

European Insecurity: Managing Changing Relations at Home and Abroad

Interviews with Dr. Margriet Drent and Dr. Bibi van Ginkel of the Security and Conflict Programme of the Netherlands Institute of International Relations 'Clingendael'

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I. Revolution in the Neighbourhood: Europe's Role in the Arab Spring

Last year witnessed great changes in North Africa and the Middle East with the large-scale and ongoing protests of the Arab Spring. Several countries in the region remain in turmoil, while others rebuild in the aftermath of revolution. 2012 holds many challenges for these countries, and especially for the process of democratic transition in Libya, Egypt and Tunisia. Dr. Drent, how did Europe react to the unrest in their backyard and how has Europe's security relationship with these countries changed?

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Europe has been conspicuously absent from North Africa. The Arab Spring is one of Europe's major challenges, as it is so close to Europe's borders and a part of its Neighbourhood Policy.¹

The Neighbourhood Policy originally centred on stability and aimed at developing countries in the North African region to form a buffer for southern European borders. While Europe was arguably more critical of the human rights situations in countries such as Egypt and Libya, Europe has mostly followed USA policies in the region. Like the USA, Europe was all too content for long-standing dictators to ensure stability. It was only a short while ago that Gaddafi was putting up his tents in Paris and paying a visit to London.

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¹ The European Neighbourhood Policy was developed in 2004, with the objective of avoiding the emergence of new dividing lines between the enlarged EU and its neighbours and instead strengthening the prosperity, stability and security of all. The Neighbourhood Policy is chiefly a bilateral policy between the EU and each partner country, including Egypt, Libya and Tunisia. See further European Union External Action, 'European Neighbourhood Policy – Overview', available at <http://eeas.europa.eu/enp/index_en.htm> accessed 23 February 2012.

This stability created a buffer that protected against terrorism, immigration and other social and political unrest that existed there and also had the potential to destabilise Europe. Events have proved this policy approach to be incorrect. The Neighbourhood Policy has, therefore, adapted its focus to supporting reform-minded political parties and civil society in the region. Europe learned a valuable lesson from the uprisings and no longer pursues political stabilisation as the dominant goal. Europe has much to answer for in the region and it is a welcome change in policy to support reform rather than the enemy-you-know.

Europe's prior absence and support for dictators arguably diminished Europe's reputation in the region. However, Europe was quick to recognise the potential of the Arab Spring and responded accordingly. It was under European leadership that the NATO mission was undertaken in Libya, with the UK and France in the lead and the USA following. Europe has changed its posture to the people and governments in the region quite considerably, which can only benefit Europe and their reputation in North Africa.

Noting that the situation in North Africa was previously more stable under the reigns of dictators like Mubarak and Gaddafi, how do you see the current instability and uncertainty caused by the revolutions impacting security in the region as well as in Europe?

There is certainly now potential for Islamic political parties and more radical elements in society to exert themselves. Such groups now have the scope to expand, become more influential, and possibly be more receptive to and supportive of foreign elements from the Sahel region and the Horn of Africa. Unfortunately, stability under the dictators and the oppression they exerted was beneficial to Europe as it contained such opposition. Of course, from an ethical, sustainability and normative point of view it was untenable - but from a security perspective it is much more insecure now for Europe.

On the other hand, there is also the chance that the new regimes in North Africa become democratic and more cooperative with Europe. In this case, a flourishing relationship can develop with all the ancillary economic, trade and human rights benefits. Undoubtedly, democratic governance in the region will improve security. As the North African situation is currently

insecure and unstable, it can go either way. This presents a task for Europe to provide as much assistance as possible to ensure that a favourable democratic outcome occurs.

II. NATO/EU Relations and the Libya Mission

NATO played an important role in the conflict in Libya in 2011 that concluded with the end of Gaddafi's rule on 21 October 2011. NATO and the EU held regular consultations since the beginning of the conflict, an issue of great concern to both organisations. The European Union's defence and military strategy is formalized in the Common Security and Defence Policy (CSDP).² Why was the Libya mission a NATO mission and what role did the European Union's CSDP play?

With the successful operation in Libya, NATO experienced a sort of revival. After the questionable mission in Afghanistan, NATO was attempting to re-establish its role and relevance.³ Following Libya, NATO's reputation as an effective military tool has been confirmed. In contrast, the European CSDP could not be used because of political divisions over the approach to the Libya crisis and a lack of vital capabilities. Europe increasingly lacks military capacity due to austerity measures and cuts in defence budgets, as well as a result of the peace dividend after the Cold War. Europe chose to work through NATO in Libya in order to secure support of the USA. This operation could not have been performed without the help of the USA, which is the big advantage that NATO has over the European CSDP.

Both the European CSDP and NATO can engage in missions without unanimous support or contributions, so long as no member State vetoes the missions. However, politically it is very difficult to get a united standpoint on a mission in Europe - especially with Germany abstaining from the UN Security Council Resolution on the responsibility to protect in Libya.⁴ By comparison, it is much easier for NATO to act,

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² For more information see European Union External Action, 'Security and Defence', available at <<http://consilium.europa.eu/eeas/security-defence.aspx?lang=en>> accessed 23 February 2012; and M Drent, 'The EU's Comprehensive Approach to Security: A Culture of Coordination?' (2011) *Studia Diplomatica*, LXIV 2.

³ See generally M Drent, A van den Assem and J de Wilde (eds), *NATO's Retirement? Essays in Honour of Peter Volten* (Centre of European Security Studies, January 2011).

⁴ UN Security Council Resolution 1973 (2011).

in terms of the capabilities and political support provided by the USA.

The EU and NATO share many common interests, how would you characterise their relationship and how has it developed as a result of the Libya operation?

In practice there is already a lot of cooperation between NATO and the European CSDP.⁵ For example, NATO and the Europeans work together on the anti-piracy operation in the Gulf of Aden and in Kosovo, where NATO provides security and the civilian CSDP provides training and assists the transition towards democratic governance. In Afghanistan, NATO and the CSDP are collaborating to train police officers.⁶ NATO and CSDP have realised that they cannot be competitors, as they use the same capabilities and both rely often on the same member States to contribute forces. In this sense they have to work together.

There is, however, a political disconnect due to the membership of Cyprus in the EU and that of Turkey in NATO. Turkey does not recognise Northern Cyprus and this creates a major blockade to EU/NATO cooperation. As a result, informal – under the radar – diplomacy is flourishing between the two organisations. This creates a strange and somewhat schizophrenic situation, which hampers meaningful strategic cooperation. Unless this issue between Turkey and Cyprus is resolved – which is unlikely to happen soon – it will continue to be a problem for EU/NATO relations.

Going forward, the USA has indicated that Europe is less of a priority for them and, increasingly, Europeans understand that they will have to lead missions through the CSDP in the future and act without substantial USA (and NATO) support. Europe will have to shoulder the risks, including the political risks, for securing their neighbourhood. A CSDP operation would be feasible in Europe's backyard if enough large countries (such as the UK, Poland, Germany and France) support and contribute to the mission – and no one vetoes it.

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III. The Standoff with Iran: Sanctions, Next Steps and Security Implications

The EU has restrictive measures in force against Iranian citizens and assets, as well as an embargo on arms and certain technology. New sanctions were imposed at the end of 2011 over Iran's controversial nuclear program.⁷ How does the EU's CSDP determine its relationship with Iran and what are the potential next steps for Europe if the dispute escalates?

The dispute with Iran is both a foreign policy and a security issue. The CSDP is an element of the EU's foreign policy. To negotiate with Iran, the EU has commissioned the French, British and Germans to form a trio, along with Catherine Ashton, the High Representative of the European Union for Foreign Affairs and Security Policy, who plays a coordinating role. This trio has been extended to include China, Russia and the USA. It is through this informal diplomatic tool that the EU engages with Iran.

The CSDP will not come into play unless the situation escalates. If negotiations and sanctions fail and if Iran is on the verge of developing a nuclear weapon, the EU may engage the CSDP – although this is far-fetched – for the possibility of military intervention. It will be very difficult to find a military solution to Iran, as no one has the political appetite for war after Iraq and Afghanistan and all the costs and political collateral damage. Foreign intervention would also be very detrimental to the reform potential existing in Iran, as citizens would be likely to rally behind their leadership if attacked. An intervention is, therefore, highly unlikely and until then the situation will continue as a high level foreign policy issue with enormous security implications.

Given the unlikelihood of military intervention in Iran, how do you foresee the dispute being resolved? Economic sanctions are a contentious measure, arguably hurting civilians more than the target governments and with questionable efficacy. What solution would you promote to deflate the conflict and prevent Iran from developing nuclear capabilities?

Economic sanctions have a very bad track record

⁵ See North Atlantic Treaty Organization, 'NATO-EU: a strategic partnership', available at <http://www.nato.int/cps/en/natolive/topics_49217.htm> accessed 23 February 2012.

⁶ For further information on EU CSDP operations see European Union External Actions, 'EU Operations', available at <<http://www.consilium.europa.eu/eeas/security-defence/eu-operations.aspx?lang=en>> accessed 23 February 2012.

⁷ European Union, 'Restrictive measures (sanctions) in force (measures adopted in the framework of the Common Foreign and Security Policy)' (18 January 2012), 20, available at <http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf> accessed 23 February 2012.

and normally antagonise the target government making negotiations more difficult. However, if there is little else you can resort to, targeted sanctions for those in power are often the only option. The EU's sanctions will hurt Iran, as the EU is Iran's largest trading partner and a substantial consumer of Iranian oil. However, the regime is so radical that they are unlikely to suspend the nuclear program, preferring to try to sell more oil to countries not participating in the sanctions, such as China and Japan. This should not be difficult to achieve given the demand for and current shortage of oil.

It is, of course, also imperative to support reform and the revolutionary potential within Iran. In addition, there might also be merit in trying to find a regional solution in order to eliminate the threat Iran is experiencing. A combination of covert action, supporting reform, regional reconciliation and continuing to name and shame Iran could be effective in the long run.

IV. Europe's Financial Crisis: Threatening More than Just Economic Security

Europe is facing an unprecedented financial crisis. Massive public debts, falls in credit ratings and gloomy financial forecasts threaten the European monetary union. This has obvious implications for unemployment, poverty rates and a greater burden on state welfare. What are the security implications of the current financial crisis in Europe?

Security implications of the current financial crisis are already taking shape. Unprecedented budget cuts have occurred in the military and defence sectors, as Europe is heading towards downsizing to a critical level. Because people do not see a direct threat at Europe's borders, as existed in the case of the Soviet Union during the Cold War, the defence budget is an easy target for austerity measures. But this perception is false, as the wars Europe fights today are wars of choice, often far from our borders and less visible but still expensive and with a direct effect on European security. Therefore, the military has a difficult task in communicating the legitimacy of its budget and need for a portion of already scarce European funding.

At the same time, the financial crisis is absorbing all of the diplomatic energy of EU leaders and parliaments. There is no political appetite to put diplomatic effort into defence and military crisis management. Viewing security as a broad

concept, the destabilisation of the Euro has implications for European unity and could result in internal turmoil, protests and violence that could come to be the biggest security threat in Europe. This destabilisation could potentially topple European governments, further weaken the economy and threaten the EU itself.

When faced with a crisis, there is a political tendency to turn inwards, to put your own country first, which undermines European solidarity. Already, nationalistic politicians and parties are gaining popularity, as seen in the Netherlands, Spain and the UK. If the scenario does play out negatively, with governments unable to create jobs, support the economy and provide basic provisions to the people, then this is a very real problem for Europe. However, thankfully this scenario is somewhat far-fetched. We are looking to Germany to provide leadership as well as solutions, which is a difficult task, however Germany is the only country in a position to do so. These are indeed interesting times. ■

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V. Ensuring Security and Human Rights in Military Operations: *Al-Skeini* and *Al-Jedda*

The European Court of Human Rights held in Al-Skeini v United Kingdom and Al-Jedda v United Kingdom that the European Convention on Human Rights (ECHR) can apply to territory in which member States have 'effective control'.⁸ In those decisions the Court found the United Kingdom (UK) in violation of the ECHR for actions by British troops in Iraq. Dr. van Ginkel, can you comment on these cases and on the relationship between security and human rights?

It is striking in the case of *Al-Skeini* that the Court argues that it is not only important for the authorities investigating a use of lethal force to be independent, but that they must also be seen to be independent.⁹ A close reading of the case grants insight into how the Court perceives that a situation with greater security and rule of law abidance can be furthered or achieved. In order to be effective in such missions as the one undertaken by the UK in Iraq, conduct, and the perception of such conduct is fundamental. It was an interesting addition for the Court to make such a political statement in their judgment.

It is clear that human rights should form part of the human security package, as human security and justice go together. In the early stages of any conflict, high insecurity makes it difficult to regulate security within human rights limitations. Contributions to a human rights situation can be made, often depending on the stage of the conflict and whether there is a military intervention. Once the main military component is over and the conflict is further progressed towards building peace, there is greater room for other

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aspects of governance such as justice and human rights. Transitions involving military operations are always notoriously difficult from a security/human rights perspective.

Do you foresee the European Court of Human Right's extension of ECHR jurisdiction as having an impact on security in Europe and the actions of Council of Europe member States abroad?

I do not believe that these decisions will greatly influence Council of Europe member States and preclude them from sending troops abroad. Missions will continue to be undertaken, however the work of military lawyers will certainly increase. An important development to note is that even before these decisions, the human rights practices of Council of Europe member States were already improving, including the way the Coalition forces conducted themselves in Iraq. These forces are more aware of public relations and how the population perceives them. They appreciate that they cannot ignore their reputation, as it will make or break an operation. If you look back at military practices over the last ten years, things have improved, but not enough. A lot more still needs to change in order to improve both security and human rights standards.

VI. Security at Home and Human Rights Abroad: the Case of Abu Qatada

The European Court of Human Rights recently ruled that the UK is unable to deport Abu Qatada, a suspect with links to Al-Qaeda, as he would be at risk of ill-treatment or a grossly unfair trial if deported to Jordan, where he is wanted on terrorism charges.¹⁰ Dr. van Ginkel, can you comment on this case and on the implications for security and anti-terrorism measures in Council of Europe member States?

The tension between human rights and security

8 *Al-Skeini v United Kingdom* Appl No 55721/07 (ECtHR, 7 July 2011) and *Al-Jedda v United Kingdom* Appl No 27021/08 (ECtHR, 7 July 2011). See case notes by Cedric Ryngaert and Laura Henderson on *Al-Skeini* and *Al-Jedda* respectively in this issue of *Merkourios*.
9 *Al-Skeini v United Kingdom* Appl No 55721/07 (ECtHR, 7 July 2011), 169.

10 *Othman (Abu Qatada) v United Kingdom* Appl No 8139/09 (ECtHR, 17 January 2012).

is obvious in the Court's *Abu Qatada* decision. This case was decided on the basis of fair trial rights in Article 6 of the European Convention of Human Rights, however it turned on the contentious issue of diplomatic assurances. In this case, the UK had secured assurances from the Jordanian government regarding Abu Qatada's treatment upon his return. While openly utilised by governments as a practical necessity, Human Rights Watch has deemed diplomatic assurances to be 'isles of legality in an ocean of illegality'.¹¹

In this case, the Court held that assurances are not in themselves a sufficient guarantee against the risk of ill treatment and that the Court will examine whether an assurance provides adequate protection.¹² While rejecting the assurance provided to the UK, the Court elucidated some criteria for making such an assessment and intimated that stronger assurances may have been compatible with the Convention.¹³ These explicit criteria were absent in previous decisions by the Court. The outcome of the case for the UK is likely to be that they revisit their diplomatic assurances and amend practices. The UK will undoubtedly continue to monitor Abu Qatada while he is in the UK.

The impact of the decision is likely to be felt in other Council of Europe member States as well. There are different practices and types of diplomatic assurances across Europe, with more significant assurances being formalised through Memorandums of Understanding. Many of these assurances have not been assessed in detail by the Court or judged according to the criteria set out in *Abu Qatada*. This makes it difficult to assess the legality or compatibility of the different standards against the Convention, especially as some countries' assurances are public and others' are not. However, the Court's ruling in *Abu Qatada* is sure to inform member States practices when it comes to diplomatic assurances in the future. ■

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11 For example, the Netherlands and Austria refuse to use diplomatic assurances while the UK uses them regularly within clear restrictions. For further information see Dr. B van Ginkel and F Rojas, 'Use of Diplomatic Assurances in Terrorism-related Cases: In Search of a Balance Between Security Concerns and Human Rights Obligations' (2011) International Centre for Counter-Terrorism – The Hague, available at <<http://www.icct.nl/user-files/file/ICCT%20EM%20Paper%20Diplomatic%20Assurances.pdf>>

12 *Othman (Abu Qatada) v United Kingdom* Appl No 8139/09 (ECtHR, 17 January 2012), 187.

13 *ibid* at 189(i) – (xi).