supporting four fields of action – Education and Youth, Culture and Arts, Cities and Migration and Peace and Coexistence. According to the 2003 report, in contrast to markets and capital in the EU, youth represent one of the most significant assets of Southern Mediterranean countries. Youth also represent a potential threat to the EU in terms of migration flows and through the perpetuation of cultural conflict. Thus, the strategic is not far from socio-cultural considerations. The work of the ALF encompasses a range of events, awards, reports, and calls for proposals. Events often include roundtables and forums where civil society actors and officials from either side of the Mediterranean can meet and discuss new priorities and concerns. Awards vary by theme depending on yearly priorities and target those groups that promoted these priorities most effectively. The ALF also produces an Intercultural Trends Report, which takes a comprehensive analysis of cultural values and trends on either side of the Mediterranean through examining opinion polls, undertaking expert analysis and media analysis and then engaging with proposals for action. As such, the ALF does a significant amount of work in promoting youth development and in promoting the conditions for understanding divisions across the region.

While the ALF contributes to and offers new opportunities to civil society actors across the region a look at the 2010 member survey reveals a desire among a significant portion of members for greater cross-border contacts as well as increased and easier access to funding (Results of the Network Survey 2010). Furthermore, the survey reveals a significant level of dissatisfaction with National networks and the roles and selection of Heads of Network, which are currently approved by national governments. In terms of funding, the survey also reveals discontent with both the level and format of funding. Though the Network survey only represents a small number of all ALF

members (with 533 respondents, or approximately 20% overall) the breakdown of these organizations along fields of action reveals the influence of funding priorities towards Education and Youth with 290 respondents working in this field. The High Level Advisory Group meeting in 2003 declared the necessary independence of the ALF in order to achieve legitimacy and neutrality in a highly politicized region. However, the scope of independence attainable by the Foundation would likely always be limited by its reliance upon the EU commission for funding (Feliu 2005) as well as the institutional context of the ALF with the UfM framework. Furthermore, the ALF does not have freedom of action within UfM member states. It acts as an organizational hub for national networks setting strategies for development and implementation as well as deciding upon funding priorities. However funding is sometimes still funneled through official channels and member states often remain responsible for approving Heads of Network and maintaining oversight over national networks, potentially limiting network penetration and membership opportunities.

According to Pries (2008: 16) “*transnational organizations* are characterized by their decentralised resources and, at the same time and opposite to multinational organizations, intense coordination.” This is a useful basis from which to start considering the ALF as a meso-link and as a transnational organization. Pries goes on to argue that such organizations are generally decentralised and engage in border-crossing practices while stipulating strict membership rules, structures and display ‘more or less explicit goals and intentions’ (Ibid). Determining the centralization of the ALF throws up immediate questions as there continues to be some debate over the organizational structure of the foundation and there have been moves towards both decentralization and greater centralization including recent discussion over the decentralization of funding activities to national organizations (Shotton 2012: *interview*). As argued by the UK head of network the ALF secretariat needs to decide what role it wants to play in the foundation’s work (Ibid). The identification of the ALF as a ‘network of national networks’ is rhetorically similar to the idea of the transnational social field. Transnational social fields “link individuals directly or indirectly to institutions located in more than one nation-state as part of the power dynamics through which institutionalized social relations delineate social spaces” (Glick Schiller 2009: 5). But there are immediate problems for considering the networks of the ALF as a distinct social field. According to the definition all social fields are highly constructed phenomena subject to the interplay of particular power dynamics and the intervention and influence of institutions on transnational actors. However, the transnational social field is perhaps still less formal and organized by the limits of membership than are the networks of the ALF. On top of this, national networks as supported by the ALF often remain just that – *nationally* organized – though transnationally connected. The resonance of such terminology reveals as much as anything the vagueness of a distinct approach of transnational studies. For example, Pries (2008: 3) is wrong to assert that the transnational perspective can be distinguished from a global-local point of view by differentiating between micro-, meso- and macro- units as this assumes a level-based understanding of functions. However, the idea of the meso-link is useful as a way to consider the foundations and organizations that intervene in or promote processes of transnationalism, and this is how the concept will be used.

Considering the ALF in this way offers a useful way to focus the link between the social aspect and the political role of organizations as they intervene for and against transnational activity. So the ALF can be considered

as a sort of literal meso-link between actors on all shores of the Mediterranean but this understanding should also be qualified by critiquing the bias and restriction of the Foundation as well as the way in which members appropriate and reconstruct particular discourses and identities. In this function the ALF frames its activities in terms of a shared Euro-Mediterranean space. This conception of the region is part of a broader EU-led political design to develop regional integration on the basis of a distinct 'variable geometry' (COM(2011) 200). The significance of the ALF in this context was revealed in the aftermath of the 2011 arab uprisings during which one of the first actions of the EU commission was to publicly seek to foster a closer relationship with the ALF (ENPI Infocentre 08/09/2011). Through its activities the ALF also supports and legitimizes a specific form of regional interaction, which can be manifest in selection procedures and in the content of supported projects. So the political imaginary on which the 2013 ALF Civil Forum *Citizens of the Mediterranean* was based provides a particular form to the identities, networks and practices pursued by its members.

Limitations of mobility are an immediate problem for all members and on this issue the ALF and especially its President Andre Azoulay have been increasingly outspoken calling for the development of better regimes for educational and youth exchange and easier mobility among UfM countries. The foundation has also shown some flexibility in its willingness to support organizations that were unable to obtain the relevant association or NGO status under the strictures of authoritarianism (Ouissi 2013: *interview*). So the ALF is both political actor and opportunity structure but what does this mean for the type of regional identity that it promotes? National networks are just as important as transnational networks and many participants see membership in the ALF as a way to find national partners. For some this is because the funding themes and goals of the ALF do not provide many opportunities. It is clear from the 2010 members survey that there is general dissatisfaction with the ability to find partners in other countries but many at the Civil Forum 2013 also mentioned the scope and goals of funding which was being influenced by political objectives and EU policy. This could be seen as lending to a sense of division between Southern organizations struggling for funding, partnership and recognition and Northern organizations with more alternative sources of funding. However during the Civil Forum 2013 there was also a more trivial form of unity represented by a kind of neo-tribalism in which many participants shared an instrumental identity for the duration of proceedings. Finding common ground on the basis on regional characteristics, personalities and gestures made for a pleasing way to partake in networking but also played an important role in finding regional organizations with like goals and commitments. So while making for a genial atmosphere there is also a practical reason for employing such a strategy through the course of the forum. A third type is driven by different motivations and views interaction in the Mediterranean as a route to global empowerment and of a renewed political subjectivity. This is actor driven and builds on existing historical and cultural conceptions in order to place actors regionally and by extension globally.

Subjectivity, Practicality and Empowerment: The Mediterranean according to transnational actors

Three examples¹ of considering actors' own relationship to the region have emerged from interviews and observations: 1) a subjective sense of the Mediterranean 2) a practical Mediterraneanism and 3) the Mediterranean

¹ These examples are based on the author's own observations and interviews conducted during the 2013 ALF Civil Forum April 4-7th 2013, 8 separate interviews with members of the ALF in Tunisia and Egypt between May 2013 and August 2013

as a route to global empowerment. These different ways of thinking crosscut experiential, networking and practice-based forms of transnationalism and though they do not precisely correspond they each evoke important elements. They also relate in different ways to the normative and prescriptive conception promoting by the ALF. The subjective position delimits the Mediterranean according to instances of interaction and exchange. It is a cultural and intellectual product that evokes a long history of hybrid relations within the region (Matvejevic 1999). It is less concerned with structure and more with the experience of mobility and interaction and well as participating in regional forums. This personal experience – influenced by the political context – is generated as a representation of the region: “Thanks to the revolution we are nearer to the other people, do you understand? From that day we come nearer to other people. We think that we have the same identity, the same mentality – almost the same mentality. And I think the Mediterranean is a point of meeting” (Bouchadakh 2013: *interview*). By giving prominence to the everyday it also more naturally supports an appeal to diversity based on national, cultural or tribal heritage as the realms of lived experience and this also opens it up to categorization. As expressed by one participant: “There is in my point of view a clear disconnect between the Northern and Southern shores of the Mediterranean. So sometimes I associate myself more with someone from Brazil, India or Uganda than the case with a Frenchman or a Spaniard...The Mediterranean is a very subjective matter even for different individuals” (Okeil 2013: *interview*). The subjective sense of the Mediterranean exists within a cultural spectrum that celebrates a middle ground between hybridity and essential otherness by privileging the rooted nature of transnational interaction. This subjectivity depends upon action and interaction and is strongly affected by the indirect effect of power relations between both shores of the Mediterranean.

The second example is a practical form of Mediterraneanism – a self-ascription that takes the form of particular characteristics, specific historical encounters or common features in order to maintain some semblance of regional unity in the pursuit of some instrumental goal. Michael Herzfeld gives a useful introduction to this idea when he argues that Mediterranean culture should be treated “as performative utterances that can, under the right ‘felicity conditions’, actually create the realities that people perceive” (Herzfeld 2005: 50). Such performances can be wide ranging and there is no ideal type. At the individual level these can take the form of historical features and characteristics. As argued by several participants, Mediterranean peoples share an exchange of Greek ideas as well as hand gestures and temperament: “Of course I am a Mediterranean citizen. We have many common points with other Mediterranean countries. We have *chaleur*, warmth, a Mediterranean warmth. We are acting, when Mediterranean people speak they speak with their hands” (Bouchadakh 2013: *interview*). This is a highly limited understanding of the region linked to direct contact, climate, diet and culture. But it can also be extended in order to forge a unity between disparate entities or peoples for organizational or political interests. For example, Andre Azoulay, president of the ALF, when visiting the UK network suggested a broader *Euro-Mediterranean* history in Britain by telling the story of his ancestors in Essaouira, Morocco, and their long history of trading through northern English ports. Regardless of the geographical issues with this statement there is a powerful image and evocation of a common history and practices. For individuals and member organizations a form of practical Mediterraneanism can complement other activities. As such this position was also more common among organizations for which

international organizations or US-based organizations are the primary targets of funding and partnership thus placing themselves within a global hierarchy of value that situates their own actorness within the geopolitics of state and international concerns (Herzfeld 2004). Such an understanding employs the construction of fluid transnational networks based primarily on weak ties that can be leveraged in the pursuit of specific goals.

The third example is a different understanding of the region in which elements of cosmopolitan or vernacular cosmopolitanisms might be expressed. Instead of seeing the Mediterranean as an end itself it becomes a form of empowerment against varying forms of subjugation from nation and state to region and globe. This also puts focus on specific practices that extend across and beyond the region and entail some form of globality. What is more, this understanding tends to resist (either actively or passively) dominant constructions of the region without rejecting common histories. Instead it reveals, as expressed by L'Art Rue; "the symbolism of a collective Mediterranean memory, to remind us that we are the heirs of a common culture and history, a history that we would like to share with the Other, no matter how far they are" (Oussi 2013). What is markedly different about this approach (and contrary to Herzfeld's original formulation) is that it employs the Mediterranean more effectively as a heuristic device "in which its inherent limitations are turned to advantage, [and] gives way to a sophisticated rethinking of globalization from the perspective of regionalisms invoked by those who see various levels of local cultural unity as the only available source of resistance to domination" (Herzfeld 2005: 58). As a result the (Euro)Mediterranean also represents a site of political engagement that is strengthened by the development of a new regional political subjectivity following the arab uprisings and the continued pursuit of social justice, equality, socio-economic stability and democratic transition: "There is huge difference between creation in the Arab Mediterranean and creation in the European parts. In the EuroMediterranean region you are all licensed, you can talk about whatever you want. In the Arab parts you still talk about whatever you want but you don't have that right. You need to earn it, strive for it. It (the Mediterranean) is a bridge that we have started to cross in order to open up to the international scene" (Bokhri 2013: *interview*).

Conclusion

The construction of a (Euro)Mediterranean space in the work of EU instruments and European-led regional institutions and foundations has led to a fundamental delimiting of the region according to specific institutional goals and political and economic practices. Civil society actors are also important actors in the development of a common space and have been incorporated into regimes of regional governance for this purpose (Scott and Liikanen 2011). The ALF, as a regional foundation, was created to support a dialogue between cultures and to increase exchange and interaction between actors across the Mediterranean. To this end the ALF has increasingly supported the development of a common unity based on a sense of Mediterranean citizenship and culture. However this is also influenced by the important role of the European commission in supporting the Foundation politically and economically. But rather than being a route to a specific type of transnational activity and identity we should perhaps focus on how the transnational desires and characters of its members is what really gives the ALF significance. For this same reason it is important to bodies like the EU Commission because it can harness some of the influence and sentiments of these groups and funnel them into regional activities and programmes that work

towards the goals of intercultural dialogue, democratic consolidation or regional integration. While these are also important for transnationally active members, the role of Mediterranean transnationalism is often as a stepping-stone or route towards becoming more globally active and visible. A thorough analysis of such actors would have to explore this global/local question and the regional as an opportunity structure in the context of global politics.

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Challenges of Inclusion in the Post-Islamist Society

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Abstract

Post-Arab Spring conflicts in Egypt and Tunisia over the authority to rule and the role of religion in society raise questions about these societies' capacity of reconciling differences in order to facilitate a peaceful transition to democracy. They also raise questions about the theoretical tools social scientists might use to understand the stakes of the post-revolution struggles. "Post-Islamism" theorists have drawn attention to societal changes that have gradually forced Islamists to adjust, but underestimate the differences within the societies that pose serious challenges to social cohesion and a stable transition. Informed by "field theory" this paper brings to the fore various actors involved in struggles for inclusion in post-revolution debates. Describing three different social fields, the paper argues that their specificities – most importantly the different sources of social recognition that gain currency within the fields – help us understand the challenges of inclusion that each of

Power struggles in post-Arab Spring Tunisia and Egypt are often simplified by conceptions of Islamist ideology versus Secular democracy. Whatever the true motivations of the military's interventions in Egypt, and the problems of Mohamed Morsi's presidency, or the causes of the postponements of the Tunisian National Constituent Assembly's drafting of a constitution, the role of religion in politics is only one aspect. In the public arenas beyond political institutions a pluralistic sphere of social fields has been emerging, where the role of religion, the legacy of the revolutions, and the identities of future democratic societies are being negotiated and struggled over. These continuous struggles do not only express the divisions of these societies that will translate into the formal political arena through elections of representatives; they also shape the basis of political legitimacy and social cohesion.

With the formulation of a "post-Islamism" thesis in the beginning of the 1990's, changes of social practices became a major focus for scholars who questioned pessimistic conclusions based on overly essentialist notions of "Islamist ideology" that often turned into an "Islamist threat". Post-Islamist theorists, including Olivier Roy and Asef Bayat, suggested that Islamism was gradually losing credibility due to processes of globalization and fragmentation of societies, and that in its place we find a new discourse of exploration and contention over the role of Islam in politics. Today, scholars approaching "Islamism" from various perspectives have found that the political discourses of the Muslim Brotherhood, Ennahda and other "Islamist" movements and parties have significantly departed from the original Islamist project of establishing an Islamic state. Politics, it is widely claimed, has gained primacy over religion, in the sense that the former determines the role of the latter, and the "failure of political Islam" is now a condition to which all political actors must adjust their strategies and actions in the new political landscapes of post-Arab Spring societies. As Roy recently put it, "Islamists have changed, or at least they have understood that the world has changed" (Roy, 2012 : 12).

The post-Islamist thesis does not suggest a decline in religiosity; neither does it necessarily suggest that religiosity has become any less politically relevant. It acknowledges that politics in Muslim-majority countries is not only about Islamism vs. Secularism, but also about the relevance and *meaning* of Muslim

identity in the political sphere. This recognition opens up for questions that have been overshadowed in scholarly debates about the political role of religiosity in Muslim-majority countries, debates that have often been narrowly focused on the ideology and strategies of Islamists, at the expense of every-day practices.

Too often, however, the post-Islamism thesis turns into a cheerful message about its promise for democracy. This paper argues instead that the democratic potential of Muslim identity politics will depend not only on Islamists' toleration of the democratic process and basic rights; it will be determined as well by struggles over the right to define the legacy of the Arab Spring revolutions and the role of religion in society. How and to what extent "the world has changed" is a matter to be determined in the deliberations of the public spheres of these societies.

The post-Islamism perspective, as it is currently applied, offers little in terms of clues of what is at stake in the current conflicts. Part of the problem is that theorists such as Roy and Bayat have been eager to define the "Post-Islamist society" at the expense of analyzing the struggles that ultimately determine its identity. They tend to treat political developments as driven by one and the same process – away from Islamism towards "post-Islamism" and thus underestimate the challenge of difference. Differences within post-Islamist societies make their identities – their values and norms that form their self-perceptions – less certain; they also pose challenges to the societies' capacity to maintain cohesion, especially if cohesion is to be maintained through a common identity.

In this paper I start off by examining the logic of the "post-Islamism" thesis in order to highlight its limitations in understanding post-Arab Spring societies. I then elaborate a perspective informed by "field theory" that can bring to the fore the various actors involved in struggles over the revolutions' legacies and the identity of future democratic societies. The stakes of current controversies over political legitimacy and the place of religion in these societies can be better analyzed by treating "the post-Islamist society" as an empty concept whose content is determined through real-time struggles. The focus is turned to the practices of actors seeking to advance their positions in the public sphere. In the last section I illustrate what this perspective can do for our understanding of "post-Islamist societies" by describing the "feminist-

Islamist” field, the Salafist-jihadist field and the revolutionary youth field. Studying their specificities – most importantly the different sources of social recognition that gain currency within the fields – helps us understand the challenges of inclusion that each of the fields is up against.

The post-Islamist thesis

The Post-Islamism thesis has now been around for more than two decades and continues to generate theoretical contributions and case studies (Gómez García, 2012). In Olivier Roy’s influential formulation, post-Islamism signifies “the precedence of politics over religion” (Roy, 2004 : 4). Roy’s contention is that “Islamism” is no longer about establishing an Islamic state, as it was for Mawdudi, Qutb and Khomeini. Likewise, for Asef Bayat, who originally used the term to describe changes of social practice and discourse in Iran in the 1990’s, “post-Islamism” means “a condition where, following a phase of experimentation, the appeal, energy, symbols and sources of legitimacy of Islamism get exhausted, even among its once-ardent supporters” (Bayat, 1996 : 45). “The Islamists”, writes Roy, “have not established a true “Islamic state”, and nor will they, due not only to the inaccuracy of their conceptual framework, but also to the way their own political praxis and experiences have changed their perception of politics.” (2004:61) Islamists have found themselves in need of reinterpreting the relationship between religion and politics. “The Islamist myth”, he writes, “was that of the unification of the religious and the political; post-Islamism means that both spheres are autonomous, despite the wishes of the actors concerned (the fundamentalists and the secularists)” (2004:3).

The recognition of the limits of religion as political ideology opens up for questions of how to make Islam compatible with modernity and democracy. According to the post-Islamism thesis, the survival of religion depends on its flexibility in this regard. Post-Islamism, Bayat argues, is a project of merging Islamic discourse on duties, responsibilities and prohibitions with liberal notions of rights and freedoms (Bayat, 2007b: 10-11). Post-Islamism is, in either account, a step forward for democratic politics. A recent contribution to this line of reasoning is Alfred Stepan’s suggestion that democratization in Muslim-majority countries (in his case with special attention to Tunisia) is facilitated by “twin tolerations”; the first being

that of religious citizens toward the state, in particular toleration of democratic decision-making in which legitimacy derives from the self-governing people, not religion; the second being that of the state toward religious citizens, which requires non-intervention from laws and officials in the practices of religious citizens, their expressions of views and values, their participation in politics and civil society, on equal terms, that is, their freedom of action which is to be restricted only with reference to the equal rights of other citizens. "In a democracy," he writes, "religion need not be 'off the agenda,' and indeed, to force it off would violate the second toleration" (Stepan, 2012 : 90).

The post-Islamist thesis suggests that political leaders and citizens accept these rules of twin tolerations. In the "post-Islamist society" the role of religion in politics can continue to be debated, but that debate is preconditioned by secular constraints. In this liberalized and secularized version of a Muslim society the question of the Islamic state is resolved. Post-Islamism is a development towards acceptance of pluralism and democratic politics. It is from this perspective that Bayat sees the Arab Spring uprisings' calls for justice and democracy as representing a "critique of Islamism from within and without", a manifestation of the "post-Islamist society", which "wants to transcend Islamist politics by emphasizing people's rights rather than just their obligations" (Bayat 2013: 592). "Post-Islamism", he writes, "hopes to mix religiosity and rights, faith and freedom (with varied degrees), Islam and democracy. It seeks to establish an electoral democracy, a secular/civil state, while promoting a pious society" (Ibid: 592-593).

But this definition of post-Islamism, which fixes not only its timing by also its content, and portrays a society united behind a common post-Islamist identity, poses some problems for understanding the conflicts taking place after the revolutions. To put it simply, it is too insensitive to the differences within these societies. The Salafist movement, for instance, which seeks to Islamize *society* and which has not, therefore, been very concerned with *political* Islam as conventionally understood, is, even after its success in Egyptian parliamentary elections of 2011 and its widely reported rise in Tunisia, treated as a marginal phenomenon (Bayat, 2013 : 593-594), which, whatever its "neofundamentalist" ideology, will be forced by the new conditions to follow the post-Islamist path and "become reluctant agents of democratization" (Roy 2012: 8). For Bayat Salafism is a cause of concern, but not enough to treat it as more than an

exception to the otherwise “post-Islamist” character of the Arab Spring events and post-revolutionary societies; for Roy Salafism as an ideology is quite irrelevant because Salafists as political actors are subject to the same constraints as all others; they “know that without a parliamentary presence, they would lose their influence” (Roy 2012: 12). As for the jihadist Salafists who nevertheless reject democracy and political participation as meaningless to their project of societal transformation he refers to the “uprooted global jihadist” as “no longer a model for young activists” (Ibid: 9). The assumption that Salafism is either a variation of Islamism-turning-post-Islamism, or possibly an outlier case, has rendered further questions redundant. But it ignores the challenge to the Islamism-Secularism debate posed by Salafism due to its refusal to fit into simplistic conceptions of the role of religion in politics. The assumption that Salafists’ role in post-revolution societies will be restricted to the extent to which they turn successfully into ordinary politicians might actually miss what makes Salafist activism meaningful in the first place. I will return to this question in the last section and demonstrate that this is in fact the case.

The limitations of the post-Islamism lens also appear in Bayat’s treatment of what he calls “post-Islamist feminism”. Characteristic of that trend, in his view, is the articulation of a “blend of piety and choice, religiosity and rights.” Post-Islamist feminists insist that “Islam in its totality as a system that could accommodate women’s rights only if it [is] seen through the feminist lens” (Bayat, 2007a : 165). These feminists, he asserts are “different from Islamist women activists such as the Egyptian Heba Rauf, who were primarily Islamist but happened to be women and raised women’s issues. [Iranian] Post-Islamist feminists were feminists first and foremost who utilized Islamic discourse to push for gender equality within the constraints of the Islamic Republic” (Ibid). Bayat, hence, distinguishes between activists who “happen to be women” and those real feminists who “happen to be” Muslims and act in an Islamic context that forces them to instrumentally “utilize” Islamic discourse to advance women’s interests. His analysis favors the side of secular rationality operating “within constraints”. One might ask, as Egyptian scholar Rabab El-Mahdi (El-Mahdi, 2010: 395), why feminism must condition religiosity, why one of them must be “first” and the other “second”. My own concern is that Bayat’s concept of post-Islamist feminism is too narrowly defined, and too focused on content, to help us understand the potential of these groups in

advancing women's rights. If Egyptian activist Heba Raouf, who Bayat dismisses as "first and foremost" an Islamist, is not "post-Islamist" according to his definition – does that mean that she is a less important advocate for women's rights? Does it render her a less relevant actor in the post-Islamist society? Will she have less impact on what that society might be like? Without taking into account the fields in which these actors act, and the relations of power of those fields, it is difficult to understand the specific form that "feminism" takes in a given context and to assess the liberating potential of different movements and discourses. We will return to Heba Raouf in a moment to see what a different reading of her activism might do to our understanding of the potentials of "Islamist feminism".

While both Bayat and Roy offer compelling evidence to support their arguments about the transformations of the major Islamist actors and the changes of the world around them that pose new constraints, there are limitations as to how their arguments help us understand post-Arab Spring societies. This goes as well for the revolutionary youth movements that started the uprisings, on which Roy has very little to say except that "the main issue" for post-Arab Spring politics "will be to redefine the role of Islam in politics" (2012: 16). Bayat, on his part, suggests that in the "post-revolution" setting their protest activities will have little (if any) role to play; "it is political society and the state that rule the day" (2013: 594-595). Both underestimate the challenge posed by the differences within these societies that have caused continuous social conflicts after the fall of their dictators. Not the least those differences concern what a post-Islamist society should be like. It seems likely, then, that we might grasp the stakes of the conflicts better by thinking of the current moment as one in which actors struggle to get a say on that issue.

Field theory

One way of approaching these conflicts is to think of social actors as invested in various social fields that form the basis of their sense of social recognition. In order to defend a privileged position or, alternatively, challenge marginalization, one would need to insist on specific values represented by the field in which one belongs. This line of reasoning underlines recent attempts of social movement theorists to elaborate a

“field theory” that draws on the works of Pierre Bourdieu. This perspective can assist our understanding of the stakes of the conflicts by offering a framework for analyzing “socially constructed arenas within which actors with varying resource endowments vie for advantage” (Fligstein and McAdam, 2012 : 10). Fields are constructed in the sense that “they turn on a set of understandings fashioned over time by members of the field” (Ibid), members who have a sense of what is at stake in field and the “rules of the game”. Plato, according to a popular story, hung a sign over the door to his school that read, “Let no one enter who is not a geometrician”. Likewise, although he needs no actual physical sign (nor an actual physical door) a Salafist activist knows the difference between a legitimate participant in his field and an intruder. The rules of the game create a sense of belonging, and not belonging, in the field, and also function so as to uphold a sense of hierarchy within the field (“one joins the ranks of sheikhs through a personal path of studying and deepening of religious knowledge”; Salafist activist quoted in Merone 2013); they also serve to direct collective actions upon the structures in which it is embedded in order to advance the position of the field in relation to others (“This is the big difference between *the others* in the political scene and *us*”; Ibid).

The point of studying engagement in social fields from this perspective is to recognize that in the absence of a singular source of legitimacy, there are multiple forms of symbolic resources available to actors who seek recognition as legitimate participants in the public sphere. Such social resources – forms of “capital” in Bourdieu’s terms – might vary from education and vocabulary to physical appearance and to social networks, political connections and external (e.g. international) recognition. The critical question is how members of a specific field utilize a field-specific form of “capital” in order to advance their positions in the public sphere. In Bourdieu’s words, “In empirical work, it is one and the same thing to determine what the field is, where its limits lie ... and to determine what species of capital are active in it” (Bourdieu and Wacquant, 1992: 98-99). The field-specific form of capital is the “return” expected by actors who “invest” in the field, and thereby accept the “rules of the game”. Their possessions of the relevant type of capital determine their positions within the field. As for the world outside the field, members of the field will need to defend the currency of their type of capital in order to advance their demands of recognition by actors invested in other fields.

Actors that are excluded or marginalized in some social arenas might seek social recognition by investing in a field whose logic of recognition (form of capital) is different from, even reversed to, the fields in which they were dominated. Various subcultures can be described this way; in Tunisia and Egypt the Salafist movements have attracted large portions of its members from the disenfranchised youth. Excluded from, or marginalized in, the labor market, and stigmatized on the basis of their background (poorer parts of the cities, or small towns and the countryside, and often lower levels of education), they might be drawn into social fields where the sources of recognition are more accessible. The way fields relate to each other, through pragmatic cooperation or competition through practices of legitimization (of own field) and delegitimization (of other fields), shapes the public sphere, in which actors of different fields compete over social and political power, and in which the right to define the national identity, or at least be part of the debate, is the ultimate medium of power. Whatever the post-Islamist society will be like, it will have to handle the challenge posed by these struggles for social recognition and political legitimacy.

Post-Islamist fields

How do agents in struggles for recognition of legitimate participation in the post-Arab Spring public spheres act in order to advance their positions? On the remaining pages I offer a brief exploration of three fields whose practices shape public discourses on the meaning and significance of religious identities in politics and on the legacy of the revolutions. The description of these fields illustrates what we might see from the lens of field theory. It draws on previous research, as well as published interviews with actors of the fields, the actors' own publications, news reports and videos posted online. The three cases illustrate different aspects of the construction and maintenance of fields. The "feminist-Islamist"² field particularly draws our attention to the ways in which investment in a particular field, and the values it upholds, shape the possibilities of creating a larger movement by the merging of more limited fields (proved difficult in the case of rival champions of women's rights). It also shows how actors might combine several sources of legitimacy in order to claim a position within a field and a position for the field relative to other fields. The

² Within parenthesis to signal that the term is unlikely to be accepted by members of the field.

Salafist-jihadist field then calls attention to the ways socially marginalized groups seek to advance their positions by inventing “new” sources of legitimacy, or even reversing those of dominant groups. Lastly, the field of the revolutionary youth illustrates the difficulties of defending the values of democracy and justice on the basis of a non-partisan “interest in disinterestedness” – distance from established interest groups and political parties – in an environment characterized by intense power struggle between established elites. Each part offers a snapshot of a field whose success or failure in advancing its members’ positions will affect the character of the post-Islamist society.

The Islamist-feminist field

As demonstrated by Rabab El-Mahdi (2010) feminism in Egypt consists of multiple groups that only rarely, and unsuccessfully, have worked together to promote gender equality. Different groups have remained divided on issues related to organization (professional NGO vs. political activism) and ideology (liberal vs. “traditional”, “Egyptian” or “Islamic” conceptions of women empowerment). A short-lived project, “Women for Democracy” aimed to bridge differences among several women’s movements in 2005, but failed to do so not only because of different definitions of “feminism”, but also because of how different participants were invested in different fields that were in some ways rivals in the pursuit of public recognition. As one participant told El-Mahdi, many of them “were more concerned with proving each other wrong than in thinking of what we should do next” (El-Mahdi 2010: 392). At meetings of Women for Democracy, El-Mahdi observed that,

even though the participants were cordial to each other, at the first sign of disagreement the discussion turned sour, with insinuations of being ‘reactionary’ and ‘conservative’ (on the part of the secularists against the Islamists); being ‘Westernized’ (the Islamists’ accusation against the seculars); ‘working with the state’ and being ‘donor-driven’ (an accusation of the activists against the NGO professionals); or ‘being too radical with no sense of reality’ (the NGO professionals against the activists) (El-Mahdi 2010: 391)

Women for Democracy reveals some specificities of the field of women’s rights groups in Egypt, in particular how different actors brought with them different sources of legitimacy (“indigeneity”, “tradition”, or being conversant with Western-feminist discourse), and how competition is not only about

the “right” form of feminism; what is at stake is also the position of the participant. In Women for Democracy, secular women involved in professional NGO’s were competitors over foreign funding. In addition, they now battled over leadership with new rivals, namely non-professional political activists, some of which were “Islamists”. This created a sense of competition that blocked the construction of a common ground for advocacy of women’s rights. (El-Mahdi 2010: 392). The point was, as Bayat might put it, to work through a plurality of discourses, including Islamic discourse, to promote women’s rights in ways effective in constraining environments. But what ultimately caused the project to break down was that neither of the groups involved was ready to pragmatically compromise on the values that gave their respective work a sense of legitimacy.

For Heba Raouf, whom we saw Bayat dismiss as too Muslim to be “feminist first”, the main problem of Women for Democracy was an excessive reliance on Western-feminist discourse. A participant in the short-lived project, she found it “importing” “an agenda that is not ours” (El-Mahdi 2010: 388). Muslim women, she argues elsewhere, need not accept western feminism’s view of “religion as a male-made set of oppressive ideas, especially when it comes to women”, but can instead “work on issues like social equality and social justice in relation to the existing social bonds” which might, at least in her case, mean to work within the Islamic resurgence (Raouf Ezzat, 2008). The main concern for women’s advocacy groups, in her view should not be with Islam as a problem; for her Islam is, in a sense, “the solution” for gender equality in Egypt (Qureshi and Raouf Ezzat, 2006). This does not mean, however, that Islam comes “first” and women’s liberation “second”, as Bayat has argued.³ Neither Islam nor women’s liberation is instrumental to the other. Rather, Islam is (potentially) liberating and at the same time, while an “Islamic feminism” would certainly confront “the male, or to be more correct, the patriarchal interpretation of [religion]”, it would also mean a greater recognition of women as “guardians of the culture” (Raouf Ezzat, 2008).

Instrumental to her capability of advancing this position is her ability to draw on several sources of legitimacy, while at the same time countering the attacks of competitors. In fact, the accusation of conservatism or backwarded Islamism does not easily succeed, since she explicitly rejects the idea of

³ In addition to the previous reference, Bayat also dismisses Heba Raouf Ezzat’s views, along with other proclaimed “Islamic feminists”, as being anti-feminist in another work (Bayat 2007: 157).

women as passive practitioners of religious piety by arguing that a true Islamic revival among women would mean “a bigger participation in social life for the sake of social change toward Islam” (quoted in (Mahmood, 2011 : 52)). Challenging the contingent male domination in the religious sphere means for her to challenge women’s tendencies to disengage from debates on Islamic themes. Neither can one easily assert that she is ignorant of non-Islamic ways of thinking – in fact, she teaches political theory at Cairo University and engages with Western philosophy in both writing and lectures. Moreover, she cannot be discarded like other “feminists” as holding Western ideas, for she explicitly affirms that “feminism”, as the term is usually applied, is “imported” from the West, adding: “I am not a feminist” (ACMCU, 2011). In other words, Heba Raouf defends the legitimacy of the field of female activism within Islamism from the potential delegitimization efforts of various other fields. Against the attack from “Western feminism” she defends the capital of tradition; against male domination in Islamic discourse she defends female participation in the name of an Islamic concept of social justice; against the capital of piety she defends the capital of activism. To suggest that by doing so she defends her “investment” in a certain field of her own, the status of which determines her social recognition, is not to reduce her religious/political commitment to a struggle for symbolic power; on the contrary we might accept her devotion to the ideals of Islam in full, while proposing, still, that the claims to a legitimate position will succeed only to the extent that her investment in those ideals “pays off”. This means that the strength of her message and the impact it can have on the fields of competing practices and beliefs depend not simply on content but on the social position of the speaker. In order to really work, as she puts it, “on issues like social equality and social justice in relation to the existing social bonds”, she must first be in a certain position in the web of those social bonds.

Viewed through the lens of field theory, hence, “Islamic-feminist capital” is not merely about “guarding culture”, but also about guarding and advancing a position. Likewise in the wider Islamist field, women’s activism might not be merely about correcting the “errors” of “patriarchal interpretation” blind to the “liberating potential” of religion, but as much about promoting a self-serving counter-interpretation. Indeed these two fronts of struggle are connected, since the relative positions of “Islamic” and “Secular”

feminism, as far as the former is perceived less confrontational (“truer to tradition”) than the latter, likely affects the relative positions between “feminist” and “patriarchal” interpretations of religious traditions.

In any case, the advancement of women’s rights in Egypt has not followed, and will likely not follow, a singular path (away from Islamism towards a “post-Islamist feminism”, in Bayat’s sense, that merges Islam with liberalism). On the contrary, the advancement of women’s rights is driven by a plurality of actors, situated in different fields, all involved in their own struggles for public recognition. The degree to which an anticipated democratic society will turn out more inclusive towards the representation of women and women’s interests, in public discourse as well as in political institutions, will depend on the status of these fields. So will the content of women’s representation. The latter is itself a matter for a debate that can exclude Muslims who only “happen to be women” only if their field is actually weakened by allegations of being too Islamic.

The Salafist-jihadi field

Salafi groups in both Tunisia and Egypt pose great challenges to articulating a substantial meaning of the post-Islamist society. Islamist groups in both countries, who were previously involved in violent struggle, now embrace non-violent means and some even participate in elections. Salafists demand a say in constitutional debates, as well as the wider debates over the place of religion and the character of society. A number of case studies classify Salafi groups in three categories (Marks, 2013, Merone and Cavatorta, 2012, Wiktorowicz, 2006): “scientific” or scripturalist Salafis who tend to discard politics altogether as impious and pointless; the “political Salafists” who participate in elections and seek support for a fundamentalist political agenda, exemplified by the Egyptian Nour party and Tunisia’s Reform Front (*Jebah al-Islah*); and, finally, the Jihadist Salafis who see themselves as part of a global jihad, and which are generally more popular among youth. Salafisms range from activists joining al-Qaeda inspired groups (e.g. in Syria) to the Cairo-based “Salafyo Costa” group (“Costa’s Salafis”) which communicates through Facebook and took the name from their favorite multinational coffee shop chain, that, they feel, symbolizes how their lifestyle contradict the stereotypes figuring in the media (Sami, 2012).

The jihadist Salafists that scholars view as the most fast-growing group of Salafists in Tunisia do not necessarily define *jihad* in terms of armed struggle but more often in terms of internal striving (Merone and Cavatorta 2012: 6). This group, which consists largely of disenfranchised youth, rejects institutional politics of liberal democracy because of its inability to deliver the material and ethical goods they demand. It reacts against “Westernization”, the modernization project from which they were left out. As Merone and Cavatorta write, “These young men, as they are overwhelmingly men, are generally poorly educated, come from lower classes and they have very rarely opportunities to enter the job market because they lack the necessary skills to compete” (Merone and Cavatorta 2012: 7).

Salafists, in a sense reverse the logic of dominant fields, from which they are already excluded, to create a field with a logic of its own, one in which being “westernized” has no currency at all. The Salafist-jihadist field is in fact, not only anti-western, but also challenge other structures of domination by seeking to counter them in practice; studies suggest that these groups do not mobilize only around a shared belief and a shared religious language, but also around ideals that are contrary to those they perceive to operate in institutional politics – hierarchy, exclusion, corruption (see Marks 2013: 110-111, Merone and Cavatorta 2012). Salafist activism “provides a political dimension that allows the *mouhammishin* [i.e. the disenfranchised] to question the way in which the new Tunisian political authority is being constructed because, just as the previous one, it marginalizes them and becomes therefore unjust” (Merone and Cavatorta 2012: 7).

Fabio Merone has published a large portion of an in-depth interview with a young leader of Salafist group Ansar al-Sharia (Merone, 2013). The activist tells the story of how, until the fall of the Ben Ali regime, the young Salafists had to hide their identity, “not only out of fear of the police but also out of fear of people’s judgment.” After the revolution they “unveiled” their identity – “We were Salafis.” They began to dress “in an Afghan manner” and consciously signaled their support for al-Qaeda. The young Salafists wanted, like other youths, to “play a role in the post-revolutionary environment.” They were, he says, “nothing more than *awled al-houma*, a group of kids that grew up together in the same neighborhood” creating a new identity for themselves. That identity, on which solidarity was based – the Salafi (meaning

follower of the “pious predecessors”, *as-Salaf as-Saleh*) – goes beyond religious belief to the embodiment of values of inclusion and equality. The activist comments on the way in which sermons are held: “We always do our preaching in the local dialect, far from the language of politicians. We are simple people and we address simple people in our sermons. (...) During our sermons, people also had fun.”

This activist consistently describes the Salafist-jihadist movement through oppositions, e.g. “lightweight and decentralized”, not “a top-down organization”. Asked about the movement’s political objectives, the activist articulates his rejection of party politics as expressing an opposition to becoming “just another political party”, which he associates with a self-serving pursuit of power. “The goal is to reach Tunisian society, the society we live in (...) I am not interested in taking over power. This is the big difference between the others in the political scene and us. Our target is the people.” By contrasting the pursuit of power to *dawa* (spreading God’s message), the activist distances himself from elitist politics. This is a recurrent theme in his responses that is brought up again when asked about whether the movement would, if possible, impose a vision of religion:

We do not want to develop a project in conflict with the people. They are our families, our friends, our neighbors, our brothers, our sisters. We are part of them. More than that, we insist on the fact that we are part of the people, which makes us the opposite of politicians. We are not, and nor do we want to be a detached elite. Furthermore, we do not have hierarchies. We have perfect equality in our movement. The simple person has the same right to express his opinion as the educated one. A young boy, even if he does not have the same experience as an elder, can still have a better idea when it comes to a specific issue. His age does not make a difference.

He stresses that the movement offers young activists exceptionally important roles. In fact, according to the interviewee, Salafists played a very significant role in 2011 uprisings by mobilizing young people from the poorer areas, people who were ready to use the means necessary to force the president to resign. As Merone and Cavatorta note,

Leading Salafists have no qualms admitting that they belong to and they seek the support of this social category of disenfranchised; in fact they find pride in it. Whereas other political forces including Ennahda and sectors of scientific Salafism use the representation of such a social category to discredit them, the jihadi Salafists consider this class as the vehicle for a process of genuine indigenous Islamic re-generation in Tunisia and the point of departure of their mission of *dawa*. (Merone and Cavatorta 2012: 8)

The particular type of social recognition, or capital, that one might gain from “following the forefathers” is opposed as much to the *political* capital of institutionalized parties, as to the religious authority of senior scripturalist Salafists. In particular, it opposes their practices of exclusion and poses as an alternative an inclusive sphere of religious and political engagement for the disenfranchised youth. It offers them social recognition, solidarity and “an adventure”, by reversing the exclusionary norms of dominant groups. It also opposes ideals and practices associated with a Western-modernization project that marginalizes or excludes them. It thus constructs a social field through these oppositions, and importantly the values that are upheld through their practices are defended through sanctions – e.g. allegations of elitism –, othering (“West”, “language of politicians”, hierarchy), and symbols (dress code, beard, rituals). The legitimacy and the competitiveness of this social field in the public sphere are contingent upon a successful defense of its values (inclusion, equality, piety), and the delegitimization efforts directed at the other, competing fields. It is also dependent upon the positions of its members in a wider Salafi field encompassing “political Salafists” who base their legitimacy partly on participation in political institutions (and might be recognized possessors of political capital) and “scripturalist Salafists” who might have a stronger sense of religious authority. It might also, as in Egypt, include young Salafists who are closer to the fields of “Westernized” youth such as the Salafyo Costa group. The extent to which these groups find themselves having a mutual interest in the advancement of a common source of legitimacy (“Salafi capital”) affects the position of the field itself in the wider public sphere. If members seek instead to base their recognition on something else (e.g. political capital) the field as such is undermined.

The challenge Salafists pose to Tunisia’s assumingly secular national identity is well-covered in media reports. The sit-in protest at Tunis’ Manouba University in late 2012 that demanded the right to wear the niqab and to a place to pray was apparently an unacceptable provocation for many seculars (or non-Salafis). But the chances that the young Salafists can be effectively excluded from the post-Islamist society – or from the debate on its identity – will depend on their commitment to defend the values of their field, which gives them a sense of place.

The Revolutionary Youth field

The youth of Tunisia and Egypt is generally credited for initiating and keeping up the momentum of the revolutions. In light of post-revolutionary disillusion with political elites and their exclusionary practices and structures, the question is warranted whether there is, or under what conditions there could be, a field of the revolutionary youth that could build on the legitimacy gained from the achievements of the revolution. The field in reality, however, seems rather to testify to the difficulties of defending the values of the revolution only – to keep distance to more particular interests of established elites. But initially, youth movements such as April 6 in Egypt sought to defend the spirit of the revolution from the power struggles between the military and the main opposition group. The question of the role of religion was not primarily about opposition to Islamist politics as such, but to possible obstacles to a democratic development. The emergent field of the revolutionary youth is thus not primarily involved in re-defining the role of religion in politics, but it plays a significant role in the struggle over defining the post-Islamist/post-Arab Spring society and the source of political legitimacy in that society.

In Egypt, youth movements such as April 6 mobilized protesters to be part of the uprisings and later continued to monitor the transition. While the larger Tahrir movement was divided over how to position itself towards the military council, and while the later Tamarod-initiated demonstrations that led to the ouster of President Morsi largely sided with the Army, the partial success of the April 6 movement, of initiating and defending the revolution, was consciously based on its non-partisan position. Continuously confronting the SCAF, April 6 defended the elected parliament's legitimacy and protested against the announced candidacy of Omar Suleiman in the presidential election, former head of military intelligence, which one of its leaders, Ahmad Maher, called an "attempt to kill the revolution and halt it in its tracks" that demanded that they would "return to Tahrir Square" (quoted in (Cole, 2012 : 502). Some activists ran for parliament positions (two won seats), and some leaders of the movement did publically endorse Morsi in the presidential election in order to defend the revolution against the candidate that they perceived to represent the interests of the old regime, Ahmed Shafik. The general position, however, according to Ahmad Maher, has been to support the political participation of Egyptian youth, including in party politics,

and to work pragmatically with various actors, while not lining up with any particular party or political leader. Maher has been against forming a political party based on April 6's platform, stating that "it is not our mission" and "we didn't finish our revolution and we must continue pressure to complete our mission ... to have a democratic country, freedom of speech, equality, social justice" (Viewpoint, October 20, 2011).

The later initiative of the Tamarod ("Rebel") movement to collect 15 million signatures to call for early presidential elections was similarly a call for defending the revolution. Originally stating its independence from any political party, it became, however, closely linked to the National Salvation Front, led by Mohamed ElBaradei. *It also benefitted from cooperating with public figures that were political rivals of the Muslim Brotherhood, including billionaire Naguib Sawaris who offered free advertisement on his TV channel and daily newspaper Al-Masry al-Youm, and access to the offices of his party, the Free Egyptians. Being, as founder and spokesperson, Mahmoud Badr, says, "part of the opposition", and even "the grassroots force of the opposition groups" (Abdel-Baky, June 12, 2013)* Tamarod's political role has been more ambiguous than that of the April 6 movement. Its position vis-à-vis the military has also been pragmatic. Leaders of the movement stated that the army's response to the protests "crowned the movement" (Egypt Independent, July 1, 2013), and posed for photographers in front of the police forces present at the demonstrations (Asharq al-Awsat, July 7, 2013), but nevertheless subsequently criticized the constitutional declaration of interim President Adly Mansour as "dictatorial" and a "setback for the revolution" because granting the president too many powers (Middle East Online, July 9, 2013)

Both April 6 and Tamarod have emerged as important actors on the political scene by building its legitimacy on the image of embodying the revolution. Tamarod, however, has not kept as much critical distance from the interests of political parties and the army. This difference led to controversy within the broader field of the revolutionary youth, notably after representatives of both groups met with the interim government after Morsi's ouster to plan actions to affect international opinion. April 6 spokesperson, Ahmed Maher, tweeted: "If we assume it's not a coup, and I tell people it's not a coup, when they screw us again like they did in 2011, what would I tell people?" (Kirkpatrick, July 15, 2013). Other youth activists held similar opinions, arguing that "What happened on June 30 was a celebration of something that had

been decided long beforehand, or it would never have been allowed to happen” (human rights activist Wael Abbas quoted in Van Langendonck, July 19, 2013). The apparent conflict within the revolutionary youth field deepened as activists of Tamarod justified the killing of Morsi supporters by the army (and armed collaborating civilians) while April 6 activists condemned them.

These disagreements are instructive for understanding the specific form of capital that actors invest in and need to defend in order to gain recognition as leaders of the revolution. Pragmatically allying with any actor that has a compatible interest does not necessarily generate that form of recognition, although it might help to create a political platform for future success in politics (Tamarod’s leaders express that kind of interest). More important than the individual actors’ stakes in this struggle, however, is the constitutive logic of the field, according to which non-partisanship and the “disinterested interest” in democracy (for democracy’s sake), justice and freedom form the basis of its legitimacy. The field as such will maintain its particularity and force only to the extent that these values are upheld. In Habermasian terms, members can either struggle to maintain the function of a critical public sphere as a public “warning system” that monitors political institutions, or be “colonized” by the instrumental rationality of politics (Habermas, 1996: 359).

The point is as relevant in Tunisia which, since June 2013, has its own Tamarod movement, determined to collect two million signatures to support a call for the dissolution of the National Constituent Assembly and the formation of a government of national unity. After the “Jasmine Revolution”, reports as well as research findings on youth participation in politics have been largely about disillusionment and complaints about exclusion (Honwana, 2013, Collins, 2011). Tamarod’s message responds to these widely shared feelings by demanding justice, democracy and effective measures to reduce poverty and social exclusion (Tunisia Live, July 4, 2013). Although some spokespersons do not hesitate to blend that message with complaints about “Islamization” of society, Tunisia’s Tamarod seems to affirm the necessity of impartiality and defense of democracy. The prospect for this emerging field to play a significant, independent role in Tunisia will, however, depend on its ability to maintain that source of legitimacy.

Members of the revolutionary youth might use various types of capital to advance their own individual positions in the public sphere and the field of power. They might accumulate political capital by building ties to established political elites, even functioning as the grass roots movements of “liberal” politicians. But that does not mean a great achievement for the *field* of the revolutionary youth as such. On the contrary, it would contribute to the demise of that field as an independent political force. Only by defending values that are specific to their field – “democracy for democracy’s sake” – can they promote a new logic of political participation that allows them to be recognized as legitimate actors independent of the self-interested support of dominant actors that ask in return that they subordinate themselves to the structures of the political sphere. The revolutionary youth field is constituted through its counterstrategies against social structures of exclusion and marginalization. Like the “Islamist-feminist” field is constituted through the mutual exclusions of Western/Secular feminism and Islamic women’s activism, and the Salafist-jihadist field through counterstrategies against the exclusionary structures of “Westernized” society, members of the revolutionary youth field will act either to compete with political actors over recognition and influence by seeking to change the terms of participation or by accepting them and working within the system. While it was the dissatisfaction with those terms that to a large extent fueled their protests, disagreements over how to utilize the “revolutionary youth” capital created for the field might in the end lead to the field’s collapse as members seek other, incompatible forms of recognition through cooperation with members of other fields, in Egypt with oppositional politicians and the army (and reportedly also with the Muslim Brotherhood). This brief account of the three fields of action suggests that their respective members seek forms of social legitimacy by drawing on symbolic resources that are relatively accessible and effective to them. The success of their struggles for recognition will depend on collective efforts to defend the currencies of, respectively, “Islamist-feminist” capital, Salafist-jihadist capital and revolutionary youth capital. In turn it will have significant impacts on the substance of these societies’ post-Islamist identities. So will the ways they choose to tackle the challenge of difference that is seriously underestimated, if not absent, in the works of Bayat and Roy.

Conclusion

The future of Egyptian and Tunisian societies will not be determined alone by competing political elites' acceptance of what Stepan calls "the twin tolerations" – of Islamists towards democracy, and of secularists towards religious politics – but will depend also on the inclusion of voices that have been previously excluded or marginalized from public discourse. By treating "the post-Islamist society" as an empty category, this paper has turned the focus to actors who seek to advance their positions on the basis of their commitments to different social fields where they are recognized as legitimate members. My main argument is the proposition to turn our attention to the determinants of recognition within these fields and of the status of the fields. Inquiries into these questions should seek to identify and define the relations of these fields and their relations to other fields. How might exclusion or marginalization in one field push actors into other fields? How might actors in a marginalized field, like the Tunisian Salafists, gain recognition in the "field of power" without sacrificing the specific type of capital that allows them a sense of legitimacy in their "world reversed"? What kind of engagement with political elites might serve the interests of these countries' revolutionary youths without undermining their unique source of legitimacy derived from the revolution itself – their struggle for democracy for democracy's sake and for social justice in the name of the revolution? These are critical questions for social cohesion and the future of democracy in these countries. By highlighting these issues, the perspective proposed in this paper is a step towards exploring them in greater detail.

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ECOWAS and the Promotion of Democracy and Human Rights in West Africa: Some Lessons for the Arab Maghreb Union in the Post-Arab Spring Era

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Abstract

This paper argues that regional organisation is an important instrument for the promotion of democracy and protection of human rights within countries in transition. It posits that the absence of an effective regional response has contributed to bumpy transition being experienced in the post-Arab spring countries. Economic Community of West African States (ECOWAS) provides a good example to demonstrate that the difficulty faced by Libya, Tunisia and Egypt in their transition to democracy is, in part, the consequence of absence of an effective and functional regional organisation in the Maghreb. From an organisation aspiring to establish economic union in West Africa, ECOWAS has evolved into an important institution for the promotion of democracy and protection of human rights. The Organisation now enjoys recognition and support from the international community as it strives to tackle challenges of political instability and security. It has over the years developed effective regional institutions and mechanisms for the entronement of democracy in member countries and promoting respect for human rights within the West African sub region. ECOWAS was involved in the democratic transition of Liberia and Sierra Leone after going through violent civil wars. It also helped Côte d'Ivoire, Guinea, Guinea-Bissau, Togo and Niger to manage their political crisis and transit into democratic regimes. More recently, ECOWAS is involved in the efforts to restore stability and security in Mali, albeit with the support of the international community. The Arab Maghreb Union (AMU), on the other hand, has been moribund since its inception in 1989. Lack of cooperation between the member countries (Algeria, Libya, Morocco, Tunisia and Mauritania) constitutes the bane of AMU. In the light of the current democratic transition that is taking place in the Maghreb after the Arab Spring, this paper makes a case for AMU to play a role by taking some lessons from the experiences of ECOWAS.

Introduction

Regional organisation is an important instrument for the promotion of democracy and protection of human rights within countries in transition. It is a level of governance within the multi-levels of governance in the globalizing world today. It lies between the state level and the interregional and multilateral levels. Regional organisation as a level of governance provides a platform for making up the inadequacies of the state as a sovereign island in addressing a problem without exposing the problem to the difficult and precarious (and sometimes treacherous) multilateral level of governance. For many developing countries regional organisations are cocoons within which to shield their independence and vulnerability from the harsh conditions of the international system. In Africa, Latin America and Asia, regional organisations are formed to protect member states' political and economic interests through common solidarity and joint action. It therefore follows that any region or sub region that lacks functional regional organisation, such a region, and the states within it, will become exposed to the onslaught of globalisation and the vagaries of international relations. The paper argues that there is role for a regional organization in the Arab Spring and its aftermath. The Arab Maghreb Union (AMU) has a historic opportunity to play this role if it takes lessons from its West African counterpart, the Economic Community of West African States (ECOWAS). The Arab Spring revolution has been a subject of international manipulations in part because the Maghreb region, which comprises of Morocco, Tunisia, Algeria, Libya and Mauritania, lacks an effective regional organisation that could help in mediating the political transition experienced in the region. The AMU has not been effective since its inception in 1989. Its ineffectiveness is indicative of lack of regional cooperation between the states.

The importance of regional cooperation in an era of globalisation cannot be overemphasized. Hettne and Söderbaum (2006) analyze the usefulness of regional cooperation in addressing regional and global challenges. They argue that regional cooperation can provide global or regional goods by promoting the gains from free trade/market; promoting the gains from knowledge through research networks; preserving peace and security through formation of regional security complex and community; ensuring financial stability; preventing adverse environmental spillovers and; halting the spread of communicable diseases (Hettne and Söderbaum, 2006). These are however, by no means exhaustive. Other uses of regional cooperation abound. The formation of regional structure for the promotion of common values and norms is another important use of regional cooperation. Economic Community of West African States (ECOWAS) is one regional organisation that has transformed its purpose (building an economic community) to include other essential goals such as promotion of peace, security, political stability and human rights. It has been able to establish institutional and normative structures to manage political, social and economic crises

within the sub region or member states. ECOWAS efforts in restoring peace and political stability in Liberia and Sierra Leone in the early 90s; Cote d'Ivoire, Guinea, Guinea-Bissau, Togo, Niger and More recently Mali provide good examples and useful lessons on how a regional organisation can facilitate peaceful democratic transition in member states after undergoing serious political change. The next sections of the paper will show how ECOWAS has been able to do that with the support of its partners, such as the European Union and what lessons the Arab Maghreb Union (AMU) can derive from ECOWAS experience.

The paper employs content and documentary analyses of ECOWAS instruments, reports and official documents, as well as reports of media related to democracy and human rights in both the ECOWAS region and the Maghreb region before and after the Arab Spring.

ECOWAS: Origin and Political Developments

Economic Community of West African States (ECOWAS) is a sub-regional organisation established by 15 West African states (Benin, Burkina Faso, Côte d'Ivoire, Cape Verde, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo- Mauritania withdrew in 2001) in 1975 to facilitate the economic integration of their disparate economies with the aim of uplifting the standard of living of their peoples. Until 1990, the organisation's main preoccupation was market integration through the establishment of a policy of free movement of people and goods, right of residence and establishment for the citizens of ECOWAS across the West African sub region. The rationale behind this policy is based on the economic argument that an enlarged market could help the ECOWAS countries to pool their resources for development through gains from economies of scale, and by overcoming structural challenges posed by their small and weak national markets.

Until the 1990s, the main institutions of ECOWAS were the Authority of Heads of State and Government, which is the highest decision making body, followed by the Council of Ministers, who essentially prepare, and follow up, on policy making and implementation. These institutions were assisted by a Secretariat, headed by an Executive Secretary, dealing with day-to-day affairs of the Organisation. These institutions and their mandates would be transformed, and new ones added in the early 1990s.

The end of the Cold War in the early 1990s radically changed the international security landscape, ushered in the era of unfettered globalisation and therefore unsettled many aspects of life (social, economic, security and political) in different countries, sub regions and regions of the world (Fawcett and Sayigh, 1999; Falk, 1997; Hogan, 1992). In the West African sub region, the end of Cold War brought about changes in both the structure and mandate of ECOWAS. It imposed on the member states the need to form a regional security complex as the region became threatened by political instability occasioned by the outbreak of violent intra-state conflicts. These conflicts constituted a huge threat to the realisation of the

economic integration objective of the Organisation. Between 1989 and 1990, violent conflict broke out in Liberia between the government and rebel groups, which caused untold hardship and death to the people. The consequent flow of refugees across the sub region effectively made the war a matter of urgent regional concern. With little or no prospect of international intervention, ECOWAS was compelled under the situation to venture into conflict resolution and peacekeeping in 1991 (Musah, 2011). That development came with some resistance and lack of consensus among the member states as it was seen as an aberration by an Organisation meant to promote economic integration and development. ECOWAS Monitoring Group (ECOMOG), a peace-keeping outfit, was formed out of necessity to address the war in Liberia. As the war spilled into the neighbouring state of Sierra Leone, ECOMOG's mandate was expanded to include Sierra Leone. Since Liberia and Sierra Leone, ECOWAS has seen its mandate and objectives transformed to include political and security matters (Musah, 2011). The transformation led ECOWAS to embrace the principles of democracy, respect for human rights norms and the issue of human security. This development was seen as a necessary step to address on a sub regional bases the roots of military or civilian autocracy and the violent political change and the human suffering that result from it. Of the 15 member states of ECOWAS, 12 had experienced violent armed conflicts (Dunmoye, 2010). ECOWAS therefore, developed institutional and normative frameworks to serve as a common rule for dealing with undemocratic practices by regimes and protect the rights and interests of the people. In the next section, these frameworks are examined in detail.

ECOWAS Institutional and Normative Structures for the Promotion of Democracy and Human Rights

West Africa has had its share of violent intra-state conflicts and political interregnum with their attendant impact on regional stability and human sufferings. As earlier mentioned, since Liberia and Sierra Leone the ECOWAS leadership realized that without security and political stability the objectives of economic integration and development would not be achieved. Therefore, in 1990 the ECOWAS Authority of Heads of State and Government made a Declaration on Political Principles in which they indicated their common commitment to pursue liberal democratic reforms. More significantly, the Declaration was made to show the determination of the leaders:

to concert our efforts to promote democracy in the sub region on the basis of **political pluralism** and **respect for fundamental human rights** as embodied in the universally-recognised international instruments on human rights and in the African Charter on Human and Peoples Rights (Emphasis mine, ECOWAS,1991)

It is interesting to note that this declaration was made at a time when most of the West African countries were under military dictatorships. The principles of political pluralism and fundamental human rights were therefore to form the common values around which states in the sub region are to converge.

It is not surprising therefore that in 1993 the founding ECOWAS Treaty of 1975 was revised. One of the fundamental principles of the Treaty is the 'promotion and consolidation of a democratic system of governance in each Member State as envisaged by the Declaration of Political Principles adopted in Abuja on 6 July, 1991'. The new Treaty brought new and bold changes to the Organisation. It created new supranational institutions, the ECOWAS parliament and the ECOWAS Community Court of Justice, which symbolizes that ECOWAS would be a Community of democracy and rule of law. The people rather than governments alone became the new focus. For instance, Articles 81 and 82 made provision for the involvement of regional nongovernmental organisations (NGOs) and socio-economic organisations and associations respectively. Furthermore, Article 58 of the Treaty empowers the Organisation to intervene in intra-state conflicts. It is noteworthy that the conflicts are mostly political conflicts over who rules, for whom and for how long.

Recognizing the need to make the provisions of the Revised Treaty more adequate, effective and pragmatic, the ECOWAS Authority agreed in 1999 to establish a Mechanism for collective security and peace, which is known as Protocol relating to the "Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security" (ECOWAS, 1999). The mechanism is based on the conviction of the leaders on 'the need to develop effective policies that will alleviate the suffering of the civil population, especially women and children, and, restore life to normalcy after conflicts or natural disasters, and desirous of making further efforts in the humanitarian sphere. It was also based on an awareness of the fact 'that good governance, the rule of law and sustainable development are essential for peace and conflict prevention' (ECOWAS, 1999). Therefore, among the objectives of the mechanism are 'to prevent, manage and resolve internal and inter-state conflicts' and 'to establish institutions and formulate policies that would allow for the organisation and coordination of humanitarian relief mission' (ECOWAS, 1999:8). The human security concern embodied in the mechanism has been highlighted by the definition of internal conflict in Article 25 on conditions for the application of the mechanism. It connotes conflict that threatens to trigger a humanitarian disaster, or that poses as serious threat to peace and security in the sub region. Humanitarian assistance is, thus, an integral part of the ECOWAS mechanism. In the event of crisis, conflict and disaster, it is the responsibility of ECOWAS to intervene to alleviate the suffering of the populations and restore life to normalcy. In that regard, the mechanism provides that ECOWAS works with national, regional NGOs and religious organisations; the African Union, the United Nations and its agencies and; other international organisations intervening in humanitarian sector (ECOWAS, 1999:22).

As earlier mentioned, most internal conflicts within the member states are caused by struggle for power between elites and social groups. Therefore, as part of its peace-building efforts, the mechanism provides that ECOWAS be involved in the preparation, organisation and supervision of elections in member states. It is also to monitor and actively support the development of democratic institutions of member states. In the event of absence of authority of government or where governmental authority is seriously eroded, ECOWAS is to support processes towards the restoration of political authority. In doing so, special attention is to be paid to 'the development of respect for human rights, enhancement of the rule of law and the judiciary' (ECOWAS, 1999:24). In summary, the Mechanism emphasizes the issue of establishing, maintaining and restoring peace and political stability through democratic processes, respect for human rights and provision of humanitarian relief. To further underscore the importance of these tasks, a supplementary protocol was promulgated by the ECOWAS Authority in 2001, known as the Protocol on Democracy and Good Governance.

The 2001 Protocol on Democracy and Good Governance has some specific and lucid provisions to prevent conflicts arising from coup d'état, religious intolerance, political marginalization and non-transparent elections. A set of constitutional convergence principles was agreed by the ECOWAS Member States. The principles constitute the sum of democratic aspirations of the states and their common values and norms. Among these principles are separation of powers; accession to power through free, fair and transparent elections; zero tolerance to power obtained or maintained by unconstitutional means; armed forces must be apolitical and must be under the command of legally constituted political authority; secularism and neutrality of the State in all matters relating to religion; respect for individual freedom and freedom of association and press, among others (ECOWAS, 2001). To make these principles respected and effective, provisions were made for sanction in the protocol. These include suspension of a defaulting member state from all ECOWAS decision-making bodies; refusal to organize ECOWAS meetings in the member state; refusal to support the candidates presented by the member state for elective position in international organisations (ECOWAS, 2001:22). As we shall see in the next section, ECOWAS has been putting to good use these sanctions in order to ensure that the democratic wishes and rights of the peoples of West Africa are respected by governments. The shift in emphasis from regime security to human security is further elaborated in another instrument of ECOWAS, i.e. the ECOWAS Conflict Prevention Framework (ECPF).

The ECPF is enacted against the background of new strategic vision of ECOWAS transformation from an 'ECOWAS of States' to an 'ECOWAS of the Peoples'. The framework is to facilitate the resolution of latent tensions, in the process of the transformation, between sovereignty and supranationality, and between regime security and human security (ECPF, 2008). The vision is, however, to resolve the tension in favour of supranationality of ECOWAS institutions and norms, as well as human security. Human security as defined by the Framework include 'the creation of conditions to eliminate pervasive threats to people's

and individual rights and the promotion of human development to ensure freedom from fear and freedom from want' (ECPF, 2008:9). The objective of the ECPF is therefore an ambitious one. The Framework has a total of fourteen components among which are Democracy and Political Governance, and Human Rights and Rule of Law. In realizing the objective of promoting democracy and political governance, ECOWAS is mandated to strengthen democratic institutions and processes within the member states. To this end ECOWAS seeks to strengthen arms of government, political parties, electoral management bodies, civil society groups and associations. Furthermore, in promoting human rights and rule of law, the Framework sets out collaborative roles for the member states, ECOWAS and civil society to ensure equal protection and access to justice and social services before the law, and strengthen the institutions of human rights and justice in the region.

In sum, these frameworks embody the normative and institutional structures upon which ECOWAS play an active role in ensuring security, political stability and respect for human rights within the ECOWAS region. The frameworks have, over time, been put to use in different situations within the sub region with some levels of success. In the next section of the paper, a historical review and analysis of ECOWAS experience in the application of the instruments and frameworks for the promotion of democracy and human and rights are made.

ECOWAS: Experiences in the Promotion of Democracy and Human Rights

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ECOWAS has, over the years, played pivotal roles in the transition process of its member states that experienced difficulty political and security situations. It has done so by mobilizing resources, support and cooperation of various stakeholders, from the member state governments, civil society groups and political parties, to other regional and international organisations, financial institutions, and development partners (like the EU, France, United States, Germany, etc). ECOWAS has intervened to alleviate the suffering of its citizens in many situations, and to restore normalcy and political stability. In this section, a number of ECOWAS experiences with transition process of some of its member countries are examined. It is worth restating here that the veering of ECOWAS into political and security issues was accidental. Democratization became the fulcrum of its efforts towards the restoration of political stability and security after violent conflicts or civil unrest in the member states. There is also a regional dimension of ECOWAS experience in dealing with human rights issues and strengthening of democratic institutions

The Early experiences of ECOWAS in political and human rights matters were in Liberia and Sierra Leone in the early 1990s. The nature of ECOWAS involvement in these countries was accidental and without clear mandate or structure. It involved the use of brute force, with less regard to human rights, to halt and resolve violent armed rebellion against the governments and their peoples.

Liberia: The first civil war that broke out in Liberia in 1989 lasted and ended in 1998 with the help of ECOWAS Monitoring Group (ECOMOG). ECOMOG's was an *ad hoc* force, whose initial mandate was to monitor a cease-fire between the government forces under the Liberian President, Samuel Doe, and the National Patriotic Front of Liberia (NPFL) led by Charles Taylor. This mandate later transformed into a peace-keeping mission. The war in Liberia had generated humanitarian and security and stability concerns in the sub region. There were thousands of refugees seeking shelter in the territories of Cote d'Ivoire, Guinea, Sierra Leone, Ghana, Mali, Gambia and Nigeria (Mmoma, 1997). Among the refugees were dissidents fighting with Charles Taylor's NPFL that constituted a threat to the stability of these states. ECOMOG helped in securing the country from being overtaken by the NPFL rebel group and in the organisation of elections in 1996 that ended the first war. However, in 2003 another war broke out in Liberia, known as second Liberian war. Again ECOWAS intervened by embarking on another peace-keeping operation under ECOWAS Mission in Liberia (ECOMIL). A Comprehensive Peace Agreement was signed on 18th August 2003 before the deployment of troops in September 2003. By October 1, 2003 UN approved the conversion of ECOMIL into a UN International Stabilization Force, known as UNMIL (Bakhoun, n.d.). With the help of ECOWAS mediation, Charles Taylor was persuaded to step down from power in 2003 which helped in ending the war. (Bagayoko, n.d.) As part of the peace-building efforts, ECOWAS participated in the conduct of elections, which saw Ellen Johnson Sirleaf emerging as the first democratically elected female leader in Africa.

Sierra Leone: The contagion effect of Liberian war affected Sierra Leone. The Revolutionary United Front (RUF) under Foday Sankoh started a war against the government of Sierra Leone. ECOMOG's mandate was extended to Sierra Leone and its headquarters was moved from Monrovia to Freetown. However, the army overthrew the government in 1992. ECOWAS, with the help of AU and UN, was able to broker a cease-fire that resulted in elections in February 1996. The Military handed over power to the newly elected President, Ahmed Tejan Kabbah. The RUF did not support the elections and continued to fight. The new government was overthrown in coup by the army in collaboration with RUF in May 1997. An ECOWAS Committee of Five on Sierra Leone met a delegation representing the chairman of the junta and signed a peace plan on 23 October 1997 at Conakry. ECOMOG was mandated to monitor a cease-fire agreement. President Kabbah, whose government was, then, in exile accepted the peace agreement. When the Junta tried to renege on the peace agreement, ECOMOG launched a military campaign in February 1998 that led to the collapse of the Junta and its forceful expulsion from Freetown. The democratically elected government of Tejan Kabbah was restored to power on 10 March 1998 (UNAMSIL, 2005). Since then Sierra Leone has enjoyed peace and democratic stability.

Due to the Liberian and Sierra Leonean experiences, ECOWAS developed regional frameworks to, not only justify its interventions but also, enable it prevent conflicts through the entronement of democracy and democratic culture, as well as respect for human rights. To a large extent, the subsequent interventions of ECOWAS were mainly to ensure compliance with the regional frameworks.

Guinea-Bissau: the conflict in Guinea-Bissau is rooted in its history and geo-politics. It was one of the only two Portuguese colonies in the West Africa, the second being Cape Verde. These two countries gained their independence together through armed resistance under the banner of the African Party for the Independence of Guinea-Bissau and Cape Verde (PAIGC) in 1974 and 1975 respectively. ECOWAS involvement in Guinea-Bissau followed many years of political instability resulting from lack of unity among the leaders of the independent struggle and ethnically inspired coups and political executions that characterized most of its first two decades of existence. On 6 June 1998 President Nino Vieira, in a bid to respond to alleged links to arms trafficking between elements of the Movement of Democratic Forces of Casamance (MFCC) and the Guinea Bissau army, put his Chief of Defense Staff, General Ansumane Mané, who was an important figure in the independence struggle, under house arrest. On 7 June, soldiers loyal to Mané deployed in the Capital and demanded the resignation of Vieira. The civil war that ensued saw the involvement of Guinea and Senegal in the war to help Vieira. ECOWAS, under the leadership of Gnassingbe Eyadema of Togo, intervened and got the parties to sign a peace agreement on 1st November 1998 in Abuja. The agreement provided for the withdrawal of foreign troops and their replacement by ECOMOG peacekeeping force and the instauration of government of national unity to organise elections. However, lack of funds and logistics hindered ECOMOG's full deployment. The rebels then seized the opportunity to ouster the government of Vieira on 7th May 1999. At ministerial meeting in Lomé on the 24th and 25th of May, ECOWAS condemned the coup and withdrew its forces, even though the new regime in the country requested the forces to remain. The UN stepped in and opened a Peace Building Support Office in Guinea authorized by the UN Security Council. With the support of the UN Office the transitional government conducted first and second rounds of Presidential elections on 28th November 1999 and 16th January 2000 respectively. The elections saw the emergence of Kumba Yala of the Party for Social Revolution as the new President (Yabi, 2010).

However, in September 2003, Kumba Yala was deposed in a coup d'état, and Guinea Bissau entered another era of political instability. ECOWAS collaborated with the new authorities and the international community to bring about a transition process. By 2005 Vieira was re-elected president. However, the political situation in the country continued to be tumultuous. This climaxed when in March 2009 President Vieira was assassinated in his presidential palace by the Military, who insisted it was not a coup. Following the assassination of the head of state, the parliament speaker, Raimundo Pereira succeeds as interim

president. Three months after, that is June 28, Guinea-Bissau held elections for a new leader. On July 29, after a runoff election, Malam Bacai Sanha was elected the new president. The poor country continued to suffer political unrest, until the death of President Sanha in January 2012 after suffering from a protracted illness. Elections were held in March and scheduled runoff in April was foiled by section of the Guinean military. ECOWAS, for the first time, differed from other members of the international community, such the AU, the EU and Angola, and declined to sanction the military junta. ECOWAS mediators and the junta named Manuel Serifo Nhamadjo, the speaker of the parliament to lead a transition government (CIA Factbook, 2012). ECOWAS deployed some troops to restore stability and assist the new interim government to return the country to democracy. At the moment, ECOWAS is mobilizing the International Contact-Group on Guinea Bissau made up of nine countries (Angola, Brazil, Cape Verde, Spain, France, Ghana, Nigeria, Portugal and Senegal) the Community of Portuguese Speaking Countries (CPLP), the UN and the West African Monetary and Economic Union (UEMOA) to support the stabilization processes in the country (Yabi, 2010).

Côte d'Ivoire: the political crisis in Côte d'Ivoire boomeranged after the death of the country's founding leader President Felix Houphouët-Boigny, who ruled the country from 1960 until his death on 7 December 1993. In 1999 the government of President Henry Konan Bédié was overthrown in a coup d'état led by General Robert Gueï. The ensuing power struggle in the country assumed different dimensions. There was the controversial issue of national identity and eligibility conditions for national elections which excludes some section of the political leaders from contesting the presidential elections. Alhassane Ouatarra was disqualified from contesting in the 2000 elections that saw the emergence of Laurent Gbagbo as the President. Clashes between the political leaders, particularly Gbagbo and Gueï and their supporters led President Gbagbo to convene a national reconciliation meeting with his rival political groups in 2001. Despite these efforts, crisis erupted on 19 September 2002 with rebel soldiers seizing and controlling some parts of the country. In the process, foreign nationals were isolated and targeted resulting in displacement of thousands of people mostly foreigners. General Gueï was killed in Abidjan and the situation degenerated. ECOWAS intervened swiftly. An emergency summit was convened in Accra on 29 September 2002,

which set up a contact group comprising Ghana, Guinea-Bissau, Mali, the Niger, Nigeria and Togo, together with the African Union, to promote dialogue between the rebels and the Government of Côte d'Ivoire, and to discuss a general framework to resolve the crisis. The summit was followed by a meeting of the ECOWAS Defence and Security Commission, which recommended that immediate arrangements be put in place to deploy ECOWAS troops to Côte d'Ivoire. The approved mandate of the ECOWAS force included monitoring a proposed ceasefire, ensuring the disengagement of the insurgents from the areas that had fallen under their control, and disarming the rebel groups (MINUCI, 2005).

A cease-fire agreement was signed after much effort on 17 October. Thereafter peace talks commenced in Lomé on 24 October 2002 under the auspices of the President of Togo, Gnassingbé Eyadéma, who had been designated by the ECOWAS Contact Group to lead the negotiations. The first agreement was achieved and the parties reaffirmed their commitment to the ceasefire agreement, pledged to refrain from human rights abuses, and acknowledged the need to preserve the territorial integrity of Côte d'Ivoire and to respect the country's institutions. Another agreement was signed again on 1 November, under which the Government, among other things, agreed to submit to the National Assembly a draft amnesty law, which would include freeing jailed members of the military and permitting the return of exiled soldiers, who would be reintegrated into the army (MINUCI, 2005). The talks however broke down as the rebels insisted on the resignation of Gbagbo, a review of the Constitution and the holding of fresh elections, while the Government demanded that the rebels disarm and honour their commitment to preserve the territorial integrity of the country. Efforts of ECOWAS to resolve the impasse included submission of a compromise draft peace plan in November 2002, series of meetings among the ECOWAS leaders in Abidjan and Dakar on 16 and 18 December 2002, all to no avail. ECOWAS leaders then decided to deploy an ECOWAS Peace Force for Côte d'Ivoire (ECOFORCE) and requested France and African members of the Security Council to bring the matter before the Council. Meanwhile ECOWAS peace efforts yielded complementary progress when President Eyadéma brokered an agreement on cessation of hostilities between the Government and the two western-based rebel movements (i.e., Ivorian Popular Movement of the Great West-MPIGO and Movement for Justice and Peace-MPJ) that were not part of the ceasefire agreement of 17 October 2002 (MINUCI, 2005).

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ECOWAS was also part of the Linas-Marcoussis Agreement signed by all the warring factions in Paris under the Security Council from 15 to 23 January 2003. The main outcome of the agreement was the formation of government of national reconciliation with detail tasks of democratic transition, demobilisation and reform of security sector. ECOWAS was part of a follow-up committee set up to ensure its implementation. The implementation of the Agreement was marred by violence in Abidjan over the allocation of defense and internal affairs ministerial positions to rebel groups. Although problems persisted, by 3 May 2003, a complete cease-fire was reached between the government forces and the rebels. On 13 May the United Nations became involved by establishing the United Nations Mission in Côte d'Ivoire (MINUCI) and worked with ECOWAS and France to manage the crisis. The mandate of MINUCI was to assist in the implementation of the Linus-Marcoussis Agreement. Based on the agreement and recommendations of the parties involved in the resolution of the conflict the Security Council adopted resolution 1528 (2004), establishing the United Nations Operation in Côte d'Ivoire (UNOCI), a peace-keeping outfit. The mandate of the peacekeepers was to monitor the cease-fire, assist in disarmament, demobilisation, reintegration, repatriation and resettlement, and the protection of UN personnel, institutions and civilians; support for

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After a decade of postponing elections, President Gbagbo finally agreed to organize election in 2010. The Presidential election was hotly contested between the incumbent, President Gbagbo, Allasane Ouattara and Henry Konan Bedie, which resulted in a run up between Gbagbo and Ouatarra. Before the run up elections, Bedie declared his support to Ouatarra and eventually Ouatarra won the elections. When Gbagbo decided to manipulate the outcome of the elections through the National Constitutional Court, ECOWAS took a decisive position by recognizing Ouatarra as the legitimate winner of the elections and continued to pressure Gbagbo to yield power. The final communiqué of an Extraordinary Meeting of the Authority of Heads of State and Government on Côte d'Ivoire on 24 December 2010 in Abuja states 'in the event that Mr Gbagbo fails to heed this immutable demand of ECOWAS, the Community would be left with no alternative but to take other measures, including the use of legitimate force, to achieve the goals of the Ivorian people' (ECOWAS Final Communiqué, 2010).

The UN, AU and most of the international community sided with ECOWAS. Gbagbo was ousted from power by a rebel movement with the tacit approval of ECOWAS, even though it would ordinary be contrary to the protocol on Democracy and Good Governance, which states that rebellion is not accepted in the

Community. The meditative effort of ECOWAS, with the support of the UN and its development partners, has again brought some stability in Côte d'Ivoire.

Togo: In 2005, when the President of Togo Gnassingbe Eyadema died on 5th February, the military, who were loyal to the former President, decided to flout the country's constitution and imposed his son, Faure Eyadema as the new President of the Republic. The people of Togo agitated against that unconstitutional action. In the same vein, ECOWAS rejected the imposition of the military as unconstitutional and compelled Faure to step down on the 25th of February, i.e. after spending only 20 days in power (Jolayemi and Adoba, 2005). An interim government was formed with the help of ECOWAS that organized elections.

Niger Republic: ECOWAS involvement in resolving the political crisis in Niger republic was to stop the then President Tandja Mamadou from manipulating Niger's constitution in order to elongate his tenure by way of a referendum. The action of the President contradicted the spirit and letter of the ECOWAS Protocol on Democracy and Good Governance to which Niger is signatory. ECOWAS sent mediation team led by former Nigeria's Military Head of State, General Abdulsalami Abubakar (Rtd) to persuade the President to halt his ambition. However, President Tandja persisted with his plan. The civil society and opposition political parties mobilized themselves against the President, demonstrated in the streets of Niamey, the capital of Niger, and directly addressed their grievances to the ECOWAS extraordinary meeting of Heads of State and Government. Consequently, Niger was suspended from the organisation for what ECOWAS termed constitutional illegality. What followed was a Coup d'état that ousted Tandja. The Military Junta worked with ECOWAS to set in motion a transition process that saw the return of constitutionalism and democracy in Niger.

Mali: Mali is the most recent situation that ECOWAS has had to contend with. Within a short span of time, the country, which had enjoyed relative political stability, experienced a military coup d'état on 22nd March, and from 30th March half of it was taken over by armed rebellion, through a complex alliance between a long time separatist group, the Movement for Liberation of Azawad (MNLA) and some radical Islamic sects, referred to as Al-Qaida in the Islamic Maghreb (AQIM). On 6th April, the rebels proclaimed an Independent State of Azawad following a strict Islamic law. ECOWAS condemned the coup and worked towards restoration of a civilian rule. At the same time ECOWAS sought peaceful engagement with the rebels. With little prospects of peaceful end to the occupation of the Malian territory by the rebels, ECOWAS facilitated the establishment of the Africa-Led International Support to Mali (AFISMA). Meanswhile, in a deal signed between ECOWAS and the coup leaders, who agreed to step aside, an interim government was formed with Dioncounda Traoré as the interim president of Mali. Mali appealed to the international community for assistance to regain its territory and sovereignty. ECOWAS decided to deploy troops to Mali and worked out a plan for intervention that was considered by the UN Security Council.

France agreed to intervene militarily, and together with troops from Niger and Chad fought and liberated Northern towns of Mali from the grip of AQIM. The MNLA split with the Islamists and joined the liberation war. It seized the opportunity to establish its governments in some of the liberated towns like Kidal and refused to allow Malian troops to enter the towns. Meanwhile, ECOWAS along with other members of the international community organized a donor conference to help rebuild the Malian institutions. Four billion dollars were pledged (\$4bn). The government has signed a deal with the Tuareg rebels to facilitate the conduct of elections. AFISMA was transformed into a UN mission.

The forgoing experiences of ECOWAS show how the presence of a viable regional organization is useful in resolving political crisis and enthrone democratic rule and norms. ECOWAS has been an exemplary in other ways other than the interventions reviewed. At a regional level, the organization is also playing some crucial roles in promoting respect for human rights and building democratic institutions.

Regional Efforts towards Promotion of Democracy and Human Rights

Aside from the country specific interventions of ECOWAS in the restoration of political stability and promotion of democracy and human rights, other regional efforts exist. These roles include the activities of the ECOWAS Community Court of Justice in the protection of human rights, and the support ECOWAS extends to democratic institutions within the sub region.

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The ECOWAS Community Court of Justice, which was established by the 1993 Treaty, came into practical being in 2001. For some time the Court grappled with some administrative and jurisdictional matters. The mandate of the Court at the time was to arbitrate on interpretation of the text of the ECOWAS Treaty and provide advisory opinion on questions of the Treaty. These competence and functions of the Community Court were however, inadequate. The inadequacy came to the fore in its first case, *Afolabi Olajide vs Federal Republic of Nigeria* (2004/ECW/CCJ/04). Mr Afolabi sued the Government of Nigeria because he failed to meet a business contract with another party in Benin Republic because Nigeria closed its border with Benin at the time, which was against the ECOWAS protocol on free movement of persons and goods. That cost Mr Afolabi losses, for which he sued Nigeria. The Court heard the case and ruled that it had no jurisdiction on cases involving individuals against their states (Ebobrah, 2008). Nigeria was not prosecuted for this case of human rights offence and for its failure to fulfill its Treaty obligation. This exposed the limitation of the competence of the court in promoting the economic integration of the sub region.

However, by 2005, the Court received a boost when a supplementary protocol A/SP.1/01/05 expanded its authority to include arbitration in human rights cases and access of the Court by individuals or corporate bodies in matters related to human rights violations. The decision of the Court became binding on the member states. Since then, the Court has entertained several cases and made landmark judgments. For

instance, on 5 June 2008, A Gambian Journalist, Chief Ebrimah Manneh, working with a Gambian based Newspaper, the *Daily Observer* was arrested by the men of the National Intelligence Agency, detained without disclosing his charges, was never charged to court, was tortured and kept under inhumane living conditions. The case came before the Community Court, whereupon it decided that his arrest and detention was contrary to Article 6 of the African Charter on Human and Peoples Rights (ACHPR); that the plaintiff was entitled to have his rights to dignity, personal liberty and freedom of movement restored based on Article 7 of the ACHPR and; consequently, the Court awarded the plaintiff \$100, 000.00 as damages for compensation (Community Court of Justice, 2011).

Similarly, the Community Court in its earlier judgment on *Hadidjatou Mani Koraou v. The Republic of Niger* ruled that Hadidjatou Mani Koraou was a victim of slavery and could not benefit from protection of the administrative and judicial authorities, which the government of Niger was supposed to provide her with and thus granted the application for reparation by the applicant and awarded her a lump sum of 10, 000, 000 CFA for damages. The victim was sold to slavery in 1996 to carry out all sorts of domestic task and as forced concubine to one El Hadj Slouleymane Naroua, who freed her nine years later but refused to allow her leave his house. The victim's plea to the National Court of Niger met with a decision that she remained the wife of her master. Thus, on 14th of September 2007, Hadidjatou came before the Court with an Application against the Republic of Niger for discrimination, slavery and unlawful detention (Community Court of Justice, 2011). The Counsel to the Niger Government wanted the Community Court to dismiss the case on the ground of non exhaustion of internal remedies but the Court declined (Community Court of Justice, 2011). The Government of Niger had to pay Hadidjatou the damages. These sorts of judgments by the Community Court have raised the status of ECOWAS in the sub region. The citizens of have found an alternative means of seeking redress, especially when they fear that the national courts may not be impartial due to interference by governments. The wise decision of the ECOWAS Authority to expand the jurisdiction of the Court came with the realization that the Community project would not succeed if the Court did not check the problem of lack of commitment to regional rules and policies by member states or the institutions of the Community. It must be noted here, however, that a problem still remains with the application of the Court's decision, in that it is hinged on the voluntary action of member state institutions. Nevertheless, a regional structure for tending to human rights violation is a significant milestone in the effort of ECOWAS to protect human rights.

ECOWAS also strives to develop popular participation at both the regional and national levels. In that regards, ECOWAS facilitated the establishment of West African Civil Society Forum (WACSOFF) and West African Women Association (WAWA), which later transformed into the ECOWAS Gender Development Centre. These institutions receive funding and training from ECOWAS in order for them to help in

promoting democratic governance and respect for human rights in the sub region. In 2009, for instance, ECOWAS contributed nineteen percent (19%) of the funding received by WACSOF from its donors (WACSOF, 2009). Therefore, when the mandate of the ECOWAS Community Court was threatened by a proposal from the government of the Gambia to include exhaustion of local remedies before a case is brought before it, the West African Civil Society mobilized and successfully defeated the proposal.

Furthermore, ECOWAS works with political parties in member states to strengthen their role in democratic transitions. In July 2010, ECOWAS Commission convened a regional meeting on Political Parties and Internal Party Democracy in Côte d'Ivoire:

to examine the state of political parties in West Africa with respect to their internal organisation, financing and their ability to articulate visions and agenda to positively transform governance in the region. It was also to deliberate on networking possibilities and opportunities among political parties across the region, with a view to sharing experiences and best practices, enhancing their capacities, as well as the support that ECOWAS could render in this direction (ECOWAS Communiqué, 2010)

The meeting was attended by political parties from eleven member states, some members of ECOWAS Parliament, representatives of Electoral Commissions of Burkina Faso, Sierra Leone, Niger and Togo, governance experts, representatives of research institutions and the media from ECOWAS Member States. The meeting reviewed the democratisation process in the sub region, the effort of ECOWAS and the place of parties within the process. Haven reviewed progresses made and challenges to overcome, it was decided that a Forum of West African Political Parties (FOWAPP) would be established as a platform for interaction and mutual assistance (ECOWAS Communiqué, 2010).

From the foregoing, it can be seen that ECOWAS has had an impressive record in the restoration of political stability, promotion of democracy and respect for human rights in the West African sub region. ECOWAS has been able to achieve that through the development of common understanding and commitment on the part of the member states to collective security and the institutionalization of common values and norms in different instruments. ECOWAS has also galvanized the support, collaboration and cooperation of its civil society, political parties and other international organisations and development partners to implement its democracy and human rights agenda. In most of the situations examined above, ECOWAS, as a sub regional body, is at the forefront. The interventions of the international community and other interested parties in most of the situations have been usually with the active participation of, and in collaboration with, ECOWAS. This has helped in ensuring that the shared values of the member states are not sacrificed by some extra-regional interests. This I argue is what was lacking in the Arab Maghreb Union, as the region became engulfed by popular uprising, known as the Arab Spring. I try to elucidate this position in the next section.

The Arab Maghreb Union: History and Challenges

The Arab Maghreb Union (AMU), like ECOWAS, is a sub regional organisation established in 1989 by Algeria, Libya, Mauritania, Morocco and Tunisia to strengthen ties among them and promote economic integration and development. AMU's history is by one of hesitation and missed opportunities. Political differences between the member states hindered the organization from taking its rightful place in the life of the region. Therefore, when the Arab Spring happened, AMU was absent in the scheme of things: the international humanitarian intervention in Libya, refugee crisis in the region and the post-Arab Spring reforms. The Libyan intervention led by the North Atlantic Treaty Organisation (NATO) underscores the importance of a strong AMU for the future of the sub region. The intervention was masterminded by the United States (US) and France, who mobilized their allies at the United Nation's Security Council to swiftly adopt tough measures against the regime of Gaddafi in Resolution 1970 of February 26, 2011 (Security Council, 2011). Intent on regime change, these countries and the EU persuaded the Arab League to approve the imposition of a no-fly zone over Libya (The DailyEdge, 2011). That followed a second Security Council Resolution (1973) on 17 March 2011 barely a month after the first in which five members (Brazil, China, Germany, India, Russian Federation) out of 15 Security Council members absented from the vote authorizing the imposition of a no-fly zone over the Libyan territory. The result of that was an all out war against the Gaddafi regime, which made the humanitarian crisis to worsen (Kuperman, 2013). Even the Arab League that earlier supported the humanitarian action deplored the broad scope of the US-European intervention campaign (Cody, 2011). Although, the intervention succeeded in killing Gaddafi and replacing his regime with a popular elected one, it left the Maghreb region and beyond littered with small arms and light weapons.

Understandably, the AMU was moribund at the time of the intervention and so it did not play any role. A combination of internal and external factors contributed to the collapse of the Union. The origin of the AMU dates back to the first Conference of Maghreb Economic Ministers in Tunis in 1964, which established a Permanent Consultative Council of the Maghreb (Conseil Permanent Consultatif du Maghreb-CPCM) between Algeria, Libya, Morocco and Tunisia. The Council was to coordinate and harmonize the development plans of the four countries. For some reasons, however, the Council became moribund until 1988 when the first Maghreb Summit of the five Heads of State at Zeralda (Algeria) resulted in a decision to establish a regional association. On February 17, 1989 in Marrakech (Morocco), the Treaty establishing the AMU was signed by the Heads of State (AMU, n.d.)

The Treaty of AMU established some intergovernmental institutions. The Council of Heads of State is the highest decision-making body. This is followed by a Council of Foreign Affairs Ministers, which prepares for

the sessions of the Council of Heads of State and examines proposals formulated by subordinate committees and four specialized ministerial commissions. Lack of cooperation between the governments made the organization to become moribund. Since 1990, the member states were, however, able to sign more than 30 multilateral agreements covering diverse economic, social and cultural areas. A number of these agreements have been ratified by the countries, which include agreements on trade and tariffs covering industrial and agricultural products, investment guarantees, avoidance of double taxation and phyto-sanitary standards (AMU, n.d.) The challenges facing the Union have both internal and external dimensions. The internal dimension is the conflict between the member states, while the external dimension has to do with the role extra-regional interests in thwarting the AMU project.

Among the internal challenges of the AMU is the contention for the AMU is the protracted conflict between Morocco and Algeria over the Western Sahara, a region which Morocco lays claim to and annexed in 1974. This problem is well known, even if though some Algerians claim that it is not a problem for AMU because if it was AMU would not have been formed as the problem predates it (Tazghart and Traboulsi, 2012). Another problem is the sore relations between Morocco and Algeria, which was caused by the spillover of violence from the Algerian civil war. The civil war, which followed the takeover of power by the Algerian military and the annulment of an election won by Islamists in 1988, lasted for a decade. In 1994, a hotel in Marrakesh was bombed by group of extremists Algerians and Moroccans based in France. The Moroccan authorities accused the Algerian intelligence of complicity and attempt to 'export terrorism' to its neighbours (Tazghart and Traboulsi, 2012). Consequently, Morocco imposed visa restrictions to Algerians, while Algeria reacted by closing its land border with Morocco. This problem lasted for the best part of a decade (Tazghart and Traboulsi, 2012). The 1988 political crisis in Algeria also caused serious political rift between the member states of AMU. Under the pressure of the crisis, the Algerian authorities introduced unprecedented political reforms in the region, such as introduction of a new multi-party constitution, lifting of restrictions on media and other freedoms. That did not go down well with other leaders of AMU, like Libyan Leader Gaddafi and Zine el Abidine Ben Ali of Tunisia, who feared spillover effect of such reforms into their countries. Tensions between Algeria and Tunisia were exacerbated by the suspicion that the banned Algerian Islamic Salvation Front (FIS) is receiving support from its counterpart, the Ennahda movement, in Tunisia. To subvert the political reforms in Algeria, Gaddafi, on the other hand, repeatedly attempted to incite Tuareg tribes in the Algerian Sahara Desert to demand succession (Tazghart and Traboulsi, 2012). These political and security tensions worked against the effective take off of AMU. It is not surprising therefore, that when the Arab Spring was blowing AMU was absent in the process.

Extra-regional interests have also played a role in preventing the AMU project from succeeding. Unlike in the ECOWAS region, where the military and autocratic leaders were compelled by changing circumstances

that came with the end of the Cold War in the early 1990s, and pressure from both national civil society organisations and the international community to embrace democratic principles and respect for human rights, the autocratic regimes in the Maghreb continued to enjoy the protection and support of superpowers, who regarded them as partners. The AMU therefore, became a victim manipulations and exploitation by extra-regional interests. For instance, it has been found that the European Union (EU) occasionally prefers to deal with the Maghreb countries as a single AMU when it comes to security and immigration, for its own interests; however, when it can acquire greater gains it seeks to deal with each country separately and push them to compete by the provision of concessions in economic affairs and so on (Choucair, 2013). This strategy of the EU is embodied in its European Neighbourhood Policy (ENP) and the Euro-Mediterranean Partnership. The European Neighbourhood Policy (ENP) is a policy that isolates the member states of the AMU, in order for Europe to secure its security and political interests. The ENP offers a privileged relationship to individual countries that are immediate neighbours of the EU based on commitment to 'common' values: democracy and human rights, rule of law, good governance, market economy principles and sustainable development (EC, 2013). The ENP, therefore, promotes competition, rather than cooperation, between members of the AMU for EU's privileges. Even the interregional partnership, i.e., the Euro-Mediterranean partnership is not different. The partnership is a set of bilateral agreements between the EU and individual countries that fall within the Mediterranean region. These agreements are referred to as Association Agreement. They are essentially aimed at establishing economic and trade relations with the countries. The Partnership specifically poses a huge challenge to the AMU project. The agreements between the EU and the member states of AMU challenge the objective intra-AMU trade, and thereby undermine any prospects for AMU unity and solidarity that is based on economic integration. Even the EU acknowledges that regional 'economic integration between Southern Mediterranean countries is still limited: total intra-regional trade amounted to €15 billion in 2009, one of the lowest levels of regional economic integration in the World' (EC, 2012). Therefore, given the context of the EU-Maghreb relations, it is obvious to see that the AMU, as well as its member states, is susceptible to manipulations and exploitation in their bi-regional relations with the EU.

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The role of International Monetary Fund (IMF) in facilitating this unequal partnership needs mention here. The Fund has been known to be a key player in the promotion of reforms in developing countries that ultimately serve the kind of EU-Mediterranean partnerships. In its assessment of the Maghreb countries in 2005, the IMF praised the integration of the Maghreb region to the EU.

Algeria, Morocco and Tunisia have made important strides toward economic prosperity in recent years. Stable macroeconomic conditions and a steady pace of economic reforms have led to a significant rise in per-capita incomes. In addition to ongoing reforms, **a key factor behind these favorable developments has been the increasing openness of the region, in particular**

it's growing economic integration with the European Union in the context of the Association Agreements signed by the three countries

The report then went on to say that

While the three economies have already started to reap the benefits of policies that favor private initiative and investment, they still face a major challenge. All three countries need to speed up economic reform to increase growth with a view to reducing unemployment and raising living standards

To this end, **greater regional economic integration in the Maghreb could play a crucial role**. It would create a regional market of more than 75 million consumers, similar in population size to many large trading economies. It would also bring efficiency gains and make the region more attractive for foreign investors (IMF, 2005).

While, it is true that greater regional economic integration in the Maghreb is crucial for reducing unemployment and raising standard of living, it is difficult to see how that can happen with greater economic integration of the Maghreb states to the EU. The Maghreb countries may only remain a market for goods from the EU and a source of cheap raw materials and labour.

Another example of how the Maghreb states have become vulnerable to the vagaries of international relations can be discerned from the US policy towards the Maghreb region. Interests rather than values often dictate the tune of the relationship. Only recently, the former United States (US) Secretary of State, who was directing and implementing the foreign policy of the US at the time of the Arab Spring, had this to say about the revolution:

...American foreign policy has long been shaped by debates over how to balance our interests in security and stability with our values in supporting freedom and democracy. Recent revolutions have intensified these debates by creating new birth of freedom, but also **by unseating old partners** and unleashing unpredictable new forces (Emphasis mine, Clinton, 2012)

This statement clearly shows that the US felt its interests are being threatened in the Maghreb countries, as the old partners (autocratic regimes) are being removed and replaced by new forces that are not yet known. It also shows that in the contest between interests and values of the superpower, the gains of freedom and democracy in the revolution may be hanging in the balance. Only through strong regional cooperation and collective bargaining can the AMU member states improve their bargaining power vis-à-vis their partners.

Needless to say, the relations between the Maghreb, on the one hand, and its partners like the EU or US, on the other, have some opportunities. The partnerships have some olive branches that can be exploited by the Maghreb countries, especially in the context of the post-Arab Spring transition. The values of democracy and respect for human rights are important elements of the relationship that can be

entrenched at both the national and regional levels with the assistance of the region's partners. EU has a good record of interregional assistance towards domesticating democracy and respect for human rights. Its role as 'external federator' (Gilson, 1998) can help in transforming the AMU into a strong regional organization. A strong AMU has a role to play in the transition process of the region. Lessons from ECOWAS experiences with transition process in West Africa are useful for the task ahead of the AMU. The next section deals with the aspect of the role of the AMU in the post-Arab Spring transition.

AMU and the Transitions in the Post-Arab Spring Maghreb: Opportunities and Challenges

As earlier seen in the case of ECOWAS, regional organizations have a role to play in the political developments in their regions. AMU has a role to play the post- Arab Spring transition process. The opportunities for that are clear and present. Firstly, the old rivalry and suspicion between the autocratic rulers is settled by the revolution in favour of a more open and democratic society in the region. One may argue here that more openness and democracy can help in resolving the territorial issues in the region. Secondly, the new leaders in the sub region have realized the need for the Union to be revived. And thirdly, the people of the sub region are also in favour of reviving the Union. These facts are true going by the recent meeting of the Council of Foreign Ministers, the second highest decision making body of the Union in February 2012. The meeting was the first in almost 20 years (Tazghat and Traboulsi, 2012). During the same period, the President of Tunisia Moncef Marzouki toured the North African countries expressing his determination 'to restore unity with our brothers in Algeria, Morocco, Libya and Mauritania'. Similarly King Mohammed VI of Morocco called for a 'new Maghreb order' on the occasion of the 24th Anniversary of AMU (Iemag, 2013). The civil society is not left out in the call for the reactivation of the AMU. A group of youth, calling itself the Arab Maghreb Youth, is calling on their governments to pursue economic integration (Bensah, 2011). The opportunities for reviving the AMU are not only coming from within the Maghreb region, but also from the region's partners. In 2012, an unprecedented summit of Maghreb and European countries took place in Malta. The summit aimed at strengthening cross-Mediterranean ties in the wake of the Arab uprising (Xucreb and Kadri, 2012). These opportunities need to be seized by the Union to strengthen its political and socio-economic role in the sub region.

The imperative of regional response when one looks at the challenges facing the Maghreb in the post-Arab Spring era. The refugee question, for instance, is one of the important fallouts of the humanitarian

intervention in Libya. In the heat of the intervention in 2011, a UN estimate put the number of refugees that escaped to Tunisia, Egypt, Algeria, Niger, and Chad at 1,002,982 (UNHR, 2011). Within the same period an Aljazeera report indicated that over 1,400 people died at sea trying to cross over to Europe (Marima, 2011). The plight of the refugees was compounded by the position of British Foreign Secretary William Hague who was reported to have called on European government to adopt tough measures against the influx of the refugees (Peck, 2011). Clearly therefore, the humanitarian crisis require a regional response. The Maghreb Union can work with other affected regional bodies like the EU and ECOWAS to manage the refugee crisis. Individual countries in the Maghreb, all of which are also coping with the demands of post-Arab transition process, may be incapable of providing adequate security and protection to the refugees.

Another fall out of the Arab Spring, and more specifically the humanitarian intervention in Libya which requires regional and interregional response, is the proliferation of small (in some cases heavy) arms and light weapons across the Maghreb and beyond. The AMU has a role to play in the recovery of these weapons. Already, these weapons have had a serious destabilizing effect in the Sahel region. They were used in the annexation of Northern Mali and in several attacks within the Maghreb States. In Libya, the US consulate in Benghazi was attacked by a mob armed with guns and grenades in September 2012. The US Chris Stevens and three other Americans were killed (Lee and Cossata, 2013). In January this year, armed islamists attacked a gas field in eastern Algeria killing some workers and holding hostages from at least 10 countries (Ouali and Schemm, 2013). These developments have shown that the gains of democracy and freedom in the post-Arab Spring Maghreb may be facing danger. Other security issues reactivated by the Arab Spring are ethnic identity conflicts in the Sahel Sahara. Ammour (2012) contends that the Arab Spring has reactivated several frozen conflicts in communities across the Sahel, such the Tuareg question and the Movement for the Liberation of Azawad, which was earlier discussed in this paper, and the Tubu question in the oil fields and aquifers between southern Libya, northern Chad and eastern Niger. A regional response to the political and socio-economic crises associated with the post-Arab Spring revolution is sine qua non. And in tackling these crises, which include both refugee and arms proliferation problems, the Maghreb Union will find the EU and ECOWAS important and willing partners.

What is to be done? : Lessons from ECOWAS

Therefore, in the light of the prevailing changes in the Maghreb region, the leaders of the Union, like those of ECOWAS in 1990, need to quickly build strong institutional and normative frameworks for the security and political stability in the sub region. A good starting point may be the adoption of some common political principles that will guide their national and regional political activities. These principles must at least include respect for constitutionalism and human rights. Lack of respect for constitutionalism and

human rights have been the bane of political stability in the sub region. Other international and regional instruments, such as the African Charter on Democracy, Elections and Governance, should be adopted at the level of the Union and its application should be collectively ensured by the Union. Armed with these political instruments, the Union can then work to supervise the transition process in the member countries. Elections, humanitarian relief, mediation and reconciliation, and the control of proliferation of arms should immediately be part of the menu of the Union. Unnecessary belligerence and deviance on the part of any extremists group need to be confronted by a regional force. The Union members should collectively work against any actions that violate the common values of people. In the case of ECOWAS, the zero-tolerance principle to unconstitutional accession to or maintaining power is becoming the norm. Coup makers or manipulators of constitution already know such actions are unacceptable to the regional organization. The earlier examples given of Guinea, Côte d'Ivoire, Togo, Niger and Mali are a testimony and important lessons for the AMU in playing a role in the post-Arab Spring transitions.

In carving out a niche for the AMU in the new era, the Union also needs to develop an external relations service to deal with extra-regional relations. The objective here is to ensure the harmonization of national and regional interests and positions in dealing with external partners. Excessive bilateralism in regional matters, such as the creation of an economic union between a member country and another regional organization, can harm the long term regional interest of the Union. Therefore, member countries should be constraint by the Union Treaty to avoid entering into agreements that will compromise the regional solidarity and integration of the Maghreb. Article 84 of the ECOWAS Treaty, for instance, says that 'Member States may conclude agreements among themselves and with non-Member States, regional organisations or any other international organisation, provided that economic agreements are not incompatible with the provisions of this Treaty' (ECOWAS, 1993). In the Maghreb today, the Association Agreements with the EU need to be revisited to end the isolation of the member states and setting them up to compete with each other. Once an acceptable partnership is established between the Union and its partners, a new concert will develop in handling the problems of the sub region. The Maghreb countries may never again suffer unwarranted violence, akin to the liberation intervention of Libya in which even the Arab League that endorsed ended up being aghast by its scope. A regional eye, like that of ECOWAS in Mali, Côte d'Ivoire and Guinea-Bissau, is important in protecting the interests of a member state or the sub region from external excesses.

Through the external relations service, the AMU needs to work with its partners, such as the EU, to develop the capacity of the Union to handle socio-economic and political crisis. An early warning and response mechanism needs to be put in place to monitor and attend to at the earliest possible time elements of crisis, such as mutiny, rebellion, drought, famine and youth bulge. ECOWAS has benefitted

immensely from the support of its international partners in strengthening its capacity to prevent, manage and resolve conflicts, as well as, to promote peaceful political transitions, democratization, respect for human right and economic integration and development. Prominent among the international support programmes are the European Development Fund (EDF) Regional Indicative Programme, African Peace Facility of the AU, and several other bilateral supports such the United States Agency for International Development West Africa Regional Programme (USAID-WARP), Danish International Development Assistance (Danida), German Cooperation (GIZ) to mention just a few. These partners have provided both technical and financial assistance towards the development of ECOWAS. In effect, ECOWAS relations with its partners are so institutionalized that their ambassadors and envoys are accredited to the regional body. The AMU can seize the opportunity to mobilize its partners in the North (The Euro-Med) and in the South (the AU) to promote political dialogue on shared values of democracy and respect for human rights.

Regional economic integration for economic transformation needs to top the priority of the AMU once again. In the transition period, the long term economic interest of the region needs to be pursued. As noted earlier in the IMF report, reducing unemployment and raising living standards remains an issue for the stability of the Union. It is obvious that past economic partnerships and associations with extra-regional partners have not helped the Maghreb countries in that regard. Therefore, an inward-looking strategy needs to be considered. If the economies of the Maghreb are integrated, it will reduce political tension and promote unity and collective security in the face of extra-regional economic and political interests.

The role of the civil society and private sector in both political and socio-economic activities of the Union needs to be appreciated. ECOWAS has in its revised Treaty of 1993 (articles 81 and 82) provided some space for the involvement of nongovernmental organizations and socio-economic organizations in its activities. As earlier discussed, the role of these organisations in the transition processes of Liberia and Sierra Leone, and the resolution of political crisis in Niger, Côte d'Ivoire needs no further emphasis. The AMU needs to mobilize the latent civil society support already indicated by the Arab Maghreb Youth to promote regional involvement in the post-Arab Spring reforms and transition processes in its member states. The civil society needs to be mobilized to promote the regional role of the Union within the member states. ECOWAS has benefitted immensely from the civil society organizations that work to support its efforts in the sub region. The role of the WACSOF in squashing the proposal to diminish the mandate of the ECOWAS Court is instructive.

Finally, one may argue that the AMU has a good chance of making rapid progress and achieving success more than ECOWAS. Unlike in the ECOWAS region, AMU has a mainly Arab Community sharing common historical and religious affinities. These important unifying factors can facilitate the integration of the

region. The Francophone-Anglophone, as well as the Lusophone, divide in the ECOWAS region has some serious effects on the Union. The allegiance to former colonial master, especially within the Francophone community is evident by their insistence on maintaining their currency relations with France, and perpetuating the duplication of efforts within the French supported West African Economic and Monetary Union (WAEMU). With the removal of strong leaders in the AMU, who had personality clashes and ego, a vacuum is created that needs to be filled with strong democratic institutions. Peoples' power rather than strong men seems to reign in the region. The Maghreb Union can come in to mediate the transition and nip excesses in the bud.

The African Union is also an important ally of the Maghreb Union in the tasks ahead. As the designated pillar of the African Economic Community (AEC) in North Africa, the AMU enjoys a special place in the African Union. It therefore behoves on the emerging leaders of the Maghreb to ally with the rest of the African continent by signing the Protocol on Relations with AEC. The AU, United Nations Economic Commission for Africa (UNECA) and other regional economic communities (RECs) such as ECOWAS offer useful, alternative partnerships as well.

Conclusion

The Arab Maghreb Union has a role to play in the post-Arab Spring transition that is underway in the sub region. The starting point is for the Union to develop regional political and security frameworks and assume some roles in the political stability and economic integration of the sub region. The examples shown from the experience of ECOWAS is that the AMU can mobilize its international partners and civil society organizations to promote democracy and human rights across the sub region. Past economic and political roles of extra-regional interests, like the Euro-Mediterranean Partnership and NATO-led international humanitarian interventions in Libya, have only worked to disunite the region and destroy its economy and security. Therefore, a reinvigorated regional role for the AMU can help in the transition process and ensure better external relations and benefits for the region's future. In the task ahead of the Maghreb Union leaders, there is a need to review relations with existing partners, like the EU, and open up new ones with others, such as the AU and its RECs.

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TUESDAY – 1 AUGUST 20TH 2013

- **SESSION 4:** WORKING PAPER BY E. DE GROOF (EUI, IT)
- **SESSION 5:** WORKING PAPER BY M. ORABY (NORTHWESTERN UNIVERSITY, US)
- **SESSION 6:** WORKING PAPER BY B. K. WANNEAU & M. VAGHI (ULB, B)

The EU transformative recognition of unilateral transitional structures: can 'legal risks' be reduced?

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In this paper, I ask how the EU may legally justify its transition policies, and how these policies could be tailored as to reduce the risk of noncompliance with international law. If the EU further bases these policies on acts of 'transformative recognition', it may envisage integrating a number of (formal and procedural) legal prerequisites based on the countermeasure framework under international law. It is hinted that countermeasure prerequisites (like the obligations of notification and proportionality) may ground a regulation and proceduralisation of thorny issues like governmental legitimacy, regime change, and what I have called 'transformative recognition'.

OUTLINE OF THIS PAPER

Introduction

(a) Transitional governmental or quasi-governmental structures and international law

(b) What is the EU's international legal basis for engaging with unilateral transitional structures?

(c) The transformative recognition of unilateral transitional structures: a legal hazard?

(c.1.) Political advantages of transformative recognition

(c.2.) Legal hazard: possible violation of the principle of non-intervention

(c.2.1.) Acts of recognition: not just politics

(c.2.2.) Need to evaluate acts of recognition in light of the principle of non-intervention

(d) Take fewer risks: law-driven policy & the legal prerequisites for taking countermeasures

[d.1.] *Domaine réservé* and obligations *erga omnes*

[d.2.] The general countermeasure framework

[d.3.] Countermeasure prerequisites

Concluding remarks

How may international law guide the EU (neighbourhood) policies regarding domestic state transitions? In this paper, I will answer this question only in part. I will focus on the international legal aspects of the EU involvement with opposition-based transitional structures in Syria and Libya, two partners under the European Neighbourhood policy⁴. These two case studies will merely feed our reflection; I will not take a stance on the lawfulness or unlawfulness of the EU involvement with these structures.

The aim of this paper is to initiate a reflection on the political leeway the EU has if it intends to practice what it preaches, i.e. if it takes international law seriously by systematically integrating the international legal discourse and international legal requirements into its decisions, especially the decisions that affect or may substantially influence

⁴ I should note here that, in the absence of comprehensive agreements, neither Syria nor Libya benefit from all the ENP instruments and incentives. See also below. Syria was self-suspended from the Union for the Mediterranean partnership while Libya has an observer status.

(regime and constitution) transitions abroad. As already mentioned, the purpose is not to legally assess specific EU diplomatic action regarding transitional oppositional structures; for such an enterprise more information, which is not always publicly available, would be needed. The purpose is rather to point out how EU diplomacy could reduce the risk of noncompliance with international law when engaging with transitional oppositional structures. I will conclude that the EU can act more cautiously by complying with a number of procedural and substantive requirements.

I will divide the paper as follows: (a) what are transitional (pre-governmental, quasi-governmental or governmental) structures? (b) what is the EU's international legal basis for engaging with unilateral (oppositional) transitional structures? (c) why can 'transformative recognition' of unilateral transitional structures be a legally hazardous initiative? (d) is it less hazardous for the EU and its member states to tailor their transition policies to the countermeasure prerequisites when they engage with such structures? The last part of the paper is not conclusive, and merely aims at triggering a discussion on the issues addressed there.

[A.] Transitional (pre-governmental, quasi-governmental or governmental) structures and international law

What is international law's relevance for a politico-legal phenomenon as temporary and heterogeneous as post-conflict domestic governance structures, e.g. 'interim authorities', 'interim governments', 'transitional governments', 'provisional governments', 'transitional councils', a topic that seems to be monopolised by political science and IR scholars? With two-stage processes of constitution-making becoming more frequent during the last decade, unilaterally or consensually created transitional governance structures increasingly pop up. Political science regards transitional authorities as a politico-legal phenomenon that includes 'revolutionary provisional governments' and 'power-sharing interim governments', bridging the transition from one politico-legal regime to another, "bridg[ing] old and new orders of rule"⁵. It regards transitional governments as "[g]overnments installed through non-democratic processes (coups, military, peace-deals, power-sharing agreements, etc.) and [that] rule for a limited amount of time until a permanent government can come to power"⁶. Whether unilaterally or consensually based, transitional structures ambition a constitutional transformation.

As I mentioned, this phenomenon has triggered the interest of political scientists and IR scholars—notably Yossi Shain & Juan J. Linz⁷; K. Guttieri & J. Piombo⁸—and only limited curiosity with international lawyers⁹. Of course, the

⁵ Karen Guttieri, *Interim Governments: Institutional Bridges to Peace and Democracy?* (Washington, D.C: United States Institute of Peace Press, 2007), 3.

⁶ This is the definition provided by the African Elections Database (<http://africanelections.tripod.com/terms.html>, consulted on 12 April 2013), which to me seems a relevant source as most transitions are operated on the African continent.

⁷ Yossi Shain, *Between states: Interim Governments and Democratic Transitions*, Cambridge Studies in Comparative Politics (Cambridge [England]; New York, NY, USA: Cambridge University Press, 1995).

⁸ Guttieri, *Interim Governments*.

⁹ To this date, the work by G. Scipione (1924), J. Spiropoulos (1926) and J. Frowein (1968) remain important sources of inspiration for analysing some of the issues that are common to so-called *de facto* governments and transitional structures, or analogous. See Gemma, Scipione. 'Les gouvernements de fait', *Collected Courses of the Hague Academy of International Law*, Vol. 004, 1924, p. 308; J. Spiropoulos, 'Die de facto-Regierung im Völkerrecht' in *Beiträge zur Reform und Kodifikation des Völkerrechts*, Verlag des Instituts für Internationales Recht an der Universität Kiel, 1926; J. Frowein, *Das de facto-Regime im*

available scholarship on transitional institutions is far from unuseful. Any legal analysis ought to take political reality into account. Rather than defining the complex political reality of transitional structures, Shain & Linz have introduced four major models for analytical purposes: (i) revolutionary provisional governments, (ii) power-sharing interim governments, (iii) incumbent caretaker governments, (iv) international interim governments¹⁰. Guttieri & Piombo do not seem to depart from this classification, yet they rightly emphasise that in all four models there can be, and mostly is, “some degree of external involvement”¹¹.

I suggest two methods to classify what I very broadly label ‘transitional structures’: the politico-legal origin of these structures on the one hand, their institutional and temporal advancement on the other. Neither of these two methods of classification are based on law but both methods can be instructive for international legal analyses.

First, regarding the politico-legal origin as a method for classification, I am loosely inspired by Huntington’s writings (which may have inspired the Shain & Linz classification too). Among transitions from authoritarian regimes to democracy, Huntington has distinguished between *transformations*, by which “those in power in the authoritarian regime take the lead and play the decisive role in ending that regime and changing it into a democratic system”¹²; *replacements*, by which “democratization [...] results from the opposition gaining strength and the government losing strength until the government collapses or is overthrown”¹³; and *transplacements*, by which “democratization is produced by the combined actions of government and opposition”¹⁴. Even though I make abstraction of the idea of a ‘third wave of democratisation’ or of an alleged ‘worldwide democratic revolution’, Huntington’s distinctions on ‘transformation’, ‘replacement’ and ‘transplacement’ are insightful, also from a legal viewpoint¹⁵. The first form of transition is a form of self-initiative. The second form of transition is unilateral or confrontational, and may follow

Völkerrecht, Eine Untersuchung zur Rechtsstellung ‘nichtanerkannter Staaten’ und ähnlicher Gebilde, Carl Heymanns Verlag Kg, Köln Berlin, 1968, p. 14. That this scholarship is a source of inspiration and information for the analysis of transitional structures, and that parallels and analogies can be drawn with *de facto* structures, is far from absurd. For example, under the Global Knowledge Transfer program of the Max Planck Foundation for International Peace and the Rule of Law, one of the questions put to the Libya team was “whether the National Transitional Council constitutes a ‘de facto regime’, capable of acting on the plane of international public law” (http://www.mpil.de/en/pub/research/details/know_transfer/libyen/projects.cfm). More recently, the legal debate has focussed on recognition practices of transitional authorities.

¹⁰ I do not focus on international transitional administrations in the sense of either of the three following definitions: “A transitional authority often arising from a negotiated peace process and is established by the United Nations Security Council to assist a country during a government regime change or passage to independence. It typically consists of three segments: (i) public administration including rule of law (ii) humanitarian assistance, and (iii) a security and stabilization force. Transitional administrations have been authorised in Cambodia, Kosovo and East Timor”. (Peacemaker definition: <http://peacemaker.unlb.org/glossary.php?f=T&d=74#d74>); “In four cases (Namibia, Cambodia, Kosovo, and East Timor), the UN has also provided interim or transitional civil administration”, K. A. Mingst, M. P. Karns, *The United Nations in the 21st Century*, Dilemmas in World Politics, Fourth Edition, 2012, p. 118; “A transitional administration is a formally constituted international body that has been entrusted temporarily with responsibility for the principal governance functions of a state or territory. In the context of post-conflict peacebuilding, transitional administration represents an international response to an internal conflict whose belligerents are unable to arrive at or to implement a peace settlement or to govern themselves peacefully”, R. Caplan, ‘Transitional Administration’, in Vincent CHETAIL (ed.), *Post-Conflict Peacebuilding, A Lexicon*, OUP, p. 359. For a comprehensive study, refer to C. Stahn, *The Law and Practice of International Territorial Administration*, Cambridge University Press, 2008.

¹¹ Guttieri, *Interim Governments*, 12.

¹² Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, Julian J. Rothbaum Distinguished Lecture Series v. 4 (Norman: University of Oklahoma Press, 1991).

¹³ Id.

¹⁴ Id.

¹⁵ From an international legal perspective, these distinctions may relate to the concept of attribution of state.

uprisings, coups, or revolutions; they are often revolutionary provisional governments. I refer to transitional authorities installed by replacement as ‘oppositional transitional structures’. The third form of transition is consensual and may be based on peace-deals or power-sharing agreements; they are often power-sharing interim governments. This paper will only deal with revolutionary or oppositional (pre-governmental or *in statu nascendi*, quasi-governmental or governmental) transition structures¹⁶, and specifically with those set up in Syria and Libya.

Second, regarding the institutional / temporal advancement as a method for classification, each transition context can be roughly subdivided into four stages; (i) before the transition; (ii) founding the transition; (iii) during the transition; (iv) after the transition.

1. Before the transition	2. Founding the transition	3. During the transition	4. After the transition
<i>Political event (e.g. ceasefire, formal opening negotiations) until foundation of transition</i>	<i>Consensual or unilateral (textual) foundation of the transition</i>	<i>Setting up and functioning of transitional institutions</i>	<i>From the creation of permanent governance structures onwards</i>

These categories are merely ‘ideal types’. The period ‘before the transition’ starts with a political event –e.g. a ceasefire, the formal start of negotiations, civil unrest– that triggers the creation of transitional structures. The choice in picking the event is indicative and context-related. This period ends on the date on which these institutions are founded on paper. In the period ‘before the transition’, transitional authorities are only nascent; they are more or less loose structures¹⁷ attempting to create stable institutions. The moment ‘founding the transition’ relates to the (textual, pre-legal or legal) foundation of the transitional institutions, often on the basis of a proclamation or agreement. The period ‘during the transition’ lasts from that foundational moment until the entry into force of a new constitution or the creation of permanent governance institutions. The period ‘after the transition’ then follows. The classification in four parts in my view offers a more accurate basis for legal analysis than the description of ‘transitional period’ given by Guttieri & Piombo, who write that “[t]he transitional period begins when the old regime falls –when it disintegrates, is torn apart from within, is overthrown by an invading force– and it ends when a new, supposedly ‘permanent’ regime takes over”¹⁸.

Organisations set up before and after the foundation of the transition (stage 1, 2 and 3) may be broadly called ‘transitional structures’, ‘transitional institutions’ or ‘transitional organisations’, even if their degree of organisation

¹⁶ It is of course possible that these structures evolve into a power-sharing arrangement. As Shain and Linz explain, the models are “flexible”.

¹⁷ See, for example, The Transitional Authority of China (See the *Charter of the Transitional Authority of China*, available on <http://www.dossier Tibet.it/news/charter-transitional-authority-china> (last retrieved on 15 May 2012). At first sight, this document seems to be linked to the Tibetan sovereignty debate) or the Uganda National Transition Council (See <http://www.museveni must go.com>).

¹⁸ Guttieri, *Interim Governments*, 5.

is not always very impressive; if one specifically wishes to refer to transitional institutions set up after the foundational moment (stage 3), one may call them 'transitional authorities'.

Whereas both the Syrian National Council and the Libyan Transitional National Council originate in opposition forces, they clearly differ in their institutional and temporal 'advancement'.

In the first case, at the time of writing the Syrian opposition is still trying to create permanent governance structures, and may never achieve that end¹⁹. In November 2012, the Syrian National Council (which had already been recognised by a good number of states) merged with the Syrian National Coalition. More precisely, on 11 November 2012 the Syrian opposition groups gathered in Doha, and agreed on the formation of the *National Coalition for Syrian Revolutionary and Opposition Forces*, which was first recognized by the member states of the Cooperation Council for the Arab states of the Gulf, by France, then by Turkey and Qatar, and Britain²⁰. It subsequently enjoyed the explicit support of the Council of the European Union, among other regional organisations²¹. The EU conclusions on Syria of 19 November 2012 read as follows:

"the EU welcomes the agreement reached on 11 November in the meeting of the Syrian opposition groups gathered in Doha and in particular the formation of the National Coalition for Syrian Revolutionary and Opposition Forces. The EU considers them legitimate representatives of the aspirations of the Syrian people. This agreement represents a major step towards the necessary unity of the Syrian opposition. The EU looks forward to this new coalition continuing to work for full inclusiveness, subscribing to the principles of human rights and democracy and engaging with all opposition groups and all sections of Syrian civil society. The EU stands ready to support this new Coalition in these endeavours and its relations with the international community. The EU encourages the Coalition to engage with the UN/LAS Special Representative and to put forward its programme for a political transition with a view to creating a credible alternative to the current regime"²².

Clearly, the purpose of the EU –and, in general, 'Western'²³– pressure by engaging with the opposition was to generate a political regime transition in Syria. Interestingly, in order to generate political change in third countries, nowadays so-called Western powers or their allies seem to favour the format of 'contact groups' or 'friends of groups' (a diplomatic format that deserves a study of its own²⁴), which assist the opposition in third countries in creating new governance structures. The 'Group of Friends of the Syrian People', of which the EU is a prominent participant²⁵, convened on 24 February 2012 in Tunisia²⁶; on 1 April 2012 in Istanbul; on 6 July 2012 in Paris; and on 12 December 2012 in Marrakech. Under the section 'Recognizing the National Coalition of Syrian Revolution and

¹⁹ 'Momentum Shifts in Syria, Bolstering Assad's Position', IHT, 17 July 2013.

²⁰ 'Syria criticizes 3 countries for recognizing opposition', IHT, 19 November 2012.

²¹ See, about the Gulf Cooperation Council for example, 'Opposition in Syria war is urged to pick leaders; U.S. and others want to see a political structure that could replace regime', IHT, 7 December 2012.

²² See the conclusions of the 3199th Foreign Affairs Council meeting, available on http://www.eu-un.europa.eu/articles/en/article_12878_en.htm.

²³ 'Obama threatens Syria over chemical weapons; Warning to Assad suggests use could be met with military force', IHT, 5 December 2012.

²⁴ See the harsh critique on this format in the Open Letter to the Peoples of Africa and the World from Concerned Africans, accessible on <http://pambazuka.org/en/category/features/75542>.

²⁵ See also 'European Union Backs Syrian Opposition Coalition', NYT, 19 November 2012, http://www.nytimes.com/2012/11/20/world/middleeast/islamists-reject-new-syrian-opposition-coalition.html?_r=0.

²⁶ The Chairman's Conclusions of the International Conference of the Group of Friends of the Syrian People, 24 February 2012, are available on <http://www.state.gov/r/pa/prs/ps/2012/02/184642.htm>. They provide for an "inclusive Syrian-led political process", including the "formation of a national unity government"

Opposition Forces and the mechanisms of achieving democratic transition', the chairman's conclusions of the Marrakech meeting indicate that the participants welcomed the foundation in Doha of the Syrian National Coalition²⁷. The chairman's conclusions of the Paris meeting indicate that the group "commended and encouraged the opposition efforts to present a united front as a credible alternative to the current regime", "decided to greatly increase assistance to the opposition", "reiterated their commitment to support the political and economic transition in Syria", and "welcomed that the Action Group Geneva communiqué called for the establishment of a transitional governing body with full executive powers"²⁸. The reference to the Geneva final communiqué of 30 June 2012 –the 'deliverable' of a meeting by a dozen of state representatives and by the EU High Representative, among other regional organisations' representatives– is not insignificant. This communiqué contained a section on "the agreed Principles and Guidelines for a Syrian-led transition", the second part of which provided for "[t]he establishment of a transitional governing body [with full executive powers] which can establish a neutral environment in which the transition can take place"²⁹. On 18 February 2013³⁰ and 27 May 2013³¹, the Council conclusions again referred to the Geneva communiqué.

In the second case, the Libyan pre-transition period started with civil unrest and protests in Benghazi mid-February 2011. The Libyan Transitional National Council was proclaimed on 5 March 2011. On 29 March 2011, the International Contact Group for Libya was created. On 22 May 2011, the High Representative opened the 'EU Office' in Benghazi³². On 3 August 2011, the TNC's Constitutional Declaration was published. After the fall of Sirte on 20 October 2011 and the declaration of liberation on 23 October 2011, the TNC's transitional administration was formed on 23 November 2011. On 7 July 2012 the elections for a General National Congress ('GNC') took place. One month later, the TNC was dissolved. The GNC nominated an interim government on 30 October 2012. After a long debate on the question whether the constituent committee was to be appointed by the GNC or elected by the people, the GNC on 6 February 2013 announced that it would proceed with elections, which at the time of writing have not yet taken place³³. In the meantime the Libyan state functions on the basis of the (amended) TNC's Constitutional Declaration.

In the Libyan case, too, twelve days after the UNSC resolution 1973³⁴ a contact group was installed to accompany the transition. The 'Libya Contact Group' was founded at the London Conference of 29 March 2011 to "provide leadership and overall political direction to the international effort in close coordination with the UN, AU, Arab League, OIC, and EU to support Libya, provide a forum for coordinating the international response on Libya, and

²⁷ The Chairman's Conclusions of the fourth Ministerial Meeting in Marrakech on 12 December 2012 are available on <http://www.auswaertiges-amt.de/cae/servlet/contentblob/633604/publicationFile/175181/121212-Marrakesch-Freundesgruppe-Abschlusserklaerung.pdf>;

²⁸ See <http://www.diplomatie.gouv.fr/en/country-files/syria-295/events-5888/article/meeting-of-the-group-of-friends-of>.

²⁹ See 'Action Group for Syria Final Communiqué 30.06.2012', <http://www.un.org/News/dh/infocus/Syria/FinalCommuniqueActionGroupforSyria.pdf>.

³⁰ These conclusions are available on http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/135529.pdf.

³¹ These conclusions are available on http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137316.pdf.

³² See 'Remarks by EU High Representative Catherine Ashton at the opening of the EU Office in Benghazi', available on http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/122142.pdf.

³³ See statement dated 29 July 2013 by the High Representative Ashton in which she "encourages the Libyan authorities to proceed as quickly as possible with the process of drafting and adopting a new constitution". See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/138438.pdf.

³⁴ See <http://www.un.org/News/Press/docs/2011/sc10200.doc.htm#Resolution>.

provide a focal point in the international community for contact with the Libyan parties”³⁵. It gathered in Doha on 13 April 2011, Rome on 5 May 2011, Abu Dhabi on 9 June 2011, Istanbul on 15 July and 25 August 2011, and in Paris on 1 September 2011 where it was re-baptised the ‘Friends of Libya Group’. At the 15 July Istanbul meeting, the participants, incl. the EU, “agreed to deal with the National Transitional Council (NTC) as the legitimate governing authority in Libya”³⁶.

With the planned elections of the constituent committee, the Libyan transition with international incl. EU support is slowly but surely³⁷ leading to a whole new constitutional, legal and political order. This contrasts with the Syrian case. While the Libyan transitional institutions are now reaching the end of the third phase ‘during the transition’, the Syrian transition did not go far beyond the second phase ‘founding the transition’.

In both cases a two-stage process of constitution making³⁸ is projected. Andrew Arato has argued for a systematic internationalisation and better international legal regulation, *de lege ferenda*, of the now recurrent two-stage processes of constitution making, whereby transitional institutions would (at least formally) build on the previous legal order³⁹. One could then imagine that, thanks to this internationalisation and legal regulation, the *marge de manoeuvre* for states and organisations like the EU to engage in these transition processes would be more specified, especially so when these processes are triggered at the initiative of the opposition.

However, as we cannot rely or speculate on future law making, we should try to understand how the law, as it currently stands, can guide policies in such contexts. Indeed, any political project to reshape the law (*de lege ferenda*) should take into account existing international law (*de lege lata*), in our case especially general public international law and the law of international organisations. The latter branch is relevant in light of global and regional organisations⁴⁰ increasingly engaging with said processes and institutions, but as this paper only intends to commence a general legal discussion of the topic introduced above, I will focus on general international law (section D). Before that, in the following section I will merely observe that it seems that the EU is not fully transparent on the international legal basis it would invoke for dealing with oppositional structures in Syria and Libya.

³⁵ The Chair’s Statement of 29 March 2011 is available on

http://www.nato.int/nato_static/assets/pdf/pdf_2011_03/20110927_110329_London-Conference-Libya.pdf.

³⁶ The Chair’s Statement of 15 July 2011 is available on

http://www.nato.int/nato_static/assets/pdf/pdf_2011_07/20110926_110715-Libya-Contact-Group-Istanbul.pdf.

³⁷ At the time of writing, it seems that the law regarding the elections of the constituent assembly will come out soon.

³⁸ “[T]he new reliance on two fundamental stages that foresee from the outset the production of two constitutions, an interim one and a final one, where the rules of the first not only occupy some kind of temporary or provisional ‘space’ but, more importantly, structurally constrain the making of the second”. Andrew Arato, *Constitution Making Under Occupation, The Politics of Imposed Revolution in Iraq*, Columbia University Press, p. 62.

³⁹ Andrew Arato, *Constitution Making Under Occupation, The Politics of Imposed Revolution in Iraq*, Columbia University Press, p. vii, p. xi. With regard to (formal) legal continuity, see p. 80. See also, on the limits of constituent powers and constitution-writing processes generally: J. Widner & X. Contiades, ‘Constitution-writing Processes’ in M. Tushnet, T. Fleiner, C. Saunders, *Routledge Handbook of Constitutional Law*, Routledge, London and New York, p. 57. On international law and constituent powers, see T. M. Franck & A. K. Thiruvengadam, ‘Norms of International Law Relating to the Constitution-Making Processes’, *United States Institute of Peace Press*, Washington DC, 2010, p. 3. On the fact that transitional texts can have an enduring polity effect, see the section ‘Transitional Charters and the Revival of Constitutional Tradition’, in R. Z. Sannerholm, ‘Rule of Law after War and Crisis’, *Intersentia*, 2012.

⁴⁰ For a study of the EU and AU responses to the uprisings in Tunisia, Egypt and Libya, see Mikael Eriksson and Kristina Zetterlund, ‘Dealing with Change’, available on <http://www.foi.se/en/Our-Knowledge/Security-policy-studies/Peace-Support-Operations/Publications>.

It is common knowledge that the EU has committed itself to contributing to the “strict observance and the development of international law” (art. 3.5 TEU), including on the international scene, where it shall be guided by the rule of law and the respect of international law (art. 21 TEU). Yet, while the EU is “proud [of its] tradition of supporting countries in transition from autocratic regimes to democracy”⁴¹, and wishes to extend its experience in favour of a “democratic, stable, prosperous and peaceful Southern Mediterranean”⁴², it is not explicit on the international legal basis of its neighbourhood policy regarding regime transitions.

The same is true with regard to the establishment of the ‘European Endowment for Democracy’ (‘EED’). The aim of this programme is to “assist pro-democratic civil society organisations, movements and individual activists acting in favour of a pluralistic multiparty system regardless of their size or formal status”⁴³, in Syria and Libya among other countries. In short, this programme is an EU initiative to “support political actors striving for democratic change in [these] countries”⁴⁴. On 9 January 2013, the High Representative declared that the idea behind EED, “Europe’s commitment to advancing democracy”⁴⁵, is timely since, according to her, “2013 will be a crucial year for democratic transitions”⁴⁶. Interestingly, the EED’s main purpose is: “direct grant-making to pro-democracy activist and/or organisations struggling for democratic transition”⁴⁷. This mission statement has triggered positive reactions but also “worries about meddling in the internal affairs of the countries”⁴⁸.

In other words, while the EU is clear on the policy *results* it intends to achieve⁴⁹ with its ‘transition policies’ based on its neighbourhood policy and the EED initiative, to my knowledge it is quite discrete on the international (as opposed to the EU internal) legal *basis* it may invoke when applying its ‘transition policies’ in the absence of any treaty basis or association agreement in force⁵⁰. Apart of the occasional reference to ‘widespread human rights violations’ by

⁴¹ Joint communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean, available on http://eeas.europa.eu/euromed/docs/com2011_200_en.pdf, p. 2.

⁴² Id.

⁴³ See <http://democracyendowment.eu/>.

⁴⁴ See, for example, ‘A New Response to a Changing Neighborhood – A Review of European Neighbourhood Policy’ the Joint communication by the High Representative of The Union For Foreign Affairs And Security Policy and the European Commission dd. 25 May 2011, available on http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf, p. 4.

⁴⁵ See press release ‘European Endowment for Democracy – additional support for democratic change’, dd. 9 January 2013, available on http://europa.eu/rapid/press-release_IP-13-17_en.htm.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ See Library Briefing of the European Parliament, ‘European Endowment for Democracy: hopes and expectations’, 30 April 2013, available on

http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130458/LDM_BRI%282013%29130458_REV1_EN.pdf.

Another difficulty concerns the identification of ‘pro-democracy actors’ and the risks inherent in democracy promoting. See Briefing Paper 11/2012 of the German Development Institute, ‘The European Endowment for Democracy between Wishful Thinking and Reality. Flexible and Unbureaucratic?’, available on [http://www.die-gdi.de/CMS-Homepage/openwebcms3.nsf/%28ynDK_contentByKey%29/ANES-8YACPI/\\$FILE/BP%2011.2012.pdf](http://www.die-gdi.de/CMS-Homepage/openwebcms3.nsf/%28ynDK_contentByKey%29/ANES-8YACPI/$FILE/BP%2011.2012.pdf).

⁴⁹ See, for example, L. Fioramonti, ‘Promoting Human Rights and Democracy’, in J. Peters (ed.); *The European Union and the Arab Spring*, Lexington Books, 2012, p. 17 a.f.

⁵⁰ With regard to Syria, the 1977 Cooperation Agreement does not regulate EU-Syrian relations comprehensively, and does not provide any ‘conditionality’ rule. The negotiations of the Association Agreement have been suspended. See <http://eeas.europa.eu/syria/>. See also C. Berg, ‘Lebanon and Syria’ in J. Peters (ed.), *The European Union and the Arab Spring*, op. cit., p. 93 a.f.

‘the regime’ in Syria and Libya, the EU remains silent on the international legal basis for engaging with (also non-military or non-armed, i.e. civilian) actors opposed to ‘the regime’. The more or less occasional reference to human rights violations⁵¹ or the simple usage of negatively connoted words like ‘regime’ or positively connoted words like ‘transition’ do not clarify the international legal basis on which a regional organisation may engage with, and even explicitly recognise, a transitional organisation that ambitions a substantial (legal and political) reconfiguration of a country.

Remedying the silence or at least discretion would be beneficial in various ways, which touch upon (political) matters of coherence, credibility, relevance, communication and coordination. It would benefit the EU’s external relations’ coherence (as synergy between norms⁵²), which arguably is a constitutional principle of EU external relations law⁵³, although difficult to implement⁵⁴. A clear reference to the law would also give more credibility to the EU’s self-proclaimed respect of the (international) rule of law. In turn, this increased coherence and credibility may increase the EU’s relevance on the world scene⁵⁵. Systematically integrating the formal international legal language into the EU’s decisions and deliberations would also enhance communication and coordination with other actors, and thus enable “a more concerted effort [between the EU and the US] at the delegation and embassy level on the ground in transitioning states”⁵⁶, but also between the EU and its member states, and between the EU and other states in the available multilateral institutions. These political concerns would however bring us too far, so I will not further elaborate on them.

Besides the concerns I have just mentioned, transparency regarding the international legal basis for EU involvement with oppositional transition structures is also, and quite obviously so, a legal matter. With its international legal personality⁵⁷, the EU is now directly liable under international law⁵⁸; a zealous abidance with international law is therefore desirable. As hinted above, the most poignant issue in this regard is the ‘recognition’ of oppositional transition structures, often to a genuinely transformative effect. In the following section (C) I will focus on the recognition, often under various forms and denominations, of these structures in light of the non-intervention principle. In the section thereafter (D) I will write that, if the EU and its member states wish to take less legal risks,

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With regard to Libya, the negotiations for a comprehensive framework agreement are to be re-launched. See

http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_memo_libya_en.pdf.

⁵¹ See, for example, ‘A New Response to a Changing Neighborhood – A Review of European Neighbourhood Policy’ the Joint communication by the High Representative of The Union For Foreign Affairs And Security Policy and the European Commission dd. 25 May 2011, available on http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf, p. 3: “The EU will uphold its policy of curtailing relations with governments engaged in violations of human rights and democracy standards”.

⁵² See articles 4.3, 13.3 and 21.3 TEU. Also see Marise Cremona, ‘Coherence in European Union Foreign Relations Law’, in P. Koutrakos, ed., *European Foreign Policy: Legal and Political Perspectives*, Cheltenham, 2011.

⁵³ Bart Van Vooren, *EU External Relations Law and the European Neighbourhood Policy, A paradigm for coherence*, Routledge, 2012.

⁵⁴ Caterina Carta and Johan Robberecht, ‘CFSP and CSDP after Lisbon: facing the challenge of a multipolar world’, p. 4: “Notwithstanding the changes brought about by the Lisbon Treaty and the setting up of the European External Action Service (EEAS), the EU foreign policy system remains highly fragmented, involving different procedures and actors. This plurality of actors and decision-making centers results in a windmill of actions, faces and declarations, which blurs the EU’s overall external visibility and coherence”. Available on:

http://www2.warwick.ac.uk/fac/soc/csgr/green/papers/policybriefs/carta_and_robberecht_policy_brief_rome_d8.5.pdf.

⁵⁵ I mention this here because this is precisely one of the stated goals of the GR:EEN collaborative research project.

⁵⁶ Oz Hassan, ‘The Arab Spring/ US Policy and Lessons for Europe’, available on

<http://www2.warwick.ac.uk/knowledge/culture/europeanpolicybrief/>.

⁵⁷ Art. 47 TEU.

⁵⁸ A. Kaczorowska, *European Union Law*, Routledge, 2013, p. 196.

they may envisage to have their transition policies guided by the international legal framework regarding countermeasures.

[C.] The transformative recognition⁵⁹ of unilateral transitional structures: a legal hazard?

Stefan Talmon⁶⁰ and Pierre Thielbörger⁶¹ have given a good overview of how Syrian and Libyan oppositional structures were addressed or recognised by particular states, regional organisations and –as for Libya– by the UNGA. In the first section above (A), I referred specifically to the EU’s acts of recognition, sometimes in the framework of so-called ‘contact’ or ‘friends of’ groups.

Without prejudging on their legality or illegality, these acts of recognition may be described and labelled as ‘transformative (acts of) recognition’. What is ‘transformative recognition’? I call ‘transformative recognition’ any act of international recognition by a state or (regional or global) organisation of a political organisation whereby the latter has the publicly proclaimed aim of introducing a new regime and reconfiguring the state order.

International law handbooks often distinguish between recognition of state and recognition of government. Transformative recognition does not concern the recognition of states. It relates more to recognition of government but this is also subject to controversy since, at the time of the act of recognition, governmental features⁶² (including the capacity to enter into international relations) are mostly absent. Transformative recognition is therefore nearly always premature recognition⁶³, but in a sense it goes beyond that since its aim is to directly empower constituent

⁵⁹ I do not in this paper address the interesting debate on legitimacy-based recognition in depth. To what extent can international recognition be based on legitimacy criteria -like ‘representativeness’- rather than ‘effectivity’ criteria? This question is especially relevant for oppositional (unilaterally based) transitional authorities. A number of authors –B. Roth, G. Nesi; D. Wippman; S. Talmon– have evoked this question. Roth observes a “broad-based movement towards reconsideration of the legal legitimacy that traditional doctrine has automatically conferred on governments in effective control” (p. 303); he argues that “[w]here effective control is closely contested or where the opposition has gained the upper hand, the presumption in favour of the established government is arbitrary from the standpoint of popular sovereignty. [...] Where the test of effective control is indeterminate, some alternative criterion must be found”. See B. R. Roth, *Governmental Illegitimacy in International Law* (Oxford: New York: Clarendon Press; Oxford University Press, 1999), p. 303; pp. 196-197. Nesi writes: “the practice also shows that States’ decisions have been based not only on traditional elements such as the effective control of parts of the State territory; but that other elements, such as the legitimacy of the parties, have also been considered as parameters to be taken into account in relation to recognition or the absence thereof. Only future practice can clarify whether these new trends will persist in determining the attitude of States towards insurgents, including regarding recognition. In this regard, both incumbent governments and insurgents should be aware that their conduct during and after insurgency could become a relevant factor in the attitude of the international community towards them”. See G. Nesi, ‘Recognition of the Libyan National Transitional Council: When, How and Why’, Symposium: the Libyan Crisis and International Law, *The Italian Yearbook of International Law*, Vol. XXI (2011). Wippman writes: “Increasingly [...] states are prepared to consider the democratic legitimacy of an inviting authority as a counterbalance to considerations of power and effective control”, Wippman, ‘Military Intervention, Regional Organizations, and Host-State Consent’, 238. Talmon, finally, writes: “While international law does not yet provide any clear rules for the assessment of governmental legitimacy, the Libyan and Syrian situations show an emerging consensus that governments which use excessive force against their own population to secure their position lose their legitimacy and must or should go” Talmon, *Recognition of Opposition Groups as the Legitimate Representative of a People*, 27.

⁶⁰ S. Talmon, ‘Recognition of the Libyan National Transitional Council’, ASIL Insights, 16 June 2011, available on <http://www.asil.org/pdfs/insights/insight110616.pdf>. Stefan Talmon, *Recognition of Opposition Groups as the Legitimate Representative of a People*, SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, March 3, 2013), 219, <http://papers.ssrn.com/abstract=2227615>. See also p. 226 a.f.

⁶¹ P. Thielbörger, ‘Die Anerkennung oppositioneller Gruppen in den Fällen Libyen (2011) und Syrien (2012)’, *Humanitäres Völkerrecht - Informationsschriften* (HuVI), Heft 01/2013, S. 34-43.

⁶² See, generally, S. Magiera, ‘Government’, *Max Planck Encyclopedia of Public International Law*.

⁶³ H. Lauterpacht writes that “recognition is governed by a duty of restraint” – “So long as the issue has not been definitely decided in favour of the rebellious party, recognition is premature and unlawful”. Hersch Lauterpacht, *Recognition in International Law* (Cambridge University Press, 1947), p. 7 & p. 283.

(i.e. constitution-making) –and not only governmental– forces within a country. Again without prejudging on its lawfulness or unlawfulness, I will first discuss the possible political advantages for actors like the EU to use ‘transformative recognition’ (as compared to ‘transformative occupation’), and then turn to a legal assessment of this practice.

[C.1] Political advantages of transformative recognition

In comparison, transformative recognition can be more effective than transformative occupation to shape polities on the ground. Transformative occupation is an occupation aiming at or resulting in a legal reconfiguration of a country. Some authors have argued that, *de lege ferenda*, ‘special rules’ should be introduced for transformative occupations. These ‘special rules’ would derogate from the ‘classical’ rules of international humanitarian law applicable to ‘normal’ occupations. Transformative occupation would thus be conceptually opposed to belligerent occupation because under the latter form of occupation, the The Hague and Geneva Conventions foresee that the domestic laws in force must in principle be upheld and respected. The theory of a *lex specialis* for cases of transformative occupation has been strongly objected⁶⁴, and in my view rightly so. This is however not the debate here, as in this sub-section we wish to concentrate on the possible political advantages of ‘transformative recognition’ vis-à-vis ‘transformative occupation’, whereby both concepts are viewed as policies, not as legal concepts or categories.

Potential political advantages relate to efficiency and legality. In short, like transformative occupation, transformative recognition can result in the legal reconfiguration of a country, but to a lesser cost, and at first sight with lesser risk of legal noncompliance. The risk of unlawfulness in the case of ‘transformative recognition’ seems less high indeed than in the case of so-called transformative occupation. The reason for this is quite simple. Where, as I mentioned above, in the case of an occupation the The Hague and Geneva Conventions require by principle that the domestic laws in force continue to apply⁶⁵, in the absence of any occupation⁶⁶ these conventions are just not applicable. Belligerent occupation is “order-preserving” because it is “constrained in its order-constitutive authority”⁶⁷; “[t]he authority of the occupant is limited by specific constraints emanating from the inviolability of the rights of the territorial sovereign and the limited regulatory powers of the occupant over the occupied territory”⁶⁸. In contrast, transformative recognition precisely provokes or intends to provoke constituent and constitutional changes that are constitutive of a new politico-legal order. Turning to an analogy used by Bhuta (albeit in another context): the transitional structures deriving their ‘legitimacy’ and arguably even their existence from transformative recognition are like ‘sovereign dictators’ who often have “unlimited power [...] to create a radically new order”. In other words, the political advantage of the recourse to transformative recognition and the subsequent instalment of

⁶⁴ Vaïos Koutroulis, “Mythes et Réalités de L’application Du Droit International Humanitaire Aux Occupations Dites ‘Transformatives’,” *Revue Belge de Droit International* 40, no. 2 (2009): 365–400.

⁶⁵ Art. 43 of the 1907 The Hague Convention provides: “the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”. See also art. 64 of the Fourth 1949 Geneva Convention.

⁶⁶ The NATO intervention in Libya following UNSC resolution 1973 was not accompanied or followed by an occupation. In Syria, no direct intervention has taken place.

⁶⁷ N. Bhuta, ‘A New Bonapartism’, in A. Bartholomew, *Empire’s Law*, London, Pluto, 2005.

⁶⁸ C. Stahn, *op. cit.*, p. 115. Stahn adds: “the laws of occupation are not intended to provide a general framework for reconstruction and law reform” (p. 119).

interim institutions is that, in the aftermath of a conflict, the law of belligerent occupation and the general restraints attached to this law are simply not applicable. The leeway for creating a new order thus becomes enormous.

The constitutive potential of transformative recognition is not diminished by specific legal ‘trends’ *per se*. One of these trends is that with ‘post-sovereign constitution making’ –which consists of a “two-stage process of constitution making”⁶⁹– the interim period is constitutionalised. The constitutive potential of transformative recognition is not essentially affected by the constitutionalisation of the interim rule because “one of the key aspects in the functioning and effects of transitional regimes involves the issue of *who initiates* [...] the transitional process”⁷⁰. It is precisely the transformative recognition by external actors that generates and substantially defines this process and the interim rule⁷¹. Broadly speaking, “the interim governments that now occur in the context of post-war transitions tend to be initiated and often managed by external actors”⁷².

In theory thus, the instigation, possibly by proxies, of civil unrest or of an armed conflict in a given country followed by the (to a more or less extent collective) transformative recognition of a self-proclaimed transitional institution could trigger fundamental constitutional changes and polity modifications in the unoccupied ‘target country’. Also geopolitically speaking transformative recognition becomes a powerful diplomatic tool. These observations relevant to the political powers that organisations or states exercise when they recognise transitional structures lead us to the next step: how can we think about these practices from a legal perspective?

[C.2] Legal hazard: possible violation of principle of non-intervention

[C.2.1.] Acts of recognition: not just politics

Recognition can have a number of constitutive effects, which include the creation of a legal relationship (*rechtsverhältnis*) between the ‘recogniser’ and the ‘recognised’, and of an obligation of estoppel. The confines of the obligation of estoppel are proportional to and dependent on the conduct adopted as well as the precise wordings used by the ‘recogniser’. Under this obligation, the vocabulary used is never insignificant since any act of recognition, as a unilateral act, can create legitimate expectations protected by estoppel⁷³. Stefan Talmon thus rightly emphasises that “with regard to recognition statements wording is all important”⁷⁴.

For Talmon, wordings also seem to impact on the ‘legal’ or ‘political’ nature of recognition. Talmon insists on the difference between the ‘legal’ and ‘political’ act of recognition⁷⁵. At face value this differentiation may however lead to confusion. It can be confusing because it is not clear whether the respective adjectives refer to the legal *basis* (or

⁶⁹ Arato, p. viii

⁷⁰ K. Guttieri and J. Piombo, ‘Issues and Debates in Transitional Rule’, in K. Guttieri and J. Piombo, *Interim Governments*, United States Institute of Peace Process, 2007, p. 5. Own emphasis.

⁷¹ I should add that, in spite of its constitutionalisation, the interim rule remains precarious and thus prone to external influence.

⁷² K. Guttieri and J. Piombo, *op. cit.*, p. 12. Own emphasis.

⁷³ See, generally, T. Cottier, J. P. Müller, ‘Estoppel’, Max Planck Encyclopedia of Public International Law.

⁷⁴ Stefan Talmon, *Recognition of Opposition Groups as the Legitimate Representative of a People*, SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, March 3, 2013), 219, <http://papers.ssrn.com/abstract=2227615>. See also p. 226 a.f.

⁷⁵ Very succinctly, for Talmon legal recognition would only follow the facts (from the facts, legal consequences follow); while political recognition would not create any legal obligations, neither for the recogniser nor for the recognised.

absence thereof) of an act of recognition, or rather to their legal *effects* (or absence thereof). Similarly, Thielbörger⁷⁶ differentiates between political and legal recognition. Recognising a group merely as an ‘interlocutor’ would be just political / diplomatic. If an organisation is recognised as ‘the legitimate representative of the aspirations’ of a people, such a recognition would be essentially political, too. In contrast, if one recognises a group as a belligerent group, that group acquires a status under international law; recognition is then a legal act. If one recognises a group as the government of a state, that recognition is also a legal act, and is unlawful to the extent that the recognised group does not conform to the conditions –effective control; state representative function– for a government to be labelled as such.

Both for Talmon and Thielbörger, characterising a recognition as legal or political seems solely to depend on whether the wordings used to label the ‘recognised’ (the words that follow ‘as’) coincide with a legal category (‘state’, ‘government’, ‘belligerency’) or not. This characterisation is thus not dependent on the possible legal basis for, or effects of, recognition. In other words, the characterisation in itself does not provide any insight or information on the political or legal basis or effects of an act of recognition. It is therefore not surprising that both Talmon and Thielbörger do not exclude that, under certain circumstances, political recognition may constitute a breach of international law, thus have legal effects. Talmon writes in this regard: “[t]he question that thus remains is whether the act of recognition of an opposition group as the legitimate representative of a people [...] constitutes unlawful intervention in the internal affairs of the state concerned”⁷⁷.

Besides the confusion, maybe, between ‘*acte juridique*’ and ‘*fait juridique*’⁷⁸, the problem with the distinction between political and legal recognition is that the *label* used to recognise one or the other organisation as interlocutor, as belligerent party, as legitimate representative or as government, *in itself* cannot be conclusive or even instructive when analysing whether a specific act of recognition is legally relevant or not, even when undoubtedly the precise wordings used must be taken into consideration when conducting such an analysis. So even if an act of recognition is not intended to produce specific legal effects (it is not an ‘*acte juridique*’) like, for example, the establishment of diplomatic channels, it can still constitute a *fact* with possibly far-reaching legal consequences (it is a ‘*fait juridique*’). Unavoidably, as Talmon and Thielbörger briefly evoke, the lawfulness of the act of recognition of an opposition group –be it as a grocer, as a gardener, as an interlocutor, as a representative or as a government– needs to be assessed in light of the principle of non-intervention in domestic affairs, and on the basis of the relevant facts of the case. Labels and wordings are then part of the facts that are to be evaluated before a legal conclusion can be reached.

⁷⁶ P. Thielbörger, ‘Die Anerkennung oppositioneller Gruppen in den Fällen Libyen (2011) und Syrien (2012)’, *Humanitäres Völkerrecht - Informationsschriften* (HuVI), Heft 01/2013, S. 34-43.

⁷⁷ *Id.*, p. 247.

⁷⁸ The ‘*acte juridique*’ can be a bilateral or unilateral act that is posited with the intent to create legal obligations; the ‘*fait juridique*’ is a (factual) conduct that, willingly or unwillingly, has a consequence in law. The discussion on the distinction between the ‘*acte juridique*’ and the ‘*fait juridique*’ would lead us too far, also because in international law that discussion is linked to the doctrinal dispute on the nature of unilateral acts. See V. R. Cedeño, M. I. Torres Cazorla, *Unilateral Acts of states in International Law*, Max Planck Encyclopedia of Public International Law.

[C.2.2.] Need to evaluate acts of recognition of oppositional transitional structures in light of the principle of non-intervention

It is not because the EU's conduct described above (B) *may be* lawful or legally irrelevant *as an act of recognition* or *under the law of recognition*, that it cannot be unlawful otherwise. The recognition practices that *per se* may be legally neutral or irrelevant need to be placed in a broader context.

Arguably, the most crucial part of this context, legally speaking, relates to the principle of non-intervention. It is against this principle that transformative recognitions (whether labelled 'political' or 'legal') ought to be evaluated. Such an evaluation seems especially relevant when transitional authorities are not consensus-based but originate in a domestic unilateral act, like a constitutional declaration or proclamation. The focus on the non-intervention principle is of course not based on a political bias 'in favour' or 'against' intervention. This focus is however unavoidable, since the non-intervention principle cannot but be legally relevant for the study of third engagement with unilaterally based transitional authorities. This is because, in the context of legal and constitutional transitions, the possibility always looms that such engagement would touch upon a state's domestic affairs⁷⁹. Does a regime change accompanied by a constitutional transformation not seem to touch upon the heart of a state's domestic affairs?

Given their oppositional origin unilateral transitional structures do not (at least at their inception) embrace officials or representatives of the incumbent regime. Especially after the foundation of the transition process and during that process (stages 2 and 3), the question arises how the non-intervention principle⁸⁰ regulates and limits the involvement by third states and organisations with transitional authorities. Indeed, when the transition is completed (stage 4) and on the assumption that the ensuing fully-fledged government is effective, the rules regarding recognition (and other legal matters like attribution, consent and representation) do not pose particular problems; because recognition then takes place *in tempore non suspecto*, so to speak. Before that period, however, applying these rules and principles calls for extra consideration. In order to make the question more palpable, I shall try to indicate, with regard to the transitional structures in Libya and Syria, during which time the assessment of the principle of non-intervention becomes most delicate. The respective time frames I give here are only indicative. In the end, the legal assessment will depend on questions of pure fact. In the case of Libya, the period *in tempore suspecto*, so to speak, starts approximately on 5 March 2011 (the date of the establishment of the Libyan Transitional National Council) and lasts at least until 23 October 2011 (the declaration of liberation), maybe even until 23 November 2011 when the TNC's transitional administration was formed. In the case of Syria, as mentioned above an agreement was reached in November 2012 in Doha on the formation of the National Coalition for Syrian Revolutionary and Opposition Forces. That coalition seems to have created an interim government in March 2013, parallel to the incumbent regime. From November 2012 until the moment this interim government transforms into,

⁷⁹ A. Schuit has written in this regard that the acts of recognition by France and the UAE of the Libyan TNC « could constitute an intervention in the domestic affairs of the Libyan State, and invoke State responsibility ». See A. Schuit, 'Recognition of Governments in International Law and the Recent Conflict in Libya', *International Community Law Review* 14 (2012), p. 402.

⁸⁰ See below for the legal basis of this principle.

or transfers powers to, a definitive and effective government, the application of the principle of non-intervention in domestic affairs calls for a more careful examination.

Crucially, the principle of non-intervention also applies to areas other than the use of force, a topic that I do not discuss in this paper⁸¹. This principle not only allows us to define which non-forcible interventions are prohibited; it can also serve as a benchmark for defining which diplomatic actions, which ‘interventions’, are allowed. In other words, the principle “may be a positive tool for the regulation of diplomacy, international relations, and our growing interdependence”⁸². This is a useful inversion. By phrasing things positively, i.e. by primarily focusing on what is in principle allowed under international law –what are lawful ‘diplomatic interventions’?– rather than on what is forbidden, not only can one start thinking about law-driven policy but also can one conveniently do away with a range of thorny and sometimes redundant questions. These questions typically arise in cases of duality of government, or of competition between an incumbent government, sometimes negatively connoted as ‘regime’, and an oppositional transitional authority. These questions often evolve around ‘the right to democracy’, ‘the responsibility to protect’, imposed regime change, etc.; or are related to (sometimes false) debates regarding recognition or effective control.

Regardless of whether the incumbent regime is (in)effective or (un)recognised in times of transition, and regardless of whether a concurring transitional authority reaches such a status, if conduct by third states or organisations does not violate the principle of non-intervention in domestic affairs or, for that matter, any other pertinent rule under international law vis-à-vis the (in)effective or (un)recognised incumbent regime, such conduct –whether friendly or unfriendly– is simply allowed. If such conduct is unfriendly but legal, we find ourselves in a zone that may be politically grey but is legally neutral. In other words, when third states or organisations wish to ‘do business’ with an oppositional transitional authority, before evaluating such ‘business’ in light of the question whether the ‘incumbent regime’ is effective or not, recognised or not, lawful or not, democratic or not, ‘legitimate’ or not, etc., first one has to investigate what, in the course of normal affairs, would be possible on the assumption that the incumbent regime is effective, recognized, lawful, and –why not– democratic and ‘legitimate’. To put it simply: what the imaginary *Countrystan* can do vis-à-vis a transitional authority on the assumption that the incumbent regime has all the qualities I just mentioned, *Countrystan* can do vis-à-vis that authority also when that regime does not have said qualities. If, by hypothesis, *Countrystan* was acting lawfully when it had contacts with the transitional authority regardless of the status or position of said regime, in law no further questions need to be asked.

Enough words on this truism. We now turn to the legal framework applicable to the engagement by third actors with unilaterally based transitional authorities. In order to do this, as explained above we should pay attention to the

⁸¹ The topic of the use of force as consented by transitional authorities is highly delicate, especially since nowadays some authors seem to argue that force can be deployed at the request of a transitional structure installed on the basis of a transformative recognition. J. J. Paust, for example, writes that, as an alternative to a UNSC resolution, « [o]ne possible scenario could involve the outside recognition of a governmental entity’s consent to or request for outside military support for self-determination assistance and/or collective self-defense against continued armed attack on Syrian people by the Assad government », J.J. Paust, ‘Use of Military Force in Syria by Turkey, NATO, and the United States’, U. Pa. J. Int’l L., vol. 34, issue 2, pp. 445 - 446.

⁸² Maziar Jamnejad and Michael Wood, “The Principle of Non-intervention,” *Leiden Journal of International Law* 22, no. 02 (2009): 381, doi:10.1017/S0922156509005858.

following question: how can 'lawful interactions' –i.e. any friendly or unfriendly conduct whereby the non-intervention principle (as enunciated in the UN Charter and further elaborated in subsequent legal texts) is not violated–, or 'justifying circumstances' –i.e. any conduct that would be unlawful were it not for the fact that it is validated by 'circumstances precluding wrongfulness' (as codified in the Draft Articles on state Responsibility)– offer diplomatic leeway to states and organisations like the EU wishing to support oppositional transitional authorities?

In what follows I will first say a few words on the non-intervention principle. The next section (D) will be devoted to countermeasures (which are part of the 'circumstances precluding wrongfulness')⁸³. It is today uncontested that both sets of rules are integral part of international law.

Based on the principle of equal sovereignty⁸⁴, and codified by the UN Charter⁸⁵, the non-intervention principle was further enshrined in UNGA resolution 2131 of 21 December 1965, and in the so-called Friendly Relations Declaration. Said resolution states, under the third principle 'concerning the duty not to intervene in matters within the domestic jurisdiction of any other state':

"No state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements, are condemned.

No state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no state shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state, or interfere in civil strife in another state".

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In spite of this broad description, one should remember that the scope of the principle of non-intervention is limited in two ways. It is only when (i) third coercion is exercised (ii) in the '*domaine réservé*' that the principle is violated. Especially the second step in this two-step analysis is relative, i.e. subject to the progressive development of international law:

"The question whether a certain matter is or is not solely within the jurisdiction of a state in an essentially relative question; it depends upon the development of international relations"⁸⁶;

"[p]uisque c'est le droit international qui détermine l'étendue des compétences discrétionnaires des Etats, l'étendue du domaine réservé dépend de la portée des engagements internationaux de chaque Etats et des interventions 'autoritaires' des organisations internationales"⁸⁷.

⁸³ See art. 49 a.f. of the 2001 Draft Articles on State Responsibility: "[a]n injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations".

⁸⁴ UN Charter, art. 2 § 1.

⁸⁵ UN Charter, art. 2 § 7.

⁸⁶ Hans Kelsen, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems with Supplement 1964* (The Lawbook Exchange, Ltd., 1950), 777.

⁸⁷ Dinh Nguyen Quoc, *Droit International Public*, 4e. ed (Paris: Librairie Générale de Droit et de Jurisprudence, 1992), 437.

With these caveats in mind, I will outline a set of distinctions that allow us to understand the broadest possible legal framework applicable to third states and organisations that wish to engage with unilaterally based (oppositional) transitional authorities. The distinctions relate to the following questions:

- Is the involvement with the transitional authority coercive and forcible; coercive but not forcible; or non-coercive vis-à-vis the incumbent government?
- Does the third involvement with the transitional authority touch upon the *domaine réservé* of the incumbent government?
- Is it a retorsion, or can it be justified as a countermeasure?

Depending on how the answers to these questions combine EU involvement with oppositional transitional authorities will either be lawful or unlawful. These questions thus inform us on the legal framework regulating EU engagement with transitional authorities. This framework can best be elucidated by a two-step analysis.

- The first step of the two-step analysis: is the involvement with the civilian domestic transitional authority coercive in nature?
- The second step of the two-step analysis: if the involvement with the civilian domestic transitional authority is coercive, one should ask whether coercion was applied in a domain that falls under the *domaine réservé* of the 'target state'?

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I shall now initiate the first step. I deal with the second step in the next section (D).

The involvement with the civilian transitional authority that is non-coercive conforms to the principle of non-intervention – Based on the Friendly Relations Declaration, at first sight one might be inclined to argue that international law systematically forbids any assistance to, or engagement with, civilian transitional authorities. First, the preamble of this declaration states that “any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a state or country or at its political independence is incompatible with the purposes and principles of the Charter”. Second, the principle of non-intervention in domestic affairs broadly forbids “all [...] forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements”. Given these relatively broad wordings, initially one may think that any third engagement with an organisation that wishes to legally redesign its country contravenes said principle.

However, the preamble to the Friendly Relations Declaration links the obligation not to intervene in the affairs of any state explicitly to the risk an intervention may pose for international peace and security, and to the concept of ‘coercion’. In the same vein, the wordings in the declaration regarding a third state’s assistance to ‘subversive activities’ is linked to the ‘violent overthrow’ of a regime; coercion is also associated to the idea of “subordination of

the exercise of [its] sovereign rights". What is the ordinary meaning of the word coercion⁸⁸? It signifies "the action of making somebody do something that they do not want to do, using force or threatening to use force"⁸⁹; "coercion in inter-State relations involves the government of one State compelling the government of another State to think or act in a certain way by applying various kinds of pressure, threats, intimidation or the use of force"⁹⁰.

The threshold of 'coercion' for defining whether the principle of non-intervention has been violated was extensively discussed in scholarship⁹¹. The ICJ also dedicated a section to this question, and found that "the element of coercion [...] forms the very essence of, prohibited intervention"⁹². Crucially, only where coercion is used in the *domaine réservé* of the 'target state' can the principle be violated überhaupt. Undeniably, in some cases a violation of the principle is quite evident. For example, where a third country uses coercion vis-à-vis the 'target state' by engaging with a nascent transitional authority in order to install a servient, vassal, thus politically dependent regime, the violation of the principle of non-intervention would be apparent. Also, when third actors directly support the armed wing of a (nascent) transitional authority (e.g. the USA "agree[ing] [...] to increase assistance to the military wing of the Syrian opposition"⁹³), such support will more likely lead to coercion. Third states or organisations can influence or even coerce in a more subtle way though. For example, when third actors define the contents of the text founding a transition, or highly impact on the transition procedure or on the form of the transitional structure itself, this can amount to coercion, as the case may be⁹⁴. These would be instances of indirect coercion, as opposed to instances of direct coercion by "transformation of domestic institutions and laws [...] achieved through direct intervention"⁹⁵.

For an informed assessment one should distinguish between oppositional civilian transitional authorities and armed military groups; or between the civilian and military wing of an oppositional transitional authority. The principle of

⁸⁸ Art. 31.1 Vienna Convention on the Law of Treaties.

⁸⁹ Oxford Advanced Learner's Dictionary online.

⁹⁰ C.C. Joyner, 'Coercion', Max Planck Encyclopedia of Public International Law.

⁹¹ Olivier Corten, *Droit D'ingérence Ou Obligation de Réaction ? : Les Possibilités D'action Visant à Assurer Le Respect Des Droits de La Personne Face Au Principe de Non-intervention*, Collection de Droit International 26 (Bruxelles: Editions Bruylant, 1992), 10. "Deux éléments doivent donc être démontrés pour conclure à l'existence d'une intervention illicite. Premièrement, il faut une utilisation de 'moyens de contrainte'; à défaut, il ne saurait être question d'intervention interdite. [...] Deuxièmement, ces moyens de contrainte doivent porter sur des matières où l'Etat a préserve des droits souverains." See also p. 13 a.f.

⁹² ICJ, Case concerning Military and Paramilitary Activities in and against Nicaragua, Nicaragua vs. United States, 27 June 1986, par. 202 – 204: "[I]n view of the generally accepted formulations, the principle forbids all states or groups of states to intervene directly or indirectly in internal or external affairs of other states. A prohibited intervention must accordingly be one bearing on matters in which each state is permitted, by the principle of state sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another state".

⁹³ 'Aid to Syrian Rebels Gains Traction', IHT 12 April 2013.

⁹⁴ The legal transformation that accompanied the US occupation of Iraq has been discussed in this context. See also below, and footnote 101.

⁹⁵ Amichai Magen writes: "[S]ince the end of the Cold War, the erosion of non-intervention principles, coupled with a strengthening of human rights and humanitarian intervention norms, has resulted in a proliferation of instances of 'imposed democratization'". These have involved a range of neo-trusteeship arrangements, extending from full military occupation led by a handful of states (Iraq) or a broader coalition (Afghanistan), to variably robust UN peace-keeping and peace-building missions (Liberia, East-Timor) and long-term transitional administrations (such as Bosnia-Herzegovina and Kosovo) – all with a substantial post-conflict state-building and rule of law promotion dimensions". See Amichai Magen, *The Rule of Law and Its Promotion Abroad: Three Problems of Scope*, 45 Stan. J. Int'l L. 51 (2009)

non-intervention in domestic affairs is less likely to be violated vis-à-vis the incumbent regime when third states and organisations engage with civilian/political leaders instead of militant leaders, regarding civilian/political matters rather than ‘militant or military matters’. The reason behind this is that by engaging in ‘militant matters’ or with militant leaders, third states or organisations are more likely to be perceived as “organi[sing], assist[ing], foment[ing], financ[ing], incit[ing] or tolerat[ing] subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another state, or [of] interfer[ing] in civil strife in another state”, which amounts to a violation of the principle. Whether third states or organisations deal with civilians, or with militants, needs to be assessed on a case-by-case basis. Suffice here to say that in many cases the distinction between both is possible. If it is not, or difficult, one should distinguish between third involvement or assistance in civilian matters, on the one hand, and in military or belligerent matters, on the other. For example, if one concludes, like Olivier Corten and Vaïos Koutroulis have done⁹⁶, that the military support to the rebels in the Libyan war was unlawful, this should not be confused with civilian/political assistance efforts by the ‘Friends of Libya’-group or the UNSMIL (assistance operation created by the UN Political Department). In this sense, the statement by a French delegation “[w]e will continue to support the peaceful Syrian opposition that is rallying around the Syrian National Council”⁹⁷ is not necessarily unlawful. States and organisations are thus less likely to be exposed to the risk of violating international law when they deal with political leaders on civilian matters, even if these leaders may have contacts with their military counterparts⁹⁸. In short, I do not pretend that in some cases the principle of non-intervention in domestic affairs would not be violated. It depends on the case. But a general conclusion in this sense cannot apply. In any event, international law does not always forbid any form of assistance to oppositional transitional authorities⁹⁹.

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Pressure or influence is not the same as coercion. No one seriously doubts that pressure and influence are part of normal foreign policies between states¹⁰⁰. States have the right to react to events that occur within third states. Arguably, when they do this, they must not operate by ultimatum, the coercive character of which is contradictory with said principle¹⁰¹. But unfriendly acts –retorsions¹⁰²– by themselves are not unlawful.

The assistance to or engagement with (nascent) transitional authorities need not be coercive, and can follow various models, ranging from informal communication channels to ‘political’ recognition. Importantly, however, “[t]he

⁹⁶ Olivier Corten and Vaïos Koutroulis, “The Illegality of Military Support to Rebels in the Libyan War: Aspects of Jus Contra Bellum and Jus in Bello,” *Journal of Conflict and Security Law* (February 7, 2013), doi:10.1093/jcs/llkrs029.

⁹⁷ S/PV.6711 dated 4 february 2012, available on http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.6711.

⁹⁸ The latter contacts may expose the political leaders themselves to the risk of being liable under international criminal law, especially when a ‘diagonal’ hierarchical relationship exists between the (political) superior and the (militant) subordinate, or when the political leader effectively acts as a military commander. But these questions fall outside the scope of this paper, and do not affect the general international legal framework applicable to third states and organisations dealing with civilian transitional authorities. See Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International law*, Cambridge Studies in International and Comparative Law (Cambridge: Cambridge University Press, 2002), 111.

⁹⁹ This may be the case when the third state or organisation takes a clear distance from any (parallel) recourse to violence. Or, for example, when a third country or organisation diplomatically engages with a nascent civilian transitional authority that is clearly distinct from a parallel armed faction, even if both groups struggle for similar aims, e.g. self-determination. In such cases, the principle of non-intervention is not necessarily violated, even if the ‘target country’ experiences such contacts as ‘pressure’.

¹⁰⁰ O. Corten, *Droit D’ingérence Ou Obligation de Réaction?*, *op. cit.*, p. 16.

¹⁰¹ *Ibid.*, 72.

¹⁰² “reactions which do not interfere with the target State’s rights under international law”, T. Giegerich, ‘Retorsion’, Max Planck Encyclopedia of Public International Law.

requirement of coercion is to be determined from the view of the target state”¹⁰³; the term is thus relatively relative. We therefore must consider the hypothesis according to which engagement with oppositional transitional authorities constitutes coercion. This is the next step.

[D.] Take fewer risks: law-driven policy & the legal prerequisites for taking countermeasures

If the involvement with an oppositional domestic transitional structure is coercive, the second step of our two-step analysis concerns the field of coercion.

[D.1.] *Domaine réservé* and obligations *erga omnes*

There are two hypotheses depending on the answer to the following question. Was the coercive action applied in a domain that falls under the *domaine réservé* of the ‘target state’?

- No: coercion vis-à-vis the target state by the involvement with the civilian transitional authority does not violate the non-intervention principle as it does not touch upon the *domaine réservé*.
- Yes: coercion vis-à-vis the target state by the involvement with the civilian transitional authority is not unlawful if it can be justified as a countermeasure.

The second hypothesis may be relevant in the following case. What if several powerful states, acting together, decide to support and assist a transitional authority and its political, legal and constitutional endeavours. What if this combined diplomatic action –for example in a ‘friends of’ or ‘contact group’ format– is rightfully perceived by the ‘target state’ as a coercion which deprives it of the possibility to decide freely on its own constitutional polity, a matter that falls under its *domaine réservé*? This is certainly not merely a theoretical question¹⁰⁴.

The first hypothesis, to which I turn now, depends on the definition of *domaine réservé*, which is central to understanding the scope of the non-intervention principle.

“The notion of *domaine réservé* (reserved domain) describes the areas of state activity that are internal or domestic affairs of a state and are therefore within its domestic jurisdiction or competence [...]. Its precise content may vary over time according to the development of international law, but the closely linked principle of sovereignty of states entails that at least some matters remain within the regulatory competence of states. Hence the *domaine réservé* describes areas where states are free from international

¹⁰³ Talmon, *Recognition of Opposition Groups as the Legitimate Representative of a People*, 28.

¹⁰⁴ Read Malik Al-Abdeh, ‘Glorified Middlemen: My Take on the Syrian National Coalition’: « Take also the delicate matter of ‘foreign interference’. Days into the Istanbul meeting, SNC figures began talking of ‘external pressures’ being applied to accept resolutions that have been cooked up by Russia and the West. ‘A strong media campaign is underway against the SNC because it refused to submit to pressures’, tweeted Abdulkarim Bakkar, an SNC member. ‘The coalition fought for independent national decision-making and got most of what it wanted’, he added », available on <http://www.majalla.com/eng/2013/06/article55242223>. See also P. Dann, Z. Al-Ali, ‘The Internationalized Pouvoir Constituant - Constitution-making Under External Influence in Iraq, Sudan and East Timor’, Max Planck UNYB 10 (2006), pp. 450 a.f. for a general (and rather inconclusive) assessment on the legality of external influence on constitution-making.

obligations and regulation. Non-interference in the *domaine réservé* is a fundamental right of states [...] derived from sovereignty and protected by the principle of non-intervention in their internal affairs”¹⁰⁵.

With regard to the link between the *domaine réservé* and the non-intervention principle, the ICJ has stated:

“[a] prohibited intervention must [accordingly] be one bearing on matters in which each state is permitted, by the principle of state sovereignty, to decide freely”¹⁰⁶; “[a] state’s domestic policy falls within its exclusive jurisdiction, provided of course that it does not violate any obligation of international law”¹⁰⁷.

In short, the *domaine réservé* of a state comprises the state activities to which no international legal rules, or none of the rules it had contracted to, apply. It is also in this sense that the *domaine réservé* is relative. Each *domaine reserve* is different for each country¹⁰⁸.

In spite of –or rather because of– the relative character of the *domaine réservé*, a number of rules have become incumbent upon all states. This is the result of the progressive development of international law during the last decades. It is thus now generally accepted that a number of international legal obligations do not fall under the *domaine réservé* of any state anymore:

“[i]l existe des matières que tous les Etats ont soustrait à leur domaine réservé, comme l’interdiction de l’aggression, le droit à l’autodétermination ou certains droits fondamentaux de la personne”¹⁰⁹; “[c]ertains droits ont acquis une valeur de coutume universelle et sortent donc du *domaine réservé* de tous les Etats. Ces droits constituent le ‘noyau dur’ des droits de la personne, que l’on qualifie aussi de droits ‘indérogeables’. L’engagement souscrit à leur égard est un engagement absolu et leur violation n’est en aucun cas excusable”¹¹⁰; “[O]n peut donc affirmer que tout Etat membre de la communauté internationale est lésé par les violations de droits fondamentaux de la personne, tels le droit à la vie ou l’interdiction de la torture, et qu’il a qualité à ce titre pour adopter des contre-mesures à l’encontre de l’Etat auteur de ces violations”¹¹¹; “[i]l ne paraît cependant pas douteux que la protection des droits fondamentaux de l’individu échappe depuis longtemps au domaine réservé des Etats. Il suffit de considérer le nombre et l’importance des instruments conventionnés consacrés à la question, le développement sur cette base de règles coutumières sinon même de normes de *jus cogens*”¹¹². Thus whenever a ‘target state’ disrespects peremptory norms –for example the prohibition of aggression, fundamental human rights, and the principle of self-determination¹¹³– even a coercive (but non-forcible) third engagement with a transitional authority, maybe with the hopes to redress such a situation, cannot violate the principle of non-intervention in domestic affairs. Olivier Corten and Pierre Klein formulate this as follows: “toute action visant à contraindre un Etat à respecter ses obligations internationales ne constitue pas une intervention illicite”¹¹⁴.

¹⁰⁵ Katja S Ziegler, ‘Domaine réservé’, Max Planck Encyclopedia of Public International Law.

¹⁰⁶ ICJ, Case concerning Military and Paramilitary Activities in and against Nicaragua, Nicaragua vs. United States, 27 June 1986, § 205.

¹⁰⁷ Ibid., § 258.

¹⁰⁸ Compare any EU member state to any AU member state, and this point is easily made.

¹⁰⁹ Corten, *Droit D’ingérence Ou Obligation de Réaction* ?, 88.

¹¹⁰ Ibid., 95.

¹¹¹ Ibid., 132.

¹¹² Nguyen Quoc, *Droit International Public*, 440. Brad Roth agrees with this. See Brad R. Roth, *Governmental Illegitimacy in International Law*, op. cit., p. 31. Antonio Cassese calls this a “truism”. See Antonio Cassese, ‘Ex iniuria ius oritur: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community’, EJIL 10 (1999), 23–30, available on <http://www.ejil.org/pdfs/10/1/575.pdf>, consulted on 9 April 2013, p. 70.

¹¹³ Antonio Cassese, *Self-determination of Peoples: a Legal Reappraisal*, Hersch Lauterpacht Memorial Lecture Series (Cambridge ; New York: Cambridge University Press, 1995), 140: “the conclusion is justified that self-determination constitutes a peremptory norm of international law”.

¹¹⁴ Corten, *Droit D’ingérence Ou Obligation de Réaction* ?, 87.

All peremptory norms are norms *erga omnes*¹¹⁵, while the reverse is not true. It is not wholly uncontested whether *erga omnes* obligations can give rise to so-called ‘solidarity measures’; the International Law Commission has left the question open¹¹⁶. For Proukaki though, “there is ample evidence of state practice and *opinio iuris* that confirms the existence of a customary norm on solidarity measures. [...] the concept of solidarity measures has emerged through the necessity of enforcing fundamental interests of international law owed to a group of states collectively or to the international community in its entirety”¹¹⁷. Since this still seems to be contested, a strict abidance with the prerequisites for applying countermeasures seems all the more relevant (see below, D.3).

If we now concentrate norms with an *erga omnes* character¹¹⁸, the framework on countermeasures can provide us with a tool for situating the legal position of third states and organisations when they apply coercion within the scope of a state’s *domaine réservé*.

[D.2] The general countermeasure framework

Let us remind what the topic is of this paper: the transformative recognition by the EU. To the extent that (an *ex hypothesi* otherwise illegal) transformative recognition may be justified as a countermeasure, the EU should consider abiding by the (material and procedural) legal prerequisites for taking countermeasures. The countermeasure framework can thus offer a useful justificatory basis for EU diplomatic action. In short, the legal regime concerning the ‘circumstances precluding wrongfulness’ may provide coherent (and, as the case may be, legally compelling) checks and balances for guiding the EU when it acts in specific post-bellum constitutional transition contexts.

¹¹⁵ J. Frowein, ‘Obligations Erga Omnes’, Max Planck Encyclopedia of Public International Law : “Although *ius cogens* and obligations *erga omnes* have different legal consequences, they are related to each other in important aspects. A rule from which no derogation is permitted because of its fundamental nature will normally be one in whose performance all states seem to have a legal interest. This is confirmed by pertinent case law [Barcelona Traction Case]”.

¹¹⁶ It has written “[o]ccasions have arisen in practice of countermeasures being taken by other states, in particular those identified in article 48 [which includes a reference to obligations owed to the international community as a whole] [...] Such cases are controversial and the practice is embryonic”. Commentary 8 to Chapter 2 of the Draft Articles on state Responsibility. See also commentary 7 to article 54: “the current state of international law on countermeasures taken in the general or collective interest is uncertain. state practice is sparse and involves a limited number of states. At present, there appears to be no clearly recognized entitlement of states referred to in article 48 to take countermeasures in the collective interest”. Note, however, that the International Law Commission does not exclude countermeasures on the basis of the violation of *erga omnes* norms.

¹¹⁷ Elena Katselli Proukaki, *Countermeasures, the Non-Injured State and the Idea of International Community*, Routledge Research in International Law, pp. 204 – 208. See also J. Frowein, ‘Obligations Erga Omnes’, *op. cit.*, who rightly states that “[r]eactions against the violations of [obligations *erga omnes*] should preferably be organised within an institutionalized system of the international community”.

¹¹⁸ “All the [other] states parties have a common interest in compliance with these obligations by the state in whose territory the alleged offender is present. That common interest implies that the obligations in question are owed by any state party to all the other states parties [...]. All the states parties ‘have a legal interest’ in the protection of the rights involved (Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970, p. 32, para. 33). These obligations may be defined as ‘obligations *erga omnes partes*’ in the sense that each state party has an interest in compliance with them in any given case”, ICJ, *Questions relating to the obligation to prosecute or extradite, Belgium v. Senegal*, 20 July 2012, par. 68. Available on <http://www.icj-cij.org/docket/files/144/17064.pdf> consulted on 9 April 2013.

Thielbörger also points to the fact that the countermeasure framework can be relevant in this regard¹¹⁹, without going into much further detail. After explaining the possibility, in principle, for states to react to violations of *erga omnes* obligations, Thielbörger adds that such a reaction could consist of what I call a ‘transformative recognition’¹²⁰. Yet, the author has not detailed that the framework of countermeasures can offer concrete guidance for transition policy.

Is depicting this framework only a theoretical exercise? Is it redundant? To the extent that, by definition, the *domaine réservé* of states does not cover their respective (injunctive or prohibitive) international legal obligations, enquiring whether the international legal regime of countermeasures can serve as an additional justificatory basis for third states or organisations to engage with domestic civilian authorities may seem a bit redundant indeed. Yet, there are two *a priori* reasons for doing this; other reasons will be elaborated below, by the end of this paper.

First, one can admit that there is a ‘grey zone’ in assessing which norms fall outside the scope of the *domaine réservé*. The universal peremptory (and, incidentally, *erga omnes*) norms referred to above clearly fall outside this scope. Arguably, this is less clear for the remaining part of (for example, permissible) international legal rules incumbent upon a given country. The ‘grey zone’ relates both to practical problems that may arise in defining the *domaine réservé* –as mentioned above, its scope is unique for each country– and to theoretical questions. The thorny theoretical question is whether one can systematically hold that no conduct coercing a state to conform to its obligations can ever constitute an unlawful intervention.

Where grey zones remain misty, a subsidiary point can be put forward in law. Where a state or organisation needs to legally justify its ‘business’ with a unilaterally based civilian transitional authority, even its coercive conduct in the *domaine réservé* of a third country can be validated to the extent that it constitutes a validly taken countermeasure.

In short, countermeasures taken in accordance with the application conditions are –it is a truism– lawful, regardless of whether they impact upon the *domaine réservé*. Where that latter question is subject to doubt, it is useful to analyse whether, in the alternative, specific conduct can in any event be justified as a countermeasure (i.e. failing the first argument concerning the non-applicability of the non-intervention principle on the basis that the conduct did not touch upon a state’s *domaine réservé*).

¹¹⁹ “[b]efinden sich also Staaten automatisch im Bruch des Völkerrechts, wenn sie Oppositionsbewegungen als ‘Vertreter eines Volkes’ oder gar als ‘neue Regierung’ anerkennen, ohne dass die dafür aufgezeigten Voraussetzungen gegeben sind? Die Frage ist grundsätzlich zu bejahen. [...] Es stellt sich stets die Frage der Rechtfertigung”. P. Thielbörger, Die Anerkennung oppositioneller Gruppen in den Fällen Libyen (2011) und Syrien (2012), *Journal of International Law of Peace and Armed Conflict*, 26. Jahrgang, 1/2013.

¹²⁰ “[es] steht Staaten grundsätzlich zu, ihrerseits mit einem (dann gerechtfertigten) Völkerrechtsbruch gegenüber diesen Staaten zu reagieren. Ein solcher Völkerrechtsbruch kann auch die unzutreffende oder verfrühte Anerkennung einer oppositionellen Gruppe als ‘(einzig) legitimer Vertreter eines Volkes’ oder sogar als ‘Anerkennung einer neuen Regierung’ sein”, P. Thielbörger, *op. cit.*

Second, as I mentioned above the international legal regime of countermeasures offers a number of checks and balances that can guide, or at least inspire, state and organisation conduct -ideally, their proceduralisation¹²¹- with regard to unilaterally based transitional authorities. These checks and balances enhance transparency (notification procedure) and encourage moderation (principle of proportionality). The obligatory notification before implementing the countermeasures functions as a '*mise en demeure*', and aims at inciting the 'offender state' -who remains the first addressee of the countermeasure- to rectify unlawful conduct as soon as possible. Coercive action on the basis of countermeasures pursues precisely the same aim. As both the notification and the coercive action are instrumental, and function as a 'paternal reprimand' rather than as an annihilating sanction¹²², the offender state is being given the opportunity to adapt its conduct.

For the sake of elucidating the topic, let us concentrate on the following case, which concentrates on the right to self-determination¹²³. First, imagine a government, *Schiffistan*, which violates human rights on a large scale, is dictatorial, or otherwise violates the right to internal self-determination. Second, imagine a (nascent) domestic civilian transitional authority that wishes to change this situation, and broadly responds to the definition that I have developed elsewhere¹²⁴: it is a publicly instituted and (pre-)legally based institution; it purports to exercise a number of important public functions, but limited in time by law; it wishes to manage the transition process to permanent, stable and representative (governmental) institutions; it purports to represent its country on the international plane; it claims to ensure 'representativity'. In fact, these points are reminiscent of the right to self-determination¹²⁵; we may say that the transitional authority, with the functional legal personality it enjoys¹²⁶, conforms itself to the right to self-determination. Third, let us assume that the breach of the right to self-determination by the incumbent regime, as a peremptory and *erga omnes* norm, grounds an obligation for third states and organisations not to recognise the situation as created by the incumbent regime. On this basis, and on the basis of the violation of said

¹²¹ See also footnote 113, above.

¹²² "Countermeasures are not intended as a form of punishment for wrongful conduct, but as an instrument for achieving compliance with the obligations of the responsible state", Commentary 1 to art. 49 *Draft Articles on state Responsibility*.

¹²³ The focus I adopt on self-determination is not 'innocent'. It touches upon the discussion of 'self-determination assistance', on which I will not elaborate here. Another discussion is the role of self-determination in a state finding itself in a period of transformation: "The opinion by the International Commission of Jurists in 1920 on the Åland Islands affirmed this by making a distinction between normal and exceptional situations, "situations de droit" [legal situations] and "situations de fait" [factual situations]. Self-determination is a political principle, the Commission argued, and not "une des règles positives du droit des gens". As such it may not justify the dismemberment of clearly established States. In situations when State sovereignty itself is in question, however, "soit qu'il se trouve dans une période de transformation ou de dissolution" [if it finds itself in a period of transformation or dissolution], the principle finds its application. For the Commission of Jurists, national self-determination was a fall-back position: something that was "normally" dormant and enclosed within sovereignty. During periods of political transformation, however, when the existence of States becomes uncertain, self-determination becomes applicable to reconstitute the political normality of statehood." M. Koskeniemi, "National Self-Determination Today: Problems of Legal Theory and Practice," *International and Comparative Law Quarterly*, Vol. 43, No. 2 (1994), pp. 241-69, at p. 246, referring to *Rapport de la Commission Internationale de juristes chargée par le Conseil de la Société des Nations de donner un avis consultatif sur certains aspects juridiques de la question des Îles d'Åland*, in *La question des îles d'Åland. Documents diplomatiques publiés par le Ministère des Affaires Étrangères* (1920), pp.68-70.

¹²⁴ See document 'one quarter', on file with the author. My definition was broadly endorsed by my supervisor F. Francioni at a conference organised by *La Comunità internazionale* (SIOI). See F. Francioni, 'Lo status del transicional national council della Libia e gli effetti del cambiamento di regime sui diritti degli investitori esteri', *Giornate di Studio sulla Libia, La Comunità internazionale*, pp. 28-29.

¹²⁵ Arguably, this is not only an entitlement of minorities or specific peoples, but also of nations.

¹²⁶ I have developed this point in another paper ('one quarter'), on file.

erga omnes norm, it could be argued that third states and organisations like the EU have the right to take coercive measures against that regime by way of countermeasure.

These measures may precisely consist in establishing diplomatic communication channels with, or even formally recognising, the (nascent) transitional authority, arguably only inasmuch that authority pledges to respect 'representativity' itself, and would not disregard the very principle (the principle of self-determination) that was violated by the incumbent government.

In the case regarding *Schiffistan I* focussed on the principle of self-determination. The link between internal self-determination¹²⁷ and civilian transitional authorities wishing to legally reconfigure their state is far from absurd. The right to self-determination serves as a basis for a people to "participate (a right to have a say) in the decision-making processes of the state"¹²⁸, i.e. a right to participation. That right includes the core business of transitional authorities, i.e. the constitutional reconfiguration of a country:

"[t]he right of participation would, in any case, relate to the determination or constitution of the political system of the state (*pouvoir constituant*). [t]his implies that a 'people' may change its form of political system at a later date. [...] In addition, the right of participation would also relate to the amendment of the constitution. And, it has been suggested, even to a right of resistance against 'tyranny and oppression'"¹²⁹.

One way to 'measure' to what extent the principle of internal self-determination is allegedly (not) conformed to, is to look at the human rights record. To the extent that the respect of core human rights and the compliance with the principle of internal self-determination overlap, this principle grounds a right of resistance against 'tyranny and oppression'¹³⁰

By exercising this right, one could aim at redressing the principle of self-determination, which is a peremptory¹³¹, thus *erga omnes*, norm. It can be invoked by all states as a basis for a countermeasure. Of course, a countermeasure "shall not affect [...] obligations under peremptory norms of general international law"¹³², like the obligation to refrain from the threat or use of force. Non-forcible intervention does not reach this level, or, more accurately, it does not violate a norm of *ius cogens*. Even if the countermeasure would *a priori* violate the principle of non-

¹²⁷ As the scheme revolves around the principle of internal self-determination, I should now briefly take a stance on this topic. The topic used to be controversial in literature; it is less so now. I agree with David Raič that a narrow interpretation of the right of self-determination cannot be defended. That right is neither reduced to the decolonisation process nor is it only held by states. For this author "treaty law, resolutions and declarations of international organizations and conferences, as well as state practice, jurisprudence and doctrine clearly point to the continuing character of self-determination beyond the traditional colonial context". In the same line, he argues that "there is convincing evidence that the *continuing* character of self-determination in particular refers to an *internal* dimension or aspect of the right of self-determination, that is to say, to an implementation of self-determination *within* states". D. Raič, *statehood and the Law of Self-determination*, Developments in International Law v. 43 (The Hague); New York: Kluwer Law International, 2002), 228, 234 and 237.

¹²⁸ Ibid., 237.

¹²⁹ Ibid., 238.

¹³⁰ P.H. Kooijmans, *Tolerance, Sovereignty and Self-Determination*, NILR, 1996, p. 211, at p. 213, cited in D. Raič, *statehood and the Law of Self-determination*, op. cit., p. 239.

¹³¹ ICJ, East Timor Case & Israeli Wall Advisory Opinion (paras 155–159). See also par. 5 of the comments to art. 40 of the *Draft Articles on state Responsibility*.

¹³² Id., Art. 50.1.

intervention, it is valid inasmuch as it conforms to the prerequisites outlined in the second chapter of the *Draft Articles on state responsibility*, to which we briefly turn now.

[D.3.] Countermeasure prerequisites

As hinted above, the injured state or organisation (like the EU or any other international legal person concerned with *erga omnes* obligations) hoping to take less 'legal risks' by following the countermeasures prerequisites should first "call upon the responsible state [...] to fulfil its obligations"¹³³, i.e. give notice¹³⁴ and possibly specify the conduct that the responsible state should adopt¹³⁵. It should "notify the responsible state of any decision to take countermeasures and offer to negotiate with that state". Such negotiations may induce the responsible state to envisage, within its domestic order, negotiations regarding the realisation of the right to self-determination since, arguably, "[t]he fact that a people has a right to freely determine its political status suggests [...] that good faith negotiations are contemplated"¹³⁶. Furthermore, countermeasures are taken in order to "induce [the responsible] state to comply with its obligations"¹³⁷; they should "be taken in such a way as to permit the resumption of performance of the obligations in question"¹³⁸, i.e. leave enough time to the incumbent government to redress the situation. As we have seen, they shall not affect any peremptory norm¹³⁹, therefore cannot be forcible, or violate fundamental human rights or humanitarian law. They must be proportional¹⁴⁰. They must be reversible¹⁴¹.

Applying the countermeasure prerequisites can be fraught with difficulties. Some comments follow on proof, notification and proportionality.

- The violation of *erga omnes* obligations must be established beyond any doubt. This high threshold is most probably met when (i) independent proof¹⁴² shows (ii) that core human rights applicable to all states on the basis of customary law¹⁴³ are systematically violated by the incumbent government.

¹³³ Id., Art. 52.

¹³⁴ Id., Art. 43.1.

¹³⁵ Id., Art. 43.2.

¹³⁶ D. Raič, *statehood and the Law of Self-determination*, Developments in International Law v. 43 (The Hague ; New York: Kluwer Law International, 2002), 283.

¹³⁷ Art. 49.1 *Draft Articles on state Responsibility*.

¹³⁸ Id., Art. 49.3.

¹³⁹ Id., Art. 50.

¹⁴⁰ Id., Art. 51.

¹⁴¹ Ibid. The fact that often only temporary missions or offices are established to liaise with transitional authorities shows that, should their establishment be justified under the framework of countermeasures, their nature is reversible. The more such diplomatic channels are kept discrete, the less the concept of estoppel can be invoked against the state or organisation establishing them, the more their establishment seems to be reversible.

¹⁴² I cannot develop in detail here which procedures would best guarantee an independent administration of proof. When it is multilaterally proven that violations of the law have taken place within a country, this seems to offer more guarantees of independence than a unilateral assessment to the same effect. Ideally, the multilateral establishment of such proofs would be proceduralised, maybe at the level of the UN Peacebuilding Commission (rather than at the level of the High Commissioner for Human Rights or of the intergovernmental Human Rights Council)?

¹⁴³ ICJ, *Barcelona Traction, Light and Power Company*, ICJ Reports 1970, 3, 32, para 34.

- The third state or organisation must generally notify the offender state of this intent; and negotiate on how its unlawful conduct can be ceased, with the hopes that this state will give its assurances of non-repetition, or resumes the performance of its obligations. If the offender state agrees to perform its obligations, the third actor should consider ceasing its contacts with the transitional authority (if it ever gets to establish them). In practice, the notification obligation may be sufficiently conformed to when the incumbent government of the offender state takes part in the transition negotiations¹⁴⁴.
- If the third state or organisation applies countermeasures, these measures must be proportional since “[o]nly if the provocation is unlawful and the countermeasure is proportionate would its unlawfulness be cured”¹⁴⁵. Proportionality concerns the legal constraints within which a certain measure of latitude is afforded¹⁴⁶. In spite of “the steady erosion of proportionality’s indeterminacy”¹⁴⁷, this remains a delicate point, especially given the huge (disproportionate?) impact ‘transformative recognition’ can have.

These three application criteria are extremely demanding. This should be borne in mind by those who wish to invoke the countermeasure framework to justify their dealings with unilateral transitional authorities. Nevertheless, if EU diplomacy and member states’ chancelleries conform as much as possible to the procedures as set out in the second chapter of the *Draft Articles on state responsibility*, in my view such a law-driven policy may present seven advantages. Before briefly concluding, I will enumerate the potential advantages of tailoring this policy to a number of material but especially procedural requirements. In line with the example of ‘Schifistan’ given above, I focus on the right to self-determination (fifth to seventh point).

- *First*, the third state or organisation (like the EU) takes less legal risks since, arguably, its conduct is less likely to be unlawful; even if it is coercive and touches upon the *domaine réservé* of the offender state, the conduct is validated as long as it conforms to the necessary conditions to apply countermeasures. Strictly conforming with the conditions under the regime of countermeasures seems to be the safer option. It also gives due weight to the merely adjusting (rather than sanctioning) role of third actors in the absence of a central sanction mechanism in international law.
- *Second*, given the obligatory notification procedure, transparency increases with regard to the reasons why one would support ‘regime change’, and, prior to that, on how the necessary changes can be implemented by the

¹⁴⁴ Arguably, it is more likely that the transition negotiations would have conformed to said obligations had the ‘AU’s proposal for a Framework Agreement on a Political Solution to the Crisis in Libya’ been fully conformed to. See <http://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Libya%20S2011%20455.pdf>. See also M. Dembinski, T. Reinold, ‘Libya and the Future of the Responsibility to Protect - African and European Perspectives’, Peace Research Institute Frankfurt, 2011.

¹⁴⁵ T. M. Franck, ‘On Proportionality of Countermeasures in International Law’, *American Journal of International Law*, October 2008.

¹⁴⁶ *Id.*, p. 765.

¹⁴⁷ T. M. Franck, ‘On Proportionality of Countermeasures in International Law’, *AJIL*, vol. 102:715.

government in power. The notification functions like a *mise en demeure*, which incidentally can also be informative for multilateral fora dealing with the matter¹⁴⁸.

- *Third*, one advantage relates to the *ratio legis* behind the application of countermeasures, which explicitly aim at inciting and permitting the allegedly responsible state to resume the performance of its obligations. Such a procedure gives the opportunity to the responsible state to backtrack and revisit its policies. By placing the primary responsibility on the offender state, this procedure discourages imposed regime changes, and puts a clear restraint on ‘government-shopping’.
- *Fourth*, the fact that the scheme calls for the (incipient) abidance with the principle of self-determination by the transitional authority ensures that that authority is not the product of a ‘puppet regime’.
- *Fifth*, transparent interstate communication concerning the application of the right of internal self-determination as held by a nation will allow for this right and principle to be more objectively grounded. This is useful as today, undeniably, difficulties arise in assessing the abidance with the principle of self-determination; as hinted above, such an assessment can be linked to a careful examination of the human rights record.
- *Sixth*, said framework allows for a ‘legalisation’ (through the international legal principle of self-determination) and for a welcome ‘proceduralisation’ (through said notification procedures) of so-called legitimacy issues; failing objective standards and benchmarks, invoking only ‘legitimacy’ constitutes an unstable ground for recognition accompanied by diplomatic channels: “it is widely known that the concept of legitimacy in international law is a complex one and attempting to determine the criteria for the basis of legitimacy, especially in a situation of insurgency, could be very difficult”¹⁴⁹. This point probably explains the hesitation of C. Tomuschat when he mentions the (legally undefined) ‘compensatory’ powers of legitimacy: “[i]n July 2011, the NTC was at the most a government in statu nascendi. But its lack of factual power was compensated by its legitimacy which it possessed as the voice of the Libyan people, although not confirmed by formal elections”¹⁵⁰.

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Concluding remarks

To the extent that transformative recognition may be justified as a countermeasure, the EU should consider abiding as far as possible by the legal prerequisites for taking countermeasures. The countermeasure framework can offer coherent and concrete guidance (e.g. institutionalisation of notification procedure) to the EU diplomatic service, and compliance can strengthen its (legal) position. It can trigger further reflection on the regulation and proceduralisation of thorny issues like governmental legitimacy, regime change, and what I have called ‘transformative recognition’.

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¹⁴⁸ Comparable to the collective recognition within the UNGA of liberation movements; and arguably emerging with regard to insurgents’ governments.

¹⁴⁹ G. Nesi, ‘Recognition of the Libyan National Transitional Council: When, How and Why’, *op. cit.*, p. 58.

¹⁵⁰ C. Tomuschat, ‘The Arabellion – Legal Features’, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 3/2012, p. 447. Own emphasis.

Human security in transition: rupture or continuity of water discourses in the Middle East?

The cases of Egypt and Libya before, during and after the political transitions of Arab states.

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Abstract

Scientific writings rarely tackle the Arab political transitions from an environmental perspective, leaving natural resources to a secondary agenda of interest. Yet, as the Egyptian President Mohamed Morsi affirmed on June 11th, 2013: *"If our share of Nile water decreases, our blood will be the alternative."* If this speech echoes recurrent tensions surrounding water in the region, it stresses above all that water discourses also undergo political transitions in the Middle East. These remarks led to question how recent changes in the Arab world have affected water discourses and their corresponding politics and policies of transition? The latter question also coins: i) the preoccupying issue of human security because water impacts individuals' lives; ii) a transnational issue because water resources lie at the heart of inter-states relations in the Middle East.

Our research question asks whether these experiences of transition trigger rupture or continuity in the existing water security discourses? We propose to analyse these discourses through press releases before, during and after the change of regime. We aim to assess whether this natural resource engenders rupture or continuity in the political transition agenda.

We have selected two countries according to the transition process they are involved in. Indeed, Libya and Egypt both have undergone a political transition since 2011 although the outcomes were different. Furthermore, they share a vital relationship to water, embedded in *conflictedness* and nationalist engineering development. They rely upon a unique set of water resources, which conditions this relationship to their neighbouring countries and their population.

Introduction

Any water story in the Middle East begins with a scarcity equation of the resource availability coupled with its international repartition. May it be river flows or aquifers, the geomorphological distribution of water resources is shared among riparian states. The equation does not end with international factors, it also stems from internal factors: sectorial uses among economic sectors, sanitation politics. Water access is portrayed by discourses either as a need or as a right, a useful definition to study water in relation to human security.

The latter notion, although disputed among researchers, stresses both vulnerable populations with poor access to water. Yet, it further includes vulnerable States with little quotas of water along shared water basins. A critical security study of water access puts to the forefront power relations among the population or riparian States and outlines negative externalities of water system managements over human security.

This paper aims to study water insecurities embedded in political, economic, social, environmental and cultural factors through discourses. The 'web' of water security introduced by Mark Zeitoun emphasises "combined readings of the social and biophysical processes that enable or prevent national water security. These processes are mediated by a socioeconomic and political context replete with power asymmetries, such that water security for some rests on the water insecurity of others." (Zeitoun, 2011:1). It outlines the *conflictedness* of water discourses and thus suggests that securitization processes can be identified in these discourses.

Our analysis uses securitization to study securitizing moves such as the Egyptian President Mohamed Morsi's speech to the Parliament: "If our share of Nile water decreases, our blood will be the alternative."¹⁵¹ If this speech echoes recurrent tensions surrounding water in the region, it stresses above all that water discourses also undergo political transitions in the Middle East. Very few scientific writings have yet tackled the Arab political transitions from an environmental perspective, leaving the natural resources-human security nexus to a secondary agenda of interest. Yet, the human security doctrine aims to abolish or modify first causes of conflicts, may they be of political, economic or social nature (Rioux, 2001).

These remarks question how recent changes in the Arab world have affected water discourses and their corresponding politics and policies of transition? The latter question also coins: i) the issue of human security because water impacts individuals' lives; ii) a transnational issue because water resources lie at the heart of inter-states relations in the Middle East. Water discourses thus affect two level of conflict: a national and an international one.

A corpus of press articles has been reviewed through a concordance analysis of words and articles' titles. Prior to this discourse analysis of Egypt and Libya's water issues, the paper presents each context to grasp the complexity of natural resources repartition. It discusses causal pathways of water disputes and analyses elements of water securitization following these categories: technological controversies; sectorial and territorial competition; investment in water infrastructure and management; human security impacts; and transboundary or riparian relations.

¹⁵¹ Article by Nouran El-Behairy, "Morsi: If our share of Nile water decreases, our blood will be the alternative", Daily news Egypt, June 11th, 2013: <http://www.dailynewsegypt.com/2013/06/11/morsi-if-our-share-of-nile-water-decreases-our-blood-will-be-the-alternative/>

I. Context

The contextualization highlights both the historical construction of water distribution and disagreements among its users and the natural repartition in two countries subject to arid climate. Natural topography and hydropolitics thus need to be contextualized before studying water discourses.

A. Egypt

Topographic and technological characteristics

The Nile is the longest river in the world, which drains a huge basin over its 6671km unequally distributed between 11 States: Egypt, Sudan, South Sudan, Ethiopia, Burundi, Rwanda, Eritrea, Kenya, Uganda, DRC and Tanzania. The geography of the Nile Basin and its topography are both distinct and varied, crossing 3 climatic zones (Equatorial, Tropical and Saharan) (Mutin, 2000).

The Nile takes its first flows from two primary sources: in Burundi the Kasumo source feeds lake Victoria and from the highest point at 5,120 m above sea level in the Ruwenzori mountain range in Uganda. While crossing the lowlands of Gezira in Sudan, a second branch of the river meets these wetland areas and the Bahr el-Ghazal river in the Sudd region where they give birth to the White Nile. This first branch provides a mere 30 % of flows as measured at Aswan (Lasserre, 2009). Closer to Khartoum, the Blue Nile comes from Lake Tana and the highlands of Ethiopia. “While the catchment of the Blue Nile is small relative to that of the White Nile, high rainfall from June to September means that it is by far the greatest contributor to main Nile flows – some 60 % of the total.” (Nicol, 2003:5)

The Nile then enters Egypt and crosses this desert country, creating a vast oasis (Swain, 2008). “The second major feature of the hydrological system is the huge seasonality of the Blue Nile’s flows, concentrated from July to October in a spectacular flood. The third major feature of the river system is caused by virtue of the river’s situation in hot, arid areas where evaporation losses are high.” (Nicol, 2003:6)

“The complexity of the number of states, combined with the uneven distribution of the basin between states and the complex hydrology of the system, poses significant technical and institutional challenges both for the management of shared waters and, in the future, for ascertaining where and how benefits can and should be shared within and outside the basin.” (Nicol, 2003:6)

The lion share: international agreements

The control over the Nile has been subject to a long dispute among its riparian states. Egypt’s hegemonic position dates back to the colonial era when the Britannic ruling attributed a dominant position to the downstream state: Egypt (Maghfour, 2008)¹⁵². A symbolic representation of this repartition under the colonial ruling lays in the 1929 Nile Waters Agreement (signed on May 7th)¹⁵³.

Two key facts need to be underlined with regard to this Treaty (Salman, 2013). It fixed for the first time the sharing and utilisation of the Nile hydraulic resources and was officially rejected by the upstream states, which argued to have been excluded from the negotiations despite the British representation of its East African colonies of Kenya, Uganda, Tanganyika and Sudan.

¹⁵² Maghfour, 2008:148: “Événement fondateur dans la représentation que se fait l’Egypte de la menace qui pèse sur ses eaux [...]. L’épisode de Fachoda est la première tentative indirecte d’instrumentaliser le Nil en tant qu’outil de pouvoir. Il a démontré à l’Egypte à quel point l’arme de l’eau pouvait être redoutable si elle était aux mains d’une force hostile en amont. L’Egypte héritera de cet épisode une susceptibilité aiguë à l’égard de la présence de toute force étrangère aux sources du Nil.” 2008:150: “De cette période coloniale, l’Egypte héritera deux éléments constitutifs de sa sécurité nationale en matière des eaux du Nil. [...] un égypto-centrisme fondé sur sa conviction profonde que l’Egypte possède des droits acquis sur les eaux du Nil et un droit de regard sur tout projet de développement hydraulique entrepris par un pays en amont et susceptible de modifier l’écoulement du Nil.”

¹⁵³ It should be mentioned that other treaties regarding the Nile game were signed before this one: the 1890 Treaty between Great Britain and Germany; the 1891 Protocol between Italy and Great Britain; the 1902 Treaty between Ethiopia and Great Britain; the 1906 Treaty between Great Britain, France and Italia; the 1925 Treaty between Great Britain and Italia.

This Treaty organized the use of the Nile following these points (Wolde-Giorghis, 2009):

- Share of water: 49 billions of m³/year for Egypt and 4 billions of m³/year for Sudan.
- Full outflow over the Nile for Egypt from January 20th to July 15th.
- Victorian lake waters will not be used without the prior agreement of Egypt.
- No construction work reducing the Nile flow will be initiated without the prior consent of Egypt, introducing a veto right to Egypt¹⁵⁴.
- Egypt was granted the right to investigate and inspect over the entire Nile river and its affluent sources.

Finally, the Treaty specified that these points were to be re-negotiated on Sudan's independence. Until then, Egypt and Sudan sustained a dialogue and agreed to recognize the rights obtained in the 1929 Treaty.

On Sudan's independence (January 1st 1956), the newly born State claimed for the revision of the 1929 Treaty. Following difficult negotiations related to the Aswan dam, Egypt and Sudan on the one hand and the other Nile riparian on the other hand signed the 1959 Nile Waters Agreement (November 8th) (Magrin & Raison, 2009).

This sharing of the Nile was organized as following by the Treaty (Majzoub, 2000):

- The agreement established the total annual flow of the Nile (measured at Aswan) as 84 billion m³, and allocated 55.5 m³ to Egypt and 18.5 m³ to Sudan. The remaining 10 m³ represent the evaporation and seepage at the large reservoir created by the Aswan High Dam in southern Egypt and northern Sudan.
- Egypt obtained the guarantee that Sudanese water consumption would never exceed the m³ allocated by the 1959 agreement.
- Egypt was able to start the construction of the High dam of Aswan and Sudan was able to build the Roseires dam.
- A permanent technical Committee was created to settle disputes between Egypt and Sudan.

Thus, Egypt and Sudan allocated the entire flow of the Nile. Ethiopia entirely rejected the agreement and refused to participate to the technical committee. The Treaty stipulated that Egypt and Sudan would receive claims from other riparian and adopt a common position to study and respond to their demand. It did not satisfied Ethiopia, as it denied its access to the Nile flows of which 80% comes from the Blue Nile. This treaty still rules the Nile sharing despite attempts to cooperate through the Nile Basin Initiative (created in 1999) and the Cooperative Framework Agreement (Entebbe Agreements in 2010) to which Egypt and Sudan refuse to sign.

B. Libya

Topographic characteristics

Libya is covered by 90% of Saharan desert land and is not crossed by any river. The only lush pastures' area, large of 80km, is located in the Northern part of Libya. The zone is characterized by a Mediterranean climate of long dry summers and rather humid winters. In this region known as Jafarah plains, precipitations are rare and intense whereas the rest of the country is portrayed as an extreme arid desert with irregular yet almost absent precipitations. The mountainous regions share a particular asset. Jabal al-Akhdar benefits from precipitations over 400mm per year while the Tripolitania region receives from 200 to 400mm at the East of Jabal Nafusah (Fontaine, 1999).

However, Libya enjoys two major underground water basins, which cover the desert areas. Shared between Egypt¹⁵⁵, Sudan, Chad and Libya, the Nubian Sandstone Aquifer System is the most important one. Its total surface area covers 2 million km² of depth ranging from 4000 to 4500m. This aquifer hides a reserve of 150.000 km³. Its second aquifer is shared with Tunisia, Algeria, Niger and Chad. It splits in two distinct aquifers: the Northwest Sahara

¹⁵⁴ 1929 Agreement, paragraph 4 (ii): "Except with the prior consent of the Egyptian Government, no irrigation works shall be undertaken nor electric generators installed along the Nile and its branches nor on the lakes from which they flow if these lakes are situated in Sudan or in countries under British administration which could jeopardize the interests of Egypt either by reducing the quantity of water flowing into Egypt or appreciably changing the date of its flow or causing its level to drop."

¹⁵⁵ Although it was not mentioned in the section over Egypt topography, Egypt is also using underground water as an alternative source of water. We chose to focus over the Nile as it remains its main source of water.

Aquifer System (Tunisia, Algeria) and the Mourzouk-Djado Basin (Niger, Chad). The Fezzan basin covers the Occidental zone and its surface area spreads over 864.000 km². Unlike the other aquifer, its thickness does not exceed 1500m and starts at 200m. It can provide 2 million m³ per day.

Key to this hydraulic presentation of Libya's topography is the absolute deficiency of renewable water resources. The only coastal aquifer reloaded each year is overly pumped and currently dries up.

The lion share: unilateral environmentalism¹⁵⁶

The exploitation of water is intrinsically linked to the discovery of hydrocarbon in the desert. In 1968, the American Occidental Petroleum company found huge quantities of ground waters in the region of Koufra during oil drilling. This discovery gave new hopes to redevelop a collapsing agriculture in the 1960s (Palluault, 2012).

As soon as Gadhafi proclaims the Libyan Arabic Republic in 1969, he decides that agriculture should be part of Libya's development and autonomy. It shadows the already vivid opposition between rural populations, tribes and urban bourgeoisie (Daguzan and Moisseron, 2011). Following the failure of perimeter irrigated agriculture in the Saharan region, Libyan authorities wished to transfer water to coastal areas. Gadhafi therefore imagined the Great Made-Man River (GMMR) project, which was officially introduced in 1983. The GMMR consists in a wide network of pipelines transferring Saharan underground water to coastal regions since 1991.

The lack of international norms regarding overexploitation of transboundary aquifers¹⁵⁷ gave room for the regime to carry this project on. The Internationally Shared Aquifer Resources Management (ISARM) currently represents the global initiative to assess transboundary aquifers' characteristics. Libya holds a core place in the regional initiative (Kheder, 2007). It hosted the first workshop "Managing shared aquifer resources in Africa" in 2002. The unilateral environmentalism behaviour to launch the project worried neighbouring States. Egypt feared excessive pumping and consequences over both the aquifer although both countries have agreed on pumping the aquifer (Mutin, 2000). Similar positions are found in Algeria. Overall, aquifers are poorly politicised and are used with only little awareness of exploitation's impacts (UNESCO, 2011).¹⁵⁸

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C. A comparison of water disputes

The two first parts draw the topographic lines of water repartition in Egypt and Libya and embed these in their historical context. Despite the singularity of these elements presented, the causal pathways of water disputes in each country put into play recurrent factors.

Causal pathways of water disputes

These similarities are both due to their affiliation to the Middle-East (Bozarslan, 2011). Abundance and scarcity of water resources are relatively distributed from one region to another according to three variables: downstream/upstream positions of domination or dependence; wealth or poverty facilitating or impeding to cope with natural handicap; and management choices at regional and international scales (Béthemont, 2001).

¹⁵⁶ The title refers to the work of Itay Fischhendler, Shlomi Dinar and David Katz (2011) over Water Management along the Israeli-Palestinian Border. They analyse the change over time in Israel's strategies for stream and river rehabilitation undertaken as a response to continued runoff of wastewater from Palestinian territories. They find that abrupt political changes that negatively affect relations among the parties undermine the foundations for cooperative solutions. In the Israeli-Palestinian case, Israel has responded by adopting a position of "unilateral environmentalism."

¹⁵⁷ The General Assembly of the United Nations has recognised by adopting the Resolution over transboundary aquifer's right (A/Res/63/124 of December 11th, 2008) that "le droit des aquifères transfrontières revêt une importance majeure dans les relations entre États" and "Encourage les États concernés à conclure des accords bilatéraux ou régionaux appropriés pour gérer convenablement leurs aquifères transfrontières".

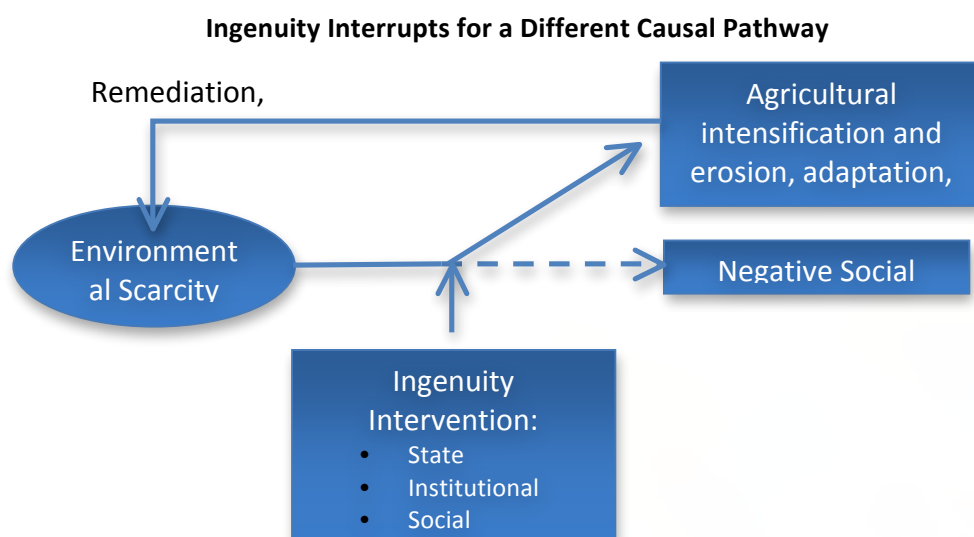
¹⁵⁸ Concerned countries endorse results of the first ISARM evaluation, but these are not often taken into account except by pilot zones. This is due to remaining uncertainties about the aquifer system and a lack of political consciousness. More information is provided by the OSS (Sahara and Sahel Observatory) program Water/Shared Water Resources.

Indeed, more than a climatic-scarcity connexion, these countries share a common ‘history’ of ‘power, land and water’ issues (Blanc, 2012). The agricultural systems are a reality often ignored by the media and public debates despite their role in national stability. They are also disqualified on the economic part whereas they remain a dominant activity and these countries claim to be seeking for food self-sufficiency and sovereignty (Leridon & De Marsily, 2011; Palluault, 2012). Hence, analyses of the role of irrigation in the Middle East have proven to be a key variable of hydropolitical conflicts for both inter and intra-states unrests. The geopolitical dimensions of agricultural sectors stem from agricultural practices and concurrences due to urbanization phenomenon and more globally the water repartition amongst population and economic activities (Lasserre, 2005). With regard to the ration water resources available / population, and international norms of scarcity, Egypt and Libya were already part of the sixth states around the Mediterranean to face shortages in 1990 (Béthemont, 2001).

These remarks echo previous works on environment-conflict linkages drawn from a neo-Malthusian analysis of environmental scarcities and violence – population-environment researches. “New research needs to move beyond debates about whether social or natural factors are more important and instead develop comprehensive explanations that also grapple with the difficult analytical problem of determining the relative importance of various interacting causes and processes.” (Deligiannis, 2013:43) Deligiannis as Ayeb¹⁵⁹ in our case therefore insist on an analysis of livelihood and poverty (Deligiannis, 2012).

Rather than being a direct link, political ecologists¹⁶⁰ suggest that environment-conflict research ought to examine the distant drivers behind processes producing scarcity and their social effect. The goal is to understand how scarcity-induced social effects encourage conflict (Peluso & Watts, 2001). The genesis of violence as put by political ecology accounts lack sophisticated analyses sensitive to social science work on the causes of civil conflict and revolution.” (Deligiannis, 2013:43) Analysts now suggest to examine more closely the relationship between the social effects of environmental transformation and patterns of violence¹⁶¹ “to better integrate social science research on violent conflict with more sophisticated analyses of environmental transformations and scarcity.” (Deligiannis, 2013:44)

10



Schema 1 adapted from Deligiannis (2013:50)

This literature allows us to avoid neglecting Neo-Malthusian outcomes of scarcity while including ingenuity interventions which modify the causal pathway (schema 1). It becomes possible to “appreciate the variety of

¹⁵⁹ Interview with Habib Ayeb, July 1st, 2013.

¹⁶⁰ A political ecology analysis concerns “deep processes and regimes of accumulation, power, and access to essential human environments.” (Deligiannis, 2013:44).

¹⁶¹ Kahl noted that “the causal logic whereby political, economic, and discursive practices and structures constitute particular environmental and patterns of violence is underspecified.” (Kahl, 2006:25)

contextual situations and different pathways of impacts of environmental scarcity while exhibiting some combination of scarcity-induced social effects, negative feedbacks, and interventions of varying effectiveness” from States or other powerful actors. (Deligiannis, 2013:50).

Elements of water securitization comparison

- **Technology controversies**

Engineering works have paved the development of water storage and irrigation in both countries. These reflect both symbolic and strategic values of water in the national development of Egypt and Libya (Béthemont, 2001). The High dam of Aswan and the Great Made-Man River respectively projected the quest for power, hydraulic control and personification of Nasser and Gadhafi.

In 1958, the USSR offers Egypt its financial and technical support to build the High Dam of Aswan (Magrin & Raison, 2009). “In this decolonization period, the High Dam of Aswan embodies the symbolic fight against neo-colonialism and a socialist project”¹⁶² (Mutin, 2000:48). Completed in 1971, it fully enters into function in 1975. It dames up 162 billion m3 of volume of water and gives a storage capacity equalling to at least the double of annual floods to Egypt. Four development goals were targeted: extend irrigated surface areas and drainage; improve navigation; protect the population from annual flooding; and produce hydroelectricity.

However, controversies about the building have been evaluated a posteriori in terms of negative effects induced by the dam: evaporation due to desert climate; increased salinity of the Delta water; erosion along the valley; loss of silt and decreased fertile lands; and diseases induced by stagnant waters. Besides, demographic increase of population partly erased the positive benefits of the dam initially planned for 30 million Egyptians – which led to the building of a second dam Merowe achieved in 2008.¹⁶³ Neo-Malthusian arguments of scarcity and population growth supports the idea that the current dams system can no longer insure the security of water and food provision of the country. Yet, hydraulic poverty arguments rather support the lack of political initiative too.¹⁶⁴

The Aswan dam reveals human security issues relevant to water infrastructures: Nubian displacement, recrudescence of diseases (bacteria bilharzies), loss of arable lands flooded, loss of livelihoods (agricultural land deterioration and fishing loss). Further human security issues are yet to be felt in Egypt as a result of the construction of the Merowe dam, while others are also claimed by every government from the potential building of the Ethiopian Renaissance dam.

In 1983, the Authority of the Great Made-Man River (GMMR) is constituted. The Authority is mandated the Libyan desert water transfer to the Mediterranean coast. The ultimate goal is to respond to increasing water demands in the coastal urban centres. The GMMR construction divided into 5 phases ended in 2010, therefore opening the question of its exploitation. Over 6000km of concrete pipelines crosses the Sahara and is supplied by 1300 drilling wells (Killgore, 2001).

The main purpose of the GMMR is the daily provision of 2.2 billion of m3, which equals to half of the Libyan water consumption. It also aims at diversifying economic assets of Libya, from which 87% is meant for agricultural purposes in Jafarah, Sirte and Benghazi regions. Similarly to the Egyptian hydraulic engineering, controversies about these positive effects stress the downsides of the GMMR. As an internal public politic instrument, the GMMR divided the Libyan economy in two rival sectors: agriculture and petrol. It also increased the division amongst urban and rural populations (Palluault, 2012). Territorial divide between the North and the South of Libya may feed regional conflicts as it already occurred in 1975 in the Aouzou strip. Currently, the price of water is competitive with desalination and

¹⁶² Free translation by the authors from French: “Dans cette période de décolonisation, le haut Barrage devient le symbole de la lutte contre le néocolonialisme et un chantier du socialisme.”

¹⁶³ Although not mentioned, 2 other dams were built above Aswan, inducing similar mixed human security consequences. Last but not least, the Peace Canal – now Cheikh Jaber – was also partly achieved thanks to Saudi donations to further increase available arable lands.

¹⁶⁴ Interview with Habib Ayeb, July 1st, 2013.

offers accessible water to its population. Yet, this situation will be reversed when drilling will go deeper in the aquifer. These massive water transfers also carry ecological consequences by introducing new species and perturbing the ecosystem below and above (Lasserre, 2005). However, the far most important drawback of the GMMR lies in the non-renewability of the aquifers: it is estimated to last only 50 years. It thus fosters inter-generational inequities.

As a conclusion, engineering projects encourage controversies between political elites, engineer experts and local populations resulting in social tensions and human security issues embedded in nature-societies politics (Latour, 2004). "Shortages situations are not necessarily explained by a real scarcity of the resource, but more often by the weakness of social and organisational assets allocated to their management, understood as changing values, and definition of norms, procedures and planning." (Lasserre, 2005:563).¹⁶⁵ For instance, the effects of on-going evolving international norms in transboundary aquifer will affect Libya's GMMR and water policies in the future.

- **Two-level conflicts: national social stability and inter-state rivalries**

We have describe in the previous sections contextual elements that will now be sum up into two categories: first internal instabilities that challenge human security; and second international disputes that result from these internal challenges and transboundary natural resources sharing.

The main internal division is explained by concurrence between multiple uses of water. These can be due to sectorial or territorial competitions. For instance, sectorial divisions build around demands from urbanisation, tourism, agricultural or irrigation needs and industrialisation. As noted by Mikail (2006:43), "the guarantee of basic water needs of urban populations is a proof of national security, and a reinforcement of governmental action and stability."¹⁶⁶ The issue can be translated to a territorial one through the opposition between rural and urban water needs. Also argued by Palluault (2012), these divisions may be coupled with inter-communitarian tensions and autonomist claims: the GMMR was also a harmonization of the institutional organisation of the water sector for the Libyan authorities.

10

As shown before, water infrastructures are costly and complex issues to be dealt by public policies. Increasing costs of water planning, exploitation and treatment of these infrastructures represents challenging issues to respond to citizens' demands. Political and economic public policies are confronted with important investments implying private and international actors. These investments are nonetheless obligatory to avoid wasting scarce water resources.

Thirdly, acute tensions are found between water demands and environment protection. Indeed, mobilizing natural resources impacts natural settings such as environmental degradations: ecosystems, soil and evaporation issues.

Finally, by reflecting social structures, established power relations and specific interests of actors, water governance is far more than just a technical issue (Houdret, 2005). Water access is directly linked to development, health (chemical and bacteriologic pollutions of sources), and food security. As stressed by Ayeb, water inequalities are a complex issue of stability best captured by the concept of hydraulic poverty.¹⁶⁷

This fragile stability between demands and resources has already reached tipping points, which affect international relations among riparian.

As discussed, internal water consumptions are an appropriation of the resources from its neighbours. In Libya, the GMMR captures non-renewable aquifers impacting Egypt, Niger, Chad, Tunisia and Algeria. It reduces their ability to access their share of the aquifer. As for the Nile, dams building in Egypt and Sudan directly impact upstream

¹⁶⁵ Free translation by the authors from French: "Les situations de pénuries ne s'expliquent pas nécessairement par une rareté réelle de la ressource, mais bien souvent par la faiblesse des ressources sociales et organisationnelles consacrées à leur gestion, sous la forme de changement des valeurs, de définition de normes, de procédures ou de planification."

¹⁶⁶ Free translation by the authors from French: "Il convient de noter aussi que la garantie des besoins de base des citoyens en matière d'eau reste un gage de sécurité nationale, ainsi que de renforcement de l'action et de la stabilité du gouvernement."

¹⁶⁷ Interview with Habib Ayeb, July 1st, 2013

countries. More than harnessing water resources, both cases impede other uses and thus require cooperation – or sustain conflicts.

What these situations outline are the power relations among riparian. They are either characterised by hegemonic position such as the one enjoyed by Egypt. Or, it is best understood as a unilateral environmentalism such as in Libya. Cooperation in those cases is either limited, controlled or denied.

Transboundary water thus appears as a mean of external policy. As an unusual example of foreign policy, water infrastructures may be strategic military targets during open conflicts. As such, Libya entered in Gleick's Water Conflict chronology in 2012 under the category of military tool. "During the 2011 Libyan Civil War, forces loyal to dictator Muammar Gaddafi gain control of a water operations centre and cut off water supply to the capital. The system controls Libya's Great Manmade River—a system of pumps, pipes, and canals that brings water from distant aquifers to Tripoli and other cities. Half the country is left without running water, prompting the UN and neighbouring countries to mobilize tanker ships to deliver water to coastal cities."¹⁶⁸

The two-level conflicts mesh-up in national goals. As a matter of fact, "a nation's identification to its water resources is negatively charged with implications. Water as a symbol embodies political claims and in the end, water causes or is a pretext that justifies the worst excess." (Béthemont, 2001:200).¹⁶⁹ As a conclusion, geographic penuries happen at both intrastate and inter-state levels, and are interlinked in water discourses.

II. 'Arab transitions', a new state of violence and water discourses

A. Media to analyse political changes and their impact over water securitization

Being a vital element of development and stability in Egypt and Libya, water resources occupy a core place in political discourses. We postulate that water discourses are subject of securitization processes (Balzacq, 2010). Securitizing moves proceed from both practices and discourses evolution. The study of these processes reveals gaps between discourses and water management practices found in water uses and relations amongst actors.

Although it is too soon to assert that the Middle East entered a new political era, the political changes affecting the region raise several questions. The aim of this article is not to define and study those changes, but we acknowledge here the diversity of these transformations in spite of the encompassing designation of Arab Spring, revolutions, rebellions (*tamarod*), or transitions (Badie, 2011).¹⁷⁰ Furthermore, current events reminds of another revolutionary process that spread in the region in the 1980s, although different in nature and purpose (Bozarslan, 2011).

Besides, since these changes are still on-going, it seems difficult to settle on the choice of words and to affirm whether changes only affect discourses, practices or both. Only historians will be able later on to decide what was breakthrough and where was continuity (Bendana, 2011).¹⁷¹ The aim of this article is not to study water issues as a cause or a result of these popular revolts. Rather, water is a fully-fledge object of political study.

¹⁶⁸ The Water Conflict Chronology List is part of a research database of the Pacific Institute under the supervision of Peter Gleick. It splits water conflicts down into 6 categories: Control of Water Resources (state and non-state actors), Military Tool (state actors), Political Tool (state and non-state actors), Terrorism (non-state actors), Military Target (state actors), Development Disputes (state and non-state actors). This list is available online at: <http://www.worldwater.org/conflict/list/>

¹⁶⁹ Free translation by the authors from French: "Cette identification d'une nation à ses eaux est lourde d'implications négatives dans la mesure où l'eau symbole devient l'eau support de revendications politiques et finalement l'eau cause ou prétexte justifiant les pires excès."

¹⁷⁰ We recognize here the importance to qualify these changes, but the rapidity of the path of change would require a debate on its own.

¹⁷¹ We mention here the colloquium "Changements sociopolitiques au Maghreb" held at the ULB in 2013 and a conference round "Vent de Liberté" in 2011 to discuss the qualification of the Arab Spring as transitions. As noted by Kmar Bendana, we will only know whether transition was the process or the goal of the Arab Spring: "History is a time which is not the one of those

The theory of securitization originally focused on the securitizing move of the most powerful actors and how the speech act of these actors was securitizing ordinary issues (Buzan & al., 1998). Water issues being treated as security matters both human and national, is subject to these processes. Recent evolutions of the theory however have started to look at other actors that participate to these processes, either by changing the practices of security or by spreading discourses. Vultee for instance demonstrates that “contemporary approaches to framing as a theory of media content and media effects illuminate “the social and cultural conditions under which securitization is introduced, amplified or played down.” (Vultee, 2010:77). As discussed previously, the Arab transitions are an acute case of changing contexts and power redistributions where securitization processes are at stake. Besides, studying discourses is also relevant because the speech act should supposedly be followed by political acts.¹⁷² These signs indicate how water issues may evolve in this sensitive revolutionary context.

In order to capture these signs, this study refers to the sociology of framing where a frame is an element of media discourse that provides a “central organizing idea [...] for making sense of events” (Gamson and Modigliani, 1989:3). They build an interpretation from the exchange between actors of key events, media and audiences. The purpose of frames is to “help make clear what kind of a problem a problem is, what sort of tools are used for dealing with it, and which actors are protagonists and antagonists” (Vultee, 2010:79). Hence, media’s role in the construction of reality is “to select some aspects of a perceived reality and make them more salient in a communicating text” (Entman, 1993:52). Working on media press release is a first answer to the question of the speech act’s function, which aims to be performative.

Securitization processes arise “at the interstate level or at the cultural level of a state’s legitimacy, its linguistic and ethnic identities, or its customs” (Buzan et al., 1998, pp. 22-23). Taken as a media frame that “blends sociological and psychological influences, it suggests that security is an organizing principle invoked by political actors [...] in an effort to channel the ways in which issues are thought about.” (Vultee, 2010:78). Securitization sheds the light on the conditions under which “the social content and meaning of security produces threats” (Balzacq, 2009:64). The main asset of framing is to better approach if not to understand agenda settings of conflicting issues.¹⁷³ In our study, “the cognitive study of news adds yet another layer to the familiar summary of agenda-setting, in which media accounts tell audiences not ‘what to think’ but ‘what to think about’ (McCombs, 2004).

These theoretical elements of our analysis thus reflect how we intend to study water discourses in Egypt and Libya. According to Vultee, reasons to look at news’ frames are three-fold:

1. The editing process works to make news sound more interesting rather than less, often by making it more assertive and less hedge (Bell, 1991).
2. News is oriented not only toward what officials think is news but toward how those close to power understand and explain news – particularly on the policy or international front (Schudson, 2003).
3. Journalists do not work in a cultural vacuum; frames organize the world in a way that makes sense to the people who produce the news as well as those who read it.

making History”. Free translation by the authors from French: “Le temps de l’histoire n’est pas celui des acteurs.” (Bendana, 2011:140)

¹⁷² Buzan et al. (1998) qualify the speech-act formulation as such: “It is important to note that the security speech act is not defined by uttering the word *security*. What is essential is the designation of an existential threat requiring emergency action or special measures and the acceptance of that designation by a significant audience.” (Vultee, 2010:72)

¹⁷³ Securitization is both taken as an independent and dependent variable. We will not enter into debating the dilemma whether we study the effects of media or effects in media. We settle this question by supporting that “Process models of framing [...] offer a more specific organizational concept in which “frames can be either causes or outcomes and can be located either in the audience or in the media” (Vultee, 2010:77)

B. Method and data collection

The method responds to the three following questions.

How did we choose the media?

Criteria to choose the media involved the importance and size of the media, its articles language (English), date of apparition and access to articles. Yet, the most important criterion is the editorial line of the media. We intend to provide a representative selection of media addressing an international audience and a national one.

Egypt: *Al-Ahram Weekly* and *Egypt Independent*¹⁷⁴.

Libya: *Libya Herald* and *The Tripoli Post*.¹⁷⁵

International: *Al Jazeera* and *The Guardian*.¹⁷⁶

How did we select the press articles and time frame?

To choose the press articles, we have narrowed our research down to a relevant time frame from 2013 back to 2010. The selection was then based on a key words search adapted to the media: water related vocabulary (ex. dam, water access, rights, wars, hydraulic, aquifer), regional issues (ex. Aswan, GMMR, Ethiopia, Nile, Nubians). For instance, we have looked in *The Guardian* for key words including Libya and water whereas we have looked for water access in *Al-Ahram*. Finally, we made no – or only briefly according to the content – selection among the articles that were available.

How did we analyse them?

We conducted a two-level analysis of the articles' corpus in a chronological order, from the most recent to the oldest one.

The first level was a word concordance analysis using the software Lexico3. We selected among the words according to their relevance after withdrawing linking and pronominal words – ex. *with*, *you*, etc. The concordance was run for about 15 words in each case, on which our analysis mainly focuses.¹⁷⁷ However, we have tested a wider amount of

¹⁷⁴ *Al-Ahram*, founded in 1875, is the most widely circulating Egyptian daily newspaper. It is in majority owned by the Egyptian government. Under President Hosni Mubarak, *Al-Ahram* largely ignored, and trivialised the opposition parties to Mubarak's ruling National Democratic Party, and did not publish much direct criticism of the government.

Egypt Independent is an Egyptian newspaper with a web presence that evolved from *Al-masry Al-youm* English edition as *Al-Masry's* weekly English-language newspaper supplement and was re-branded as *Egypt Independent* and published its first edition on 24 November 2011. After being banned to publish their second edition by the chief editor of *Al-masry Al-youm*, *Egypt Independent* acquired its own license and resumed publishing its weekly edition independent from *Al-masry Al-youm* in 2012. In April 2013, the management of *Al-Masry Media Corporation* informed the *Egypt Independent* editorial team that the print and online news operation is being shut down, though the website continues to publish articles.

¹⁷⁵ *Libya Herald* is an English-language newspaper. It was launched in February 2012 and currently publishes news through its website, even though plans are in place to launch a print edition in the near future. *Libya Herald* co-founded by Michel Cousins – a British journalist who has worked in the Arab world for much of his career – together with Sami Zaptia – a Libyan journalist who worked for the state-owned *Tripoli Post* for ten years but resigned upon the outbreak of the Libyan civil war, frustrated at the Gaddafi regime's strict censorship.

The Tripoli Post first appeared in 1999. Its objective is to communicate Libya's news and views to the rest of the world. The *Tripoli Post* and *The Tripoli Post Online* focuses on serving readers by making information available with regard to Libya's politics, business, culture, sports, history and the country's dynamic growing population.

¹⁷⁶ *Al Jazeera* is a broadcaster owned by the privately held *Al Jazeera Media Network* and headquartered in Doha, Qatar. Initially launched as an Arabic news and current affairs satellite TV channel, *Al Jazeera* has since expanded into a network with several outlets, including the Internet and specialty TV channels in multiple languages. Until 2011, *Al Jazeera* was owned by the government of Qatar. Before and after the change, *Al Jazeera* officials have emphasized their editorial independence from the government of Qatar, though this assertion has been disputed.

The Guardian known until 1959 as *The Manchester Guardian* (founded 1821), is a British national daily newspaper. Currently edited by Alan Rusbridger, the newspaper currently identifies with social liberalism.

¹⁷⁷ *Libya*: groundwater, korea / korean, people / population, tripoli / kufra, bp, city, resources, sector, nato, coast / coastal, production, infrastructure, wastewater.

words, leading to an analysis of about 40 words.¹⁷⁸ The selection is less representative of their occurrence – even though taken into account – than of their significance.¹⁷⁹

The second level consisted into a listing of the articles' title. We ranked them using our previous analysis of elements of water securitization: technological controversies (national and international); sectorial and territorial competition; investment in water infrastructure and management; human security impacts (social, health, pollution, shortages and ecological); and transboundary or riparian relations (disputed or cooperative).¹⁸⁰

III. Results: water *conflictedness* and discourses (dis)continuities

Water *conflictedness* appears in our corpus under the different categories previously elaborated. With regard to our research question, discourses highlight either continuities or discontinuities stemming from recent political changes in Egypt and Libya.

A. Lexico3 analysis

Egypt

Drinking outlines human security impacts, either through sanitation or pollution and health stakes. It also combines issues of competing sectors and investments using water such as consumption opposed to industrial or agricultural uses. As Neo-Malthusian arguments compounds, alarmist discourses of water scarcities are also revealed below.

million euro improvement plan targeting **drinking** water supply and sanitation facilities ,

orate were hospitalised on tuesday after **drinking** poisoned drinking water . angry citizens

orks and waste collection , contaminated **drinking** water , chemical fertilizer runoff and isolation

gyptian citizens with universal access to **drinking** water supply and environmentally - friendly

for 80 per cent of the consumption while **drinking** water and industry made up 10 per cent apiece

th \$ 60 million to supply nasr city with **drinking** water . the second is worth \$ 80 million

nile , which provides around 95% of its **drinking** and irrigation water . protecting this supply

es until 2050 in terms of irrigation and **drinking** water needs in light of an increasing population

Hydro is fierce example of technological controversies and disputes over the use of hydro projects such as electric dam. It reveals the priority of Ethiopia and Egypt in getting a hegemonic control of the resources. The large sum of money invested testimonies of the long-term engagement in extensive infrastructure.

This dispute is embedded in a long history of downstream vs. upstream hegemonic locking found in continuous discourses.

t to be able to implement irrigation and **hydro** - power projects in consultation with egypt

ything . " but the pace and scale of the **hydro** projects have alarmed environmental groups

cairo had already threatened to bomb new **hydro** - infrastructure initiatives on the blue

condemns egypt's historical and ongoing **hydro** hegemony , by which the country claims its

Egypt: drinking, hydro, british, delta, technical, infrastructure, cities, domestic, riparian, approval, disagreement, sharing, access, shortages, nubians, sanitation, dependent.

¹⁷⁸ We grasped elements of our analysis from words of consequent occurrence, but left the concordance out of our annex due to an impressive occurrence and great variety of significance: *water* or countries' *name* for instance.

¹⁷⁹ Annex 1: Words selection and occurrence.

¹⁸⁰ Annex 2: Press articles by category.

ile waters for a massive \$ 4 . 2 billion **hydro** - electric dam dubbed the grand ethiopian
d and the 1959 treaty locked in egyptian **hydro** - hegemony , it infuriated addis ababa .

British is mostly used to remind of the colonial roots of the riparian's rivalries to control the Nile. Egypt continues to rely on his historical right to defend its share of the Nile.

net exporter of food and textiles before **british** colonialists shifted crop production towards
agreements were signed during the era of **british** occupation . the fco spokesperson , however
1890s , regional power relations and the **british** strategy . all these combined to create
- an agreement where , according to the **british** , the ethiopians promised not to take any
20th century were plans drawn up by the **british** at the beginning of the century . [the
d in 1929 - - when egypt was still under **british** occupation - - and in 1959 , stipulate that
t be plausible to argue that the way the **british** developed Nile control
increased the regional

Delta is a region portrayed as affected by climate change driven sea level rising, poorly equipped to deal with pollution and salination problems. It supports environmental displacement issues and discontent of its citizens. These problems have emerged and are continuously discussed in the press media although we note less governmental actions since the uprising.

as more effective chemical treatment of **delta** drinking water . in egypt , chlorine injection
quent contamination . groundwater in the **delta** often displays high levels of iron and manganese
ment programs have resettled millions of **delta** and Nile valley farmers , university graduates
court said . rising waters threaten Nile **delta** scientists warn higher salinity in the fertile
t global warming , and the threat to the **delta** posed by the possibility of sea - levels
factors now damaging the ecology of the **delta** . ever since the completion of the aswan

11

Technical underlines how water projects are treated as political objects. Evidences are found in committee dealing with the controversies at the heart of negotiations.

The continuity is found in the use of technical assessments by each side, to support its position.

remained " insufficient . " a trilateral **technical** committee - consisting of experts from egypt
declared . " there is also a need for a **technical** committee to supervise the project . " '
egypt , sudan and ethiopia to discuss " **technical** aspects and influences " of ethiopia ' s
dil said the ethiopian side will provide **technical** studies and information about the dam when
ational security . the egyptian fund for **technical** cooperation with africa will provide upstream
erable social , economic , political and **technical** repercussions . otherwise put , the question
gyptian negotiator adopts , either on the **technical** , diplomatic or developmental side , " said

Infrastructure also highlights the issues surrounding controversial constructions such as demographic, fear, health repercussions and investments in modern engineering.

d already threatened to bomb new hydro - **infrastructure** initiatives on the blue Nile back in 2009

e and negative impacts with this **infrastructure** project and in order for us [egyptians

nance new sustainable technologies ; our **infrastructure** lags behind in light of increasing water limited access to funding , and yes , our **infrastructure** requires urgent upgrading . but the Nile banks . poor urban planning and lack of **infrastructure** have led to a dire health and environment

g project to create a modern electricity **infrastructure** financed by Italy , Ethiopia and the European

Domestic was chosen due to several key oppositions in the Egyptian water sector: sectors competition with daily consumption, local and international dilemmas and loss of water due to an aging water system.

Daily consumption was an acute argument during the 2011 revolution crises.

ls cannot be achieved in isolation - the **domestic** and international regime are so intertwined recent past . for a country facing daily **domestic** crises in the aftermath of its 2011 revolution for 85 per cent of water demand , while **domestic** and industrial use makes up 8 and 6 per cent . plan to transform its farming sector from **domestic** supplier to competitive exporter . some other resources to meet the requirements of **domestic** consumption as well as for agricultural in other Nile users divert the river with **domestic** irrigation and hydro - power projects .

Riparian reveals a continuous dialogue marked by recurrent tensions and sometimes crises.

ever , that " dialogue " with its fellow **riparian** states represented Egypt ' s " best means to end , disagreement between Egypt and upper **riparian** nations over water from the Nile began in

Cities presents a human geography argumentation over rural / urban territories and poor / rich neighbourhoods.

11

eventually deprived nearby villages and **cities** of clean water to drink and grow food with Egypt , with people crowded on its sides , **cities** located along its banks , and roads shaped by the location of industrial zones located far from **cities** to protect citizens from diseases caused by pollution , pointing to the outskirts of big **cities** like Cairo where luxury residential developments

Approval demonstrated the on-going shift of power over the Nile flows. Ethiopia now considers itself as the hydropower underlined by the Renaissance dam. It no longer solely considers itself as a credible competitor to Egypt as shown by the recent Ethiopian parliament approval of the Entebbe agreement.

projects without first seeking Egypt ' s **approval** . Ethiopia is building the \$ 4 . 2bn Grand Ethiopian Renaissance Dam projects without first seeking Egypt ' s **approval** . " parliament approved and passed a law

Disagreement shows the lasting tensed relations between riparian.

ed a possible war with Egypt to settle a **disagreement** over the distribution of Nile water , in Cairo

Hosni Mubarak . Egypt has been in fierce **disagreement** with upstream Nile countries over the distribution

Sharing which is positively connoted is yet almost exclusively employed in negative expressions.

continue . Ethiopia to secure equitable **sharing** of Nile waters : parliament Ethiopia lower a council MPs that colonial - era Nile - **sharing** treaties must be respected , says Egyptian respects of cooperation when it comes to **sharing** Nile water consensus is as distant as ever

huge amounts of water . Nile basin water **sharing** is a very sensitive topic that plagues relations

could arise in the future including water **sharing** problems , el - Gamal said . Ethiopia and

Morsi / Mubarak words show the ambiguity of the Nilotic diplomacy entertained by Egypt and the securitizing discursive moves along national and international issues.

warns Ethiopia over Nile dam president **Morsi** says " all options are open " in dealing to Islamist supporters on Monday night , **Morsi** called the Nile " God ' s gift to Egypt resident Kalonzo Musyoka as saying . the **Mubarak** regime had a belligerent attitude toward minister Meles Zenawi had described the **Mubarak** approach as "old - fashioned" Egyptian politicians

Access mostly appears in discourses before the revolution as an internal issue: safe and potable water. The word refers in the aftermath of the revolution to international access to the Nile.

ersial treaty in early June ensuring its **access** to Nile water resources , replacing a colonial deprived communities are getting better **access** to clean water the recently launched 2009 rived communities in upper Egypt to have **access** to and use of safe drinking water and sanitation

Nubians intrinsically refers to human geography under the issues of vulnerability and environmental displacement. It is an acute example of the governmental responsibility in supporting discriminatory dam projects in this region.

eir homeland to the Aswan dam , Egyptian **Nubians** look set to finally gain recognition and p them relocate . some 50 , 000 Egyptian **Nubians** were forced to move from 45 villages and

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Shortages highlights the incumbent risks of violence and internal instability stakes induced: water cuts, pollution and daily water management. This word indicates a causal effect between water access and discontent among the population. This relevant causal pathway outlined by media discourses would be worth to explore legitimacy issues of authorities, uprising against the power in place and post-revolutionary democratic functioning.

, Giza governorate . fears over probable **shortages** of potable water in Egypt rose after a technical

al bottled water companies led to severe **shortages** that resulted in the prices of bottled water Egypt . some developers complain of water **shortages** and how polluted the water is . on the Sabah uding apricots and grapes . due to water **shortages** the farmer has slowly switched to other Nile or risk violence and further water **shortages** last summer , the NBI was gearing up for

Sanitation is an example of discontinuities in water discourses. Under Mubarak, sanitation policies were not necessarily different, but governmental efforts were promoted by the media. Since the revolution, it seems that cost issues, connexion problems and toxicity are coined in press articles to point at political authorities' responsibilities.

es and penalties on use of tap water for **sanitation** and irrigation purposes Gena Governor Adel ifa further explained that currently the **sanitation** services cover only 50 per cent of Egyptians and environment predicament here . poor **sanitation** sewage networks and waste collection , contaminated

the spread of improvements in water and **sanitation** . the latest who update on progress , published

ng the importance of improving water and **sanitation** behaviour , this national campaign will

hile 80 , 000 egyptians have constructed **sanitation** facilities in 13 districts in upper egypt

Dependent outlines the lasting fragile transboundary context of Egypt.

aised concerns in egypt and sudan , both **dependent** on the world ' s longest river for their
hortage of water , and we are completely **dependent** on the nile , we can get international
support

We tried 20 more words and wishes to raise 2 more arguments. First, **ministry** demonstrates how intertwined are
water policies in Egypt. It requires the collaboration of almost 10 ministries: foreign, prime, irrigation and water,
health, information, defence, agriculture, finance and energy. Their discourses are often embedded in controversies
and disputes at national and international levels.

We also tested different sector to grasp the vast array of imbrications and competitions among sectors carried by
water discourses: **irrigation, agriculture, farmers, electricity** and **industry**. The agricultural sector distinguished itself
from the industrial or energy ones as a disputed one with regards to water distribution.

Libya

Groundwater mainly insist on the abundance character of Libya's water resources, and only few references to its
non-renewable limit. This discourse was not only the product of Gadhafi's vision, but continues to be sustained by
the new regime.

tallic minerals and above all , abundant **groundwater** resources provided by its more humid past
inent as a whole and understand that the **groundwater** resources really are quite considerable
ces rather than the unsustainable use of **groundwater** resources that we ' ve observed in places
evealed vast quantities of fresh , clean **groundwater** - this could meet growing national demand

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Korea / Korean were tested due to the continuous bilateral relations between the countries: facilities built by North
Korea in the 1990s, cooperation with the Korean environmental and foreign affairs ministries.

ewage treatment" lee was speaking at the **korea** - libya environmental cooperation forum
the korean ministry of environment , the **korea** environmental industry and technology institute
hich brought the ceos of both libyan and **korean** companies' ceos together with decision
he mid - 1990s facilities built by north **korean** workers at tarhuna , 50 miles south - east

People / population stress a discourse on population growth and a focus on agriculture and shortages. It also
outlines the urbanization and density of the population in coastal cities in opposition to Southern population.

aquifers contain fossil water , the low **population** in the fezzan means that there should be
and supply interruptions . tarhuna has a **population** of some 300 , 000 . the surrounding area
tions . it said that as a result of high **population** growth , record levels of urbanisation ,
fe in libya as approximately half of the **population** lives near western coastal area . most of
pply and an estimated 46 per cent of the **population** suffer hunger , has a potential rainwater
 . " the gmmr provides 70 percent of the **population** with water for drinking and irrigation ,
more readily available for over 21 , 000 **people** by providing support for local water boards
the pipes , fixing some leaks , but the **people** will be back , and will take the water again
and a further 2 . 5 billion **people** do not have adequate sanitation

Tripoli / Kufra were both showing water cuts and shortages during the war. It reminds of the gap between the Gadhafi ruling and the popular uprising that threw out the regime. It also reveals some fragility of the water flow provided by the GMMR depending on electricity. It finally stresses a possible strategic military use of water.

lution never happened . " water cuts hit **tripoli** much of tripoli was without running water
age by gaddafi forces . libya war leaves **tripoli** short of water and cash , but residents
the icrc has also supplied water in al - **kufra** , al - hamiyah and al - abyar , Benghazi

BP stresses the hidden dependence of Libya upon foreign companies, an issue all the more raised after the departure of Gadhafi. The quality of water relies upon a clean management of the oil extraction.

rels of oil have spewed into the water . **bp** ' s failure to cap the leak has put the
City is opposed to the Southern origin of the water it uses.

miles south of the capital . most of the **city** has no access to wells and has not been

Resources seems to indicate an on-going evolution in the government's consciousness of both a current abundance of water and a need to develop all water provision, including wastewater. Water and more widely environment appear as a more fragile resource than what the GMMR achievement suggests.

ved urgently , particularly in the water **resources** , solid garbage and sewage treatment" lee
ime . fezzan region is rich in its water **resources** . a lot of fossil water has been left under
landscape , but is also rich in natural **resources** such as fossil fuels , renewable solar and
ted \$ 20 billion . the ministry of water **resources** , which was set up just three months ago
gical suicide ' as land deals hand water **resources** to foreign firms , threatening environmental
alarm over competition for scarce water **resources** - said all land deals in africa involve
ve productivity while preserving natural **resources** such as water , all with the goal of
improving

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Sector shows water as one key domain of interest and emerging sensitivity of the government. It also links water to Libya's agricultural development, a continuous dimension of water management in Libya.

erience in the libyan water purification **sector** providing water plants within a short timeframe
help libyan companies in the environment **sector** tackle issues such as water treatment and
ion , where different areas of the water **sector** fall under different ministries . the general
er to develop the country's agricultural **sector** and improve food security . as such , a
ole in regional cooperation in the water **sector** . it began with a workshop in tripoli followed

NATO appears in the corpus due to its use of water as a military target. It materialises water not as a political object, but as a strategic object in wartime.

ast month , libyan officials warned that **nato** airstrikes on the gmmr ' s pipelines could

Coast / Coastal stresses the territorial tension stemming from the North / South opposition. Water is an issue of human geography as it characterises the distribution of power among Libya's national territory. It also underlines a dual role of foreign firms in Libya's natural resources ownership and management.

round in the south of the country to its **coastal** towns . since the project was started in
alf of the population lives near western **coastal** area . most of them depend on the ocean

countries in the world . historically , **coastal** aquifers or desalination plants located water per day to cities along libya ' s **coastal** belt . " the colonel ' s gmmr project was desert and oil storage facilities on the **coast** of libya . shell : deep - water oil drilling

Production shows that water is raised to a political object unless it is related to the GMMR, or unless it offers an interest for agriculture's development.

tural output and mean that domestic food **production** meets only 25% of the demand . given libya's ss of 3 , 000 hectares devoted to cereal **production** , yields have tended to be low , partly the agreement will aim to increase food **production** and improve productivity while preserving e amount of arable land for agricultural **production** . " libya could start an agro - business

Infrastructure may indicate that if there were little symbolic references to water resources like there are in Egypt with the Nile, technologies and infrastructure building were enhanced for the capacities they brought to Libya.

plans to upgrade libya's water and waste **infrastructure** and the challenges that need to be addressed

ganisation , every \$ 1 invested in water **infrastructure** produces an average of \$ 4 in increased s libya's waste , water , and wastewater **infrastructure** , and potential opportunities for future ntain and construct water and wastewater **infrastructure** , including pumping stations and desalination

Wastewater shows three key elements of Libya's relation to water: the development of new infrastructures by foreign companies, the will to develop an efficient agricultural sector and a will to modernise sanitation.

ation of uk companies from the water and **wastewater** sectors will be in tripoli from saturday proved management of water resources and **wastewater** treatment high on libya's development agenda y to discuss libya's waste , water , and **wastewater** infrastructure , and potential opportunities 1400 : 2004 and ohsas 1800 : 2007 . new **wastewater** treatment solutions for libya hospital as tion (who) irrigation standards so the **wastewater** can be re - used effectively . the wpl solution

We have also tested **water** and **aquifer** to complete this analysis. **Aquifers** provides a resource mapping, but reveals more acutely the non-renewable tension: shortages and desalination are mentioned for instance. The geographic origin of the water used for coastal cities is also stressed, a key element of the opposition with the South.

Water maps water issues before, during and after the Libyan war: before, water treatment and concurrence with the oil sector was stressed; during, humanitarian issues related to water access in cities under siege and for displaced populations; after, a fear of polluted water added to the previous water issues present before the war.

B. Press title analysis

Egypt

In 2013, a vast majority of the articles revolve around the controversial Ethiopian *Renaissance* project. The Ethiopian securitizing move put its gigantic engineering project on the Egyptian political agenda. Until his destitution, President Morsi and his government's ministries were forced to respond to this urgent matter in spite of an overloaded agenda. President Morsi tried to seize the Nile issue by playing the diplomatic cards at his disposal, notably by visiting Ethiopia and other Nile countries.

The high number of press releases attests a daily alternation of mixed messages between *technological controversies* (feasibility studies, impact) and *riparian relations* (quotas and other tipping point negotiated in committee and bilateral meetings). Tensions however have heated up in the press titles from May 2013 until Morsi's declaration to the Egyptian Parliament. "Egypt's water security cannot be violated in any way," Morsy said. "As head of state, I confirm to you that all options are open." He later added: "We are not calling for war, but we will never permit our water security...to be threatened." (Egypt Independent, 11-06-13)

This international *hydropolicy* seems to have put asleep other internal water issues, on an agenda already saturated by the intense political activity of the on-going revolutionary process.

Transboundary relations underline the continuity of Egypt's Nilotic diplomacy and structural elements contributing to this diplomacy. Water, as the British understood more than a century ago, lies in the heart of Egypt's stability. "When the British took control of Egypt in 1882 they very soon realised that they had become rulers of a society [that] was totally dependent upon the Nile. So they understood from the very beginning that the economic stability, economic development and political stability of Egypt depended on Nile control. They also understood that in order to improve their own position within Egypt, they had to prove to the people of Egypt that they were able to provide water to them." (AlJazeera, 11-06-2011).

The international agenda also influences the water focus in 2010, upstream states gathered a majority to sign the Entebbe agreement. There is a constant influence of this international agenda over Egyptian policymaking.

Comparatively, human security impacts indeed raise less attention to the media, but they are continuously present. They remind that hydraulic poverty affects territorial and social disparities. "Residents of Nile Delta township cut Cairo-Alexandria agricultural highway to protest water cuts, reopen road following promises to increase supply, improve infrastructure.

Dozens of residents of the Qasr Bolad township in the Nile Delta Beheira governorate blocked the nearby Cairo-Alexandria agricultural highway to protest a three-day water supply stoppage in their area." (Al-Ahram, 01-07-2012).

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EGYPT						
Technological controversies		Sectorial and territorial competitions	Investment in water infrastructure and management	Human security impacts (social, health, pollution, shortages and ecological)	Transboundary or riparian relations	
National	International				Disputed	Cooperative
2013						
1	46	1	4	5	15	25
2012						
4	2	8	4	11	4	11
2011						
	5	5	2	5	6	16
2010						
2	5	1	7	8	19	8

Table 1: Egypt press articles' titles¹⁸¹

Libya

The higher number of human security articles demonstrates water access issues. Human security issues exploded at the beginning of the revolution, fostering humanitarian assistance (articles of ICRC providing water supplies to

¹⁸¹ This 46 international technological controversies number reflects how these controversies can impact negatively riparian relations. The high number is due to the Ethiopian Renaissance dam project.

displaced population, cuts during wartime or shortages in blocked cities). "Among the consequences of the destruction of the hydraulic system, the statement also cited the risk of flooding, which could affect residential areas and cause human and environmental disaster." (The Tripoli Post, 06-04-2011). Water was also used as a military target causing human security impacts: " Last month, Libyan officials warned that NATO airstrikes on the GMMR's pipelines could cause a humanitarian and environmental disaster. But pro-government forces could also disrupt the GMMR's flow if they wish, leaving opposition-held regions in the east with only the Ajdabiya reservoir – this holds just a month's supply of water." (The Guardian, 27-05-2011). The two following years were marked by pollution and sanitation health related human security.

The previous analysis had stressed the lack of politisation of water issues in Libya, characterised by a relative abundance from its aquifers. The interest for infrastructures and technologies materialised by the GMMR gigantic project is undeniable, but so is the lack of internal or external controversies about it. Neither the risks related to the GMMR nor the absence of renewable water resources seem to raise environmental consciousness in the media. "The Fezzan Region not only has a diversified landscape, but is also rich in natural resources such as fossil fuels, renewable solar and wind energy for the future, metallic and non-metallic minerals and above all, abundant groundwater resources provided by its more humid past." (Libya Herald, 09-05-2013).

In terms of investment in water infrastructures, the Libyan oil investment into the GMMR is seconded by foreign firms. The pursuit of profit out of the Libyan soil is double headed, as the Korean, Britain and Dutch increased water infrastructure investment in the aftermath of Gadhafi's fall shows. "Seven South Korean companies were represented along with 18 Libyan organisations including HIB, the General Desalination Company of Libya and the Ministry of Water Resources." (Libya Herald, 25-06-2013). "As a result of the war, in which a factory producing huge pipelines for the Great Man-Made River project was blown up in a NATO bombardment, supplying water has been difficult. There are opportunities for Dutch companies to restart the project. And there are other opportunities elsewhere in the country, says Professor Szöllösi-Nagy: "The knowledge the Dutch have in the area of water technology is unique in the world. I'm sure Dutch companies will be involved at various stages. But it is up to the international community, in particular the UN, to decide what needs to be done when the fighting is over." (The Tripoli Post, 01-09-2011).

Sectorial and territorial competitions finally should be mentioned for two reasons. Firstly, the ruling out of Gadhafi added to the active fighters from Southern tribes triggers territorial tensions. Secondly, the final completion of the GMMR, in spite of NATO's attack during the war, exacerbates these human geographic tensions. The choice of grand infrastructures carries political consequences that may turn into negative political outcomes.

LIBYA							
Technological controversies		Sectorial and territorial competitions	Investment in water infrastructure and management	Human security impacts (social, health, pollution, shortages and ecological)	Transboundary or riparian relations		
National	International					Disputed	Cooperative
2013							
1		6	8	6		1	
2012							
1	1	6	6	7		1	
2011							
		2	3	15			
2010							
		1	3	1	1		

Table 2: Libya press articles' titles

C. Comparison

Egypt is culturally tied-up to water. The Nile has always been erected into a symbol. As an example, during the IV century before JC, Herodotus already stipulated: "Egypt is a gift of the Nile" (Herodotus, IV century before JC, *Histories*, Book II). This symbol was materialised to the forefront through the vanguard infrastructure of Aswan dam. To a certain extent, a similar nationalist symbol can be found in Gadhafi's Great Man-Made River without the cultural tie.

Both cases raise acute human geographic issues driven by large-scale infrastructures. May it be the ecological consequences in the Delta region, polluted water along the riverbank, the Nubians forced eviction or the apparition of new species in the Nile, the Aswan dam slides from a symbol of Egypt's national independence to a fragile management of its water resources. On the Libyan side, the GMMR follows a similar path and faces a shift from grand symbol to a more questionable project with regard to Southern populations neglected and oil pollution of the aquifer.

The predominance of international relations in Egyptian water discourses is a symptomatic habit to blame its upstream riparian for its water problems. On the other hand, Egypt has a 'schizophrenic' behaviour towards its upstream riparian: alternation between periods of cooperation, dispute and wary threat. It leaves an open question whether this behaviour shows willingness to share the Nile or interest in a determining context.

Besides, it also questions whether this hydro-diplomacy masks or not internal issues that matter in daily lives of citizens. The presence of farmers' demonstrations inside the corpus might give a first answer. One may raise a similar question in Libya towards Southern tribes.

Surprisingly, a flagrant contrast was revealed by the study between an Egypt fearing scarcity and a water abundance discourse in Libya. It first gives food for thought concerning the role of experts in the establishment of these discourses. It also reflects upon the politicisation of water in relation to the consciousness of the issue.

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As demonstrated, water discourses can induce *conflictedness* between actors at different levels. Wary rhetoric for instance is a permanent trait found in Egyptian water discourses through time. Evidence of water as a strategic target was however part of the last Libyan war. It demonstrates how security actors, involving in this case NATO an international organisation and pro-government forces, have used the GMMR and water access to deprive population of water (Boulanger, 2011).

The results stress how framing in the media attest securitizing moves. "Securitization, in short, is conceptualized as a news frame that cues several results. When the right actor invokes the right threats under the right conditions to the right audience, the results should reflect a greater willingness to place authority, as well as civil liberties, in the hands of the government for the duration." (Vultee, 2010:84). In the case of water *conflictedness*, Egypt and Libya water discourses have outlined the repartition of assets in the hand of ministries and government wishing to legitimise their power in the post-revolution elections. Yet, water *conflictedness* plays a two-levels game: internal and external. Both levels address to national and international audiences. They show a two-levels power legitimization that induces discourse (dis)continuities.

Conclusion

Media only reflect the issues that make their way to the political agenda. The redundancy compound in water issues frames questions the capacity of media to shed the lights over discourses discontinuities. Media, especially national ones, have written about the political agenda as found in political institutions – Morsi's address to the Parliament – or the street – demonstrations against water cuts and shortages. Media framing however succeeds in outlining securitizing moves proceeding from a mix of practices and discourses. The same example of Morsi's worry discourse content, address to the Parliament and call for unity to its opponents is at the same time a speech act and a political practice of power and democracy.

The paper lists a series of human security impacts ranging from social, health, pollution, shortages and ecological linkages to water resources. It supports the vital characteristic of water and the idea that there is no substitute to it but to improve its management and distribution among sectorial and territorial competitions. The study of hydropolitics through discourses and practices also reminds that human security impacts are intrinsically related to the water system understood as the organisation of water extraction, distribution and reallocation to the natural system. Any breach in this cycle in the long run produces human security impacts and releases or worsens technological controversies. The study thus supports to a certain extent some linkages between environmental degradations, human security, and securitizing moves.

While transboundary water resources are often studied through diplomatic relations and foreign policies, the paper shows that the prior human security impacts are effects of international politics and vice versa. In Egypt, downstream/upstream disputes and cooperation are justified because of nationally defined water needs. Whereas Libya enjoys a unilateral position to use its groundwater as it wishes, this position will only sustain as long as other aquifer riparian and international norms do not conflict with it.

With regards to the idea of 'transition' of this colloquium, this water discourses study confirms few ideas about the (dis)continuities of politics during these Arab 'transitions'. Regime changes have not at this point affected the combination of arguments that make governmental water discourses with regards to national water security. However, it offers opportunities to re-shuffle cards internally: addressing sectorial and territorial water distribution competitions, evaluating public policies and investment in water management by changing priorities and perspectives (fostering for instance a better combination of ecology and economic goals), and local authorities may also play a role in this.

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The sensitive expectations of the population in the aftermath of these revolutions and democratic refashioning of policy-making may put water policies on standby in the short term. Water discourses in the media currently show very few ingenuity interventions from political representative neither in the Parliament nor the government. The only exception is the dispute with upstream riparian that was appropriated by Morsi and its ministries.

This research would gain to include a larger timeframe. Because water discourses are so sensitive in the Middle East region, a similar study done retrospectively would give time to assess (dis)continuities that do not appear during transitions. Media practices may also change and therefore frame water issues differently in the future.

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THURSDAY – AUGUST 22ND 2013

- **SESSION 7:** WORKING PAPER BY A. MARTIN (DURHAM UNIVERSITY, UK)
- **SESSION 8:** WORKING PAPER BY A. BANKA (BIRMINGHAM UNIVERSITY, UK)
- **SESSION 9:** WORKING PAPER BY B. M. VILSON (TARTU UNIVERSITY, EST)

GR:EEN-GEM DOCTORAL WORKING PAPERS SERIES

American Drone Strikes and the Norm against Assassination

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Abstract

The objective of this paper is to examine American drone strikes and their impact on the established norm against assassination. In order to achieve this, the study conceptualizes the norm and provides a historical look of targeted killings as a foreign policy tool. State-led assassinations are not something entirely new in international affairs; however, with the development of drone technology they have been utilized and institutionalized to an unprecedented degree. The central argument advanced here is that the United States, in the context of systematic drone strikes, threatens the norm, and creates a highly visible and dangerous precedent that others might start to follow. By and large, the task here is to trace and explain how notions of assassination as a foreign policy tool have changed in America over a period of time, and assess the impact this has on others. Moreover, the presented study will also reflect on what this US foreign policy choice mean for the wider international security outlook.

Keywords: Norms, Drones, Targeted Assassination, United States.

Introduction

Under President Barack Obama unmanned aerial vehicles, or drones, have become America's main weapon when dealing with terrorists in the Middle East and North Africa. Once inconceivable, targeted drone strikes are now almost routine operations allowing to wage a war in distant geographical spaces with no risk for American lives. Drones can operate in hard to reach environments (Sauer and Schörnig, 2012), fly through enemy airspace undetected (Zenko, 2013a), and stay airborne much longer than a piloted jet (Hudson *et al.*, 2012). Remotely controlled attacks allow the public to view war from afar and create the impression of conflict being fought in a 'clean, precise, and noble' manner (Wall and Monahan, 2011:246). It is for this set of advantages that drones are highly praised by politicians in Washington and greatly feared by terrorists in Federally Administered Tribal Areas. For a nation that is still in the midst of fighting its longest war, paying for it greatly with, - both blood and treasure, drone attacks can seem like a seductive option that demands little from the economy or already exhausted military.

Yet, enthusiasm about drones can be tempered by questions regarding their legitimacy, transparency, compatibility with democratic values, and long term strategic consequences. While for Americans drones represent a risk-free tool, the majority of Pakistanis and Afghans see them as violators of their sovereignty that interfere with cultural practices, terrorize local residents, and kill innocents. A comprehensive study by the NYU & Stanford Law School (2012) reveals that people experience a sense of helplessness and have described living under drones as 'hell on earth'. Despite the obvious anti-American sentiment fuelled by drone attacks and increasing number of protests from international advocacy groups, the White House has remained unmoved about this frequently utilized military tool. Which part of international law applies to these attacks? Who decides the targets and on what evidence are they based? What role, if any, does the Congress play? What is the number of casualties? Questions like these have gone mostly unanswered.¹⁸² Instead, regular leaks and rumours about a 'kill list' that is signed off by President Barack Obama circulate in the media, causing protests and international outrage.

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Having UAV's does not automatically mean using them for military purposes; drones can also assist in investigations, disaster relief, and many other peaceful operations. Nonetheless, countries like Russia, China, Israel, Japan, and Iran see them mainly in the light of national defence. It is not anymore a question of if, but when the next country will use a drone to hit a specific target. Micah Zenko, one of the leading experts on drones, explains that other states won't just emulate American practice, but will adopt its justification, or lack of it, for targeted killings (Madrigal, 2013). This is where the importance of the American precedent lays. By being the first country that launches hell-fire missiles from drones on a monthly basis with little or no public justification, United States is setting up a troubling example that can weaken the international norm against assassination.

Norm Emergence, Diffusion and Erosion

Since the argument presented here is that drone attacks may be a case of norm weakening, it is useful to provide some theoretical grounding of how norms emerge, diffuse and get accepted in first place. This would help us to understand mechanisms in place for a reverse process - norm erosion. There is no single way for a norm to arise, that path can be 'highly varied', writes Peter Katzenstein (1996: 115). According to his analyses, the very source of a norm can be 'pure power politics, moral opprobrium or domestic politics' (Katzenstein, 1996: 115). Jackson (2011: 407) adds that unforeseen events such as an act of political violence can open up the space, in which a willing norm entrepreneur can shatter existing

¹⁸² Obama's best attempt to clarify some of these questions came during his speech at the National Defense University (2013). While he did spell out some general guidelines and principles that govern drones, many important details remain classified.

perceptions and offer new norms. In raising the chances of acceptance, Cortel and Davis (2002: 77) suggest that an international norm is more likely to become salient if it is linked in the domestic discourse to material interests, whether economic or security.

Not all states play an equal role when it comes to international norms. This insight is shared by a number of scholars. Powerful states clearly matter, others less so (Tannenwald, 2007:72). It is 'beyond discussion' that state power is an important ingredient in the successful articulation of a norm, points out Clark (2007: 105). According to Florini (1996), the powerful simply have more resources and opportunities to persuade others of the rightness of their views. From a practical point of view countries like the United States are in a favorable position and have greater impact on norm promotion because they have more bilateral interactions than other minor powers (Axelrod, 1986: 1103). By and large, states are not equal when it comes to normative weight in international arena. This surely is something to keep in mind since our central object of investigation is America - maybe declining but still world's only superpower. In critical moments of norm emergence and acceptance America's stance may be decisive. By the same logic, America as a violator of a norm can cause a normative turmoil.

Overall interest in norms has 'blossomed during the past decade' (Clark, 2007: 176) and as a result we have diverse accounts of how norms emerge, diffuse and get accepted. Yet, with all the rich explanatory work on norm creation, scholars have for the most part neglected the opposite dynamics – norm change, regress, or even destruction of a norm. Prominent scholarship has overwhelmingly turned to the creation of international norms, rarely looking at the other side (Panke and Petersohn, 2011; McKeown, 2009). According to Lantis (2011: 546), review of the norm literature suggests that, once created, norms are 'fairly static'. While some norms indeed should survive different tests of time fairly easily, it seems erroneous to assume that every norm has 'carved in stone' characteristics and changes in agency and/or structure leaves no effect on them.

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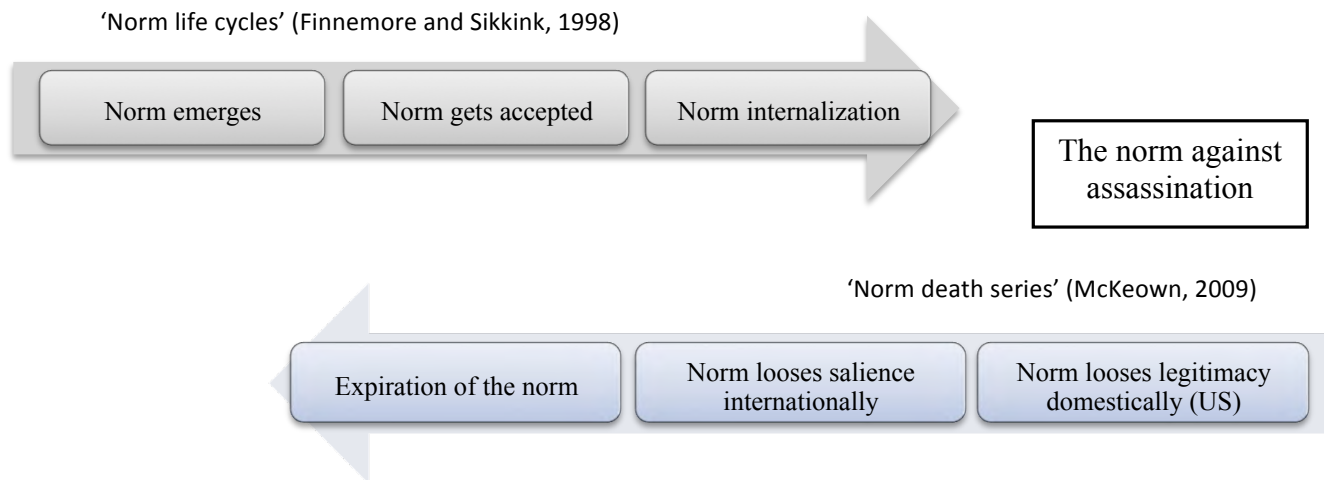
For a long time America strongly opposed the practice of targeted assassinations. But what happens when the most powerful actor in the international system suddenly stands in a norms way that it once helped to create? Given that Washington is going after terrorists with unchecked executive power, fragile legal justifications, and striking targets based on secretive discussions, one cannot dismiss the possibility for serious norm erosion. A norm can change 'in a surprisingly short time', notes Axelrod (1986: 1096), and sometimes even a few violations may be enough to demonstrate that a norm is no longer respected (Thomas, 2005:33). It is therefore possible to hypothesize that more than 400 drone strikes provide a serious challenge to the established norm against assassination. In other words, the violations by America have been so frequent, and publically visible that the norm might experience a certain back-slide resulting in a situation where others stop taking it seriously.

As explained, norm emergence and acceptance provides only a half of the full norm 'picture' and in order to gain complete grasp of how norms work, we also need to have a scenario where norms, influenced by actors and or events, lose their salience. Finnemore and Sikkink's (1998) work on norm 'life cycles' has been frequently referred to in the academic scholarship as having the greatest analytical value in explaining norm emergence and thus will provide the first part of the theoretical model.¹⁸³ In the context of pointed critiques, McKeown (2009) has drawn attention to the opposite dynamics, charting a 'norm death' series. He begins his scheme exactly where Finnemore and Sikkink's model ends: norm internalization. First, the reverse norm cascade begins domestically and resonates with domestic audiences. Here, certain norm revisionists through changes in policy, practice and/or discourse pose a challenge to specific norm (McKeown, 2009: 11). In the second stage, the norm loses salience in the

¹⁸³ In their article *International Norm Dynamics and Political Change* authors draw a three-stage process where: 1) The norm emerges as a result of active work and persuasion by norm entrepreneurs; 2) It successfully resonates in the society and is accepted by a number of actors; 3) The norm goes into the stage of internalization and acquires a taken-for-granted quality (Finnemore and Sikkink, 1998: 895).

international arena through a process of emulation by leaders of other states who feel that the ‘normative stigma for breaking the norm is now significantly reduced’ (McKeown, 2009: 11). Both, norm ‘life’ and ‘death’ cycles have been combined (Figure 1) and will serve as the theoretical basis for this paper.

Figure 1.



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Conceptualizing Targeted Assassination

In the context of this working paper it is essential to understand what constitutes targeted assassination and under what conditions we can draw on a specific norm when talking about drone strikes. While in daily reporting and public discourse terms such as ‘assassination’, ‘killing’, ‘summary execution’ and ‘elimination’ float around freely, and with little attention to detail, in legal sense determining the precise meaning can make all the difference. One should not expect a ‘clear blue water’ when it comes to terrorist elimination, especially in the post-9/11 era. As Gross (2006: 328) puts it, the complexion of modern warfare has changed in ways that ‘many theorists and jurists hoped to avoid’. One of the goals of terrorists is to confuse the categories of ‘civilian/official, stranger/enemy, citizen/threat’ (Zarakol 2011: 2315) and thus the line between combatants and non-combatants can be blurry. Yet, despite some obvious challenges it is still possible to make some fundamental points that allow us to determine the status of drones, and connect them to the norm against assassination.

Targeted assassination as a policy has only one goal – to use force in lethal manner against a specific enemy. It rests on the identification of an individual that poses a threat to nation’s safety and therefore must be eliminated. Unlike detention or interrogation, this tactic is not utilized to monitor person’s actions, or extract information; it is designed solely to kill (Blum and Heymann, 2010: 147). Targeted assassination is not unintentional or accidental (Alston, 2010). It supports the goals of a government organization, group, or cause (Berkowitz, 2002), and is a deliberate choice to get rid of a named individual. For this reason, killing soldier’s indiscriminately in a battle would not fit into this category (Clark, 2012), nor would shooting at a military unit or asset (Yoo, 2011: 56).

The nature of targeted assassination, explains Ben-Yehuda (1990: 349), clearly is individual and not collective. He goes on to suggest that for a terrorist it would not make a difference what the targets are in order to successfully carry out his intended mission. Targeted killing is different in this respect because the attacking side is interested only in specific subject and would not substitute it for something else (Ben-Yehuda, 1990). If the targeted person survives, its performers would see it as a failure (Otto, 2010: 16). Knoepfler (2010: 471) further notes that as an act, targeted assassination does not depend on the particular means used - it can take place in 'public or private, with a gun or a knife, during the day or at night'. The State of Israel, for example, has used explosives built in mobile phones, sniper shooting, and air attacks to eliminate Palestinian enemy fighters. It is more the policy behind the killing- an intentional use of lethal force by government or governmental agency against a specific foreign adversary that lands it into the 'assassination' box.

Connecting Drones with the Norm

It is important to note that in the eyes of the US government drone strikes do not fall into the 'assassination' category. Instead, the White House frames it as self-defence targeted killings which under the international law, in limited circumstances, can be legal. There are, however, a number of problems with US government's version of drone legitimacy. The first issue arises with regard to the locations of these attacks. For years United States has engaged in flying unmanned aircraft over countries that it is not officially at war with, and eliminating targets that are not even close to the actual battlefield. Targeting enemy combatants in Afghanistan, for example, could be legal since America is in an armed conflict with this country (Maxwell, 2012; Yoo, 2011). But once drones operate outside the war zone and 'take care of business' in Pakistan, Yemen, and Somalia they end up opposite of the rule of law. Out of the conflict zone attacks can be legal if the host country welcomes American military intervention (Aslam, 2011). Finding foreign consent, however, has been a hard case for Washington. With staunch anti-Americanism in the region, legalization of drone attacks through the consent of those who are being attacked does not seem to be a viable path.

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Moreover, US policy makers have struggled to provide an explanation of why exactly someone is hit and deserves instant death without due process. For a strike to be lawful it must be a situation where the threat is clear, imminent and no other option such as capture or arrest is possible (Statman, 2004; Printer, 2003; Zenko, 2013a). However, after reviewing the list of those who have been killed it seems very difficult to coin the drone strategy in purely self-defensive imminent threat terms. Does a twenty year old combatant in Mogadishu really represent a credible danger to the world's strongest military? Katherine Tiedemann and Peter Bergen (2011), acknowledged terrorism analysts, point out that majority of those killed in drone strikes are not important insurgent commanders but rather 'low-level fighters' that can hardly pose a real danger to the US. NYU & Stanford Law School (2012) study has found that only 2% of drone strike victims are known militants. While at first there was an exclusive focus on Al-Qaeda organization with time the scope of targeted individuals was broadened, including members of the Tehrik-e-Taliban, Haqqani network and other local groups (Plaw and Fricker, 2012; Klaidman, 2012). Many of those targeted do not have the capacity or a proven intention to harm the US homeland.

Clearly drone strikes that kill suspected terrorists cannot be put in the same category as US plots in the 70's to get rid of state leaders like Fidel Castro, Patrice Lumumba or Rafael Trujillo. Still, when one concludes that drone strikes have been carried out illegally, do not conform to the pretext of self-defence and imminence, and are executed in undemocratic fashion, it can be argued that they come close to what we understand as a state-led assassination. Plaw (2008: 250) explains that even though 'terrorist elimination is not itself a form of assassination', it does share features of assassination and thus it is reasonable to fear that 'too frequent and too prolonged terrorist targeting might erode the international norm against assassination'. Thomas (2000: 130) agrees, by pointing out that in the long run, non-transparent actions,

even against terrorists can undermine the norm as a whole and 'erode the barriers to the use of assassination in other circumstances'. It is for these reasons that we can connect drone strikes with the norm against assassination.

The Norm against Assassination

Historically countries have engaged in assassinations for centuries (Blum and Heymann, 2010: 149; Krishnan, 2012; O'Brien, 1998) and philosophical deliberations on this method can be found already in the classical political texts of Sun Tzu's 'Art of War', and Machiavelli's 'The Prince' (Allhoff, 2009: 267). With the exception of Rome, city-states in Europe frequently engaged in removing opponent enemies through assassination (Thomas, 2000: 109). International law was written in a way that did not differentiate between assassinating someone in the battle or elsewhere (Amstutz, 2005). With the rise of sovereign statehood however attitudes towards killing of foreign enemies shifted (Thomas, 2005). Assassination started to appear in people's minds as something illegitimate, in the words of America's founding father Thomas Jefferson: 'Something from the dark ages which intervened between ancient and modern civilizations' (Wrage, 2011: 32). It was a combination of moral principles, and the interests of the powerful nations that set in motion the rise of the norm against assassination (Thomas, 2000).

In America the norm strengthened in 1970s when congressional committee revealed CIA's role in deaths or attempted killings of five world leaders. Special investigation, led by Senator Frank Church, uncovered massive wrong-doings and abuses by the US government intelligence agencies, and concluded that assassination is 'incompatible with American principles' (Senate Report, 1975: 1). Following international embarrassment, President Gerald Ford issued an executive order stating that: 'No employee of the United States Government shall engage in, or conspire to engage in, political assassination' (Executive Order 11905, 1976). This order was broadened by President Jimmy Carter in 1978 to include those 'acting on government's behalf' (David, 2003: 112). Today the illegality of assassination under law has been codified in the 1937 Convention for the Prevention and Repression of Terrorism and the UN Charter (David, 2003: 112).

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Arguably there have been instances of American presidents violating the assassination ban in the post-Church Committee era. Ronald Reagan, for example, was comfortable with sending airstrikes on Colonel Muammar Qaddafi's tent. During Desert Storm, George H.W. Bush bombed Saddam Hussein's presidential palace, and after Al Qaeda attacks on US embassies in Nairobi, Kenya, and Tanzania, Bill Clinton gave the green light to strike bases where he thought Osama bin Laden was hiding. Still, during this period going after specific adversaries was an exception, not the rule. Richard Clarke, former White House Terrorism Advisor, explains that these White House administrations were careful to narrow the scope of such operations and targeted killing operations were intended for very surgical and rare cases. 'We didn't want to create a broad precedent that would allow intelligence officials in the future to have hit lists and routinely engage in something that approximated assassination', explains Clarke (Scahill, 2013:30). Mark Mazzetti notes that back then CIA's motto was 'We're not Mossad' (Kaplan, 2013). In short, there was a certain stigma or a taboo surrounding assassination as a foreign policy tool.

Before 9/11, Israel was the only country that regularly engaged in targeted assassinations and was harshly criticized for that (Statman 2004: 180). Just two months prior terrorist attacks on the World Trade Center, US Secretary of State Colin Powell commented on Israel's targeted hits: 'We continue to express our distress and opposition to these kinds of targeted killings and we will continue to do so' (Keinon *et al.*, 2001). On a similar note, then American Ambassador to Israel, Martin Indyk stated that 'The United States government is very clearly on record as against targeted assassinations' (Mayer, 2009). This however turned around swiftly after 9/11 with Congress authorizing the president to take any steps necessary in order to protect the homeland from future attacks.

9/11: Kill or Capture

It was right after terrorist attacks of 9/11 that from being against the policy of assassination, United States in a short period of time moved to the other extreme, and became the leading practitioner of this practice. Faced with an outside threat Americans have historically been willing to 'cede more authority and power' to the executive office of the President (Merolla and Zechmeister, 2009: 21). Events of 9/11 were no exception. George Bush received a considerable public approval boost and freedom to design a new security approach. In following months the White House monopolized foreign policy making and in the name of national security few were willing to openly question presidential authority or decisions. 'We went to the Congress and they said, just tell us what you need', Richard Clarke recalls (PBS, 2011). Bush received a sweeping authority from the Congress, and with the public support running high, he promised to steer US foreign policy in a new direction.

No institution faced more transformation than the CIA. Created in the aftermath of World War II, Central Intelligence Agency was initially tasked with gathering information and evaluating threats at home and abroad. With time the institution grew in size and scope of missions, but was seriously shaken by Congressional report that revealed serious abuses of power by the executive branch. The Bay of Pigs, the covert bombing of Cambodia, plans to overthrow Allende government in Chile, and numerous other secretive activities were not compatible with democratic principles. American public was shocked and demanded changes in how the agency conducted its business. As a result congressional committees in 1970's gained more power over the review of US intelligence activities. September 11, 2001 had a reverse effect and turned the CIA more into its pre-1970's version. After terrorist attacks, George Tenet, Director of Central Intelligence drafted a plan that would allow agents to 'kill and detain Al Qaeda targets on a global basis' (Chesney 2012: 563). The proposal circumvented traditional wartime chain of command - now the CIA director was put in charge for running a secretive war (Mazzetti, 2013). With President Bush signing it off, Gerald Ford's ban on assassinations was essentially overturned. United States waged a massive international campaign to seek and eliminate those responsible for the attacks, including their associates.

From gathering intelligence, CIA's emphasis now shifted to locating elements in Afghanistan-Pakistan tribal regions, and calculating optimal ways to kill or capture them. Instead of reacting to events the agency now had become pro-active. 'We went from a purely espionage organization to more of an offensive weapon, a paramilitary organization where classic spying was less important', explains retired CIA's senior officer Richard Blee (Miller, 2013). No longer was assassination as an option off limits. In fact, now it was the preferred way. Garry Schroen, CIA operator, recalls a meeting with Cofer Black who was appointed Coordinator for Counter-terrorism in which Black said: 'I want to make it clear what your real job is. [...] Your job is to find bin Laden, kill him and bring his head back on ice' (Schroen, 2012). While Bin Laden was the undisputable nr.1 target, he was far from the only one that United States sought to kill.

In the post-9/11 environment CIA's bureaucracy substantially grew as the organization was flooded with millions of dollars just to prevent another terrorist attack. It expanded in number of agents, missions, responsibilities and authorities. It is clear that the CIA's turn to kill specific individuals was a direct result of an external shock – Islamic extremism. At the same time there were also some inner dynamics at play that turned the agency into a man hunting department. Mark Mazzetti (2013) explains that a new post-Church Committee generation was now in charge of the CIA - people who had not been directly involved in the previous scandals. They saw covert action and assassination rather differently and were largely unaware about the mistakes made in the 70's. The ascendance of a new generation within the agency had a direct impact on the type of operations the CIA chose to go with (Mazzetti, 2013).

The importance of drones in carrying out targeted killing missions was not that obvious at first. Unmanned aerial vehicles were initially used during the Balkan crises. Back then drones did not carry missiles; only took digital images and transmitted them back to the station in Langley, Virginia (Kaplan, 2013). In 2000, even George Tenet was skeptical about the use of Predator planes and rejected the idea of establishing military bases to fly them (Mazzetti, 2013: 130). However, after attacks on World Trade Center, US military started to arm and fly drones over Afghanistan on a regular basis. The first big strike came on November 3, 2002 when US intelligence located whereabouts of Qaed Salim Sinan al-Harethi - Al Qaeda operative in Yemen. With a pinpointed strike Al-Harethi's car was struck by Hellfire missile leading to his instant death together with five other people, believed to be low-level Al Qaeda operatives (USA Today, 2002). With Pakistani approval to fly drones in restricted tribal areas, Washington got another big hit in 2004. This time it was Nek Muhammad – an enemy of both American and Pakistani government. The pattern for systematic targeted killings was set, and with or without foreign approval, drone strikes started to define America's new way of fighting a war.

Obama's escalation of Drone wars

The election of 2008 brought to the presidency Barack Obama - a democrat, former constitutional professor and candidate who had previously harshly condemned Bush's torture and wiretapping methods. Obama started out with promises to fight against terrorism with an 'abiding confidence in the rule of law' (White House, 2009); to sit across the table with his enemies and listen carefully to strategic partners, but soon realized the limits of that foreign policy approach. Faced with a complicated strategic outlook that demanded power projection, but not at the expense of American lives, Obama came across Unmanned Aerial Vehicles. Drones offered limited engagement, which was in stark contrast with the long and messy wars that his predecessor had launched. Moreover, putting the targeted killing procedure in the hands of the CIA analysts, and not Pentagon officials, granted escape from the public eye and a way around Congressional oversight. America will have to spend some time in the shadows and 'work the dark side', Dick Cheney proclaimed right after 9/11. Drones turned out to be the ultimate weapon in realizing this objective. Places in Pakistan and Afghanistan that were once impossible to navigate were now under a 24 hour drone camera watch. Through technical ingenuity Washington had achieved 'total control in warfare' (Buley, 2008: 11) and acquired the capability to strike whenever and wherever it wanted.

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There is, of course, other side of the coin as well. As shown by longstanding example of Israel, targeted killings invite revenge and each revenge invites retaliation (Blum and Heyman, 2010: 166). A number of scholars have emphasized that named killings deeply humiliate nation's sense of honour and weaken already fragile government structures (Gross, 2003; Williams, 2010). Strikes offend people's deepest sensibilities, and contribute to instability (Exum and Kilcullen, 2009). One should also point out that the secretive drone campaign is practically universally hated¹⁸⁴ and thus runs contrary to the US postulated goal of winning 'hearts and minds'. Diplomatic efforts by the State Department and USAID are overshadowed by reports about drones killing innocents and children. There is little doubt that remotely controlled UAV programme has seriously damaged Al Qaeda organization and its affiliates by taking out many of its followers. If Washington's main goal is to kill specific individuals then surely drones have delivered. At the same time it is questionable that America can simply kill its way through complex strategic problems; technology alone cannot solve human problems.

Drones: Changing Agency, Normalizing Assassination

Whatever the pros and cons in strategic terms, it is clear that with the rise of drone technology America has institutionalized and normalized the policy of targeted killings to unprecedented degree.

¹⁸⁴ Pew Research Center (2012) study found that in 17 of 20 countries, more than half of the people disapproved American drone strikes.

Because of the great distance between the drone and the pilot, and low risk engagement for the attacking side, an argument can be made that this lowers the bar when the strike is actually needed. Having nothing to lose, United States can afford to launch Predator missiles and simply hope that they reach their designated targets. Micah Zenko (2012a) makes a valuable point when he argues that America would not have sent manned aircraft or special forces to attack Pakistan 350 times. Innovative drone technology and cutting edge capabilities have changed not only how US conducts its military operations, but also transformed the agent of war. Writing for the Rand Corporation in 1987, Jenkins argued that assassination is a nasty business that requires 'nasty people, not the suave, urbane, romantic agents from the movies.' It seems that with the development of drones the 'nasty people' problem has now been solved. Controlled from afar, drones offer to kill the enemy in cold and mechanic manner. Unmanned Aerial Vehicles have changed how people think about assassination, making it appear clean, neutral and anonymous.

During a time when Democrats and Republicans seem to disagree on everything, drone strikes represent a rare exception. Even some of the biggest Republican 'hawks' such as Dick Cheney, Donald Rumsfeld and John Bolton are ready to sign under Obama's drone policy. Very rarely have drone attacks been questioned at the higher political levels. A journalist attending the first House Judiciary Committee hearing on drones described it as follows: 'No audience, very little press, no one testifying' (Hersh, 2012). Rare voices - Democrat Dennis Kucinich and Republican Ron Paul - have tried to elevate the issue a number times, but without any tangible results. Despite the fact that the distrust in the US government has been already eroded by the human rights violations during the Iraq war, the White House keeps drone strikes under the veil of secrecy.

It is not, however, only the political elites that favour deadly strikes in the Middle East and North Africa. On the contrary, almost two-thirds of Americans (65%) approve of US government launching airstrikes against suspected terrorists (Gallup, 2013). Taking into account that during the Bush era there were serious discussions and public outcry over torture methods, one can conclude that there have been some fundamental changes within the US society over the past decade. After years of targeted killings, politicians and society have grown comfortable with this foreign policy tool and now accept it as a necessary trade-off for their own security. The norm against assassination seems to carry little weight domestically in the United States.

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Is the Norm against Assassination still relevant?

Given its standing in the world, it is reasonable to fear that changes in America can also have a serious effect on the norm internationally. It is inevitable that others will use drones, and one can argue that America has set a rather bad example of how to do it. Already more than 70 countries have acquired remotely piloted aircraft as it has proliferated through international system with great speed. American contractors have pushed hard to receive export licenses to sell drones to Saudi Arabia, Egypt, Morocco and the United Arab Emirates (Bergen, 2012). China has declared a long term interest in developing advanced unmanned systems; Russia has bought drones from Israel and invested money in domestic manufacturing; France and Germany also have serious UAV plans in place. With time drones will become only cheaper and easier to acquire which can have serious consequences for the stability of international security. With the current development tempo, soon a number of states will be able to physically replicate America's targeted killing practices.

The threat to the norm stems not only from the fact that someone will build or acquire a drone, but from the fact that countries can now emulate and borrow blurry arguments and fragile legitimacy that America has used for its killings programme. The threat comes also from American justification or, more precisely, the lack of it. So far there has been no accountability, no explanation of what laws apply, no oversight and no substantial debate between Republicans and Democrats on this highly important issue. By failing to

restrain itself, America will not have the moral ground to condemn others when they start flying drones and target individuals. As Zeke Johnson from Amnesty International points out: 'When the US government violates international law, that provides an excuse for the rest of the world to do the same.'

How others react to violation of a norm is 'extremely important' (Percy, 2007: 36) and therefore judgment of others becomes the main barometer in measuring the strength of a norm internationally. To date, reaction of other countries has been condemnation and disapproval of American policy. Criticism, outrage and protests indicate that others still take the norm seriously and are interested in following it. At the same time, there have also been signs of wanting to emulate America's norm breaking behaviour. Chinese officials, for example, recently revealed that the country was very close to using a drone in order to target a major drug trafficker hiding in Myanmar (Perlez, 2013). Except Israel no other country has followed American targeted killings practice which means that the norm against assassination is still taken seriously internationally. However, following the same development trajectory this can easily change.

Conclusion

Targeted killings are not something entirely new in international affairs. They have been present from medieval to modern times. What is significantly different in the case of drones, however, is the systematic basis in which they have been used to eliminate specific individuals - state enemies. This is not a 'one off' mission, but a highly regarded and institutionalized counterterrorism strategy that over the years has increased in number of strikes and expanded in new war fronts. Maybe at a time when America had monopoly over the drone technology it could afford to use them with little regard to international law or norms. Today, however, around 70 countries are in the possession of this technology, and therefore the example Washington sets can easily be replicated by others. With a fleet of UAV's operating from bases in Virginia, North Africa and the Middle East, targeted killings from drones have become routine operations. What was supposed to be very last resort action- killing an individual – has now become almost a first policy option for America. With the technological drone race on and without major changes and self-restraint, America is tacitly inviting others to follow its example and in this kind of environment, the norm against assassination might lose its relevance very fast.

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The “more for more” approach in practice: the case of the Southern neighbourhood

13

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Introduction

When the row of mass demonstrations in the Middle East and North Africa later known as the Arab Spring broke out, the European Union (EU) set off to support the countries in their “path to democracy”¹⁸⁵. It also made the EU recognise that its policy in the region “has not always been right”¹⁸⁶ and that a “radically changing political landscape in the Southern Mediterranean requires a change in the EU's approach to the region”¹⁸⁷. As a result, the EU has come up with a renewed European Neighbourhood Policy (ENP) which aims to once again improve the ENP framework (in place since 2004) to build closer relations between the EU and its neighbours.

The EU has a long history of relations with the Southern neighbourhood countries¹⁸⁸. Institutionalised relations with the EU were initiated through the Barcelona Process or Euro-Mediterranean Partnership (EMP) in 1995, this was later complemented (with the aim to substitute) with the ENP in 2004 and with the Union for the Mediterranean (UfM) in 2008. The cooperation in the EMP and in the UfM has been largely technical, focusing on uncontroversial low politics issues such as maritime transport or small business¹⁸⁹ and avoiding more burning issues of politics, democracy or human rights. After the Arab Spring the EU admitted that its support to reforms in neighbouring countries only met with “limited results”.¹⁹⁰ This together with the recognition that the EU's choice to support authoritarian regimes had proven to be a miscalculation, resulted in several new policy documents on the EU's side which signal the change in the EU's policies towards its neighbourhood. Most significant of the changes is the switch from the old “one size fits all” approach to “more for more” policy of differentiation.

This paper focuses on the example of the Southern neighbourhood and closely scrutinises how the “more for more” approach is applied by the EU since the Arab Spring. The EU has been very open about the approach in its policy documents, thus the aim of the paper is to observe whether the EU is applying the “more for more” approach in the Southern neighbourhood (i. e if differentiation between various neighbourhood countries can be demonstrated) and if this is the case, how this principle is applied. 13

185 Barroso, J. M (2011) Partners in Freedom: the EU response to the Arab Spring, SPEECH/11/523

186 Füle, S. (2012a) Speech at the Conference EU-Nachbarschaft – Der Arabische Frühling ein Jahr danach Munich, 3 February 2012, SPEECH/12/66, available at: http://europa.eu/rapid/press-release_SPEECH-12-66_en.htm (07.08.2013)

187 COM (2011a) A Partnership for Democracy and Shared Prosperity with Southern Mediterranean, Joint Communication, Brussels, 8.03.2011, COM(2011) 200 final, available at: http://eeas.europa.eu/euromed/docs/com2011_200_en.pdf (07.08.2013), p 3

188 Countries participating in the European Neighbourhood Policy's Southern dimension include Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Occupied Palestinian Territory, Syria (relations currently suspended) and Tunisia.

189 Kausch, K. Youngs, R. (2009) The End of the 'Euro-Mediterranean vision', International Affairs, 85:5, p 964

190 COM (2011b) A new response to a changing neighbourhood, Joint Communication, Brussels, 25.05.2011, COM(2011) 303, available at: http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf (07.08.2013), p 1

The paper proceeds as follows. The first part gives an overview of the main new ENP-related documents since the Arab Spring. The documents conceptualise the “new” ENP approach, emphasising the differentiation principle. The second, most substantive part focuses on the three case studies from the Southern neighbourhood: Tunisia, Algeria and Egypt. The three countries can be seen as having a various degree of relations with the EU and are thus especially suitable for studying if and how the EU is implementing differentiation among the neighbours. The third and final part will conclude based on the case studies how “more for more” is playing out in the Southern neighbourhood.

New initiatives for the Southern Neighbourhood after the Arab Spring

The relations between the EU and the Southern neighbourhood after the beginning of the Arab Spring were bolstered by several new documents: the Joint Communication *A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean*¹⁹¹, the proposal for a renewed European Neighbourhood Policy *A New Response to a Changing Neighbourhood: A Review of the European Neighbourhood Policy*¹⁹² and the new European Neighbourhood Instrument¹⁹³.

A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean lists democratic transformation and institution-building, a stronger partnership with the people and sustainable and inclusive growth and economic developments as the three main elements that the EU would aim at in closer relations.¹⁹⁴ It also emphasises partnership between the EU and the neighbours based on differentiated approach since “no country in the region is the same”¹⁹⁵ and an incentive-based approach where “those that go further and faster with reforms will be able to count on greater support from the EU”¹⁹⁶. The document states little in terms of benchmarks and incentives, aside of the “commitment to adequately monitored, free and fair elections” as “the entry qualification for the Partnership”¹⁹⁷ and resuming “negotiations on Association Agreements with the aim of achieving “advanced status”” for “partner countries carrying out the necessary reforms”¹⁹⁸.

191 COM (2011a) A Partnership for Democracy and Shared Prosperity with Southern Mediterranean, Joint Communication, Brussels, 8.03.2011, COM(2011) 200 final, available at: http://eeas.europa.eu/euromed/docs/com2011_200_en.pdf (07.08.2013)

192 COM (2011b) A new response to a changing neighbourhood, Joint Communication, Brussels, 25.05.2011, COM(2011) 303, available at: http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf (07.08.2013)

193 COM (2011c) Proposal for a Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument, COM(2011) 839 final, Brussels, 7.12.2011

194 COM (2011a), p 3

195 COM (2011a), p 2

196 COM (2011a), p 5

197 COM (2011a), p 5

198 COM (2011a), p 5

The weightier document *A New Response to a Changing Neighbourhood* that seeks to renew the overall EU approach towards its neighbourhood, offers a “new approach” in terms of deep democracy, sustainable economic and social development, strengthening regional dimensions of the ENP as well as a more coherent EU policy framework.¹⁹⁹ These elements have been discussed now in more detail compared to previous documents.

Regarding differentiation, the EU recognises that each partnership with each neighbour will develop “on the basis of its needs”²⁰⁰ but that the EU support to its neighbours will be conditional: “the more and the faster the a country progresses in its internal reforms, the more support it will get from the EU”²⁰¹. Thus the conditionality aspect is enforced because “for countries where reform has not taken place, the EU will reconsider or even reduce funding”²⁰².

In addition to these two new documents, the EU also proposed to reconfigure the funding for the neighbours: the European Neighbourhood and Partnership Instrument (ENPI) was replaced by the European Neighbourhood Instrument (ENI). The new funding instrument is accustomed to the “more for more” approach, and should also enable faster reaction to changing conditions in the partner countries.²⁰³ More specifically, the regulation once again emphasises that the EU support will be differentiated according to the partner country where it will depend on “the level of ambition of the country's partnership with the Union, its progress in building deep and sustainable democracy, its progress in implementing agreed reform objectives, the country's needs and capacities, and the potential impact of Union support”²⁰⁴.

Thus in all of the new documents the EU has sought to emphasise differentiation (“more for more”) as the central element in relations with its neighbours. In addition, the use of conditionality (both positive and negative) has been more articulated than before. The “more for more” approach is significant because it signals the EU's attempt to distinguish between neighbours based on their individual progress and not on geographical location as has been the case before. As the EU has attempted to apply differentiation in the ENP framework already back in 2005, although with less determination²⁰⁵, it will be interesting and enlightening to observe how the EU is implementing “more for more” now.

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199 COM (2011b)

200 COM (2011b), p 2

201 COM (2011b), p 3

202 COM (2011b), p 3

203 COM (2011c) Proposal for a Regulation of the European Parliament and of the Council establishing a European Neighbourhood Instrument, COM(2011) 839 final, Brussels, 7.12.2011, p 2-3

204 COM (2011c), art. 4.1

205 Tömmel, I. (2013) The New Neighbourhood Policy of the EU: An Appropriate Response to the Arab Spring?, Democracy and Security, 9:1-2, p 30

On the other hand, there remains the question how to assess what is “more”, both in terms of definition (what does “more” mean? “More” in what areas?) and degree (how much is “more”?). As evident from above²⁰⁶, the EU has defined it for example in relation to the degree of ambition regarding the relations with the EU, the progress in building deep democracy, progress in implementing agreed reform priorities but also as broadly as the partner country's needs and capacities and the potential effect of the EU support. It does not explain who and how will decide what is “more”, thus making the approach extremely relative and most likely basing it on the EU estimation of “more”. For the purposes of this paper, this complication is approached by critically analysing and balancing between different sources: the main sources of analysis will be relevant ENP documents as the basis for understanding the approach on the EU's side, and academic articles for looking at relations between the EU and the partner country more generally. This does not remove the problem of definition but it will seek to get around it by developing a more general scale of differentiation between the three cases.

The three cases of the Southern neighbourhood

The case studies for this paper include Tunisia, Algeria and Egypt. All three countries are partners with the EU in the ENP framework; Tunisia and Egypt also having an Action Plan with the EU while Algeria does not. The basis for the selection of the countries relies on Kausch's categorisation of the Southern neighbourhood countries as “satellites”, “independents” and “untouchables” based on their relationship with the EU.²⁰⁷ A “satellite” is a country that has significant economic, political and security dependency on the EU and thus the EU remains its primary partner for the foreseeable future. For this reason, “satellites” (e.g Tunisia, Morocco) are countries towards whom the ENP is actually shaped.²⁰⁸ An “independent” (e.g Algeria, Libya) is a country that is economically and politically independent from the EU and thus it is unlikely that the current ENP framework suits their interests, however, a more flexible cooperation in the field of economy or security would be acceptable to them.²⁰⁹ An “untouchable” (e.g Egypt) is a country that is strategically relevant and where the EU's influence can only be illusory.²¹⁰

One country has been selected from each category to enable wider explanatory power. Tunisia is chosen as an example of a “satellite” country and due to the fact that it has experienced significant political change as a result of the Arab Spring. Algeria, on the other hand, is an example of an “independent” and a neighbour that experienced Arab Spring but the political reform was introduced by the regime and only to a limited extent. Lastly, Egypt is chosen as an “untouchable” and as a country that has experienced significant political change during the Arab Spring. With such different case studies, the results for analysing the “more for more” approach should be illuminating in explaining the “new” ENP. It is expected that there will be a variation in EU's policies towards these countries as the level of relations with the EU is diverse.

206 See footnote 20 and the text referring to that

207 Kausch, K. (2013) The End of the (Southern) Neighbourhood, PapersIEMed no. 18, European Institute of the Mediterranean, p 37

208 Kausch (2013), p 37-38

209 Kausch (2013), p 38-39

210 Kausch (2013), p 39

This would demonstrate, firstly, how the EU has managed to initiate the new policy, and secondly, whether the EU is able (or willing) to apply it to countries with different background conditions.

Tunisia

As a country that went through a revolution and the overthrow of the autocratic leader Ben Ali, Tunisia's transition process is seen as the most genuine and the most successful. For example, the EU Commissioner for Enlargement and the European Neighbourhood policy Štefan Füle has recognised Tunisia as the country with the most “impressive progress”²¹¹ and just recently as a country with “good prospects of a successful democratic transition”²¹². Tunisia has after the Jasmine revolution been one of the main recipients of the EU support.

This support comes, for example, in the form of negotiations in several areas: on a new Privileged Partnership and a new Action Plan (by now finalised), on trade agreements, on an aviation agreement and on a mobility partnership²¹³, as well as agreements in the area of higher education through Erasmus Mundus and Tempus²¹⁴. Concerning funding, Tunisia has received double financial assistance from the EU in 2011 (€160 million instead the initial €80 million)²¹⁵, and just as much more in 2012.²¹⁶ It is also the largest beneficiary of the SPRING (the Support for Partnership, Reform and Inclusive Growth) programme, especially designed as a response to the Arab Spring in order to assist partner countries with socio-economic challenges. Being the beneficiary of the SPRING programme is, according to the EU, the “more for more” reward for transformation of autocratic regime to democracy.²¹⁷

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The relations between the EU and Tunisia are institutionalised through EU-Tunisia Association Council and EU-Tunisia Task Force which discuss and confirm the main reform objectives and new cooperation schemes between the countries. Of the progress made by Tunisia, the EU Progress Report mentions the elections to the Constituent Assembly in October 2011 in accordance with the international standards which were considered as the “first democratic and free elections in its history”²¹⁸, also the creation of interim governments and ad hoc institutions to support the transition process, the successful adoption of laws on association, media freedom, justice sector and

211 Füle, Š. (2012b) One year after the Arab spring, European Parliament, Committee on Foreign Affairs Bruxelles, 24 January 2012, SPEECH/12/33, available at: http://europa.eu/rapid/press-release_SPEECH-12-33_en.htm (07.08.2013)

212 Füle, Š. (2013a) European Neighbourhood Policy – Priorities and Directions for Change, 25 July 2013, SPEECH/13/661, available at: http://europa.eu/rapid/press-release_SPEECH-13-661_en.htm (07.08.2013)

213 Füle, Š. (2012c) Statement by Commissioner Štefan Füle following the EU-Tunisia Association Council, 19 November 2012, MEMO/12/878, available at: http://europa.eu/rapid/press-release_MEMO-12-878_en.htm (07.08.2013)

214 COM (2013a) Increased education opportunities between Tunisia and EU, press release, 14 May 2013, IP/13/421, available at: http://europa.eu/rapid/press-release_IP-13-421_en.htm (07.08.2013)

215 COM (2012a) EU bolsters its support to reformers in its Southern and Eastern neighbourhoods, 15 May 2012, IP/12/474, available at: http://europa.eu/rapid/press-release_IP-12-474_en.htm (07.08.2013)

216 COM (2012b) The European Union in increasing its support to Tunisia's disadvantaged neighbourhoods, press release, 13 December 2012, IP/12/1369, available at: http://europa.eu/rapid/press-release_IP-12-1369_en.htm (07.08.2013)

217 COM (2012a); COM (2012c) Further concrete support for transformation in Tunisia, 9 July 2012, MEMO/12/540, available at: http://europa.eu/rapid/press-release_MEMO-12-540_en.htm (07.08.2013)

218 COM (2012d) Mise en oeuvre de la Politique Européenne de Voisinage en Tunisie. Progrès réalisés en 2011 et actions à mettre en oeuvre, Bruxelles, 15.5.2012, SWD(2012) 123 final, p 2

human rights.²¹⁹ The new Privileged Partnership agreed in November 2012 lists a number of priorities for Tunisia in fields as broad and diverse as human rights, discrimination against women, protection of refugees, structural reforms, drafting the Constitution and so on.²²⁰

Compared to other Southern neighbourhood countries, Tunisia's reform progress has been the most significant one: in the domestic level, the drafting of the Constitution is one of the central elements in the process, in relations with the EU, several negotiations have been concluded and the next ones (such the DCFTA and mobility partnership) are on the way. However, in the case of the DCFTA, there have been concerns that the EU's offer might not suit the country's needs and in the case of the mobility partnerships it has been noted that there is not much progress to the reluctance on the EU's side.²²¹ The EU has in its response been thus quite straightforward, focusing on the process of transformation and trying to limit comments on everyday political developments. For example, in one of the latest press releases announcing new support measures to Tunisia, Commissioner Füle (when ending his visit to Tunisia in March 2013) did mention the slowing down of the “positive momentum” and pointed out worsening political climate and increased polarisation as hindrances to the reform process.²²²

Algeria

in the case of Algeria, the country that has been largely unaffected by the Arab Spring, the EU's support is more difficult to measure than it was in the case of Tunisia. Several funding instruments that have been in place for years, have now been complemented by others, e. g environmental protection²²³. It is also visible that the EU support can broadly be divided into two areas: on the one hand, more technical (such as the environmental protection, cultural heritage, transport sector²²⁴, economy diversification²²⁵) and previously committed policy-oriented funds (e.g implementation of the Association Agreement²²⁶) which are continued in light of the “growing interest” shown by the Algerian authorities²²⁷; and on the other hand new funds either from SPRING or other programmes as a direct

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219 COM (2012d), p 5-6

220 COM (2013b), Mise en œuvre de la Politique Européenne de Voisinage en Tunisie Progrès réalisés en 2012 et actions à mettre en œuvre, Bruxelles, 20.3.2013, SWD(2013) 83 final, p 4-5

221 Dennison, S. (2013): The EU and North Africa after the Revolutions: A New Start or ‘plus ça change’?, Mediterranean Politics, 18:1, 119-124, p 125

222 Füle, Š. (2013b) Press Points by Štefan Füle, Commissioner for Enlargement and Neighbourhood Policy, at the end of his visit to Tunisia, 15 March 2013, MEMO/13/230, available at: http://europa.eu/rapid/press-release_MEMO-13-230_en.htm (07.08.2013)

223 COM (2012e) European Union mobilises to protect the environment in Algeria, 16 August 2012, IP/12/901, available at: http://europa.eu/rapid/press-release_IP-12-901_en.htm (07.08.2013)

224 COM (2011d) Fresh European aid for Algeria's cultural heritage and transport sector, press release, 17 August 2011, IP/11/965, available at: http://europa.eu/rapid/press-release_IP-11-965_en.htm (07.08.2013)

225 COM (2012f) At an Association Council meeting with Algeria, the EU decided to continue its support for administrative reform, good governance and economic diversification, press release, 6 December 2012, IP/12/1334, available at: http://europa.eu/rapid/press-release_IP-12-1334_en.htm (07.08.2013)

226 COM (2012f)

227 COM (2012f)

response to the Arab Spring (e. g youth employment support programme²²⁸, economic and political governance programme²²⁹).

From the political aspect, the EU and Algeria have an association agreement, however, there is no Action Plan in force, but the negotiations regarding the latter were initiated in October 2011. One of the main platforms for negotiations is the EU-Algeria Association Council. The EU's stance on Algerian reform process has been careful. The EU has welcomed the legislative elections as “a step forward”²³⁰ but maintained that there are several areas of improvement. The ENP progress memos on Algeria also remain scant²³¹, memo from 2011 points out that Algeria is due to receive around €172 million during the years 2011-2013 covering the areas of sustainable development and culture as well as economic growth and employment²³² (programmes already agreed on before Arab Spring) but has fairly little to say about political developments aside of listing the reforms promised by the President. The memo looking back at 2012 notes a substantial improvement since 2011 as discussion on the Action Plan started, and several other high-level meetings and visits were held.²³³

The case of Algeria demonstrates that where the partner country has little interest in reform, there is also little that the EU can do in terms of incentives. In terms of the differentiation approach, the EU has not withdrawn from its previous funding commitments agreed before the Arab Spring, instead it has offered some additional funding as a reward for some (although not yet very meaningful) reform and engaged with the government in the discussion over the new Action Plan. Whether less pressure for reform (compared to Tunisia) is related to differentiation and waiting for the partner country to take the lead, is too early to say. After all, it might also be related to the fact that Algeria is simply not interested in the EU's offer if there is no domestic or external pressure that would change its mind. Countries similar to Algeria are also a test for the ENP since it is not clear how far would the EU go with its differentiation. Algeria is currently relatively positive example because it has expressed increased interest in the ENP but should this interest be short-time, would the EU exercise conditionality on Algeria? In this case, differentiation could also threaten what has previously been achieved by the EU by keeping these countries engaged.

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Egypt

Egypt, a country that has almost eight times the population of Tunisia and more than two times the population of Algeria, not to mention its strategic and geopolitical position, is an important neighbour for the EU. For this reason, the revolution that took down Mubarak, was closely watched in the EU. The transformation process in Egypt is extremely fragile, taking into account the coup arranged by the military and the opposition forces in July 2013.

228 COM (2011e) New European support programme for youth in Algeria, press release, 8 November 2011, IP/11/1320, available at: http://europa.eu/rapid/press-release_IP-11-1320_en.htm (07.08.2013)

229 COM (2013c) New European Union programme to support economic and political governance in Algeria, 30 July 2013, IP/13/753, available at: http://europa.eu/rapid/press-release_IP-13-753_en.htm (07.08.2013)

230 COM (2012g) Joint statement by High Representative Catherine Ashton and Commissioner Štefan Füle on the elections in Algeria, press release, 12 May 2012, MEMO/12/324, available at: http://europa.eu/rapid/press-release_MEMO-12-324_en.htm (07.08.2013)

231 As there is no Action Plan based on which to evaluate Algeria's progress, the EU only releases an annual memo and does not prepare a Progress Report for Algeria

232 COM (2012h) ENP Package – Algeria, Brussels, 15 May 2012, MEMO/12/XXX [sic]

233 COM (2013d) ENP Package – Algeria, Brussels, 20 March 2013, MEMO/13/241

This all is reflected in the EU's approach to Egypt. The EU has so far remained supportive of post-revolutionary government and has after the coup maintained a cautious position. Catherine Ashton, the Vice-President of the European Commission and the High Representative of the Union for Foreign Affairs and Security policy, has visited Egypt several times during last year. However, her visits have not achieved rapprochement between the new interim government and the opposition.

Since the country was politically in flux, the EU support has been focused on socio-economic issues in 2011 by investing €100 million to improve living conditions and create jobs²³⁴ and allocating €23 million for water and sanitation programme²³⁵. The EU support diversified in 2012 when a more significant funding for Egypt was allocated: altogether €853 million for the years 2012-2013 out of National Indicative Programme, SPRING programme, Macro-Financial Assistance and Neighbourhood Investment Facility.²³⁶ This was in addition to major economic and political assistance package worth around €5 billion in the form of loans and grants agreed by the EU and Egypt.²³⁷ As of July 2013, the package had not been allocated yet, due to “the lack of a framework for economic reform”²³⁸, and the EU had announced previously that it had “no plans to change” the aid to Egypt in light of the recent events²³⁹. This is also remarkable as this came after the intra-EU audit that highly criticised support for governance in Egypt, saying that around €1 billion for 2007-2013 has proven to be “ineffective”.²⁴⁰

There is an Action Plan in force between the EU and Egypt which remained officially in force, although reforms outlined in the Action Plans did not receive much attention due to the domestic situation. The ENP Progress Reports, were quite critical of Egypt's new regime, the main concern in 2011 was related to various security issues in the post-revolutionary period: guaranteeing human rights, ensuring the safety of civil society organisations, abolishing the state of emergency.²⁴¹ In 2012, the highlights of the transition were the presidential elections and the transition from military to civilian rule, however, the political situation remained highly unstable, with the dissolving of the

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234 COM (2011f) New Commission support to improve living conditions and create jobs in Egypt, press release, 17 August 2011, IP/11/966, available at: http://europa.eu/rapid/press-release_IP-11-966_en.htm (07.08.2013)

235 COM (2012i), p 13

236 Füle, Š. (2012d) EU-Egypt: True partnership for people and transformation, speech, 14 November 2012, SPEECH/12/820, available at: http://europa.eu/rapid/press-release_SPEECH-12-820_en.htm (07.08.2013)

237 Council (2012) EU-Egypt Task Force agrees major package of economic and political assistance for Egyptian transition, press release, Brussels, 14 November 2012, A 516/12, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/133514.pdf (07.08.2013)

238 Daily News Egypt, EU €5bn aid to Egypt stands yet stymied by limited economic reform, 22 July 2013, available at: <http://www.dailynewsegypt.com/2013/07/22/eu-withdraws-previously-agreed-e5bn-grant/> (07.08.2013)

239 Wall Street Journal, EU: No Plans to Change Aid Regime for Egypt at Present, 8 July 2013, available at: <http://online.wsj.com/article/BT-CO-20130708-702284.html> (07.08.2013)

240 European Court of Auditors (2013) EU Support for Governance in Egypt - “well-intentioned but ineffective”, say EU Auditors, press release, 18 June 2013, ECA/13/18, available at: http://europa.eu/rapid/press-release_ECA-13-18_en.htm (07.08.2013)

241 COM (2012i) Implementation of the European Neighbourhood Policy in Egypt. Progress in 2011 and recommendations for action, Brussels, 15.5.2012, SWD(2012) 113 final, p 2

parliamentary lower house, heated presidential elections and the adoption of the constitution²⁴² which led to coup in July 2013. The EU's attempts to engage the new leaders of Egypt have met with limited success.

Before the results of the presidential elections that brought Morsi to the position, the military authorities were extremely reluctant to take part in any new initiatives. This was reflected in declining negotiations on DCFTA, Dialogue on Mobility, Migration and Security.²⁴³

In the case of Egypt, it has been extremely difficult for the EU to get involved for several reasons. First, Egypt's leadership is wary of external actors and their possible interference²⁴⁴, second, the EU is Egypt's partner only after the US, who is also the main donor for Egypt (and in this respect the EU's funding, or offer on the whole, for that matter, remains too little). When earlier it has been criticised that the EU's demands for reform in Egypt to the Supreme Council of the Armed Forces have been weaker than in the past to Mubarak²⁴⁵, then now the EU must work towards stabilising the situation before any reform demands can be made. Even then, the EU has little to condition Egypt with, or even bargain with, because Egypt just is not interested enough.

Conclusions

After the Arab Spring, the EU has renewed its neighbourhood policy with the emphasis on the “more for more” approach. This means differentiation between neighbours according to their level of cooperation and integration with the EU: the more the partner country achieves progress on mutually agreed reforms, the more incentives the EU will provide in return.

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In the cases of Tunisia, Algeria and Egypt, a clear “more for more” approach is present in Tunisia-EU relations. This is evident both in the availability of the EU funding possibilities as well as EU's readiness to negotiate more significant political deals. As long as Tunisia's political development does not face serious backlashes, it is likely that the “more for more” will continue. The cases of Algeria and Egypt are less obvious but based on the EU's criteria of “the level of ambition of the country's partnership with the Union, its progress in building deep and sustainable democracy, its progress in implementing agreed reform objectives, the country's needs and capacities, and the potential impact of Union support” for differentiation some conclusions could be made. Neither in the case of Algeria nor Egypt there is indication of deep interest in partnership with the EU, however, once that interest was demonstrated even to a limited degree (as in the case of Algeria), the EU welcomed the chance. As there was no extensive political opening in Algeria and the current situation in Egypt is very insecure, there can be no expectations of deep democracy or implementing meaningful reform at this point, however, in the former case there is certain level of engagement which in the latter case is simply not there. And when mentioning the potential impact the EU support might have in these countries, it is clear from above that in order to be able to have an impact, significant resources are needed

242 COM (2013e) Implementation of the European Neighbourhood Policy in Egypt. Progress in 2012 and recommendations for action, Brussels, 20 March 2013, SWD(2013) 89 final, pp 2-3

243 COM (2012i) Implementation of the European Neighbourhood Policy in Egypt. Progress in 2011 and recommendations for action, Brussels, 15.5.2012, SWD(2012) 113 final, p 3

244 Balfour, R. (2012) EU Conditionality after the Arab Spring, PapersIEMed. No 16, European Institute of the Mediterranean, p 26

245 Balfour, E. (2012), p 25

and the current resources the EU has to offer, do not correspond to the needs of Egypt or Algeria (which is not to say that these countries do not have any interest in cooperation or any dependency point with the EU).

Tunisia is one of the (so far) most successful countries in the Southern neighbourhood and has thus benefited from extensive EU support. In the case of EU-Algeria and EU-Egypt relations it is hard to say whether “more for more” differentiation is present. This is due to the fact that in less clear-cut cases (than Tunisia so far has been) the concept becomes confusing. There are no clear EU standards against which to decide “what” or “how much” is “more”. And when it comes to the EU neighbourhood, there are far less clear-cut and far more grey area cases.

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FRIDAY – AUGUST 23RD 2013

- **SESSION 10:** WORKING PAPER BY A. SADELDEEN (ULB, B & LUISS, IT)
- **SESSION 11:** WORKING PAPER BY A. NEAME (NORTHWESTERN UNIVERSITY, US)



GR:EEN-GEM DOCTORAL WORKING PAPERS SERIES

Rough Transcripts from the Field: Portrays from a liberated Syrian city

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The Syrian revolution is unthinkable for a number of intellectuals and scholars, in part because they are not familiar with the situation on the ground, but more importantly because they use inadequate conceptual tools to examine it. Prominent intellectual Michel-Rolph Trouillot explains that the Haitian revolution was invisible and for a long time unthinkable for many historians because “[t]heir worldview wins over facts.” The following paper attempts to propose new tools to investigate the Syrian revolution. It reevaluates the geopolitics of knowledge in the Syrian context. It does so on the premise that what is happening in Syria is a constitutive part of the Arab revolts that erupted in Tunisia and Egypt. We propose first of all to interact with persons in the revolution before theorizing, and to discover what dignity means for persons, and to discover a sort of innocence as well. While many consider the Syrian uprising the exception in the Arab World, we reject such a delinking from the larger Arab context. At the same time, we recognize the specificity and singularity, which at times makes the Syrian revolution more ambiguous and uncertain than other revolts. The Syrian uprising and the Arab revolutions more generally are inviting us to reevaluate the dominant epistemic and philosophical trends whether progressive or reactionary.

Surprisingly, the efforts of the Syrian regime to isolate the revolt and delink it from its Arab context had some success. For example, the organic relationship between the Syrian popular revolt and the Arab uprisings is not acknowledged by many anti-imperialist internationalists such as Tariq Ali, Chris Hedges, or John Rees and a number of leftist Arab intellectuals who are more interested in radical posturing than in the creative and new tools Syrians are using to oppose despotism. The recent articles published in the *New Left Review* illustrate this tendency. An article by Cihan Tugal²⁴⁶ published in 2012 as well as one written by Tariq Ali in 2013 follow that logic.²⁴⁷ The geopolitical aspect of the Syrian revolution is emphasized and other dimensions are either deemed irrelevant or secondary.

The militarization of the revolt and the involvement of various regional and international players have allowed many leftist intellectuals to turn against the Syrian uprising without feeling any guilt. These intellectuals claim to be opposing the Syrian regime and yet will gladly validate its discursive strategies. They believe the United States and its allies are conspiring against Syria because of the latter “anti-imperial alliance” with Iran. For these intellectuals, the revolution is simply unthinkable in such regional and global conjunctures. They argue that the United States and its surrogates in the region are backing the Syrian opposition because they would benefit from the toppling of the regime. They acknowledge the existence of a genuine and independent opposition but they argue it’s too marginal and without any real impact on the ground.

Likewise, many conservative analyses of the Syrian revolution understandably only recognize its geo-political dimension and focus mainly on the military aspect. These analyses are state-centric and only emphasize interstate relationships. For example, in April 2013, the conservative journalist Daniel Pipes recommended the US should support the Syrian regime and the opposition at once to weaken both and consequently further the interests of the US in the region. His proposal soon became the US official position. The US and European ambiguous stances towards the Syrian revolution allowed Western media to portray it as a brutal war between two equal parties.

Our trip to the liberated areas was prompted by these intellectual debates. Only research on the ground could counter these meta narratives. While we both had been to Syria multiple times since the beginning of the revolution and had witnessed the revolutionary spirit of many Syrians inside Syria, we never visited the liberated areas in Northern Syria. Our research complements the work of several authors and revolutionary and professional media outlets who have written about the diversity and complexity of the Syrian situation. After some preliminary research, we chose to conduct our research in Manbij because it is considered one of the exemplary cities in the liberated areas in Syria. It has a vibrant revolutionary council. In addition, it has a vital and healthy opposition, which

²⁴⁶ Cihan Tugal, “Democratic Janissaries?”, *New Left Review*, 76, July-August 2012; pp. 5-24.

²⁴⁷ Tariq Ali, “Between Past and futures: Reply to Asef Bayat”, *New Left Review*, 80, March-April 2013; pp. 61-74.

belongs to an entire spectrum that starts with the pro-revolutionary and ends with the pro-regime tendencies.

We mostly interacted with men in Manbij since they occupy most of the public space, but we met some women active in newly established women associations. We had the opportunity to live in a farm outside the city where activists and journalists are invited to stay when they visit the city. During a period of six weeks we attended important meetings that took place in the farm and were part of informal discussions about the politics of the city. While our research in Manbij took place in various institutions, in this short paper we describe three individuals we lived with during our stay in Manbij. What characterized many of the men we met during our stay is both a sense of dignity and “innocence”. In some cases, these traits were even visible in their faces. We will concentrate in this preliminary draft paper on few quick portrays.

Behind the mask: Faces from the revolution

Shortly after arriving, we witnessed an airstrike in downtown Manbij. We were only 150 or 200 meters away from the location where the missiles struck their target. There was a sudden change of mood in the city. We felt powerless because the pilot was unreachable since there were no anti aircraft guns in the city. We were vulnerable because there was no safe location where we could take refuge. Although people were accustomed to these frequent attacks, some panicked and moved from one place to another without purpose. We saw men and children rushing to the location of the strike to help. Amidst this uneasy atmosphere, it appeared that the only tools people had to counter the violence of the regime were their innocence and dignity. At the scene, a young boy had his hand on his stomach and was walking back and forth. His innocence has obviously no place in the geopolitical analyses proposed by conservative and progressive intellectuals alike. For those helping to remove the debris and looking for the injured in the ruins, these acts of dignity were the most effective tool to resist the cruelty of the regime.

After the first strike, people knew the pilot would attack again. These pilots try to inflict as much devastation and killing as they possibly can. In the past, when a pilot disobeyed orders and launched his missiles in deserted areas, he was executed soon after arriving to his base. That is why pilots are considered merciless. During the few minutes that separated the first strike from the second, we were filled with a feeling of helplessness. We could hear the deafening aerodynamic noise above our heads but weren't able to see the airplane in the sky. In those moments, we had contradictory emotions and incoherent thoughts. Fear and helplessness were mixed with a sense of the futility of life. Logic and rational thinking have no place in these instants. I stood at the entrance of an alleyway. When I looked upward, I noticed the material above my head was shaky and might fall on me if the second raid were to be close to where I was standing. In a split of a second I had a mental image of my beloved, then an image of my mother and the people I cared for. I thought maybe these were the last minutes of my life. I wanted to hug each one of them one last time. I became a vulnerable child looking for protection. I remembered what Rami²⁴⁸ had told me the previous night: “my young nephew hugged me tightly during the air strike; he wrapped his arms around me but it wasn't enough; he needed another person to hug.”

In these moments everything was relative and questionable to me. Is the revolution worth all the destruction? What should people do? What could people do? The regime is very aware that the bombing of these neighbourhoods raises such questions. It wants the population to reject and expel military groups from their cities. Instead of reacting according to the regime's expectations, many people living in Manbij become more religious and think their only protection is a merciful god. The aerial attack was one such moment of total helplessness where closeness to god seemed like the most rational choice.

Kamal was living in the farm when we arrived. He was watering the plants in the garden. He was happy to give a

²⁴⁸ All names have been changed in this paper.

hand in the kitchen when someone needed help. He just recently turned seventeen but childhood is something he has outgrown for a long time. Hezbollah fighters arrested him in Beirut when he was only fifteen. Kamal was one of the many unskilled Syrian laborers who looked for work every morning in the Southern Suburb of Beirut. One morning in the summer of 2011, several vans that belong to Hezbollah stopped in front of him and individuals dressed in black asked everyone to get inside. He was blindfolded like everyone else and brought to an undisclosed location where he was searched, questioned, and had his phone confiscated. Since then Kamal has embraced the revolution wholeheartedly.

He currently wants to become a fighter with the FSA. He had been to a battle in Aleppo a few months earlier and had fought for a few days before his father pulled him out. When he came back from Aleppo, he worked at a carpentry but wasn't able to follow orders or execute the tasks given to him. He tried to work at other apprenticeships but wasn't able to focus. He was thinking about the front and the many friends he had lost since the beginning of the revolution. Kamal isn't fearful of death. He believes fighting and dying at the front is the duty of a man and a sign he had a dignified life. What else can one do? He said, "we do not fear death anymore. Even Samir, my three-years-old brother, doesn't fear death. When the airplane attacks the city, my brother goes to the roof and shouts 'Allah wa Akbar'" There was a clear sense of pride in his expressions as he was telling the story. Kamal loved a girl for almost a year when he was working in Beirut. She was the daughter of the grocery store's owner. He still has feelings for her but doesn't believe in love anymore. We told him he was too young to be fighting with the FSA and that he should enjoy life. For him, every day spent away from the front was a betrayal to the memory of his friends who were killed by the regime.

We met Abou Maen at the Syrian-Turkish borders. We spoke with him via skype before coming to Syria but didn't know much about him or his political views. Abou Maen is a young man in his early twenties. He has a short haircut and a slight mustache and beard. He often wears a black T-shirt and dark pants and puts a keffiyeh around his neck. Originally from Damascus, Abou Maen has been living in Manbij for three months now. On several occasions, he expressed indifference towards death or love. At other moments he was clearly missing the beloved he left behind. He explains, "I miss being in love. I am a very romantic man. I wrote a book of poetry to the woman I used to love... I also miss Damascus. When someone talks about Damascus, I find myself crying. That's why I don't want to leave Syria anymore because I fear I won't be able to come back. When I left Damascus last year, I was banned from coming back, again."

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Abou Maen is a friendly person. In the morning when he wakes up, his eyes are semi closed and yet he already wears his distinctive and instinctual smile. Even when he is upset, he tries to keep calm. In short, he is "habbab" as Syrians would say. Although he is new to the city, he promptly made many close friends. Because of his personality and demeanor, many young men consider him their role model. Abou Maen has been actively working in rebuilding the different institutions in the city. He repeatedly reminds his interlocutors that not only new institutions should be created but more importantly, human rights and the dignity of the Syrian citizen should be respected.

Abou Maen is also a sniper and he takes his role seriously. The personality of Abou Maen counters many of the accounts one reads about FSA fighters in Arab and Western media. Abou Mean represents the antithesis of the regime's sniper, who is the most threatening of figures. Many Syrians see the regime's snipers as loyal soldiers who kill passersby without remorse; don't distinguish between fighters and civilians; and hide their faces cowardly behind a mask. Despite his outgoing personality, as a sniper, Abou Maen would not hesitate a split of a second to shoot a soldier he might see in the monocular of his rifle. He explains, "I am humanist and I care about human life but I try to forget about that when I am at the front. There is no place for such thinking at the front. The front is not human at all. It is bloody. It's full of bloody things."

Before coming to Manbij, Abou Maen was studying engineering at a prestigious European university. He was a popular student and had no financial problems. More generally, he enjoyed life in the small European city where he spent almost two years before deciding to freeze his study, return to Syria, and dedicate his entire time for the success of the revolution. One afternoon, we sat to drink coffee at the terrace, he said with affection, "the taste of coffee, the faces I see around me, the friends I made in Manbij are priceless and they make me happy. I would never leave Syria before this regime is toppled."

Abou Maen participated in establishing a civil association active in the liberated areas and in Manbij, working on some projects like the garbage. He is in the centre of military and civilian activities, where he is involved in training and establishing security bodies, and became a member of the Revolution Trustees' Council in Manbij, while many guys approach him with obvious love. He is not marginal at all. He tries to mobilize resources for many projects, while emphasizing that "We do not take more than a certain financial limit from any person. No one can manipulate us". When asked about the money that some military divisions receive, he replies that some receive tiny amounts, others do not, and the revolution lacks weapons and money, but it is also naïve to think that many military leaders are stupid and do not manoeuvre.

Abu Rami was our guide to the city. He was one of the main instigators of the rebellion in Manbij and was therefore very knowledgeable about the minutiae of life during the revolution. In addition, he is one of the influential persons in the city. Although he is only 26, he is well respected and his word is heard in Manbij. He built a solid symbolic capital when he started organizing and attending demonstrations back in April 2011 when only a few dared to do so. Since the beginning of the revolution, Abu Rami doesn't miss an opportunity to sing revolutionary songs. Sometimes he sings pro regime songs and starts smiling as he repeats lyrics that denigrates the image of the revolution. In these moments his goal is make his audience laugh.

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Abu Rami is used to work on different tasks until late night. That is why he wakes up late, often around noon. Although he has been a central player in all the actions against the regime in Manbij, he was one of the last ones to know about its liberation. the morning the city was liberated he slept until noon. He enjoys telling the story about his friends coming to his house that day and waking him around one in the afternoon to inform him about the latest news.

Since the liberation of the city, every morning Abu Rami goes to the local council to discuss various matters with the revolutionaries who control it. After his daily visit to the council, he goes to the revolutionary court, or the military council. He often meets people in the street and chats with them to know the latest news. He is hard worker and can achieve many tasks without losing his sense of humor. For an outsider, what Abu Rami seems to be doing during these brief encounters in the street or at the council is simple and polite exchange. In reality he is one of the few persons who are able to gather information from various sources and communicate with the different players in the city. His passion and ability to speak a language that draws from multiple repertoires allows him to network effectively between different groups. In addition, his symbolic capital makes him an uncircumventable person in the city. Ironically, these skills have also become a burden. Certain people have accused him of monopolizing the decision making in some instances.

Abu Rami is not always in a good mood. On several occasion, he was angered during the weekly meetings of the Revolution Trustee council. In one case, several members interrupted him as he was proposing an amendment to the bylaws. In another occasion, someone challenged the veracity of his narrative. In both cases, he had an angry exchange with his interlocutors and yet managed to hug and kiss them only a few minutes later. Ironically, the popularity of Abu Rami has created some dissatisfaction among individuals or groups who felt marginalized.

After the liberation of Manbij, Abu Rami and others created a council that became popular due to the revolutionary legitimacy of its members. A few months later however, others felt that they should participate in the management of the city even if they didn't play a central role in its liberation. To counter the power of the revolutionary council, they created a local council that got the support of a dozen "Civil Committees," many of which were created for the sole purpose of supporting the new council. The local and revolutionary councils coexisted for four months before the local council finally decides to dismantle itself since all the vital institutions, such as the court, the bakeries, and the mills, were still controlled by the revolutionary council. In addition, the revolutionary council was able to get the backing of Aleppo's provincial council and therefore the support of other local councils in the liberated areas. Finally, to protect the revolutionary council from being high-jacked by *Shabiha* as Abu Yehia likes to label part of the opposition, there was a need for the creation of a new body. For that purpose, "The Council of the Trustees of the Revolution" was created as a powerful body to oversee the operation of the council. The trustees' council includes more than 600 members; in other words every revolutionary is invited to join the trustees. However, the new body created more resentment among many who were not considered good enough to become members. Many challenged the definition of revolutionary proposed by the new council. By splitting the city between revolutionary and non-revolutionary, the members of the new body unwillingly created a non-cohesive yet united front against them.

Abu Yahya witnessed the different "moods" that Manbij passed through in the post regime period, and has been active in all periods. There was the "security vacuum" period, the diverse established local councils, and when a militant person called "the prince" has been kidnapping, then when Islamic divisions clashed with "the prince", and finally when the mood is anti-"Islamist divisions" as he and many others call them, meaning the Salafi Jihadi groups. When asked about "dignity and freedom", he replies quickly "they are the core values of the revolution".

Conclusion

The Syrians described above and others we met in the city don't seem to be affected or distressed by the death and harsh conditions they live in as much as one expects them to be. While the city is safer than others, it had its share of bombing and destruction. Everyday there are news of young men from Manbij killed at the front. Two cultural explanations were proposed to us to explain such a situation, where also many displaced persons in Manbij have been describing harsh experiences of displacement while being calm and sometimes with a smile. According to a Syrian film director who documents the various aspects of the revolution, "Syrians have a feeling they are playing a historic role even before the emergence of Syria as a nation-state. They believe they are the synthesis of many great civilizations. Many Syrians therefore consider the Assad regime ephemeral and accidental that doesn't deserve too much attention." As a filmmaker he felt insulted by the way Syrians were portrayed on Youtube and other media. He said, "Syrians have a sense of dignity; they do not accept to be portrayed in such a manner." When I pressed another friend for an answer, she proposed an economic explanation. She said, "the Syrian society is not linked to the modern industrial or capitalist system the way other societies are. High level of poverty mostly in rural areas makes individuals living in these regions tender". Of course, these are only partial explanations.

Any attempt to understand the cartography of the Syrian revolution should benefit from looking well at faces, be surprised by the "innocence" in its first obvious meaning of being "not feeling guilty" as the revolution has been frequently accused and secondly the feeling of "tenderness", and understand "the politics of dignity" as points of entry. Ironically, the political repertoire used by many progressive and conservative intellectuals bypasses such issues. It doesn't have any place for everyday life. The faces of Syrians are irrelevant in their analyses. By doing so, these intellectuals render the revolution unthinkable. Dignity or "innocence" don't have a place in a theoretical framework saturated with state-centric rhetoric that maintains and polices the boundaries of the nation. While concepts such as "sovereignty," "state," "nations," and "American empire" have undeniable relevance and should be part of any analysis of the Syrian uprising, it is imperative to recognize the novelty of the context and adjust the analysis accordingly. Intellectuals trying to comprehend the anatomy of Syrian authoritarianism need to question

mainstream geopolitics as a unique *modus operandi*. The Syrian uprising requires the creation of innovative conceptual tools that could grasp the newness in the emerging configuration in the region.