

From 9/11 to Da'esh: What role for the High Representative in the external dimension of EU counter-terrorism policies?

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## From 9/11 to Da'esh: What Role for the High Representative and the External Dimension of EU Counter-Terrorism Policies?

by Maria Giulia Amadio Viceré

### ABSTRACT

Under certain conditions, such as security crises, an integrated external EU counter-terrorism policy can emerge without leading to the supra-nationalisation of policy-making. This paper analyses the role of the High Representative for Foreign Affairs and Security Policy with the objective of assessing the influence that such figure can have on the governance of EU counter-terrorism policies. It does so by assessing the EU's response to three security crises, namely: the 9/11 attacks and the subsequent bombings in Madrid (2004) and London (2005); the Arab Spring and the following destabilisation of the Middle East and North Africa (MENA); and the emergence and spread of Da'esh.

*European Union | Security | Terrorism | European External Action Service (EEAS) | EU external relations | North Africa | Middle East*



## From 9/11 to Da'esh: What Role for the High Representative and the External Dimension of EU Counter-Terrorism Policies?

by Maria Giulia Amadio Viceré\*

### Introduction

Any act of terrorism is unpredictable. Yet, there is an element of predictability in the sentiments triggered by such acts. Ferocious beheadings, cruel shootings and violent executions bring a common sense of fear and frustration that, generally, leads to enhanced cooperation among the different actors and institutions of the political entity under threat. At a time in which the EU and its citizens are facing a rapid increase of violent extremism and terrorist attacks, there is a strong functional argument for rationalising and improving a traditionally neglected niche of EU foreign and security action, namely counterterrorism. In light of the track record of the past and considering the challenges ahead posed by the emergence and spread of transnational terrorist networks, it is unlikely that single nation states will be able to tackle such phenomena individually. The role played by the High Representative (HR) for Foreign Affairs and Security Policy could be crucial in bringing together Member States and institutions in order to increase the coordination and, therefore, effectiveness of European foreign and security policies.

Admittedly, political will and consensus on the fight against terrorism are directly correlated to the level of threat perception.<sup>1</sup> Yet, conceiving an effective European response to such phenomena necessarily implies a step further: the emergence of integrated action among Member States and institutions. In this context, the aim of the paper is to assess whether and to what extent, the existence of security crises, are a condition for the HR to act as a "policy entrepreneur"<sup>2</sup> in EU counterterrorism

<sup>1</sup> Javier Argomaniz, "Before and After Lisbon: Legal Implementation as the 'Achilles Heel' in EU Counter-Terrorism?", in *European Security*, Vol. 19, No. 2 (June 2011), p. 308.

<sup>2</sup> The definition of policy entrepreneur used in the paper is the one adopted by Flavia Zanon,

\* Maria Giulia Amadio Viceré is a PhD candidate in Political Sciences, Department of Political Sciences, LUISS Guido Carli University. E-mail: mamadio@luiss.it.

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efforts.

The paper is structured as follows. First, it outlines the position of the HR in EU counterterrorism and clarifies why it is relevant to analyse the role played by such figure to assess developments in this field. Second, it examines the influence of the HR in the alleged improvement of these policies by considering the EU's response to three security crises: the bombings in Madrid (2004) and London (2005) and the political climate generated by the terrorist attacks of 9/11;<sup>3</sup> the Arab Spring and the following destabilisation of the Middle East and North Africa (MENA); and the emergence and spread of Da'esh. Finally, the paper draws some lessons from the analysis. Certain situations can offer fertile ground for the HR to play an active role towards integrating the EU's external counterterrorism efforts, without necessarily leading to its supra-nationalisation. Providing such analysis is crucial not only to identify the potential areas of cooperation, but also to highlight the limits of what appears to be an essentially contingent approach.

## 1. The High Representative's institutional basis and the EU external counterterrorism policy

European security is at stake. Terrorism is not new to the old continent, but such matters have been traditionally - and continue to be - analysed through national lenses.<sup>4</sup> Since the 1970s, Spain has faced the Basque *Euzkadi Ta Askatosuma* (ETA) and the United Kingdom the *Irish Republican Army*; but these terrorist experiences were mainly the result of secessionist movements. Other states, such as Italy, with the *Brigate Rosse*, Germany, with the *Badher-Meinhof*, and France, with *Action Directe*, have been victims of political leftist terrorism. Undeniably, the largely domestic character of the threat European states have had to face historically has not led them to consider a possible international dimension of terrorism.<sup>5</sup> Yet, the attacks in the US and in Europe, at the beginning of the 2000s, put a spotlight on the emergence and consolidation of transnational terrorist networks. Terrorism, which up until that time was mainly a national concern stemming from domestic cleavages, had evolved into a transnational threat necessarily calling for an integrated EU response. It is in this period that it is possible to identify the first seeds of external counterterrorism policies at the European level.

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who draws on Roberts and King's work. See Flavia Zanon, *The High Representative for the CFSP and EU security culture: mediator or policy entrepreneur?*, PhD Dissertation, University of Trento, April 2012, <http://eprints-phd.biblio.unitn.it/785>; and Nancy C. Roberts and Paula J. King, "Policy Entrepreneurs: Their Activity Structure and Function in the Policy Process", in *Journal of Public Administration Research and Theory*, Vol. 1, No. 2 (April 1991), p. 147-175.

<sup>3</sup> Maria Giulia Amadio Viceré, "EU counterterrorism efforts and the role of High Representative Mogherini", in *Aspenia online*, 7 July 2015, <http://www.aspeninstitute.it/aspenia-online/node/5801>.

<sup>4</sup> Javier Argomaniz, *The EU and Counter-Terrorism. Politics, Polity and Policies after 9/11*, Abingdon and New York, Routledge, 2011, p. 3.

<sup>5</sup> *Ibid.*

## From 9/11 to Da'esh: What Role for the High Representative and the External Dimension of EU Counter-Terrorism Policies?

More than a decade has passed since the terrorist attacks at the beginning of the 2000s in the US and Europe. Nonetheless, external counterterrorism policy is still considered a niche area for EU action and remains largely underdeveloped, in stark contrast with other areas in which the EU stands out as a political entity capable of making a difference in the international arena.<sup>6</sup> As a matter of fact, EU external counterterrorism can be conceived as a “multi-level/cross-institutional” subject, which encompasses both internal and external policies while calling for a combined array of state and EU actors, institutions, agencies and instruments.<sup>7</sup> The counter-effect of the multifaceted nature of the EU is that the institutionalisation process of this field of activity has been – and continues to be – affected by the supranational/intergovernmental separation around which the EU is structured.

Historically, a security crisis is a propitious moment for giving greater priority to security objectives and for granting more extensive powers to the executive branch.<sup>8</sup> Yet, the EU is a compound polity<sup>9</sup> and identifying what its foreign policy executive branch is might be not as straightforward as in the case of national entities. Ever since its introduction, the figure of the High Representative has found itself at the crossroads of the divisions among Member States, which creates a certain degree of institutional complexity, if not ambiguity. The institutional post of the HR was first introduced to enhance the effectiveness of EU international actions after the crisis in the Western Balkans. The post was created by the Treaty of Amsterdam as the High Representative (HR) for the Common Foreign and Security Policy (CFSP) in 1997.<sup>10</sup> The institutional constraints faced by the first HR emerged very quickly. The HR was intended as a Secretary-General of the Council, tasked with assisting the Presidency, and had no significant independent powers. Whilst at the European Council the HR's role was highly limited by the national Heads of States and Government, at the level of the General Affairs and External Relations Council, the national Foreign Ministers could exercise strong influence over the HR.<sup>11</sup> As a consequence, the HR was not encouraged to express autonomous positions that had not been formally endorsed by the Council itself. At the same time, the existence of an External Relations Commissioner caused coordination problems. It is against this restraining institutional background that Javier Solana, the first to occupy the HR post, faced the security crisis stemming from the bombings in Madrid (2004) and London (2005).

<sup>6</sup> Maria Giulia Amadio Viceré, “An opportunity for EU foreign policy: Mogherini as High Representative and her tasks”, in *Aspenia online*, 5 December 2014, <http://www.aspeninstitute.it/aspensia-online/node/3811>.

<sup>7</sup> Bruno Oliveira Martins and Laura C. Ferreira-Perreira, “Stepping Inside? CSDP Missions and Counter-Terrorism”, in *European Security*, Vol. 21, No. 4 (December 2012), p. 537-556.

<sup>8</sup> John E. Owens and Riccardo Pelizzo (eds.), *The 'War on Terror' and the Growth of the Executive Power? A Comparative Analysis*, Abingdon and New York, Routledge, 2010.

<sup>9</sup> Sergio Fabbrini, *Compound Democracies. Why the United States and Europe are Becoming Similar*, Oxford, Oxford University Press, 2010.

<sup>10</sup> Article 18.3.

<sup>11</sup> The Foreign Minister of the state holding the Council Presidency was still chairing the General Affairs and External Relations Council (GAERC).

In the post-Lisbon era, EU counterterrorism policy is still compounded by the supranational/intergovernmental division characterising the functioning of EU foreign and security policy more broadly. Admittedly, the principle of coherence in the external action of the EU is provided for in the 2009 Lisbon Treaty,<sup>12</sup> together with provisions concerning the achievement of closer cooperation among police forces<sup>13</sup> and judicial cooperation in criminal matters related to terrorism.<sup>14</sup> However, prompted by the sensitive nature of the matter, national governments maintained, in large part, their own counterterrorism institutions and policies, with the most relevant separations pertaining to their national intelligence services. No specific arrangement regarding EU counterterrorism is envisaged in the 2009 legal text. Certainly, the fight against terrorism is mentioned as the general objective of the Petersberg tasks.<sup>15</sup> In addition to this, both the mutual defence clause<sup>16</sup> and the solidarity clause<sup>17</sup> provide that Member States should support each other following an attack. Yet, these clauses “do not oblige mutual assistance to prevent attacks,” substantially avoiding making territorial defence a Treaty obligation.<sup>18</sup>

Against such a legal background, the HR is charged with providing coordination of EU external action broadly defined, including counterterrorism. In an effort to further enhance the international profile of the EU, the Lisbon Treaty attributed to the HR the capacity of Vice President of the Commission. However, the delineation of the role of the HR is not clearly defined in the legal text. The Lisbon Treaty “remains unsure whether to conceptualise the HR as an integral part of the government function or as an administrative infrastructure.” Because of this, “the post of HR fluctuates between political autonomy and administrative support.”<sup>19</sup> In her/his capacity as chair of the Foreign Affairs Council, for instance, the HR can elaborate the Union’s external action. Yet, this has to be done on the basis of strategic guidelines provided by the European Council, composed by Heads of States or Government.<sup>20</sup> Along the same lines, “[w]here there is a lack of consensus among the member states, there is no policy position which he/she may represent.” Thus, without approval he/she “must, however, remain silent as a matter of legal principle.”<sup>21</sup> The arrangement of

<sup>12</sup> Article 21 and Article 26.

<sup>13</sup> Article 29 TFEU.

<sup>14</sup> Article 31 TFEU.

<sup>15</sup> Article 42 TEU.

<sup>16</sup> Article 42.7 TEU.

<sup>17</sup> See Article 222 TEU.

<sup>18</sup> Gijs de Vries, “The Nexus between EU Crisis Management and Counter-Terrorism”, in Steven Blockmans (ed.), *The European Union and Crisis Management. Policy and Legal Aspects*, The Hague, T.M.C. Asser Press, 2008, p. 357, [http://www.clingendael.nl/sites/default/files/20080900\\_cscp\\_chapter\\_vries.pdf](http://www.clingendael.nl/sites/default/files/20080900_cscp_chapter_vries.pdf).

<sup>19</sup> Daniel Thym, “The Intergovernmental Constitution of the EU’s Foreign, Security and Defence Executive”, in *European Constitutional Law Review*, Vol. 7, No. 3 (October 2011), p. 457.

<sup>20</sup> Article 16 (6) TEU.

<sup>21</sup> Daniel Thym, “The Intergovernmental Constitution of the EU’s Foreign, Security & Defence Executive”, cit., p. 456.

the Council's working groups reflects, on a practical level, the extent to which the HR can undertake a pro-active role; it largely depends on a convergence among Member States' strategic preferences. The Foreign Affairs Council, chaired by the HR, deals exclusively with the external action of the EU. However, it is the rotating Presidency that chairs the Committee of Permanent Representatives (COREPER) and the supporting working groups within that institution.<sup>22</sup> As a consequence of this institutional set up, before a decision reaches the level of the Council, it may have been already strongly shaped by contingent national influences.<sup>23</sup> For all these reasons, whilst the Lisbon Treaty attributes to the reshaped figure of the HR/VP "extensive agenda-setting, decision-shaping and implementing powers," personification does not necessarily lead to federalisation.<sup>24</sup>

Bearing all this in mind, before assessing the role of the HR during the security crises under study, three main considerations should be abstracted from the analysis of this institutional post with regard to EU counterterrorism policies. First, both before and after the entry into force of the Lisbon Treaty, the HR post has been characterised by a certain level of institutional ambiguity "generating contradictory expectations about its future."<sup>25</sup> This level of uncertainty is mostly represented by the vagueness of the job description, which makes it unclear whether to consider the HR a bureaucrat or a politician.<sup>26</sup> Second, in both cases, although to different degrees,<sup>27</sup> the convergence among Member States and institutions' interests appears as a necessary condition for the HR to act as a policy entrepreneur. When such convergence takes place, against the background of a complex, but at the same time fluid institutional system, the person occupying such post might have an authentic choice on the role to play: "between, on the one hand, a secretary and on the other hand a general, between a follower and a leader, between reactive and proactive instincts, between a coordinator and a doer, between a tactician and a strategist."<sup>28</sup> Last but not least, whilst historical contingencies, such as security crises,<sup>29</sup> might offer the functional pressure for such alignment of strategic interests

<sup>22</sup> This arrangement applies to both the General Affairs Council, entitled with horizontal coordinating functions, and the Justice and Home Affairs Configuration, crucial in terrorist matters. The Council Working Group on the International Aspects of Terrorism (COTER), the Foreign Relations Counsellors Working Party (RELEX) and the Political and Military Group (PMG) are Presidency-chaired, as well.

<sup>23</sup> Daniel Thym, "The Intergovernmental Constitution of the EU's Foreign, Security & Defence Executive", cit., p. 456.

<sup>24</sup> Ibid.

<sup>25</sup> Flavia Zanon, *The High Representative for the CFSP and EU security culture...*, cit., p. 3.

<sup>26</sup> Ibid.

<sup>27</sup> With the entry into force of the Lisbon Treaty the HR has turned into Vice President of the Commission. Such modification should give to the post enhanced coordination powers compared to the post introduced by the Treaty of Amsterdam.

<sup>28</sup> Joylon Howorth, "Catherine Ashton's Five-Year Term: A Difficult Assessment", in *Les Cahiers européens de Sciences Po*, No. 03/2014 (December 2014), p. 20, <http://www.cee.sciences-po.fr/en/publications/les-cahiers-europeens/2014/doc/1142/raw>.

<sup>29</sup> On security crises and EU counter-terrorism, see Xiana Barros, "The External Dimension of EU Counter-Terrorism: The Challenges of the European Parliament in Front of the European Court of Justice", in *European Security*, Vol. 21, No. 4 (December 2012), p. 518-536.

to occur, it seems evident that whether the HR would play an active part largely rests also on the personal qualities of the person occupying such post and his or her willingness to do so.

## 2. The first High Representative Solana: steering the ship towards unexplored waters

During Javier Solana's tenure, the "ideational convergence"<sup>30</sup> among institutions and Member States on the necessity for the EU to step up the fight against terrorism stemmed from the pressure caused by the bombings in Madrid and London and against the background of the political climate generated by the attacks in the US. Thus, during the period under consideration, Member States and institutions generally abstained from entering into contradiction with each other with regard to the fight against terrorism. In response to the 9/11 events, the Director-General of the Commission for Justice and Home Affairs, Sir Daniel Fortescue, stated that the EU and the US could be drawn together by cooperating.<sup>31</sup> The Spanish Presidency of the EU, in turn, publicly declared that there was a need for the fight against terrorism to be added to the Union's activity.<sup>32</sup> Along the same line, in November 2001, the European Council adopted an Action Plan on combating terrorism and, in June 2002, Member States even agreed on a common definition of terrorism, primarily based on a list of terrorist offences.<sup>33</sup> Against such uniform background and notwithstanding the provisions of the Treaty of Amsterdam, Solana managed to act not merely as administrative support but as policy entrepreneur. He did so by influencing the entire policymaking cycle of the EU response to the above-mentioned security crisis.

Already before the first attacks on the European continent had taken place, the High Representative actively contributed to shape the debate and formulate ideas about EU counterterrorism through speeches, public declarations and drafting of policy documents. By framing terrorism as an urgent threat the EU had to address and by stressing the need for a nexus between counterterrorism policies and the European Security and Defence Policy, he set the basis for a pro-active stance for the EU in this field. The first seeds of EU external counterterrorism can be found in the European Security Strategy (ESS), *A Secure Europe in a Better World*, adopted in December 2003. The official document, prepared by Solana and his team, identified terrorism as among the key threats the EU had to face,

<sup>30</sup> Christopher J. Bickerton, Dermot Hodson and Uwe Puetter, "The New Intergovernmentalism: European Integration in the Post-Maastricht Era", in *Journal of Common Market Studies*, Vol. 53, No. 4 (July 2015), p. 709.

<sup>31</sup> Christian Kaunert, "The External Dimension of EU Counter-Terrorism Relations: Competences, Interests and Institutions", in *Terrorism and Political Violence*, Vol. 22, No. 1 (2009), p. 55, <http://dx.doi.org/10.1080/09546550903409551>.

<sup>32</sup> Gijs de Vries, "The Nexus between EU Crisis Management and Counter-Terrorism", cit.

<sup>33</sup> Council of the European Union, *Council Framework Decision on combating terrorism*, 13 June 2002, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32002F0475>.

stating that "Europe is both a target and a base for such terrorism" and that "[c]oordinated European action is indispensable."<sup>34</sup> The strategy also envisaged "support for third countries in combating terrorism in the spectrum of crisis management operations to be covered by the Union, along with joint disarmament operations and security sector reform."<sup>35</sup> Whilst some observers have considered the ESS as not particularly influential, others have argued that it showed the emergence of a "new operational and cohesive approach to security" at the European level.<sup>36</sup> However the case may be, the subsequent release of the Council 2004 *Conceptual Framework* for the contribution of ESDP to the fight against terrorism<sup>37</sup> explicitly stated the HR's much-wanted nexus between the European Security and Defence Policy (ESDP) and counterterrorism. Specific measures concerning EU policies to fight external terrorism were also subsequently included in the conclusions of the December 2004 Council.

The HR played an active part in formulating policy proposals and even managed to gain room for manoeuvre in the decision-making and implementation phases of the EU response to the attacks in Madrid and London. In a report to the EU Ministers of the Interior in June 2004, Solana made several propositions on terrorism and intelligence co-operation. On that occasion he proposed to charge "the EU's Joint Situation Centre (SITCEN) with the production of intelligence analyses."<sup>38</sup> The merging "between information from internal and external secret services in SITCEN could help bridge the gap between the Second and Third Pillar of the European Union."<sup>39</sup> Notably, SitCen's counterterrorist unit became operational not even six months after Solana presented the report.

Admittedly, the most evident institutional modification to counter-terrorism, during Solana's tenure, was the introduction of the Office of the Counter-Terrorism Coordinator (CTC). The European Council welcomed "the decision [of] High Representative Solana to appoint Mr. Gijs de Vries to the position of Counter-

<sup>34</sup> Council of the European Union, *European Security Strategy. A secure Europe in a better world*, 12 December 2003, p. 3, <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>.

<sup>35</sup> Gijs de Vries, "The Nexus between EU Crisis Management and Counter-Terrorism", cit., p. 356.

<sup>36</sup> Flavia Zanon, *The High Representative for the CFSP and EU security culture...*, cit., p. 123. See also Asle Toje, "The 2003 European Union Security Strategy: A Critical Appraisal", in *European Foreign Affairs Review*, Vol. 10, No. 1 (2005), p. 117-133; and Alyson J.K. Bailes, "The European Security Strategy. An Evolutionary History", in *SIPRI Policy Papers*, No. 10 (February 2005), [http://books.sipri.org/product\\_info?c\\_product\\_id=190](http://books.sipri.org/product_info?c_product_id=190).

<sup>37</sup> Council of the European Union, *Conceptual Framework on the ESDP dimension of the fight against terrorism* (14797/04), 18 November 2004, <http://data.consilium.europa.eu/doc/document/ST-14797-2004-INIT/en/pdf>.

<sup>38</sup> Council of the European Union, *Summary of remarks by Javier Solana, EU High Representative for the CFSP, on Terrorism and Intelligence Co-operation*, Justice and Home Affairs Council Meeting, Luxembourg, 8 June 2004, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/declarations/80852.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/declarations/80852.pdf).

<sup>39</sup> Jelle van Buuren, *Secret Truth. The EU Joint Situation Centre*, Amsterdam, Eurowatch, August 2009, p. 11, <http://www.statewatch.org/news/2009/aug/SitCen2009.pdf>.

Terrorism Coordinator" in March 2004, following the train bombing in Madrid.<sup>40</sup> This institutional figure was to work under the direction of the HR. His or her tasks, according to Solana, included analysing the work done so far in countering terrorism with the aim of highlighting possible improvements; drafting preparatory work for ministers of the interior meeting in the Council; and monitoring Member States' implementation of decisions taken at the European level.

When, in 2007, Gilles de Kerchove replaced de Vries as CTC, the HR issued a press release and took the opportunity to include a new task for the EU anti-terror chief, namely to ensure that the EU would play a pro-active role in the fight against terrorism.<sup>41</sup> Arguing that circumstances had changed since the first mandate was agreed and that "it is for intelligent people to adapt to the new circumstances," Solana stated that the new coordinator should have a "deeper" mandate and enjoy "a much closer relationship" with EU governments and institutions.<sup>42</sup> The HR's pursuit of an enhanced role of the CTC is particularly relevant when one considers that the position had been left vacant for four months and that "disagreements over the exact scope of the job are believed to have prompted de Vries to quit and for his replacement to be delayed."<sup>43</sup> Remarkably, the new appointment took place "after a summer marked by failed and foiled terrorist plots in Germany, Denmark and the UK, which once again revived political interest in counter-terrorism."<sup>44</sup>

With the attacks in London, in July 2005, EU counter-terrorism policies received further impetus. Whilst Member States agreed on accelerating the Action Plan on Combatting Terrorism, along the lines of Solana's quest for enhanced EU activities in this field, the Commission's Communication *A strategy on the external dimension of the area of freedom, security and justice* set an approach for reinforcing "the justice, freedom and security aspects" of the EU's external relations policy.<sup>45</sup> The same year, the adoption of the EU Counter-Terrorism Strategy (EUCT), a first comprehensive strategic approach to terrorism, provided the strategic basis for enhanced cooperation among EU institutions and Member States. The British EU Presidency and the Counter-Terrorism Coordinator, working under the direction of Solana, prepared the document. Significantly, each of the four pillars of EU

<sup>40</sup> Council of the European Union, *Declaration on Combating Terrorism* (7906/04), 29 March 2004, par. 14, <http://data.consilium.europa.eu/doc/document/ST-7906-2004-INIT/en/pdf>.

<sup>41</sup> Isabel Skrine, "The Counter-Terrorism Coordinator", in *QCEA Briefing Papers*, No. 15 (May 2012), <http://www.qcea.org/?p=5109>.

<sup>42</sup> "Belgian appointed new EU counter-terrorism co-ordinator", in *EurActiv*, 20 September 2007, <http://www.euractiv.com/node/200836>.

<sup>43</sup> DPA News, "Solana appoints new EU Counter-Terrorism coordinator", in *Digital Journal*, 19 September 2007, <http://www.digitaljournal.com/article/230281>.

<sup>44</sup> Alex Mackenzie et al., "The European Union Counter-terrorism Coordinator and the External Dimension of the European Union Counter-terrorism Policy", in *Perspectives on European Politics and Society*, Vol 14, No. 3 (2013), p. 328.

<sup>45</sup> European Commission, *A strategy on the external dimension of the area of freedom, security and justice* (COM/2005/491), 12 October 2005, p. 4, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52005DC0491>.

counter-terrorism action<sup>46</sup> contained in the strategy envisages key priorities for external action.<sup>47</sup>

Finally, the report on the implementation of the European Security Strategy confirmed the HR's commitment to the development of this area. In the official document, presented in December 2008, Solana argued, with specific regard to the fight against terrorism, that "better co-ordination, transparency and flexibility are needed across different agencies at national and European level." Whilst this was already identified in the ESS five years earlier, "progress has been slow and incomplete," he warned.<sup>48</sup>

### 3. Lady Ashton's mandate as High Representative: when terrorism was at the doorstep, but still asking for permission

The new Treaty had just entered into force when the Arab Spring broke out. The events of the Arab Spring led to the destabilisation of the MENA region, generating a security crisis for the EU. Whilst no major attacks had been carried out on European soil, the risk of a spread of transnational terrorism in the European neighbourhood was well known in Brussels. Already in April 2011, the EU terrorism and situation trend report, issued by EUROPOL warned that EU countries saw a 50 percent jump in the number of arrests linked to Islamist terrorism. With specific regard to the Arab Spring, the document notes: "should Arab expectations [of political reform] not be met, the consequence may be a surge in support for those terrorist organisations."<sup>49</sup> Gilles de Kerchove, the CTC, spoke on the risks as well.<sup>50</sup> All this notwithstanding, the counter-terrorism legacy of Lady (Catherine) Ashton's tenure has been largely inconsistent compared to the latent risk provided by the transition in the MENA region. As Howorth exhaustively puts it, during the Arab Spring "unfortunately for Ashton, in her capacity as HR-VP, she was caught in the middle of the chaotic responses forthcoming from the various Member States and proved incapable of leading an orchestra that was already playing in cacophonous disharmony."<sup>51</sup>

<sup>46</sup> Council of the European Union, *The European Union Counter-Terrorism Strategy* (14469/4/05 REV 4), 30 November 2005, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST+14469+2005+REV+4>.

<sup>47</sup> Bruno Oliveira Martins and Laura C. Ferreira-Perreira, "Stepping Inside?", cit.

<sup>48</sup> High Representative of the Union, *Report on the Implementation of the European Security Strategy. Providing Security in a Changing World* (S407/08), 11 December 2008, [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressdata/EN/reports/104630.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/reports/104630.pdf).

<sup>49</sup> EUROPOL, *TE-SAT 2011. EU Terrorism Situation and Trend Report*, April 2011, p. 6, <http://dx.doi.org/10.2813/14705>.

<sup>50</sup> Johanna Somers, "EU anti-terror chief highlights Arab Spring risks", in *Reuters*, 5 September 2011, <http://www.reuters.com/article/2011/09/05/us-eu-arabspring-risk-idUSTRE7843TV20110905>.

<sup>51</sup> Joylon Howorth, "Catherine Ashton's Five-Year Term: A Difficult Assessment", cit., p. 15.

Against such a background, and notwithstanding the enhancement of its role provided by the 2009 Treaty, the first post-Lisbon HR mostly acted as an executor and did not manage to participate in the policy-making phases. With the exception of the drafting of the regional strategy for the Sahel, the High Representative did not play an active role in turning the EU policy agenda to face the latent risk of a spread of terrorism in the EU neighbourhood. The strategy was prepared by the HR/VP in collaboration with the Commission after the kidnapping of EU citizens, in October 2010, with the active participation of the Counter-Terrorism Coordinator. The regional strategy document highlighted that: "An urgent and a more recent priority is to prevent [Al-Qaida in the Maghreb] attacks in the Sahel region and its potential to carry out attacks on EU territory."<sup>52</sup> It also said: "improving security and development in Sahel has an obvious and direct impact on protecting European citizens and interests and on the EU internal security situation." Nonetheless, Ashton did not actively participate in the general debate about EU priorities with regard to terrorism. In general terms, she "hesitated to draft any statement until she had cleared it with all 27 foreign ministers."<sup>53</sup> Furthermore, the tendency of the HR/VP to task her spokesperson to make statements regarding terrorist attacks reflected a rather limited interest of Lady Ashton in the matter. For all these reasons, one may argue that the counter-terrorism aspects contained in the strategy for the Sahel have been more the outcome of Member States' requests to the HR, rather than the result of her own strategic priorities.

Even though the latent danger was clear, Lady Ashton did not play an active part in the formulation of policy proposals to face the risk of terrorist attacks. The first post-Lisbon HR/VP dedicated a large part of her time to the establishment of the European External Action Service (EEAS), which appeared as her "first and major priority."<sup>54</sup> The crisis in Ukraine, in turn, largely dominated the second part of her mandate as well as the agenda of the Foreign Affairs Council, which she chaired. In the face of the Arab Spring, Lady Ashton's activity towards the region was mainly dedicated to the reframing of EU Southern Neighbourhood policy. *A New Response to a Changing Neighbourhood: A Review of the European Neighbourhood Policy*, was released in May 2011,<sup>55</sup> elaborating further the so-called "conditionality approach."<sup>56</sup> The review was mainly aimed at supporting the democratic transition in Northern Africa and the Middle East through "more flexible approaches to cooperation" with the neighbourhood.<sup>57</sup> The document stresses "continued

<sup>52</sup> European External Action Service, *Strategy for Security and Development in the Sahel*, September 2011, par. 4, [http://www.eeas.europa.eu/africa/docs/sahel\\_strategy\\_en.pdf](http://www.eeas.europa.eu/africa/docs/sahel_strategy_en.pdf).

<sup>53</sup> Joylon Howorth, "Catherine Ashton's Five-Year Term: A Difficult Assessment", cit., p. 20.

<sup>54</sup> Ibid., p. 8.

<sup>55</sup> European Commission and High Representative of the Union, *A new response to a changing neighbourhood. A review of European Neighbourhood policy* (COM/2011/303), 25 May 2011, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52011DC0303>.

<sup>56</sup> See Rosa Balfour, "EU Conditionality after the Arab Spring", in *IEMed-EuroMeSCo Papers*, No. 16, (June 2012), <http://www.euromesco.net/images/papers/paperseuromesco16.pdf>.

<sup>57</sup> Alex MacKanzie, Christian Kaunert and Sarah Léonard, "EU Counterterrorism and the Southern Mediterranean Countries after the Arab Spring: New Potential for Cooperation?", in *Democracy and*

counterterrorism cooperation is necessary" arguing "that is it important to support social and economic policies and reforms in a bid" to combat radicalisation.<sup>58</sup> Yet, no particular measures to streamline EU external counter-terrorism measures were envisaged at the institutional or at policy level. Furthermore, terrorism was mostly conceptualised as one among other security concerns to take into consideration: listed right after "energy and resource security, climate change, non-proliferation" and only before "the fight against drugs."<sup>59</sup> The joint staff working document of the following year, *A Partnership for Democracy and Shared Prosperity: Report on Activities in 2011 and Roadmap for Future Action* mentions terrorism only briefly, as well.<sup>60</sup>

The deterioration of the security in the Sahel mentioned in the regional strategy was accelerated further by the Libyan and Malian crises. The former, in particular, provoked an inflow of weapons and armed combatants coming from Libya's "Islamic Legion," a Libyan paramilitary force founded by Gaddafi himself in 1972.<sup>61</sup> Unlike during Solana's tenure, key political actors either abstained or issued statements that contradicted each other. Against such lack of agreement, the High Representative did not find space for playing a pro-active role in the decision-making process or its implementation. Deep divisions among Member States on whether to intervene or not in both conflicts did hamper a timely design and efficient implementation of CSDP missions in the field, let alone the fight against terrorism. Both in the Libyan and Malian crises the EU failed to act in an integrated and timely manner leaving room for the same vacuum of power several reports had warned against when the Arab Spring first started. Probably, the widely proclaimed risk of a spread of terrorism was not felt as an imminent threat by Member States and institutions.

#### 4. Mogherini's tenure as High Representative: towards an enhanced integration in EU counter-terrorism policies?

While the ferocious beheadings were still a distant threat not yet shown on the TV screens and the shootings in European capitals were not yet current events, Federica Mogherini started actively engaging in the debate on the external dimension of EU counter-terrorism. Even if her mandate had not started yet, she was already making public interventions to prod the EU in this area. On the occasion of the August 2014

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*Security*, Vol. 9, No. 1-2 (2013), p. 148.

<sup>58</sup> Ibid.

<sup>59</sup> European Commission and High Representative of the Union, *A new response to a changing neighbourhood*, cit., par. 1.3.

<sup>60</sup> European Commission and High Representative of the Union, *Partnership for Democracy and Shared Prosperity: Report on activities in 2011 and Roadmap for future action* (SWD/2012/121), 15 May 2012, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52012SC0121>.

<sup>61</sup> Princy Marin George, "The Libyan crisis and the Western Sahel: Emerging Security Issues", in *IDSA Backgrounders*, 14 August 2012, [http://www.idsa.in/backgrounders/TheLibyanCrisisandWestAfricanSahel\\_140812.html](http://www.idsa.in/backgrounders/TheLibyanCrisisandWestAfricanSahel_140812.html).

informal foreign affairs ministers' meeting in Milan (IT), she declared a long-term strategy would be needed to tackle the critical situation in Iraq, Libya and Syria and the problem of foreign fighters. A few days before the new HR officially started her mandate the Foreign Affairs Council adopted the EU counter-terrorism/foreign-fighters strategy focusing on Syria and Iraq<sup>62</sup> and "called on the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission to develop an EU comprehensive regional strategy" with the final aim of tackling "in a comprehensive and coordinated manner the crises in Syria and Iraq and the threat posed by Da'esh."<sup>63</sup>

Against the political climate generated by the attacks in Europe and in its neighbourhood, Mogherini has managed to foster increased cooperation among Member States and institutions, taking advantage of their agreement and playing an autonomous political role. She did so through public declarations directed at shaping policy decisions and reframing "the interests of the Member States in a more integrated perspective,"<sup>64</sup> with a conceptual effort to construct a common counter-value narrative based on education, faith and community dialogue; putting the spotlight on the issue and priorities to be discussed through her agenda-setting power as Chair of the Foreign Affairs Council; and fostering, through her implementation tasks, bureaucratic and operational synergies among Member States and EU institutions. A few months after the beginning of her mandate, when a wave of terrorist attacks hit the European continent and the spread of violent extremism and terrorism in its neighbourhood became evident, Mogherini inverted the tendency undertaken by Lady Ashton to delegate declarations to the spokesperson. There were very few cases where Mogherini did not personally release the statement or declaration herself. Right after the Charlie Hebdo shootings in Paris, the HR/VP declared that "the fight against terrorism, in all its forms, is regularly at the heart of the work of the meetings of Foreign Ministers."<sup>65</sup> On the same occasion, the HR/VP said the Paris events strengthened her determination in the fight against terrorism and promised that she would put the issue on the agenda of the following Foreign Affairs Council.

Through her authority as chair of the Foreign Affairs Council (FAC) and her capacity as Vice President of the Commission, Mogherini carved out for herself a role to influence most policy formulations. As promised, the extraordinary FAC discussed the external dimension of EU Counter-Terrorism as a first point

<sup>62</sup> Council of the European Union, *Press Release: 3340th Council meeting Foreign Affairs* (14451/14), Luxembourg, 20 October 2014, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/145218.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/145218.pdf).

<sup>63</sup> European Commission and High Representative of the Union, *Elements for an EU regional strategy for Syria and Iraq as well as the Da'esh threat* (JOIN/2015/2), 6 February 2015, p. 2, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52015JC0002>.

<sup>64</sup> Sergio Fabbrini, *Which European Union? Europe after the Euro Crisis*, Cambridge, Cambridge University Press, 2015, p. 44.

<sup>65</sup> High Representative of the Union, *Statement on the attacks in Paris*, 7 January 2015, [http://eeas.europa.eu/statements-eeas/2015/150107\\_05\\_en.htm](http://eeas.europa.eu/statements-eeas/2015/150107_05_en.htm).

in the agenda on 19 January 2015. EU ministers set the basis for more effective cooperation among each other, through an increase in the sharing of information and best practices among EU capitals and with partner countries.<sup>66</sup> The decision to establish the figure of security *attachés* within the EU delegations abroad was also taken. Exceptionally, on 19 January, the Counter-Terrorism Coordinator, Gilles de Kerchove, participated in the discussions of the FAC. As the HR herself declared in the press conference following the gathering: "probably for the first time, there was a real deep awareness of the need to work together" and that the decision was taken "within the Foreign Affairs Council to coordinate in a much more active way than it has been the case so far."<sup>67</sup> Notably, the HR/VP even took a step further and called for the European Parliament to work on the Passenger Name Record as well fostering the prevention of financing of terrorist networks. "This is not the competence of the foreign affairs ministers" she said, "but still they are politicians and members of the national cabinets."

Practical measures along the approach proposed by Mogherini were undertaken during the following Foreign Affairs Council, held on February 9th. The meeting concluded that the EU would "step up, as a matter of urgency, its external action on countering terrorism in particular in the Mediterranean, the Middle East, including Yemen, and North Africa, in particular also Libya, and the Sahel" and that counter-terrorism would "be mainstreamed fully into EU foreign policy."<sup>68</sup> Using such conclusions as an input, the EU Council of 12 February, in turn, declared that the EU would take "this work forward promptly, fully involving the High Representative, the EU Counter-Terrorism Coordinator and the Member States."<sup>69</sup>

Mogherini continued to shape the debate through official documents. The *Regional Strategy for Syria and Iraq as well as the ISIL/Da'esh threat*, prepared by the HR/VP and adopted on March 16th by the Foreign Affairs Council, discussed counter-terrorism in detail and stresses the need for complementarity between the activity of the EU and the Member States. As a budget of 1 billion euros was envisaged for the accomplishment of the objectives contained in the strategy, the strategic interests of the Commission seemed to be in line with the interests of the Member States as well. At the same time, the Commission's proposal presented in April 2015 for a comprehensive *European Agenda on Security*, mainly focused on the internal dimension of the fight against terrorism,<sup>70</sup> recognised that EU

<sup>66</sup> These included Turkey, Egypt, Gulf countries, North Africa and also Africa and Asia.

<sup>67</sup> High Representative of the Union, *Remarks at the press conference after the Foreign Affairs Council*, 19 January 2015, [http://eeas.europa.eu/statements-eeas/2015/150119\\_05\\_en.htm](http://eeas.europa.eu/statements-eeas/2015/150119_05_en.htm).

<sup>68</sup> Council of the European Union, *Council conclusions on counter-terrorism*, 9 February 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/02/150209-council-conclusions-counter-terrorism>.

<sup>69</sup> European Council, *Statement by the Members of the European Council*, Informal Meeting of the Heads of State or Government, Brussels, 12 February 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/02/150212-european-council-statement-fight-against-terrorism>.

<sup>70</sup> Maria Giulia Amadio Viceré, "EU counterterrorism efforts and the role of High Representative Mogherini", cit.

action has to be “based on a coherent set of actions combining the internal and external dimensions, to further reinforce links between Justice and Home Affairs and Common Security and Defence Policy” (CSDP).<sup>71</sup> Notably, a similar document was also presented by the Commission right after the bombings in London during Solana’s tenure.

The HR has not limited her activity to influencing the European public debate. She has also played a pro-active role in decision-making and implementation concerning the fight against terrorism in a broader effort to stabilise EU’s neighbourhood. At the end of March, for example, the EU’s foreign policy chief called for “a strong mandate to explore all possible ways, in which the European Union can, not only support a dialogue, but also support the outcome of a dialogue” in Libya.<sup>72</sup> On that occasion, the HR “received what she had sought,”<sup>73</sup> with EU leaders stating that the EU would make “full use of all its instruments” to support a government of national unity and Germany’s chancellor declaring that the EU’s efforts would be led by both Mogherini and the president of the European Council, Donald Tusk.

The current post holder is also the first HR able to launch a CSDP mission in only two months. Member States tasked the HR with the preparations for Common Security and Defence Policy mission to fight traffickers in the Mediterranean. This task was assigned at an extraordinary meeting of the European Council<sup>74</sup> in the tense political atmosphere caused by the tragedy of 1,300 migrants who died trying to reach the Italian shores. In striking contrast to CSDP’s record, discussing the issue as the first item on the agenda, the Foreign Affairs Council launched Operation “European Union Naval Force Mediterranean” on 22 June 2015.<sup>75</sup> The rapidity with which the bureaucratic and operational aspects of the preparation, mostly handled by the Commission, have been concluded testifies to an inter-institutional convergence and coordinating role for the HR.

As EU leaders at the European Council held on 25-26 June were discussing and the High Representative was reporting on the implementation of the measures agreed at the informal meeting of February, brutal terrorist attacks took place, almost simultaneously, in Tunisia, France and Kuwait. In what appears as an infinite policy cycle, setting aside the evaluation of the counter-terrorism measures undertaken

<sup>71</sup> European Commission, *The European Agenda on Security* (COM/2015/185), 28 April 2015, p. 4, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52015DC0185>.

<sup>72</sup> High Representative of the Union, *Remarks upon arrival at the second day of the European Council*, 20 March 2015, [http://www.eeas.europa.eu/statements-eeas/2015/150320\\_02\\_en.htm](http://www.eeas.europa.eu/statements-eeas/2015/150320_02_en.htm).

<sup>73</sup> Andrew Gardner, “EU offers ‘full support’ for Libya”, in *Politico. European Voice*, 20 March 2015, <http://www.politico.eu/article/eu-offers-full-support-for-libya>.

<sup>74</sup> European Council, *Special meeting of 23 April 2015*, <http://www.consilium.europa.eu/en/meetings/european-council/2015/04/23>.

<sup>75</sup> Council of the European Union, *Outcome of the Council Meeting, 3400th Council meeting Foreign Affairs*, Luxembourg, 22 June 2015, [http://www.consilium.europa.eu/en/meetings/fac/2015/06/Outcome-of-the-Council-meeting\\_EN\\_pdf](http://www.consilium.europa.eu/en/meetings/fac/2015/06/Outcome-of-the-Council-meeting_EN_pdf). Right after the gathering, Mogherini herself noted, that this was the first time that Member States had agreed by consensus on an operation decided only two months earlier.

in the past months, Mogherini got back on stage to shape the EU's reaction. Her first declaration on the attacks appeared on the social networks, "Tunisia, Kuwait, France: Europe and Arab world united as victims and in the response. Terrorists want to divide us; they unite us even more."<sup>76</sup> The efforts of the HR/VP as policy entrepreneur are not over. In the official EU European Council conclusions held on 25-26 June 2015, Member States agreed that the High Representative would continue the process of strategic reflection with a view to preparing an EU global strategy on foreign and security policy in June 2016.

## Conclusions

A common denominator of the tenures of the three High Representatives has been the occurrence of three sets of events potentially providing the impetus for action within the EU. However, the comparison of the three cases indicates that whilst during the mandates of Solana and Mogherini, the HR was able to play a key proactive role and foster more integrated policies in EU counter-terrorism, during her tenure, Lady Ashton, who had the same institutional job description as the current post-holder, mainly acted as an administrative executor. How was that possible?

A convergence of interests among Member States and the institutions is, in principle, a pre-condition for the High Representative to play a pro-active role in the external dimension of EU counter-terrorism. In these situations, the HR might have the opportunity to exercise leadership and "steer the ship" towards coordinated and therefore more effective policies.<sup>77</sup> Taking advantage of the strategic convergence among national governments and institutions, notwithstanding the institutional limitations of its function, Solana played an active part in the shaping of a more integrated EU counter-terrorism policy. Indeed, a security crisis did take place during Lady Ashton's mandate as well. Admittedly, the threat perceived by the Member States was not as high as in the other two cases generating an insufficient functional pressure for a convergence among the strategic interests of the main actors to occur. Bearing divergent national positions during and in the immediate aftermath of turmoil in the MENA region, Member States retained and strongly exerted all their control on EU foreign and security policy. Such control prevented the HR/VP from undertaking a decisive action and coordinating a comprehensive and effective response to the security threat deriving from the *vacuum* left by failing states in the European neighbourhood. Considering the limited activity of Lady Ashton in shaping the public debate and formulating proposals, it remains open to question, had such convergence occurred, whether she would have taken advantage of it. Until now Mogherini has enjoyed and taken advantage of a similar alignment of preferences as the one encountered by Solana. The rapid increase

<sup>76</sup> Federica Mogherini on *Twitter*, 26 June 2015, <https://twitter.com/federicamog/status/614417129450942465>.

<sup>77</sup> Maria Giulia Amadio Viceré, "EU counterterrorism efforts and the role of High Representative Mogherini", cit.

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of ferocious attacks on European territory and its neighbourhood, together with the urgent necessity to stabilise failing states providing a safe haven for violent extremism and terrorist networks, has set the basis for agreement among EU institutions and Member States. In principle, all the conditions are in place for the EU to make a difference in the fight against terrorism in the international arena. The development of its counter-terrorism policies demonstrates that integration in the EU foreign and security domain is not an absolute impossibility. Yet, such integration is largely contingent: it runs in parallel with Member States' threat perception and depends on the personal characteristics and attitude of the HR in place. Hopefully, such set of conditions will be there long enough for the EU to develop an effective and long-lasting approach to its fight against terrorism.

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T +39 06 3224360

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