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THE EU'S EVOLVING CONCEPTUALISATION OF ITS POWER IN
THE LAST INSTITUTIONAL CYCLE

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Abstract

The scope of this thesis is to analyse how the conceptualisation of the EU's power is evolving and whether there has been a shift in the concept of power expressed by the European Union in the course of the last institutional cycle (2014-2019). This historical period has been chosen because it was characterised by the migration crisis, which challenged the EU from many points of view, especially from an ideological one. The in-depth analysis of the policies initiated to respond to this perceived crisis is going to be useful in proving the claimed shift in the concept of power of the European Union. The policies and the official EU documents are going to be counter analysed with examples provided by the literature and presented in the course of the third chapter, to show that it is possible to find a correlation between what the policies actuated and the elements defining the abovementioned shift. The first chapter of this thesis is going to provide examples of other types of power that cannot fully describe the European Union, whereas the second chapter is going to present the types of power that have been associated with the EU during the decades. Those are going to serve as starting point for the empirical findings of the third and fourth chapters. By following this path, this thesis is going to show the evolution of the conceptualisation of the EU's power and to see if this has changed.

Table of Contents

List of abbreviations 4

List of tables 5

Introduction 8

Chapter 1: What power is..... 12

 1.1 The different natures of power 12

 1.1.1 Military power..... 14

 1.1.2 Economic power..... 15

 1.1.3 Technologic power 17

 1.1.4 Cultural strength..... 18

 1.2 Soft Power 20

 1.2.1 Soft Power Resources..... 20

 1.2.2 Measuring Soft Power 22

 1.2.3 Public Diplomacy 26

 1.2.4 Critics to Soft Power 32

Chapter 2: What type of Power is the European Union? 37

 2.1 The fundamental principles of the European Union..... 42

 2.2 Legitimizing EU’s normative power 44

 2.3 Examples of Normative Power Europe 52

 2.4 Conclusion..... 60

Chapter 3: The application of the concept of power in the migration crisis..... 64

 3.1 Transformation of the European borders..... 65

 3.2 Securitisation of EU borders and migration 70

 3.2.1 Neo-liberalisation, technologisation and outsourcing of border controls..... 73

 3.2.2 External projection outside the territory of the European Union and militarisation of EU borders 78

 3.2.3 Humanitarian border security 92

 3.4 Conclusion..... 95

Chapter 4: The role of the European Institutions and Frontex 100

 4.1 The European Parliament 100

 4.2 The European Commission 111

 4.3 The European Council and the Council of the European Union 117

 4.4 Frontex 124

 4.4.1 Critics to Frontex..... 131

 4.5 Conclusion..... 135

Conclusion.....	139
General References.....	147
Appendix	153

List of abbreviations

ACPD	Advisory Committee on Public Diplomacy
BRICS	Brasil, Russia, India, China, South Africa
CEAS	Common European Asylum System
CoE	Council of Europe
EC	European Community
ECHR	European Convention of Human Rights
ECRE	European Council of Refugees and Exiles
EEAS	European External Action Service
EES	Entry/Exit System
ENP	European Neighbourhood Policy
GAMM	Global Approach to Migration and Mobility
GDP	Gross Domestic Product
GNI	Gross National Income
GNP	Gross National Product
IO	International Organisation
IOM	International Organization for Migration Committee on Civil Liberties, Justice and Home Affairs
LIBE	
MEP	Member of the European Parliament
MP	Mobility Partnership
NGO	Non Governmental Organisation
OLP	Ordinary Legislative Procedure
OSCE	Organisation for Security and Co-operation in Europe
PESCO	Permanent Structured Cooperation
PPP	Purchasing Power Parity
RTP	Registered Traveller Programme
SAA	Stabilisation and Association Agreement
TCN	Third-country National
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Right

List of tables

Table 1: Military Expenditures (expressed in US\$ billions) by Country in 2018, page 14

Table 2: largest economies by nominal GDP in 2018, per the International Monetary Fund, page 16

Table 3: most prominent soft power rankings, page 24

Table 4: the division of the Public Diplomacy expenditure of the US Government for the 2017 fiscal year, page 29

Table 5: Division per country/International organisation of the Public Diplomacy expenditure of the US Government in the fiscal year 2017, page 30

Table 6: Civilian, military and normative powers, page 40

Table 7: The EU's normative basis, page 44

Table 8: Traditional measures of EU internal actor characteristics, page 52

Table 9: Main reasons for benefit of EU Membership (Max. 3 answers), page 60

Table 10: The Schengen Area, page 66

Table 11: info graphic, page 77

Table 12: Agreements signed by the EU with third-countries, page 80-81

Table 13: evolution of walls built by EU Member States, Schengen Area Members and North Macedonia from 1990 to 2017, page 86

Table 14: Details about walls of EU Member States, Schengen Area Members and North Macedonia from 1990 to 2017, page 87

Table 15: Estimated costs of walls in the territory of the European Union, page 88

Table 16: deportation and removal in Spanish regions from 1991 to 2004, page 90

Table 17: Main reasons for benefit of EU Membership (Max. 3 answers), page 97

Table 18: Evolution of the Frontex budget from 2005 to 2017, page 127

Table 19: Composition of Frontex Technical Equipment Pool (December 2018), page 129

Table 20: Contracts/tenders for assets in use or to be used by Frontex, page 129

Table 21: Frontex budget allocation, page 130

Introduction

The scope of this thesis is to try to determine what concept of power the European Union possesses at the moment. This topic was chosen because of the particular nature of the European Union, which is not a full-fledged state actor, but present many traits of one. This aspect have always generated interest in me, because I tend to think at the European Union as an actor which plays an important role in the international arena and therefore I wanted to explore more the kind of power that the EU exercises. The historical context was chosen because the migration crisis presented the EU with multiple challenges. In doing so, I have tried to keep a critical and objective point of view, that would be able to present the situation without falling into subjective opinions. Another factor which pushed me towards choosing this topic is the widely spread tendency to depict us young pro-European as people that agree with “what Brussels says” without expressing any kind of critic or opposition. On the other hand, the reality is much different. Because we are pro European, we tend to have a critical view of what is proposed and what is done, because we are deeply interested in what is happening. During the course of this research, I have been able to see for myself that what is said and written is deeply different from what is actually done, and I have been once again reminded that it is not right to take everything that is said as true, but rather it is always useful to look at things through a critical point of view.

The analysis is focused on the last institutional cycle (2014 - 2019) and how this has helped shaping the concept of power exercised by the EU. This period of time has been chosen because of the many events that helped this transformation, with the migration crisis being the most important. This crisis challenged the European Union in many ways, from the economical, to the political and especially from the ideological point of view. For the matter of this research, the latter point is going to receive the greatest share of attention.

In the first chapter, the subject is the concept of power. This concept has been object of a wield discussion between political scientists, due to the many facets that it present; therefore, the analysis is going to present an overview of military, economic, technologic and cultural power, with examples taken from the literature. The second part of the chapter is dedicated to the analysis of the concept of ‘Soft Power’ as expressed by Joseph Nye in his

most famous work ‘Soft Power: The Means to Success in World Politics’, a book that became a benchmark for the academic researchers in this field.

Then, in the second chapter the different types of power the European Union has been associated with during the decades are introduced. Since the focus of this research is on the European Union, I found it appropriate to dedicate a whole chapter to it; this is also due to the fact that the previous concepts of power are mainly referred to nation state, whereas the European Union is not a full-fledged state. This chapter will provide an analysis of the concept of Normative Power Europe, as one of the most prominent when it comes to describing the EU from a power point of view, through examples and critics from different sources of literature as well as from personal knowledge gained during my internship abroad in the Republic of North Macedonia, which is a country that, despite the multiple and recent delusions, still continue to pursue a path into a EU membership. This chapter is useful as it provides the theoretical framework for the third chapter.

In the third chapter, an in-depth analysis of the policies adopted by the European Union during and in the aftermath of the migration crisis will be provided. Through this analysis, it will be possible to see how the concept of power changed and the trajectory that it is taking. The first part of the chapter is dedicated to the changes that the European Union faced in terms of borders and the consequent changes in terms of identity and policies coming from that. Due to the many challenges that border changes brought, the EU started to change its attitude when it comes to its external actions, especially when it comes to the respect of its founding principles and treaties that have been explained in a detailed way in the second chapter. Due to the complexity of the scenario, I have used a wide array of literature, consulted official EU documents as well as reports and publications from NGOs active in the field of human rights.

In the fourth and final chapter, the role of the main European Institutions – the European Parliament, the European Commission, the European Council and the Council of the European Union – is analysed, as each of this Institution contributed in a different way into shaping the concept of power. The period analysed will be the last institutional cycle 2014 – 2019. The European Border and Coast Guard Agency, commonly known as Frontex, will be analysed as well. Even though it is a European Agency and not an institution, its role is central to explain this shift in power. The analysis of the various policies and actions undertaken by the different institutions will then be counter analysed with elements from the

third chapter, to see if it is possible to find a correlation between the actions and policies initiated and what has been said to have changed the concept of power of the European Union. A broad analysis of Frontex, from its origin to its current situation, is provided and will be helpful in showing what is the direction towards which the European Union might be going.

1

What power is

‘Power is like the weather. Everyone depends on it and talks about it, but few understand it.’

Joseph Nye, ‘Soft Power, the Means to Success in World Politics’

In the following chapter I am going to discuss the concept of power, which has always been a controversial definition for political scientists. Power has been described differently, according to the feature of power taken into consideration. I am going to present some features that are generally linked with the definition of power for a state, bringing some examples of the discussed subtopic related to power with graphics and schemes. Then I am going to analyse the so called ‘soft power’, mainly through the famous book of Joseph Nye ‘Soft Power: The Means to Success in World Politics’, with some examples of how soft power works and which are today the nation state and the non state actors that present a good level of attraction and how can soft power be wielded. In the last part of the subparagraph, I am going to present some critics of the concept of soft power.

1.1 The different natures of power

There is no clear definition of what power is when is discussed in the field of international relations. In fact, power is defined in several different ways. The concept of power has been in discussions since the time of the Athenian historian and General Thucydides, Italian diplomat and philosopher Machiavelli and it is still in the discussion in contemporary times. Yet, a precise definition of the concept of power still has to be found. Although power was and still is nowadays a key concept for international relations, ‘its proper definition remains a matter of controversy’¹. Furthermore, R. Gilpin adds to the discussion the description of the concept of power as ‘one of the most troublesome in the field of international relations’². The Merriam-Webster dictionary defines power as: (1a.1) ability to act or produce an effect; (1c.1) capacity for being acted upon or undergoing an effect; (b) legal or official authority, capacity or right; (2a) possession of control, authority, or influence over others; (2b) one having such power, specifically a sovereign state; (2c) a controlling

¹ Waltz, Kenneth N.; 1986; ‘Reflections on Theory of International Politics: A Response to My Critics’ in Robert Keohane (ed.), *Neorealism and its Critics*; New York: Columbia University Press; page 333

² Gilpin, Robert; 1981; *War and Change in World Politics*; New York: Cambridge University Press; page 13

group; (2d) archaic: a force of armed men; (2e) chiefly dialectal: a large number or quantity; (3a) physical might; (3b) mental or moral efficacy; (3c) political control or influence³. As abovementioned, power has different characteristics, it is not a unique feature of sovereign states, but it can be exercised by other non-state actors as well, such as International Organisations, Non-governmental Organisations, religious groups, which are some of the most common examples someone could find when talking about non-state actors. By looking at the definition provided by the Merriam-Webster dictionary, it can be noted that some definitions refer to different features, such as coercion and force (*a force of armed men; physical might*), control (*legal or official authority; a controlling group*) and persuasion and influence (*mental or moral efficacy, influence over others, influence*). Another model provided for understanding how power works in modern societies was theorised by the British sociologist Michael Mann. In his book *The Sources of Social Power: Volume 1, A History of Power from the Beginning to AD 1760*, (1986), he wrote that in order to understand how power in Western societies work, one must determine the intersections of four fundamental aspects of power, that are the ideological, economic, military and political one. His model is called *iemp* Model. When he talks about ideology, Mann says that its power comes from the ultimate need of human beings to find some norms and core values to be shared among people, to find a meaning for life. According to him, ideology has a stronger power when the current theories or models have proven to be not working; therefore human beings find themselves more affected by an ideological power. For Mann, economic power derives from the need of human beings to use the product of nature, by extracting, processing and ultimately consuming it. When talking about military power, he talks about a social organisation of mobilised and deadly violence. Finally, according to Mann, political power is the central hub in regularising social life. Even if those terms used to try describing the concept of power might seem to be different among themselves, it is however possible to find some common ground belonging to these terms. As Dahl theorised, the common element between all these different nuances of power is that ‘A has power over B to the extent that he can get B to do something that B would not otherwise do’⁴. It is a rather basic definition, but it has been commonly accepted and as a matter of fact is able to define the ultimate goal of power: being able to make someone else do what you want them to do; being able to set the agenda.

³ <https://www.merriam-webster.com/dictionary/power>

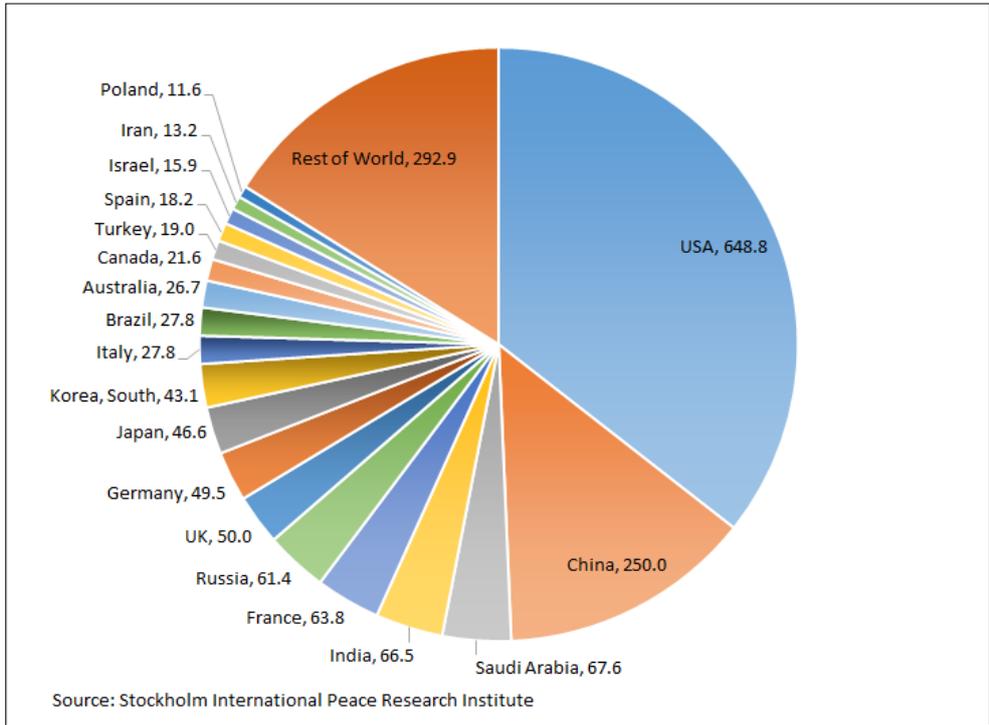
⁴ Dahl, Robert; 1957; ‘The Concept of Power’; Behavioral Science, 2.

1.1.1 Military power

Having acknowledged that a precise definition of power cannot be given, it is time to see what makes an actor powerful, that is determining what its capabilities are. As before, scholars tend to disagree about what is the most important factor or feature that makes an actor powerful. Nevertheless, it is agreed upon that, in order to be a power a state has to have combined means of military, economic, technological and cultural strength. As of today, the United States of America is recognised as the sole superpower in the world. According to academics, there are potential superpowers which are the European Union and the BRICS countries, (with the exception of South Africa), which are Brazil, Russia, India and China.

The first feature that comes to mind is military power. The past centuries have been characterised by wars, therefore the best way to prove someone’s power was to have a powerful and accessorised army. This is still partly the case, as States utilise huge sums of their GDP to build up their military capability. The world military expenditures in 2018 has been of 1,822 US\$ billion, accounting for a 2.1% of world GDP. (SIPRI, 2019, 1) In the picture below, military expenditures by country are shown:

Table 1: Military Expenditures (expressed in US\$ billions) by Country in 2018



It must be noted that countries that allegedly have a high military expenditure such as North Korea, Syria, Yemen, and Libya have not been analysed, since there are no data available for those countries. The United States of America was the country with the highest military expenditure in 2018 with 648.8 US\$ billion, followed by China (250 US\$ billion). The highest military expenditure from a European country was recorded by France, who spent 63.8 US\$ billion in 2018.

China has currently the largest standing army, with more than 2 million active military personnel, followed by India and the United States of America, which both have almost 1,5 million active personnel. According to the website *Global Fire Power*, the US army is the strongest at the moment, followed by Russia, China and India. An important feature to be considered a military superpower is the number of aircraft carriers present in a country's fleet, that is 11. At the moment, the US navy possesses 11 aircraft carriers, whereas China possesses only one, but it is planning to build more. Data show that at the moment, the United States of America is the only military superpower, and that it has been like this since the end of the Cold War. It is important to notice, though, that being a military superpower is not enough, as the US lost the Vietnam War (also known as the Second Indochina War) and was not able to prevent the September 11 attacks. Therefore the sole military power cannot be enough in today world. As Nye (Nye, 2004, 3) said correctly, 'Holding a winning poker hand does not help if the game is bridge. Even if the game is poker, if you play your high hand poorly, you can still lose.'

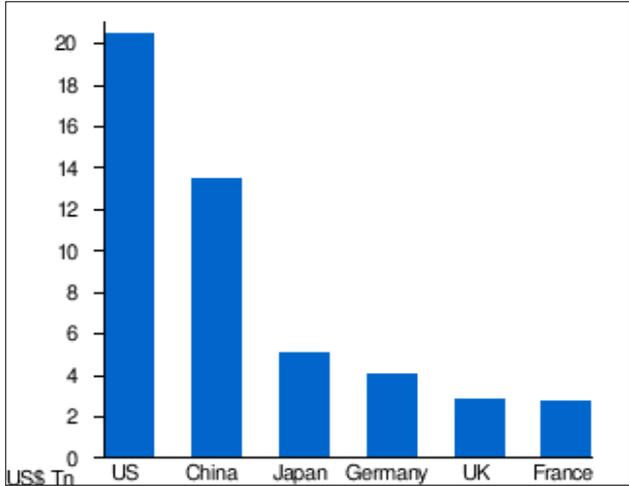
1.1.2 Economic power

Another element used to describe a country as powerful is the economic power. Usually, to rate out economic capabilities analysts look at the gross national product (GNP) and to gross domestic product (GDP). Gross national product (GNP) is an estimate of total value of all the final products and services turned out in a given period by the means of production owned by a country's residents. GNP is commonly calculated by taking the sum of personal consumption expenditures, private domestic investment, government expenditure, net exports and any income earned by residents from overseas investments, minus income earned within the domestic economy by foreign residents. GNP is currently been replaced by gross national income (GNI), which is an alternative method of calculating Gross National Product. GNI is also related to Gross Domestic Product. GNI is the sum of a nation's gross domestic product and the net income it receives from overseas. Net exports represent the

difference between what a country exports minus any imports of goods and services. Gross Domestic Product (GDP) is the total monetary or market value of all the finished goods and services produced within a country's borders in a specific time period. As a broad measure of overall domestic production, it functions as a comprehensive scorecard of the country's economic health.

In the following table, largest economies by nominal Gross Domestic Product in 2018 are shown. Data are taken from the International Monetary Fund.

Table 2: largest economies by nominal GDP in 2018, per the International Monetary Fund



Source:
<https://www.imf.org/external/pubs/ft/weo/2018/02/weodata/weorept.aspx?pr.x=104&pr.y=16&sy=2018&ey=2018&scsm=1&ssd=1&sort=country&ds=.&br=1&c=924%2C132%2C134%2C534%2C158%2C112%2C111&s=NGDPD&grp=0&a=>

The US once again ranks as the top country, followed closely by China. Many scholars believe China is set to become the biggest economy in the world in the next years. It must be said that, were the European Union be counted in this list, it would have ranked second, just behind the United States of America, with a GDP of almost 19 US\$ billion. The first European country in this ranking – and fourth globally – is Germany which has registered a GDP of almost 4 US\$ billion.

Another way in which it is possible to measure economic power is the purchasing power parity of a value, that adjusts the value of a dollar for what it can buy in a given country. In that sense, China's PPP GDP is higher than the American one and it is likely to

continue grow. Scholars do not widely agree with the use of this type of GDP calculation, as looking only at what an economy can buy domestically can be misleading.

1.1.3 Technologic power

In the last decades, technology has acquired a growing importance in the realm of international relations. Many new technological challenges belonging different domains (social, electoral and military) have become matter of discussion among national governments: the 5G technology, Artificial Intelligence, the use of Big Data (the scandal regarding Cambridge Analytica), taxation of the web giants companies; the use of drones, satellites and dual use devices for automated weapons (guided artillery rockets); crypto currencies and new competition in the area of *quantum computing* and *quantum communications*. Those new features pose unknown previous opportunities, but also threats to national security. As a matter of fact, the U.S. intelligence put AI and quantum computing in a list of ‘emerging threat’ to its national security⁵. Moreover, another threat can be the foreign interference in national elections. On July 25, 2019 the Senate Intelligence Committee of the United States of America presented a report which states that Russia had interfered in the 2016 American Presidential election and that election systems in all 50 U.S. States were targeted⁶. Russia has been accused of having interfered in some European countries elections as well (France, Great Britain and Italy), by spreading fake news and creating bot (short for robots) accounts on social medias to give public supports to certain candidates or parties.

Some countries are implementing special units in their armies whose aim is to create havoc to other States through hacking, such as the Unit 61398 of the People’s Liberation Army of China, who has been linked to numerous hacking attacks towards the United States of America⁷. These actions belong to the so called *cyberwarfare* tactics. The countries which are most active in those kinds of operations are the abovementioned USA, China and Russia, as well as India, Israel, North Korea and Great Britain. Other mentionable high tech countries are South Korea, Japan and Germany.

⁵ <https://techcrunch.com/2018/12/13/us-intelligence-quantum-computing-artificial-intelligence-national-security-threat/?guccounter=1>

⁶ <https://www.nytimes.com/2019/07/25/us/politics/russian-hacking-elections.html>

⁷ https://www.nytimes.com/2013/02/19/technology/chinas-army-is-seen-as-tied-to-hacking-against-us.html?emc=na&_r=1&

1.1.4 Cultural strength

Another important feature in order to exert power is the cultural strength of a country. A cultural power country is able to project a cultural influence in the world, through various elements. The purpose is ‘for the people of a foreign nation to develop an understanding of the nation's ideals and institutions in an effort to build broad support for economic and political goals’⁸. This quotation shows the intertwined nature of the aforementioned different features of power. The influence can be an historical one, or a current one. What is the definition of culture? The Merriam-Webster dictionary defines culture as ‘the customary beliefs, social forms, and material traits of a racial, religious, or social group’ but also ‘acquaintance with and taste in fine arts, humanities, and broad aspects of science as distinguished from vocational and technical skills’. The various elements that can exert cultural influence are for example the spread of language, traditions, music, food, art, fashion and norms which are then acquired by other countries, as well as the reputation of a State. For example, a State might hesitate in engaging with deals or alliances with a State which is known for its non compliance or non obedience to subscribed deals. These elements might help a country to exert its power by attraction, rather than by force or payments. Therefore, the definition is broad. This is because culture encompasses many aspects of a country or a groups’ identity; culture has started being spread as soon as state-countries started to have relations among themselves and eventually got spread due to travels, economic exchanges and territorial conquests. Exchanges of diplomatic letters are said to have started as back as the 14th century B.C. between Egypt and ancient populations in the Middle East and “modern” embassies started to develop around the 14th century in the northern part of Italy. Around the first half of the 17th century, France started establishing national institutions that would promote the culture and the cultural identity of the country. The first one was the *académie française*, established in 1635 by Cardinal Richelieu; Great Britain and Germany followed in the second half of the 20th century, with the establishment respectively of the British Council in 1934 and the Goethe Institut in 1951. The French government was also the first one to create a separate cultural office from within the Ministry of Foreign Affairs in 1923, establishing a direct link between culture and politics, specifically international politics. Therefore, culture has played and still plays an important role in the international relations of

⁸ Maaek, N. Mary; 2001; ‘Books and Libraries as Instruments of Cultural Diplomacy in Francophone Africa during the Cold War’; *Libraries and Culture* 36, no.1; p. 59.

a country. The importance of the cultural element gave rise to the so called ‘*Cultural diplomacy*’. As per the Institute for Cultural Diplomacy, the definition is:

‘[...] a course of actions, which are based on and utilize the exchange of ideas, values, traditions and other aspects of culture or identity, whether to strengthen relationships, enhance socio-cultural cooperation, promote national interests and beyond; Cultural diplomacy can be practiced by either the public sector, private sector or civil society’

(Institute for Cultural Diplomacy, http://www.culturaldiplomacy.org/index.php?en_culturaldiplomacy)

The term cultural diplomacy was first used in 1954 by Aline B. Saarinen, an art critic writing for *The New York* magazine. The term was first used in politics by the special assistant to the US Secretary of State Robert Thayer in 1959 (Stelowska, 2015, 62). Nicholas Cull during an opening speech given at the University of Southern California on February 2015 said that Cultural Diplomacy can take four forms; he provided examples as well of those forms. The forms can be: a) a cultural gift; b) cultural information – meaning presenting an aspect of a country which is not so commonly known abroad; c) cultural dialogues; d) cultural capacity building activities. Examples of those forms are foreign exhibitions and concerts (which mix a and b), publications (a mix of b and d), exchanges of students and artists and workshops (a mix of c and d).

A common question regarding Cultural Diplomacy, due to the broad definitions and activities within its realm is whether it can be conducted just from National Governments or also by other parties, private and public institutions. The current literature on this regard is that cultural diplomacy needs to have a political direction, therefore the involvement of a governmental party is crucial. As a matter of fact, some successful parties in spreading cultural diplomacy are the UNESCO, where countries cooperate to promote cultural heritage, and the national cultural institutes, who are often under the control of the Ministry of Foreign Affairs and are vital part of diplomatic missions abroad. Italian embassies and Italian institutes of culture abroad collaborate frequently, as often culture is one of the main tools that Italy uses to spread its influence and presence in a foreign country.

Cultural diplomacy – and therefore the cultural strength of a country – differs from the abovementioned element of national power because it cannot be measured. It is therefore not possible to determine the strength of a country’s culture and whether it is effective or not in changing decisions of third parties or in setting the agenda.

The cultural strength of a country is often recalled as the *soft power* that a country can exert, as opposed to hard power. What soft power is, its origin, its importance and its critics is going to be matter of discussion of the next subparagraph.

1.2 Soft Power

The term '*soft power*' was coined by the American political scientist Joseph Nye in the 1990 book *Bound to Lead: The Changing Nature of American Power*, where he wrote that 'when one country gets other countries to want what it wants-might be called co-optive or soft power in contrast with the hard or command power of ordering others to do what it wants'⁹. In the preface of the book *Soft Power: The Means to Success in World Politics* (2004) he stated that he was pleased that the term was used by many political personalities, though he was frustrated by the people who wrongly understood the meaning of it and by those who were simply ignoring the soft power dimension, therefore he decided to dedicate a whole book to the subject. In the book, he gives us a definition of what soft power is, that is

'The ability to get what you want through attraction rather than coercion or payments. It arises from the attractiveness of a country's culture, political ideas, and policies. When our policies are seen as legitimate in the eyes of others, our soft power is enhanced.'

It is possible to notice how he counter poses soft power to coercion and payment, terms which refer to military and economic power. It must be said that he does not deny the importance of those features, rather he suggests that soft power must be incorporated in the national strategies of countries that aim to be powerful. He writes that hard and soft power are related, as they are both aspects 'of the ability to achieve one's purpose by affecting the behaviour of others'(Nye, 2004, 7). In the book he often analyses how soft and hard power can reinforce (or interfere) each other: for example, weaker countries could join forces in order to restrain a stronger country, or they could bandwagon with the stronger country, if the latter's hard power is accompanied by an attractive soft power. He calls the combination of soft and hard power *smart power*.

1.2.1 Soft Power Resources

According to Nye, there are three resources upon which the soft power of a country lies, that are: culture, political values and foreign policy. For him, culture is 'the set of values

⁹ Nye, Jr., Joseph S.; 1990; 'Bound to Lead: The Changing Nature of American Power'; London: Basic Books.

and practices that create meaning for a society' (Nye, 2004, 11). He distinguishes between high culture – such as literature and art – and popular culture. Why is culture important for a country's success? According to him, it is important because a country promotes – through its culture and policies – universal and shared values which could help its possibilities to obtain what it wants, due to the attraction and the duties promoted by those abovementioned values. If a country's culture includes values such as freedom of speech and religious freedom, that country is likely to have relationships and to reach determinate objectives with countries that share the same values, for example when trying to impose sanctions or promote a military action on a rogue country. He responds to the critics of some analysts that compare soft power to mere popular cultural power: it is true that the attractiveness of cultural and commercial goods can produce soft power, but this is not automatic, as 'The North Korean dictator Kim Jong Il is alleged to like pizza and American videos, but that does not affect his nuclear programme'(Nye, 2004, 12). According to him, culture can be transmitted both via commerce but mostly through personal contacts, visits and exchanges. In effect, later in the book he would list the number of foreign students visiting and studying the US as an important feature in building the attractiveness of a country. He makes some examples of how the culture – through the form of cultural and academic exchanges – can affect people and even elites. He writes about Aleksandr Yakolev, who was the head of an important institute, a Politburo member and had a liberal influence on Mikhail Gorbachev. Yakolev was influenced during its stay at the Columbia University in 1958. A high KGB official said that 'exchanges were a Trojan horse for the Soviet Union. They played a tremendous role [...] they kept infecting more and more people over the years'¹⁰. This is a good example of a long term effect of the cultural attractiveness of the United States of America, which eventually led to the fall of the Soviet Union. In this case, the cultural exchanges due to the cultural attractiveness of the country marked an important contribution to some already existence policies that had the goal of dismantling the Soviet Union.

After culture, he mentions political values and foreign policies. He says that the policies and values that a national government promotes through its domestic and foreign policies and through its action in international fora could help the growth of the soft power dimension, by affecting or influencing the preferences and actions of others, or vice versa it could have a negative effect on the attractiveness of a country. In order to explain this, he

¹⁰ Richmond, Yale; 2003; 'Cultural Exchanges and the Cold War: Rising the Iron Curtain'; (University Park: Pennsylvania State University Press), quoted in Nye, 2004, 46.

brings up some example from his home country (the United States of America), telling that the practice of capital punishment and the weak guns laws had diminished the American soft power in Europe. That is a case in which a domestic policy has international importance and it works towards weakening the image of a country. Conversely, he gives a good example of how soft power work internationally; he says that President Carter's human rights policies promotion in Argentina during the '70s influenced Argentinean Government to support American policies in the UN and in the Balkans in the early 1990s. Another interesting example he uses is the inability of the United States of America to obtain the votes of Mexico and Chile in the UN Security Council in 2003, due to American foreign policies and the intervention in Iraq, which reduced American popularity, that was later reacquired. With these examples, he showed that domestic policies also have an effect on the international arena; foreign policies might also have long-term effects and that certain decisions could weaken a country's reputation and therefore its ability to obtain certain objectives. An important thing to bear in mind when promoting values through foreign policies is that the values are respected in the country which is promoting it, otherwise the country would be seen as arrogant and hypocrite.

1.2.2 Measuring Soft Power

After having acknowledged the different features that can contribute in building up a country's positive or negative image, it must be asked whether it is possible or not to measure the soft power of a country. What are the factors that must be taken into consideration when making this calculation? In the book, Nye gives us some indicators that could show the soft power of the US, mentioning for example that, in 2004, the country attracted more than six times the inflow of foreign immigrants than Germany who ranked second; it was the world's number one exporter of films and television programs; over the 1.6 million students that study abroad, 28% studied in the US, compared to the 14% that studied in Britain. He goes on listing that the US published more books than any other countries; ranked first in Nobel prizes for physics, chemistry and economics. Adding to the list that economic capacity can contribute to reputation and attractiveness as well as to wealth, nearly half of the top 500 global companies were American, five times more than Japan, who ranked second. Looking for some more updated rankings, it is possible to see that the US still ranks in the first places, even though each ranking shows some differences. The most important

measurements have been made by the media company *Monocle, Portland* and the *Real Instituto Elcano*. The differences between the various rankings are due to the features that have been chosen as important and fundamental in a country's soft power. The media company Monocle was the first one that tried to rank countries by soft power, in 2010. At that time, it used a framework of five sub-indices regarding culture, education, diplomacy, government and business/innovation. Since 2016/2017, it started calculating the rankings based on factors that indicate the use of soft power, such as the number of cultural missions, Olympic medals, businesses brands and the quality of a country's architecture¹¹. Portland first published a soft power ranking in 2015. In *The Soft Power 30*, the ranking is based upon 'the quality of a country's political institutions, the extent of their cultural appeal, the strength of their diplomatic network, the global reputation of their higher education system, the attractiveness of their economic model, and a country's digital engagement with the world'¹². According to *Elcano Global Presence Report*, the index shows global presence. By that term it wants to represent the effective positioning, in absolute terms, of the different countries (in terms of products sold, tourists welcomed, and victories in international sports competitions etcetera). Moreover, it does not just measure the quantity of the presence of a country, but also its nature, as the index is made of three dimensions (economic, military and soft presence; those aspects have various features such as energy, development cooperation, troops deployed and tourism). This is useful in order to demonstrate also the nature of the presence of a country in world, rather than just the mere presence¹³. It is important to notice that the *Elcano Global Presence Report* puts the European Union at the first place for soft power, when considered as a whole excluding the member states, as 'It must be borne in mind that the global presence of the member states is partly reflected in other member states of the Union' (Real Instituto Elcano, 2018, 11).

Bearing in mind the abovementioned differences between the various publications, the ranking are as presented in the following table. The table has been prepared by myself, after having consulted the websites where the rankings have been published.

¹¹ <https://monocle.com/film/affairs/soft-power-survey-2018-19/>

¹² <https://softpower30.com/>

¹³ http://www.realinstitutoelcano.org/wps/wcm/connect/897b80cc-47fa-4130-9c3d-24e16c7f0a66/Global_Presence_2018.pdf?MOD=AJPERES&CACHEID=897b80cc-47fa-4130-9c3d-24e16c7f0a66m

Table 3: most prominent soft power rankings

	<i>Monocle's soft power survey 2018/2019</i>		<i>Portland's The Soft Power 30 2018</i>		<i>Elcano Global Presence Report</i>
Rank	Country	Rank	Country	Rank	Country
1	France	1	United Kingdom	0	European Union
2	Germany	2	France	1	United States of America
3	Japan	3	Germany	2	China
4	Canada	4	United States of America	3	United Kingdom
5	Switzerland	5	Japan	4	Germany
6	United Kingdom	6	Canada	5	France
7	Sweden	7	Switzerland	6	Japan
8	Australia	8	Sweden	7	Russia
9	United States of America	9	Netherlands	8	Canada
10	Portugal	10	Australia	9	Netherlands
11	New Zealand	11	Denmark	10	Italy
12	Italy	12	Italy	11	Spain
13	Spain	13	Norway	12	South Korea
14	Denmark	14	Spain	13	India
15	South Korea	15	Finland	14	Switzerland
				15	Australia

As it can be noted, there are differences among the soft power rankings and the military, economic and technologic rankings showed in the first subparagraph. Furthermore, some countries that do not wield a significant military, economic or technological power do instead have, according to these survey, a significant soft power, that could help achieve some objectives and help create relationships that would otherwise be not possible to have. At the same time, it is interesting to notice that in the Monocle's soft power survey of 2018/2019, the United States of America ranks in the ninth position, whereas it is at the top of the charts showing the other type of powers; the US ranks first (when the European Union is not

considered) in the Elcano Global Presence Report, which characteristic is to mix the quantity of a country's presence as well as the nature of that presence. Another major difference is that, while the aforementioned aspects of power belong to the government of a nation, the resources that can produce or lessen the soft power of a country do not necessarily belong only to a national government, as there are many non state actors and civil society involved as well in the positive or negative spreading of a country's image, values, goods and norms. Moreover, intergovernmental organisations such as the European Union or the United Nations wield significant soft power, even though they are not national states. Taking into consideration American soft power and the already mentioned importance of culture, movies and music, universities are not under the direct control of the government, so is not Hollywood or music groups that were widely listened to and broadcasted during the Yugoslavian War. The same can be said for business and firms that help economic growth but also attraction and reputation of a country through foreign investments. An important role in the spreading of norms and values is played by Nongovernmental organisations (or NGOs), whose soft power has enhanced during the decades. In 2015, there were an estimated number of 10 millions NGOs worldwide and the number of people donating to NGOs was 1.4 billion¹⁴. What NGOs do is to try to improve the perception of the population and ultimately of governments and parliaments towards specific issues, that would usually benefit the whole world, through campaigning at the public level; lobbying and advocating at the institutional level. Some influential NGOs are for example Médecins sans Frontières or Emergency, who have been making highly provocative and controversial declarations towards governments, entering in the political and social discussion and promoting changes and policies about their fields of operation, which are medical assistance and aid development in difficult countries of the world. NGOs should be accounted in the political discussion, as a recent survey conducted by the Edelman agency, shows that trust in NGOs is rising in almost every country covered. Overall, 57% of the participants in the survey have trust in the work of NGOs, as per the survey reported¹⁵. Another difference between the type of power (military or economic) that can be wielded directly by governments and soft power is that soft power – as its aim is to attract rather than coerce – is that the desired outcomes are dependent upon the positive or negative reception of the other party involved. Furthermore, as showed with the example of Argentina, it can take

¹⁴ <http://nonprofitaction.org/2015/09/facts-and-stats-about-ngos-worldwide/>

¹⁵ 2019 Edelman Trust Barometer; <https://www.edelman.com/trust-barometer>

some time, even decades, before the effect of a certain ‘soft’ policy could be seen. This does not mean that countries are unable to control or try to enhance their attractiveness and the soft power that comes with it.

1.2.3 Public Diplomacy

As a matter of fact, there are various actions a country can do to work in that direction. This is called *public diplomacy*. The definition is:

‘Any of the various government-sponsored efforts aimed at communicating directly with foreign publics to establish a dialogue designed to inform and influence with the aim that this foreign public supports or tolerates a government’s strategic objectives’.

(Encyclopedia Britannica, <https://www.britannica.com/topic/public-diplomacy>)

Another interesting definition is given by the U.S. Department of State Dictionary of International Relations Terms. This publication of 1987 refers to public diplomacy as:

‘Public Diplomacy refers to government-sponsored programs intended to inform or influence public opinion in other countries; its chief instruments are publications, motion pictures, cultural exchanges, radio and television’

As it possible to notice, the two definitions – and the others which is possible to find in the basic literature about this argument – highlight the need of government involvement in the process. Therefore, there must be a political driven purpose for actions undertaken under the public diplomacy realm. Those features are the same already listed when talking about cultural diplomacy. As a matter of fact, cultural diplomacy is one of the methods used in public diplomacy listed by Professor Nicolas J. Cull. Among the many methods that are used in public diplomacy, Professor Cull lists the five most important according to him: listening, advocacy, cultural diplomacy, exchange diplomacy and international broadcasting¹⁶. Nye in his work ‘Public Diplomacy and Soft Power’ (2008) said that Public Diplomacy has three dimensions: the first one being daily communication between national government personalities and the foreign public through foreign press; the second one consists of strategic communication and the last one being the creation of long standing relationships with citizens from another nations through the creation and the establishment of exchanges, scholarships and trainings.

¹⁶ Cull, Nicholas J.; 2008; ‘The Annals of the American Academy of Political and Social Science. Public Diplomacy: Taxonomies and Histories’.

The term public diplomacy and actions correlated to it started in seventeenth and eighteenth century, with France promoting its culture around Europe and being able to turn the French language into the language of diplomacy and into the language used in some courts abroad as well, notably in Prussia and Russia. In more recent history, one of periods that experienced a quick acceleration in the building of public diplomacy was the outbreak of World War I. The various countries involved (most notably the Great Britain and Germany) started establishing offices with the aim to spread their cause and their image. This wartime propaganda was followed in the aftermath of the conflict by the creation of numerous governmental foreign-language broadcasted radio programmes. Through the new technologies (radio and movies) ideology-driven regimes such as fascist Italy, Nazi Germany and the Soviet Union tried to promote a positive image of their countries and their respective ideologies. Germany made a wide use of propaganda films, with almost 80 movies produced in the years of the regime (1933-1945)¹⁷. The Roosevelt administration was reportedly preoccupied with the heavy Nazi German propaganda and stated that ‘America’s security depended on its ability to speak to and to win the support of people in other countries’^{18/18}. In order to do so, the United States Advisory Commission on Public Diplomacy was established in 1948. Moreover, Antony Eden, who was at the time Britain’s foreign secretary, said that ‘It is perfectly true, of course, that good cultural propaganda cannot remedy the damage done by a bad foreign policy, [...] even the best of diplomatic policies may fail if it neglects the task of interpretation and persuasion which modern conditions impose’¹⁹. The importance of communication, image and propaganda was therefore a crucial and integrated part of the diplomatic measures to be taken before and during wartime. Radios played a vital role during World War II and the Cold War, with the iconic *Appel du 18 juin* by the leader of the French Free Forces Charles de Gaulle from BBC broadcasted Radio; Voice of America, which was established in 1942 and which started in 1947 to broadcast to Soviet citizens in the USSR in order to counter the anti-American Soviet propaganda and which is just currently diminishing its broadcasting outside the United States of America; Radio Free Europe/Radio Liberty, broadcasted illegally by people in the Soviet Bloc during the Cold War or Radio B-92, which was active during the 1990s in Belgrade. If the firsts were used more for political messages, the latter was used to broadcast music, even though lyrics as well can have a political message. It is reported that the dissident radio B-92 used to play over and over a song from

¹⁷ https://en.wikipedia.org/wiki/List_of_Nazi_propaganda_films#cite_ref-leiser49_1-0

¹⁸ Pells, R.; 1997; ‘Not like Us’; p. 33

¹⁹ Quote from Wagnleitner, R.; 1994; ‘Coca-colonization and the Cold War’; Chapel Hill: University of North Carolina Press; p. 50

Public Enemy, an American rap group, whose lyric was ‘Our freedom of speech is freedom or death – we got to fight the powers that be’²⁰. Other important tools are the Exchange programs such as for example the Fullbright exchange Program, established in 1946 and that currently provides 8,000 grants annually²¹ or the European Erasmus+ Program, that since its creation in 1987 has involved more than 9 million people and which budget is going to increase in the next legislation course of the European Union (European Commission, 2017). Out of the participants to the Fullbright exchange Program, 59 alumni from 14 different countries have been awarded the Nobel Prize, 82 Alumni have received Pulitzer Prizes and 37 Fullbright Alumni have served as head of states. Nowadays China is enhancing its exchange program, especially towards the African continent. 19,000 scholarships have been granted in the last 55 years and now more than 70 Confucius Institutes are present in Africa. Moreover, in 2017 China became the top destination for English speaking African students, overcoming the United States of America and the United Kingdom. This numbers are useful to understand the importance that countries attribute to these sorts of tools that can be used to enhance the attraction, and also to create the future political elites with whom they will cooperate in the future.

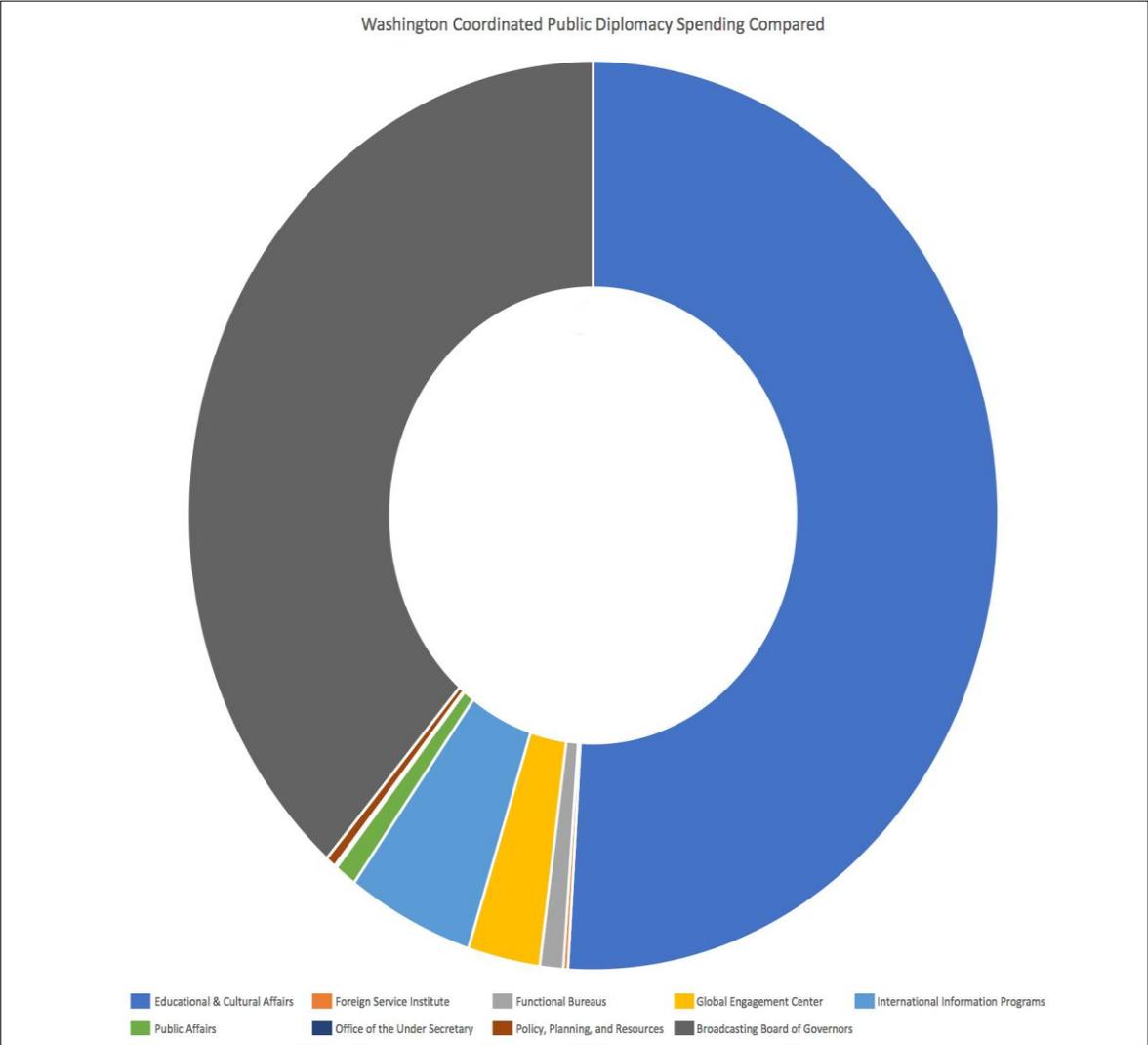
As it has been shown, countries can effectively take actions in order to exert soft power through public diplomacy. How much do countries invest in this? According to the *2018 Comprehensive Annual Report on Public Diplomacy and International Broadcasting*, the United States of America spent \$2.28 billion, with an increase of 12.4% (\$252.1 million). The budget included expenditures for Diplomatic and Consular Public Diplomacy Programs; Educational and Cultural Exchanges and Overseas funding.

In the following pie chart it is possible to see the division of the total Public Diplomacy expenditure regarding the 2017 fiscal year. It is possible to notice that the largest share of the expenditure has been allocated to international information programs, then broadcasting and finally educational and cultural affairs. Smaller sums of money have been dedicated to American global engagement centers and to public affairs, as these two elements represent a minimal part of the Public Diplomacy expenditure for the 2017 fiscal year. Foreign service institutes do not seem to have a particular weight in the expenditure, contrary to European countries.

²⁰ Quote from Collin, M.; 2001; ‘Guerrilla Radio’;New York: Nation Books; p. 41

²¹ <https://www.cies.org/about-us>

Table 4: the division of the Public Diplomacy expenditure of the US Government for the 2017 fiscal year



Source: 2018 Comprehensive Annual Report on Public Diplomacy and International Broadcasting, U.S. Advisory Committee on Public Diplomacy (ACPD)

Another interesting data that can be inferred from the ACPD Report is that the United States of America have been working and spending a considerable amount of the total budget in the European and Eurasian region, whilst the country were most of the Public Diplomacy funds were spent was Afghanistan, with \$38.7 million. A decrease of almost \$15 million can be seen in Africa, South and Central Asia, while more money was spent respectively in Russia and Ukraine; the amount for Japan and China remained almost the same. This data is useful, as it can help understand the direction towards which the American foreign policy is

going and where the geopolitical interests of a country are. Expenditures towards non state actors as the European Union, NATO and OSCE are reported as well.

Table 5: Division per country/International organisation of the Public Diplomacy expenditure of the US Government in the fiscal year 2017

	Post Name	FY 2016	FY 2017
		Total	Total
1	Afghanistan	\$ 58,456,635	\$ 38,729,000
2	Pakistan	\$ 53,161,799	\$ 33,840,000
3	Russia	\$ 9,745,637	\$ 14,480,811
4	Ukraine	\$ 7,017,209	\$ 11,608,335
5	Iraq	\$ 12,558,042	\$ 10,377,789
6	Japan	\$ 9,984,569	\$ 9,360,347
7	China	\$ 8,265,903	\$ 7,996,382
8	India	\$ 9,342,161	\$ 7,641,363
9	Brazil	\$ 6,866,632	\$ 7,539,686
10	Georgia	\$ 5,031,863	\$ 7,260,350
11	Moldova	\$ 2,259,563	\$ 6,345,050
12	Germany	\$ 6,169,781	\$ 6,124,164
13	Indonesia	\$ 7,219,386	\$ 6,054,188
14	Bosnia and Herzegovina	\$ 3,698,383	\$ 5,170,280
15	Mexico	\$ 4,383,523	\$ 5,088,341
16	Israel	\$ 4,700,589	\$ 5,026,077
17	Palestinian Territories	\$ 4,025,041	\$ 4,635,289
18	Nigeria	\$ 7,475,814	\$ 4,594,054
19	Korea, South	\$ 4,396,868	\$ 4,510,812
20	South Africa	\$ 3,829,475	\$ 4,238,838
21	Argentina	\$ 3,601,396	\$ 4,031,111
22	Venezuela	\$ 3,365,641	\$ 3,898,092
23	Turkey	\$ 4,035,275	\$ 3,606,950
24	Serbia	\$ 2,481,743	\$ 3,524,004
25	France	\$ 3,936,694	\$ 3,517,450
26	Italy	\$ 3,636,465	\$ 3,460,150
27	Egypt	\$ 3,291,543	\$ 3,291,368
28	Kosovo	\$ 1,743,459	\$ 3,287,150
29	Saudi Arabia	\$ 2,564,140	\$ 3,250,644
30	Australia	\$ 3,090,680	\$ 3,207,614

Source: 2018 Comprehensive Annual Report on Public Diplomacy and International Broadcasting, U.S. Advisory Committee on Public Diplomacy (ACPD)

It is noteworthy to say that, even though the American expenditure on Public Democracy saw an increase, the total budget is nothing when compared to military expenditure, which for the year 2018 accounted to \$648.8 billion.

Public Diplomacy might as well be a useful tool for States that cannot count on big military and/or economic power, if used wisely. Less powerful countries might use Public and Cultural Diplomacy to influence foreign people and foreign governments, that would might have in turn an influence when the time to negotiate a deal or to participate in activities in international organisations might come.

The European Union, even if it is not a fully fledged state actor, invests money in Public Democracy. Indeed, part of its budget is dedicated to *Neighbourhood and the World*, among which actions for Public Democracy belongs. The European Union promote its Public Democracy also through grants and calls for tenders directed to civil society organisations; universities; NGOs; media; local governments; diplomatic corps and more similar stakeholders. Taking into consideration the Annex 8 of the Commission Implementing Decision on the 2019 Annual Action Programme for cooperation with third countries to be financed from the general budget of the European Union, the four strands relating to Public Democracy are: academic outreach; EU Policy and Outreach Partnerships; Civil Society engagement and Cultural Diplomacy and one extra strand which is Engagement towards Torture – free Trade. Why does the European Union have such actions and programs? To ‘support actors in their endeavours to globally develop EU's soft power by building alliances and better-informed decision-making on priority EU themes such as response to global challenges, use of multilateralism, promotion of EU values and principles, economic partnerships and fundamental rights, including in the field of trade and human rights. It will also enhance widespread understanding and visibility of the EU and its role on the world scene’ (European Commission, 2018, 1). Another one of the ‘objectives of the Partnership Instrument Multiannual Indicative Programme under public diplomacy is promoting the EU as a major and reliable partner in supporting human rights, democracy, good governance, the rule of law and a rules-based global and multilateral order’ (European Commission, 2018, 6). The EU issued a document, the EU Global Strategy, where it stated that Public Diplomacy must be used to ‘enhance the EU strategic communications, investing in and joining-up across different fields, in order to connect EU foreign policy with citizens and better communicate it to our partners’²². The EU Global Strategy goes on to add that the current world is interconnected and complex, therefore the methods used by the EU to engage with third countries citizens must change and adapt. Through Public Diplomacy, the EU wants to ‘support the implementation of EU Foreign Policy objectives by strengthening the EU's

²² European Global Strategy; 2016; p. 23

ability to engage meaningfully with selected audiences in third countries (i.e. students/academics, multipliers/influencers, civil society and cultural operators/artists) in order to increase mutual understanding, improve the perception of the EU and of its policies and, ultimately, identify and nurture like-minded allies for future cooperation'²³. Another useful document is the EU study 'Analysis of the perception of the EU and EU's policies abroad', published in March 2016. In the document, there is a recommendation to 'establish a centralised EU public diplomacy strategy comprising a finite set of core messages with the implementation adjusted to local specificities, context and capacities'²⁴. The document was useful to the European Union itself to be able to understand the local perceptions of the EU and the European policies and to develop them accordingly.

Due to the emergence and the increasingly use of social medias and technological tools in everyday life as well as in the way of reporting news, the fast spreading of news around the globe and the consequent bigger involvement of non-state actors (which were not considered in the first definitions of public nor cultural diplomacy) have had scholars talking about the emergence of a New Diplomacy. In the New Diplomacy, the role of citizens grows, going along the emergence of a society which is always connected. As a matter of fact, the term New Diplomacy started being used around the 1990s', when the Internet emerged as a popular and available for all tool. Under this new tool, citizens have started to make their voice heard especially in matters of human, working and environmental rights. As a matter of fact, diplomacy in a broader sense is not anymore just a matter of diplomats and government representatives, but it involves citizens as well. Therefore, public diplomacy and the use of these new tools are going to become even more important.

1.2.4 Critics to Soft Power

Even though the concept and the definition of soft power have been widely accepted in International Relations and are widely used by politics as well, there are some critic views about it. The three main critics are that: its originality; the inability to measure it effectively and the strong focus on agent.

²³ Quote by European Global Strategy; 2016

²⁴ Analysis of the perception of the EU and EU's policies abroad; 2016; p.6

1.2.4.1 Originality of the concept

Whilst Nye states (1990; 2004) to have coined the term soft power and its respective definition, critics claim that the concept is similar to many others that were precedent to Nye's. For example, Edward H. Carr in 1946 divided the political power in three dimensions: military power, economic power and power over opinion, used by states to control others and to change others' actions. Although the first two dimensions of power were central, the latter is also important, as he states that 'the art of persuasion has always been a necessary part of the equipment of a political leader. Rhetoric has a long and honoured record in the annals of statesmanship. But the popular view which regards propaganda as a distinctively modern weapon is, none the less, substantially correct'²⁵. The definition of smart power (hard and soft power combined) can be applied as well to Carr's thought, because he believed that, in addition to military and economic means, non-material power resources were essential as well.

Another theoretical approach similar to Nye's is the one of Steven Lukes. He defines power as three-dimensional, with the first dimension focus being on decision making about specific issues; the second one about the power of a country to suppress a topic of interest of another country and the last one is about influencing, shaping or determining someone else's wants. This third dimension is about attraction and changing the mind of others, therefore soft power could be included in this dimension. Lukes himself says that this third dimension is closely related to Nye's soft power and Gramsci's idea of hegemony²⁶. The hegemony concept of Gramsci means that political and civil societies are equally important, as there is the need for a 'combination of force and consent, which balance each other reciprocally without force predominating excessively over consent'²⁷. For Gramsci, these two elements are intertwined, with intellectuals that must function as a link between the two spheres, they must create a particular way of life and must translate particular interests and values into general interests and values, that are good for the whole society. It is possible to see this under the domain of persuasion and attraction, rather than coercion, therefore making this concept similar to Nye's. More generally, critics claim the values that Nye's soft power promotes

²⁵ Carr, E. H.; (1946); *The Twenty Years' Crisis 1919-1939: An Introduction to the Study of International Relations*; London: Macmillan; p. 132.

²⁶ Lukes, S.; 2007; 'Power and the Battle for Hearts and Minds: On the Bluntness of Soft Power'; in Felix Berenskoetter and M.J. Williams (eds); *Power in World Politics.*; London: Routledge; pp. 83-97.

²⁷ Gramsci, A.; 1971; *Selections from the Prison Notebooks*; London: Lawrence and Wishart; p. 80.

belong to normal IR theories, such as democratic peace and institutionalisation²⁸. Therefore, the concept would not be original at all.

1.2.4.2 Inability to measure soft power

Even though there are many publications that rank states by soft power, according to critics these rankings are not indicators that countries change their behaviour or action due to another country's image. One of the critics makes an example about his home country, Turkey. When looking at relations between Turkey and the Middle East, for instance, it is possible to see that Turkish culture (television series and music) are popular in the region, as well as President Erdogan. Moreover, Turkey attracts many tourists to its cities. According to the author, these features would constitute soft power in Nye's ideas. Although Turkey has this attraction power, it is not possible to say that a country changed its view to support Turkey in fora such as the UN. The author goes on analysing the Global Soft Power Index part about Turkey and says that 'although it says many things about Turkey's soft power assets and what creates positive and negative perceptions about Turkey, we cannot claim that since Turkey has a global brand it has'²⁹.

Therefore, it would not be possible to measure in an effective way the ability of a country to provoke changes in the behaviours or actions of other countries.

1.2.4.3 Sole focus on the agent

According to critics³⁰, Nye has put a strong focus on the agent or actor, soft power becomes a tangible resource, like military or economics. Moreover, focusing only on the agent, Nye tends to consider just the soft power resources that the country under examination (in the case of his book, the United States of America) has, rather than how these resources effectively have an impact on the rest of the world. Finally, as Nye said soft power is wielded not only by states but also by civil society, NGOs, corporation and media, which are not under state control. Therefore, according to its critics, those cannot be considered as soft power tools of a country, since the country's government do not control them.

²⁸ Layne, C.; 2010; 'The Unbearable Lightness of Power' in Inderjeet Parmar and Michael Cox (eds.), *Soft Power and US Foreign Policy: Theoretical, historical, and contemporary perspectives*, London; New York: Routledge; p. 54.

²⁹ Yukarıoğlu, U.; 2017; 'A Critical Approach to Soft Power'; *BEÜ SBE Derg.*, 6(2); pp. 498-499.

³⁰ Layne, C., 'The Unbearable Lightness of Power'; Lock, E.; 2010; 'Soft Power and Strategy: Developing a 'Strategic' Concept of Power' in Inderjeet Parmar and Michael Cox (eds.), 'Soft Power and US Foreign Policy: Theoretical, historical, and contemporary perspectives', London; New York: Routledge.

Notwithstanding the critics that have been formulated in the course of the years over the concept of soft power, its conceptualisation must be considered as a benchmark by scholars and academics when it comes to the discussion of power.

The different natures of power that have the subject of this chapter, namely military, economic, technologic and cultural power, cannot properly be attributed to the type of power that the European Union has been and is at the moment. Therefore, the next chapter is going to focus on the EU and the definitions of power it has been associated with during these last decades.

What type of power is the European Union?

As the focus of this thesis in the concept of power in the European Union, this chapter is going to discuss the different concepts of power that Europe has been associated with. However, the main focus is going to be on the concept of Normative Power Europe. I will begin by explaining the theoretical definitions of the various terms presented, followed by a brief overview of the so called European values and how these permeate the set of law and treaties that give the European Union its legal power. Then, some examples that might serve the purpose of explaining whether or not the European Union is a normative power actor will be provided.

One of the first and most famous scholar that tried to define Europe in terms of power was François Duchêne. In his *'Europe's Role in World Peace'* (1972) he tried to answer the question whether Europe would have been able to play a part in reducing the growing world tensions. The context of that period must be seen in the cold war framework, with the two nuclear super-powers willing to avoid any kind of military confrontation that would have resulted in a "mutually assured destruction". Another element resulting from the cold war context was the emergence of strong Western countries with 'highly pluralistic societies with spectacularly civilian values' (Duchêne; 1972; 35), due to the nuclear parity between the US and USSR and by the détente in Europe with the consequent shift of attention in Eastern Asia. Moreover, the global context was changing, as it was becoming more reliant on interdependency and it was seeing the emergence of new economic powers. According to Duchêne, the new challenges to peace lied not in the possibility of a war, but rather in the ability to absorb those changes he was anticipating. He thought that this type of global configuration was ideal for Europe to play a role in it; on the other hand, he says that 'the one thing Europe cannot be is a major military power' (1972; 37). Another element that for him is unlikely is a Western European regional sphere of influence. For him, Europe might have some functional spheres of influence restricted to some domains (trade, for example) but this is not going to evolve into a geographical sphere of influence. Conversely, he states that in the domain of trade and investments abroad Europe might benefit from not being felt as a super-power, but rather just as rich, compared to the US, USSR and emerging China and Japan. The supposed declining in military armaments would mean a strong emergence of economic exchanges, diplomacy and cultural relations. This, together with a security sphere maintained that would eventually decline might be the perfect context for the birth of Western Europe as 'the first of the world's civilian centres of

power' (1972; 43). Due to the size of the-then Western Europe countries and their capacities – a fifth of world production and a third of world trade – a civilian power of this kind could play an important role. Moreover, due to technological advances and interdependence and due to the growing importance of transnational social movements and ideologies, the importance of military power and state structure is bound to diminish – or at least, it is not possible to determine whether it would be central or not. For Duchêne, the lack of military capacities must no longer be considered a deficit in this new society. He compares this to 'the end of history', which requires that 'administration begins' (1972; 47). Since the direction that the world was taking, he says that economic, social and cultural problems are going to become of a greater importance and to those Western Europe can contribute, if the countries would integrate and acknowledge their capacity to act. Europe was then able to encourage stability through its economical and political power – civilian means – rather than through military power.

It is to this new concept of power that Hedley Bull responded in its article *Civilian Power Europe: a contradiction in Terms?* (1982). Bull argued the idea the traditional military power was being replaced by civilian power. His view opposed the view of many scholars which were claiming that models which put the state at the centre were inadequate and that the role of force was declining to give room to the importance of economics in an interdependent world. Those ideas were suggested by writers such as François Duchêne and others. Duchêne claimed that the EU was a civilian power, meaning that it was a 'special international actor whose strength lies in its ability to promote and encourage stability through economic and political means' (1972). Bull's piece starts with a quote from Sir Andrew Shonfield, which in his BBC Reith Lectures for 1972 said that the European Community was 'the purest expression in the international system of what François Duchêne has called "civilian power", as opposed to traditional military/political power'³¹. To show the switch in the society, he says that economic experts were now deemed as international affairs experts as they were as a matter of fact becoming directors of international affairs institutes, like Duchêne. Power politics was declining, as the importance of military capacities. To this end, Bull argues that the détente between the super-powers implied that there was a balance of military armament that could not foresee any other possibility than détente. At the same time, the wars lost by the US were actually won by the opponent side and this could not signify that military power is losing importance. Conversely, the failures of Western countries interventions in the Third World

³¹ Shonfield, A.; (1974); *Europe: Journey to an Unknown Destination*; Penguin Books quoted in Bull, H.; (1982); 'Civilian Power Europe: a contradiction in terms?'; p. 149.

were not faced by the Soviet Union or the Third World countries itself which were able to deploy interventions of their own. As for the growing importance of economic, cultural and social factors and possession of resources, Bull claims that the former were not diminishing the power of the state centric system and that possession of resources could be a useful tool as long as military strong states do not decide to exert their force. To conclude, he claims that the power exerted by the so called civilian powers was possible due to the global context provided by military powers, which the formers are not able to control. Apart from the European Community, Japan was deemed to be a civilian power, because of its important and stable economic growth but also because of the military constraint posed by article 9 of its Constitution. For him, as long as the countries of Western Europe were not able to provide a military security, they were to be considered vulnerable and not able to be an effective actor in international affairs. He argues that Western European countries should try to become self-sufficient in the sphere of defence and security, without relying completely on the support of the United States of America. This was also emphasised by the fact that the policies of Washington at the time were, according to Bull, detrimental of the policies of European countries, as the two were pursuing diverging interests. For him, the ‘disengagement cannot be achieved by foreign policy or diplomatic measures alone, but requires a conscious effort to reduce dependence on the United States in matters of defence’ (Bull; 1982; 154). Another factor that he deemed essential in the development of European military capacity was what he called a European regeneration. He claims that countries as wealth and historically important as the Western European ones cannot be dependent on other countries for their security, which is the first element that any community needs to provide. This process that he calls ‘Europeanist course of building disengagement’ (1982; 157) could give way to an independent stance on the global scene. He rejects the idea that Europe is an area of peace were another war is never bound to happen, therefore in order to start this Europeanist policy there is need of a political and strategic union between the Western European countries. To sum it up, he concludes by saying that he is strongly advocating for a ‘Western European military alliance, with appropriate machinery attached to it’, because as it was at the moment the EC performed an ‘almost total lack of involvement in this most vital of European issues’ (1982; 164), being ineffective. Whilst the common theory in that decade was that military power was declining in importance, Bull claimed the opposite. Furthermore, he famously claimed that ““Europe” is not an actor in international affairs, and does not seem likely to become one’ (1982; 151).

This claim represents the starting point for Manners in the discussion of the European Union and of its international role as a promoter of norm. The term *normative power* was firstly imagined in the 1990s; then written in *Normative Power Europe: a Contradiction in Terms?* by Ian Manners

and published in 2002. Manners came to this term because he wanted to respond to Hedley Bull's critiques to the 'civilian power' of the then European Community. According to Manners, in order to understand the normative role of the European Union and its international impact, the focus must not be about civilian or military power. In his analysis Manners does not want to imply that the civilian or the growing military power of the Union must not be taken into consideration, but rather that its ability to shape 'what is normal' must be taken into greater consideration than it was. As a matter of fact, for him normative power means 'The ability to define what passes as "normal" in world politics' (Manners; 2002; 236). He says that the concept of normative power has been already present in the discussion, with different acceptations: in 1962 Carr made the distinction between economic, military and power over opinion; Duchêne talked about the *idée force* that started from the founding fathers of Europe to then extend to widely different political spheres in European countries; while Galtung talked about ideological power as 'the power of ideas'³², which is 'powerful because the power-sender's ideas penetrate and shape the will of the power-recipient'³³. According to Manners, another important feature of normative power Europe is that this notion must take into consideration not only the EU's institutions and policies, but rather the substantive and symbolic components. In this case, it is better to move from the classical analysis of a State and the State-like features of the European Union towards an analysis to understand the international identity of the EU. For him, the European Union has to be studied in consideration of 'what it is' instead of 'what it does' (Manners; 2002; 252).

In order to clarify the distinction he makes between the three types of powers, he provides the following table:

Table 6: Civilian, military and normative powers

	<i>Civilian</i>	<i>Military</i>	<i>Normative</i>
Carr	Economic	Military	Opinion
Galtung	Remunerative	Punitive	Ideological
Manners	Ability to use civilian instruments	Ability to use military instruments	Ability to shape conceptions of 'normal'

Source: Manners (2002) based on Carr (1962, p. 108), and Galtung (1973, pp. 2, 7).

Taken from Manners (2002); *Normative Power Europe: a Contradiction in Terms?*; p. 240

³² Galtung, J. (1973) *The European Community: A Superpower in the Making* (London: Allen & Unwin); p. 33.

³³ *Ibid*, p.36.

Other factors that prompted the European Union to become a unique type of power than the ones present in the global arena were introduced by Robert Kagan. He shares his particular view in his *Power and Weakness* published in Policy Review of June 2002. As he says in the beginning of the piece, his view is particular, being him an American living in Europe, therefore the concepts he introduces are not the ones that have been normally associated with the birth of the European Union as a different type of power. Recognising the importance that European history of conflicts among great powers and lastly the experience of World War II have played in shaping ideas on the role of power in international relations, he claims that the European shift from the use of military power to other more civilian means is due to European military weakness combined with its economic force. Because of its weakness, Europe has a greater tolerance for threats that are ultimately perceived as “challenges”, whereas the same threat is perceived in the US as an issue that needs a forceful response. For him, this divergence is not due to historical and cultural factors, because ‘the key difference is less a matter of culture and philosophy than of capacity’. At the same time, because of its economic force, Europe tends to be mostly worried about issues ‘that have a greater chance of being solved by political engagement and huge sums of money’ (Kagan; 2002; 7). The fact that Europe avoids using and boasting up its military power is not according to him due (only) to the nature and history of the continent, but rather it is a direct product of its military weakness, that consequentially produces the unwillingness to use military power. Europe has an interest in ‘eradicating the brutal laws of an anarchic, Hobbesian world where power is the ultimate determinant of national security and success’ and this ‘is what weaker powers have wanted from time immemorial’ (2002; 5). This represents a paradox for Kagan, because it is through the US military force that European problems were solved, allowing Europe to believe in a world where armies do not matter and international institutions and law have a predominant role. A world in which the same power that have allowed this society to breed and nourish is deemed as dangerous. As a matter of fact, he compares the US to an international self-appointed sheriff, who tries to enforce law in a lawless world, whereas Europe is a saloonkeeper and from his point of view ‘the sheriff trying to impose order by force can sometimes be more threatening than the outlaws, who, at least for the time being, may just want a drink’ (2002; 8). For him, Europeans must remember that it was the military destruction of Nazi Germany the focal point that allowed peace in continent, rather than ‘the transformation of European politics, the deliberate abandonment and rejection of centuries of machtpolitik’ which are believed by European to have ‘made possible the “new order”’ (2002; 9). The US is therefore detrimental for Europe’s new mission civilisatrice, that is the subjection of relations between states to the rule of law. The US, being willing to intervene when it deems it necessary, might therefore pose a threat to the European Union aim as claimed by Kagan. However,

he argues that this aim is not fulfilled, as foreign policy initiatives that do not involve merely peacekeeping do not have enough strength to be respected, because of a lack of backing from the various European powers.

For him, European use of ‘engagement and seduction, [...] commercial and political ties, [...] patience and forbearance’ (2002; 4) comes from the intrinsic weakness of Europe, as it is not possible for it to do otherwise, due to the incapacity to act which has been proven in Bosnia and to a lesser extent in Kosovo. Bosnia provided the perfect example for the famous definition he gave of the division of labour between the two: ‘the United States “making the dinner” and the Europeans “doing the dishes”’ (2002; 4), meaning that Europe would only intervene once the conflict is over and by providing peacekeeping missions and using its strong economic force by providing economic assistance and aid.

2.1 The fundamental principles of the European Union

Manners claims that it is not fair to say that the EU is just promoting its own norm, like empires did and global powers do. That is because of the particular historical nature of the European Union, its particular nature which embodies supranational, intergovernmental and international features and the legal nature of the European Union coming from its founding treaties. As it is commonly known, the starting idea of a European union was born in a post-war environment. Because of this particular context, the different European States were committed to ‘pooling their resources to preserve and strengthen peace and liberty’, as stated in the preamble to the Treaty establishing the European Communities. The EU then went on to evolve to a completely new political form, combining supranational, intergovernmental and international features. This new hybrid form can give the EU actor quality and puts a strong emphasis on the values which are common for the Member States or, as written in art.6(3) of the Treaty on European Union, ‘they result from the constitutional traditions common to the Member States’. A legitimate question might arise now: what are the fundamental principles of the European Union and when did they appeared in the process of building it? Peace, liberty, democracy, rule of law, respect of human rights, human dignity, freedom and equality. The principles of social justice, democracy, rule of law, and respect for human rights were originally written in the first point of the 1973 Copenhagen declaration on European Identity and were later written in the preamble of the TEU, along with *equality* and *freedom*. It can be seen that from its foundation and its growth in the first decades, the European project put a strong emphasis on the respect of the human rights and this view can be supported by the decision taken in the Cologne summit to draft a European Human Rights Charter

because, as said in the presidency's conclusions 'Protection of fundamental rights is a founding principle of the Union and an indispensable prerequisite for her legitimacy' (Annex 8 of the Conclusions of the Presidency – Cologne European Meeting). Moreover, some decades before this summit the European Court of Justice recognised fundamental rights as general principles of European law and therefore protected by the court. The Charter of Fundamental Rights of the European Union was proclaimed in 2000 in Nice but entered into force in 2009 with the Lisbon Treaty.

What has pushed the European Union to place such a strong emphasis on universal norms and fundamental rights? The historical context and nature within which it was born, its hybrid structure and the legal basis given through declarations, treaties and policies. For example, *peace* had always occupied a central spot and it can be found in the Schuman Declaration on 1950, in the preamble of the European Coal and Steel Treaty of 1951 and in the Treaty establishing the European Community (TEC) of 1957, which has been amended by the Lisbon Treaty. The concept of *liberty* appeared in the in the preambles of the TEU and the TEC. Furthermore, art. 6 TEU 'recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union'. *Democracy, rule of law and the respect of human rights and fundamental freedoms* are found in the preamble of the TEU.

The EU put these values and norms at the centre of its relations within the Member States and with the rest of the world, especially in the post-cold war period. According to Manners, the values that are now at the core of EU's international relations are much closer to the one of the European Convention of Human Rights (ECHR) and the Universal Declaration of Human Rights (UDHR) than most of other actors in world politics and this is a clear example of the normative nature of the European Union. The values upon which the European Union is founded and towards the implementation of which it has foreign and development policies are enshrined in art. 2 which states that:

'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

Furthermore, art. 3(1) TEU says that 'The Union's aim is to promote peace, its values and the well-being of its peoples.' The policies to implement such values are matter of discussion in artt. 6,24 of the Treaty on European Union (TEU) and art. 208 of the Treaty on the Functioning of the European Union (TFEU). Manners then goes on to list four minor norms which can be

inferred from the various policies and treaties, especially from the *acquis communautaire et politique* of the EU, that is the sum of norms and laws that must be implemented and acquired by a country that wishes to join the European Union. These four minor norms are, according to Manners, *social solidarity, anti discrimination, sustainable development and good governance*. All of these norms must be seen in the different historical context in which they were thought and eventually implemented. For example, the importance of democracy and rule of law was a defining feature to put in contrast western European countries and eastern European countries, which were under the communist Soviet regime. In the following table, taken from Manners, the normative basis of the European Union is presented. As the table was designed in 2002, some of the articles and the treaties might now have been amended or changed.

Table 7: The EU’s normative basis

<i>Founding Principles</i>	<i>Tasks and Objectives</i>	<i>Stable Institutions</i>	<i>Fundamental Rights</i>
Liberty	Social solidarity	Guarantee of democracy	Dignity
Democracy	Anti-discrimination	Rule of law	Freedoms
Respect for human rights and fundamental freedoms	Sustainable development	Human rights	Equality
Rule of law		Protection of minorities	Solidarity
			Citizenship
			Justice
Treaty base – set out in art. 6 of the TEU	Treaty base – set out in arts. 2 of TEC and TEU, arts. 6 and 13 of TEC	Copenhagen criteria – set out in the conclusions of the June 1993 European Council	Charter of Fundamental Rights of the European Union

Source: Manners (2002).

Taken from: Manners; *Normative Power Europe: a Contradiction in Terms?* page 243

2.2 Legitimizing EU’s normative power

Another main difference between the European Union and the rest of international actors is that, according to Manners, Europe does not need a ‘backing of force and the willingness to use

it³⁴, because the different nature of the European Union and its uniqueness in regards to any other pre-existing political forms predisposes the Union to act as such, in a normative way, without the need of any other type of power to back its want. As a matter of fact, he writes that the European norms are diffused through contagion and transference (Manners; 2002; 244-245). When talking about contagion, he means a unintentional diffusion of norms from the EU to third-parties through ideas. Furthermore, he differentiates between informational and procedural diffusion. The first one is achieved through ‘strategic communications, such as new policy initiatives by the EU, and declaratory communications, such as initiatives from the presidency of the EU or the president of the Commission’, whereas the second one is achieved through ‘the institutionalization of a relationship between the EU and a third party, such as an inter-regional co-operation agreement, membership of an international organization or enlargement of the EU itself’. On the other hand, transference means the diffusion of said European norms and values through commercial exchanges, aid or technical assistance. Therefore, a fundamental trait of the transference process of diffusion is that it involves financial and economic measures. Norms and ideas might be transferred, as a result of what he defines as ‘carrot and stickism’, meaning the use of financial rewards or sanctions whether some norms are respected and incorporated into the national laws or not. Finally, he states overt diffusion and cultural filter as elements that can change the way in which European norms are diffused. Overt diffusion is characterised by the physical presence of the European Union in third-states and international organisation, whereas cultural filter is based upon the ‘interplay between the construction of knowledge and the creation of social and political identity by the subjects of norm diffusion’. Going back to overt diffusion, the European Union – through the European External Action Service (EEAS) – is now represented by 140 European Delegations and offices around the world. The EEAS was enshrined in the Lisbon Treaty (2009) and was formally established in 2010. Its aim is to assist the work of the High Representative for Foreign Affairs and Security Policy. To corroborate his opinion, Manners lists some examples. When talking about contagion, he says that the EU successfully exports its experimenting in regional integration; concerning procedural diffusion, he cites the dialogues with IOs such as the Southern African Development Community and the EU membership in the World Trade Organisation; when talking about transference, he writes about the Cotonou Agreement with the African Caribbean and Pacific (ACP) countries and finally he sees a cultural filter at play in the diffusion of European norms in China, Turkey and the Great Britain.

³⁴ Therborn, G. (1997) ‘Europe in the Twenty-first Century’. In Gowan, P. and Anderson, P. (eds) *The Question of Europe* (London: Verso), p. 380.

Whereas the processes of norm diffusion described by Manners have been successful for the European Union in the past, it is my personal opinion that this is no longer the case. In this regard, I tend to agree more with Whitman's view, that says that the European Union has been capable of changing what is 'normal' for others only when a credible path to accession to the Union was given, otherwise the normative push was not as successful, as it was the case in Ukraine, Russia and other. As Whitman said:

'Previous experience has already shown that the EU has not in fact been very successful in projecting its normative power in cases where full membership was not on the agenda. This is due to the internal constraints inherent in the character of the Union as an actor and especially the key role played by enlargement as the main instrument of the Union's normative power in Europe: the EU's expectations of normative convergence and harmonization in Europe are seen as legitimate and warranted only when the incentive provided by accession is on offer. Once it is not available, the situation is radically altered, and the EU's capacity to act as an anchor for reforms is proven to be severely limited'. (2011; 48)

A credible path to accession might be considered as the 'force' that was theorised by Therborn and that Manners thought was not necessary. Whitman sees enlargement as the true tool through which the European Union can effectively promote its norms and values. Furthermore, he claims that the enlargement process is the only way in which the European Union's action can be seen as legitimate. For him, the normative power of the EU and its success is dependent on the legitimacy that it has in the eyes of the counterparts, the recipients of given norms and policies. Whitman defines Manners' idea of contagion and transference as static and passive means to promote EU's norms and values. According to him, through enlargement the EU has actively tried to diffuse norms and values, instead of waiting for other countries to willingly adopt them. Another slight critique that Whitman has for Manners lies in the latter's definition of the Union's 'ability to shape conceptions of "normal" in international relations' (Manners; 2002; 239). According to Whitman, in the European area the EU is the only power that can set the parameters and it claims the sole property on what can be called 'Europeanness'. This has positive factors, as it has given the European Union a strong normative power over countries in Europe, but on the other hand it has also negative factors, as it can give birth to a sense of 'otherness'. This critique can be found both in Whitman's and in Diez's. As a matter of fact the critic can be considered reasonable, especially after the big bang enlargement of 2004 and the subsequent enlargements of 2008 and 2013. After this enlargement, the EU put a temporary stop to any sudden new member states. According to Whitman, this could cause some negative effects, as it

‘reinforces the image of the EU as a “Fortress Europe” shielding its precious acquis behind the Schengen border. [...] the previously open “European Project” is increasingly perceived, especially by the EU’s Eastern neighbours, as a form of exclusion. For them it is about extending a normative and highly institutionalised wall, which will isolate them from the rest of Europe’. (2011; 54-55)

In order to maintain legitimacy in its actions, and seen that a credible path to accession was a strong tool in providing the European Union with legitimacy, the EU has tried to establish different policies for its neighbours, among which the European Neighbourhood Policy (ENP), which however does not entail a candidate member status. The ENP was originally launched in 2004 on the basis of the European Commission Communication (2003)104) ‘Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours’ and it underwent reviewing in 2011 and 2015. The aim of the ENP is to cooperate with the Eastern and Southern neighbours of the European Union in order to ‘foster stabilisation, security and prosperity, in line with the Global Strategy for the European Union’s Foreign and Security Policy’³⁵. The key areas of cooperation are promotion of democracy, rule of law, respect of human rights, social cohesion, security and stability – a strong emphasis has been put on the latter two with the last revision of 2015 due to the growing threat of migration. The advantages for third-countries that participate in the ENP is a greater access to the European market, participation in the European agencies and programmes, as well as financial support through the European Neighbourhood Instrument (ENI) whose budget for the period 2014-2020 was €15 billion. Currently, there are 16 ENP countries: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Republic of Moldova, Morocco, Syria, Palestine (the designation does not entail a recognition from the European Union), Tunisia and Ukraine. However, this is not as effective as the enlargement process in spreading the European values and norms. Those benefits offered by the ENP – namely free trade agreements (FTA) and visa facilitation processes – do not outweigh the costs. This might be due to two factors: non interests by the political elite of third-countries who might fear about losing their control over the country (as it can be seen, countries taking part in the ENP are not “champions” of democracy and they are ruled by authoritarian governments) and ‘lack of coherence in formulating the aims of its neighbourhood policy’ from the EU side, with the ‘EU democracy promotion paradigms [...] vaguely defined and often incoherent’ (Yakouchyk and Schmid, in Bossong, Carrapico; 2016; 126). The ENP would not therefore bring the countries towards developing a democratic stable environment. Conversely, scholars claim that engagement through the ENP might bring the opposite result, as the EU deals with authoritarian countries. Taking Belarus as an example, the country is considered as one of Europe’s last dictatorship. Its

³⁵ https://eeas.europa.eu/diplomatic-network/european-neighbourhood-policy-enp/330/european-neighbourhood-policy-enp_en

President Alexander Lukashenko has been serving in the role since its creation in 1994 and has at various times restricted freedom of medias, civil society and political opposition. As a result, members of his government and him have been targeted with sanctions and entry-bans by the European Union. When the ENP was first drafted in 2004, Belarus was not part of it. Relations improved in 2007, to worsen again in 2010. However, relations in the sphere of border management and other projects are still underway. Scholars argue that ‘the EU has failed to bring about democratic changes because of the pursuance of own security interests’ (Yakouchyk and Schmid, in Bossong, Carrapico; 2016; 126). If this were to be true, it would mean that the EU had broke the spirit that supposedly would drive its foreign policy and the ENP. Moreover, local experts (2016; 132-133) from Minsk claimed that the small improvements registered by the Belarusian side – and the consequent opening of visa facilitation talks – were tactically decided to happen before elections. If the agreements were to be reached before the elections, that would have been beneficial for the elite to gain popular support, even though there was no pure interest in reforms. At the same time, Belarusian elite tend to hide projects financed by the European Union, in order to cast bad light on the EU and to portray it as a mere executioner of sanction. Moreover, Belarus tend to threaten the EU with weaker border controls in order to receive bigger financial aids. As for Thomas Diez, he argues that talking about a normative power Europe creates practices of ‘othering’ in the process of building an international identity for the EU. Diez has two other critiques to the concept of Normative Power Europe, with the first being that the EU is not the first normative power to be present on the global stage, because similar traits could be found in other historical moments in the United States of America and the second being that the concept of civilian power would embody the one of normative power. To respond to the first critique, Manners says that one of the main difference between the EU and the US is that the former tries not to build hierarchical relationships, while the latter claims to have a ‘God-given duty’, to be the land of the free and to be ‘exceptional’, in the sense of not being all equal, but rather above. According to Manners, the EU claims normative power in a cosmopolitan normative theory, where all parties are equal. To respond to the second critique, Manners says that, while a civilian power might act in a neo-colonial way (that is trying to civilise international relations), the normative power concept does not entail this. Furthermore, whilst civilian power theory focuses on primarily economic means, normative power theory rather focuses on non-material processes such as the contagion of norms through imitation and attraction. However, this last example clashes with what Whitman wrote, because as he said when full membership was not on the agenda, the European Union has not been able to successfully project its normative power and therefore spread its values and core norms.

Whilst Manners thought that the nature of the European Union prompted it to act in a normative way and that legitimacy was provided by the Union's actions themselves, as they were supporting universal values, now the EU is in search of legitimisation. The problem arises when this can be found only through enlargement, which has been stopped for the moment, because of other problems that are currently at the top of the European agenda and because the EU must understand whether it is able to further enlargement or whether its absorption capacity is no longer able to stretch.

I think that Manners view was more relevant in the period in which it was theorised, where states were willing to join the European Union either to benefit from an economical point of view, to have the Community as a democratic anchor during political transition or to free themselves from the Soviet sphere. The first example responds to the case of Greece, Spain and Portugal who joined the EC respectively in 1981 and 1986 (the latter two joined in the same year). These countries emerged from periods of dictatorship and wanted therefore to anchor the process of national democratisation through membership in the EC. This episode was called the Mediterranean Enlargement. When talking about protection from post-Soviet interests, the end of the Cold War provided the context for Central and Eastern European Countries (CEECs) to 'return to Europe' – a region to which they were historically linked – by anchoring their institutions to EU and being therefore able to succeed in linear political and democratic transitions. Moreover, through membership in the European Union the CEECs were also responding to their need of protection towards a post-Soviet Russian influence and still strong ideological and physical presence in the region. By joining the EU, those countries underwent processes that were not merely political or economical, but that had indeed a cultural and cultural importance as well. Now the global situation has changed, therefore the European Union must actively act in order to continue to spread its norm and securitize its neighbours. Furthermore, nowadays the EU does not tend to act according to the principles enshrined in the Treaties, but rather in a more pragmatic way and according to the rationale will of its Member States, which in many cases is in strong contrast with the abovementioned principles.

Nevertheless, the idea of *Normative Power Europe* still plays an important role in the European foreign policy, by providing the Union's policies with legitimacy and by theoretically providing guidelines and criteria when dealing with other states. As a matter of fact, in the 2003 European Security Strategy (ESS), the importance of European values in the field of external relations are to be considered fundamental and to be put at the core of the EU's external relations. The ESS stated: 'The European Council [...] established principles and set clear objectives for

advancing the EU's security interests based on our core values.' (Council of the European Union; 2003; 11) and that 'Spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order' is the proper mean for a secure EU because it will help in creating 'a world of well-governed democratic states' (2003; 38). Common values are listed as central in partnerships with other countries: 'Our partnership should be based on respect for common values, notably human rights, democracy, and rule of law, and market economic principles as well as on common interests and objectives'. (2003; 24)

Has the European Union become an actor on the global scene, or still, 'it is not likely to become one'? From this question, another consequent one might arise and it concerns how can one be defined as an actor? What are the fundamental characteristics to be perceived as an actor and to give an entity actorness? Many scholars have tried different approaches to try answer this question. One of the first theories to provide elements necessary to be considered actors was done by Gunnar Sjöstedt in his *The External Role of the European Community* (1977). He wrote that, in order to perform 'actor capability', three fundamental conditions need to be fulfilled: the ability to articulate interests and mobilise resources towards common goals; capabilities for decision-making especially under urgent conditions; a network of implementation agents to carry forth the will of the entity. Sjöstedt also argued that when an actor possessed actor capability, this would be considered a unit in international system. The unit had to meet some conditions, namely 'it is discernible from its external environment – it has a minimal degree of separateness – and it has a minimal degree of internal cohesion'. When those conditions were fulfilled, then 'the unit has autonomy, which is...a necessary condition for the unit to be able to attain an actor capability'³⁶. From a legal point of view, the history of international relations have for long recognised only state systems as actors, due to the fact that states were able to make treaties, join international organisations and be held accountable by other states. This are duties and obligations that gave legal actorness, were just sovereign states where subject to International Law. However, this changed in 1948 with the recognition of the legal status of the United Nations by the International Court of Justice (ICJ). The UN were entitled to present a claim for the murder of Count Folke Bernadotte, a mediator in Palestine. This recognition did not put IOs and states on the same levels: international organisations were recognised as having the capacity to exercise the functions given to them in their founding treaties and charters, but not the competencies that were still attributed to national states. According

³⁶ Sjöstedt; 1997; 15 quoted in Rhinard, M.; Sjöstedt, G.; (2019); 'The EU as a global actor: A new conceptualisation four decades after "actorness"'; The Swedish Insitute of International Affairs.

to this, the then European Community had legal personality in certain competence areas established by the treaties, due to its intergovernmental nature. From the behavioural point of view, actorness is being able to exhibit autonomy from external environment and internal constituencies (the EU Member States).

A definition of an actor might then be ‘an entity that is capable of formulating purposes and making decisions’ (Bretherton and Vogler; 2006; 17). In this sense, the European Union demonstrated autonomy, as sometimes the decisions undertaken by the European Commission differ from the interests of certain of its internal constituencies. There is difference between being legally recognised as an actor and being able to exercise actorness. The EU exercised actorness as it started to be accepted into agreements as representative of its Member States. As a matter of fact, European Commission duties include representing the EU (and its Member States) internationally, by speaking on behalf of it in international bodies – especially when it comes to trade policy and humanitarian aid – and by negotiate international agreements for the European Union.

Scholars have found variables useful in determining the degree of actorness of the EU, namely internal coherence, capability and consistency. The meaning of coherence is the presence of a set of shared values and goals between EU institutions, implying a strong commitment to reach a common goal. For Thomas (2010) coherence is the most important element in actorness, as ‘the range of preferences amongst actors will be a major determinant of the Union’s political cohesion. The more that EU member states and supranational institutions agree on what the EU’s policy should be, the more cohesive the Union will be and vice-versa’³⁷.

Similarly, capability has been defined the core element for an organisation that desires to be an important actor in the international arena, as it necessary to posses tools in order to implement policies and decisions. If an actor has the legitimacy necessary to initiate a policy but not the means to move on in the implementation, it cannot be described as possessing an effective actorness.

The last element is consistency, meaning that an actor in order to be successful must carry out and implement agreed upon policies in a consistent way.

The following table presents traditional measures of the European Union’s internal actor characteristics.

³⁷ Thomas, D.; (2010); ‘Still punching below its weight? Actorness and effectiveness in EU foreign policy’; p. 7 quoted in Rhinard, M.; Sjöstedt, G.; (2019).

Table 8: Traditional measures of EU internal actor characteristics

Characteristic	Typical measure
Coherence	Value coherence, preference coherence, procedural coherence, policy coherence
Capabilities	Instruments, mechanisms, deployable resources
Consistency	Commitment to agreed position; fealty to implementation
Autonomy, Recognition, Opportunity	International perceptions; <i>de jure, de facto</i> authority of the EU; parallelism; political circumstances

Taken from: Rhinard, M.; Sjöstedt, G.; (2019); ‘The EU as a global actor: A new conceptualisation four decades after “actorness”’; The Swedish Institute of International Affairs, page 8

Does the European Union possess actorness? Even though it is not a full-fledged state, it certainly is an efficient actor in the international arena. It meets the requirement presented by Sjöstedt, it is able to take decisions, act autonomously and it supposedly act on the basis of common goals and values as enshrined in its founding treaties. However, it still lacks some elements – as for example an all-encompassing foreign policy – and it still struggle with consistency and coherence. Furthermore, its complex structure and procedures tend to limit its intervention and decision capacity. When it comes to capability, the EU is increasing the tools at its disposals and the scope of its agencies.

2.3 Examples of Normative Power Europe

Now I am going to provide some examples that try to give an answer whether the European Union is a normative power or not. The first example was provided by Manners in his book and it is about the international European attempt to abolish the death penalty.

Even if the right of everybody to live was present in the Universal declaration of human rights of 1948 and in the European convention for the protection of human rights and fundamental

freedom (ECHR), still just six EC member states had effectively abolished the death penalty. Some important institutional actors advocating for the abolition of the death penalty were the Council of Europe (CoE) – 25 members out of 43 had not abolished it – and the United Nations with its 1989 second optional protocol (OPT2) to the International covenant on civil and political rights (CCPR). Moreover, in 1983 the CoE signed protocol no.6 attached to the ECHR regarding the abolition of the death penalty. According to Manners, the three factors that pushed the European Union in working towards achieving such goal. The first was that through the work of the CoE the idea of the abolition of the death penalty was an important one in Europe, still not all the Member States had abolished it nor ratified protocol no. 6; the second one was that the fall of the Iron Curtain and the end of the Cold War, which ignited a rethinking process inside Europe about the concept and the meaning of being democratic and liberal European states. As a result of that, the principles of the ECHR were reinforced as prerequisites needed to become members of the western institutions such as the CoE, the EU and NATO. The third factor, according to Manner, was the internal confidence crisis of the EU in the period between 1992-1997. In order to get over this, a stronger attachment to the protection and respect of human rights and the ECHR was decided and the Amsterdam Treaty of 1997 recalled the signing and the respect of protocol no.6 about the abolition of the death penalty, the fact that it was no longer applied in any of the Member States and that most of them had effectively abolished it. 1997 could therefore be considered a breakout year for the EU in its independent pursuit of the abolition of the death penalty. This was also due to the role played by the European Parliament, that adopted a resolution on the abolition of the death penalty for European States and called them to ratify the OPT2. Moreover, the EP called for the EU to table a resolution at the United Nations General Assembly about a universal moratorium on the death penalty. 1997 was indeed a breakout year, as the EU enshrined the abolition of the capital sentence in its treaty and was pursuing an independent path towards the global abolition of it. The following year 1998 was also the 50th anniversary of the Universal declaration of human rights and the EU decided to dedicate that year to human rights. In doing so, the Council of Ministers issued some guidelines for EU policy towards third countries on the death penalty. The aim of this document was to ‘set out the objectives and means of intervention in third countries’ (Manners; 2002; 247) and it resulted in initiatives from the presidency, involvement in cases where the death penalty was imposed and reports. As it can be seen, those actions fall in the realm of informational diffusion described in the previous pages. Also the issuing of *démarches* (representation of an official position or a view from one government to another) from the Austrian presidency to the American government in 1998 falls into this realm, as well as direct addresses from the EP to the US Congress. Moreover, the Council started presenting an annual report on human rights within the EU and about what actions the EU

was taking. After the first Austrian declaration, other countries followed suit and the general EU policy about the abolition of the death penalty became more overt by using declaratory measures and clearly directed to countries due to the presence of clear references in its documents. By engaging directly with those countries that performed a large number of capital sentences (i.e. China and the United States of America) the EU used informational diffusion – as said before – as well as overt means of diffusion, through the work of the EU Delegations. Moreover, the EU raised the issue during bilateral and multilateral meetings with ‘over 20 countries’ (2002; 248) as well as in the UN, issuing a presidency memorandum and through various speeches. Obviously, when it comes to the so called ‘super-executioners’, the work of the European Union is not going to make those governments change their position about the death penalty, but it was certainly useful to raise awareness on the matter by nationals of those countries. Nevertheless, Manners identifies some cases in which the EU was successful in its pursuit of the abolition of the capital sentence. According to him, the EU played a crucial role in the abolition of the death penalty in Cyprus, Poland. Those countries were members of the CoE and candidates EU Member States. Manners says that the abolition came from the procedural diffusion of the EU pre-accessions negotiations, rather than from the membership of the CoE, since Cyprus joined it in 1961 and Poland in 1991. A different case he presents concerns Ukraine and Albania, as those countries were member of the CoE but were not EU candidate countries. Even though the countries were CoE members, they were still performing capital sentences, with Ukraine being second only to China in this unfortunate ranking in 1996; Albania committed to the abolition of the death penalty in 1995 (joining of the CoE) but eventually did not. After the 1998 EU guidelines and the 1999 EU Common Strategy on Ukraine, Kyiv finally abolished the death penalty. Similarly, Albania abolished it in 2000 after EU pressure in the realm of the stability pact for the south eastern Europe of 1999, together with the threat of removing EU support for Albanian legal reforms. In this last case, the abolition of the death penalty was achieved through transference, and through what Manners defined ‘carrot and stickism’ and through the Ukrainian willingness to be accepted into the European sphere. He then presents the cases of Azerbaijan and Turkmenistan, countries that were not CoE nor EU members. Even if it is not possible to prove a direct responsibility of the EU in the abolition of the death penalty in those countries, Manners claims that it was passed by ‘contagion, informational and transference means through the technical assistance for CIS (Tacis) programme contact and participation in the partnership and co-operation agreements (PCAs)’ (2002; 250). Finally, he talks about the cases of Turkey and Russia, countries which have always been thorny in regards of human rights. First of all, it is possible to find an example of overt norm diffusion, through a joint CoE-EU public awareness campaign with the aim to provide information for the general public,

legal experts and parliamentarians of various countries, including Turkey and Russia. For the former then, the norm was diffused through the EU accession process – a process of procedural norm diffusion – whereas for the latter it was diffused through a common strategy – falling in the realm of informational diffusion. As a result of accession negotiation, Turkey underwent a constitutional reform in October 2001 to adopt the *acquis communautaire* which included the abolition of the death penalty for civil offences, ‘clearly demonstrat[ing] the normative power of the EU’, according to Manners (2002; 250). Russia, on the other hand, continued to perform capital sentences until 1999, but in 2001 President Putin made a statement in favour of the abolition of them.

Manners identifies in the civil society the driving force that pushed the European Union and national governments to pursue a global abolition of the death penalty, even if it this was not a source of national or domestic benefit. On the other hand, he says that countries and the EU itself have advocated for it even though the majority of EU citizens were not aware of it. If this is the case, then the EU and national countries were not doing this in order to gain citizens support, but rather to spread this common European values outside of Europe.

One the regions in which the European Union has been more involved in the last 30 years, due to historical linkages and its geographical proximity, is the Balkans. In particular, the EU has engaged itself in Bosnia and Herzegovina after the tremendous war that occurred in the years 1992-1995, after the signing of the Dayton Peace Agreement between the Presidents of the Republic of Serbia, Croatia and of the newborn Bosnia and Herzegovina.

The example of the EU intervention in the country is used by Whitman to try explaining the validity – or not – of a Normative Power Europe. Here, the EU has deployed its ‘traditional economic and diplomatic instruments (including the membership carrot)’, as well as ‘police and military missions [...] aiming to promote stability, democracy and human rights’ (Whitman; 2011; 83). The author argues that, rather than the deployment of military missions, other factors have undermined the credibility of the European Union has a normative agent in the country: the failure to support ‘local ownership’ of reforms, divisive practising of ‘othering’ and securitization, techniques of ‘governmentality’ and finally, to a lesser extent, consistency problems which are classical of the EU’s external policies such as double standards and coordination problems within EU agencies and policies. Furthermore, Whitman’s analysis is going to concentrate on the processes, rather than the ‘what it is’ approach typical of Manners’. For Whitman, “what the EU does” is important, because through its actions in Bosnia and Herzegovina the EU is promoting not

only universal norms, but also ‘practices of domination and exclusion’ (2011; 85) as well as discursive practices that accentuate the differences between ‘us’ and ‘others’.

The European engagement in the region began through economic assistance with conditionality such as respect for human rights and rule of law attached to it. This proved to be not enough when the conflict in Kosovo started in the late 1990s’ the EU understood that its actions were too limited in cases as such, happening in its own neighbourhood and in a region in which the EU was investing much. According to Javier Solana, the then EU High Representative for Common Foreign and Security Policy, ‘The Balkans has shown that the European Union can no longer remain a force for peace simply through example. It has also to be forthright in defending the basic values of democracy, human rights and the rule of law on which it is founded’³⁸. Eventually, the EU launched its first police operation in 2003, a EU Special Representative Office and EUFOR Althea, a military operation, in 2004. Since 2003, the country has been a potential candidate country and it is part of the agenda for future enlargement. Another element of a possible future membership is the signing of a Stabilisation and Association Agreement (SAA) in 2008. These kind of agreements are signed between the EU and countries that have expressed a wish to join the Union. Those agreements include a commitment to undergo reforms in various fields such as political, economical, trade and human rights. Therefore, the EU engagement in the country was double-folded: military presence in the country as well as promotion of the Copenhagen criteria through the tool of future accession. The EU promotes these norms in its neighbourhood not only because it is an altruist actor, not only because “it is in its nature”, but especially to secure its external perimeter and to further securitize the territory of the Union. Security, stability and norms are closely intertwined. Whitman argues that European policies attracted Bosnian policy-making because of the incentive of the EU accession and the economic assistance that comes within the respect of those. On the other hand, a degree of ‘ideological’ attraction cannot be denied, as per a declaration of a Bosnian official that he reports, ‘reconciliation in Bosnia follows the same logic as French-German reconciliation, which lies at the inception of the EU. Integration [...] would be *the only way* to solve the security problem’ (2011; 90; emphasis added). Phrasing European integration as “the only way” is a common trait in political discourses in the Balkans and I am going to discuss about it later. What instruments did the EU use in Bosnia and Herzegovina? Political declaration by Brussels (informational diffusion), Bilateral relations (procedural diffusion), respect of the conditionality to obtain financial assistance (transference) and the establishment of EU offices (overt means); these are all tools that fall in the realms theorised by Manners and discussed in the previous pages. Even

³⁸ Solana, J.; (2000); ‘The Development of the CFSP and the Role of the High Representative’, Speech at the Institute of European Affairs, Dublin, 30 March quoted in Whitman, R.; (2011); (ed.), ‘Normative Power Europe: Empirical and Theoretical Perspectives’; p. 86.

if there is a certain degree of norm attractiveness, Whitman argues that the reception from the Bosnian side was more due to a coercion factor rather than an attraction one. However, reception of these norms is still low, even with the “carrot” of the European membership.

Talking about the problems of the European engagement in Bosnia, he says that the EU actions fall into double standards, practicing of domination and ‘othering’, discrimination and do not take into account the interests of the local population. When talking about double standards, he points out the example of the police section reform requested by the EU. The double standard lies in the fact that Bosnian police – as it is – has the same organisation of current EU countries, creating therefore a different standard for Member States and candidate countries. Through the diffusion of EU norms and criteria, the European Union wants to “civilise” the country, which is perceived as dangerous and in need of supervision. This in turn could cause a sense of domination perceived by the population as well as an intensification of the distinction between ‘us’ and ‘them’, between the civilised and the dangerous people who need to be controlled and whose liberty of movement need to be restrained by visas. Moreover the EU tends to impose what it considers to be “normal”, without taking into account the particularities of the country and therefore risk creating a future society which is not able to construct a just environment for itself. The perception of Bosnia and Herzegovina as a dangerous country affects the policies taken by the EU there, as per the words of a Bosnian officials reported in Whitman: ‘The EU sees this region mostly as a political and security issue: the bodies that are today present in Bosnia are mostly dealing with security issues [...] They have to change their focus [...] The disparity in economic development and the lack of real convergence between Bosnia and the rest of Europe, that is the real threat to stability in the region’ (2011; 95). This in turn could lead to the EU not taking into consideration the interests and needs of the local population and government, but rather its own. The EU claims not to impose any reforms, but according to the author this is not the case in Bosnia and Herzegovina, where the EU through its offices has imposed ‘institutional reforms [...] bypassing Bosnia’s democratic institutions’ (2011; 97).

Going back to the phrasing of European integration as ‘the only way’³⁹, it might be useful to point out that this is a recurrent term used, especially in the area of the Western Balkans. From September until December 2019 I was an intern at the Italian Embassy to the Republic of North Macedonia in Skopje and I was therefore able to attend conferences and parliamentary sessions, listening to the speeches delivered by prominent figures of the government. The Republic of North Macedonia has signed its SAA in 2001 – becoming the first Balkan country to sign it – and has expressed its intention to join the European Union in 2004. Skopje has been a EU candidate country

³⁹ Page 56.

since 2005 and it is part of the future enlargement agenda of the European Union. However, due to some historical controversies with Greece over the name of the country, Skopje has never been able to start the negotiation with the EU. Finally, in 2018 the dispute with Greece was solved, as the country changed its name from Republic of Macedonia to Republic of North Macedonia, with Athens withdrawing its opposition to the start of negotiations. Nevertheless, accession negotiations – which were supposed to start after the General Affairs Council (GAC) of 18th October 2019 – have not started yet, due to the opposition of France, the Netherlands and Denmark.

During the course of the three months that I spent there, Prime Minister Zoran Zaev, the President of Republic Stevo Pendarovski and Foreign Affairs Minister Nikola Dimitrov have always talked about the importance of the European values for the growth and stability of their country, and that a future EU membership is the only foreseeable option for Skopje. In particular, I'd like to point out just a few cases as examples.

In the weeks following the non decision by the GAC, a European Affairs Committee session was held. In that instance, FM Dimitrov reiterated the importance of the European values and criteria for a positive development of the Macedonian society and its citizens, and that despite the delusion 'the European path is the only way'⁴⁰. Those words were echoed by PM Zaev in almost every public speech or declaration, before and after the non decision of the Council in October. For example, he stated the importance of the rule of law in the country and fight of corruption, with the full support of the citizens, in the Western Balkans Summit 'Reinforcing the Momentum for European Integration' held the 1st of October. In that occasion, he answered a question by saying that its country was open to deal financially with Russia or China, but that there were no 'credible alternatives' for Skopje than the European Integration. On the 3rd of October he met with the OSCE High Commissioner on National Minorities Lamberto Zannier for the presentation of the National strategy 'One Society for Interculturalism' about the integration of all the ethnic communities in the society. There, he stated the importance of EU assistance to integrate the different ethnic components of the Macedonian society. The full abidance to the European values and standards was further reiterated during the various visits by European Foreign Ministers, the then-President of the European Council Donald Tusk and the President of the European Parliament David Sassoli, to whom the government of Skopje underlined its continue commitment to European values and standards, notwithstanding its delusion. Despite the delusion, the European prospect was and still is strong and welcomed by the citizens and the government, which promptly rejected the Russian

⁴⁰ Speech delivered by Nikola Dimitrov during a European Affairs Committee; Parliament of the Republic of North Macedonia; 29 October 2019.

invitation to join the Eurasian Union which was presented by the Russian Permanent Representative to the European Union on the 30th October. Also the main opposition party said that the European Union is the only possible way for the country and there is no alternative, this is significant because the opposition party is nationalistic, therefore traditionally less inclined towards the EU. Another sign that might point to the successful spreading of the European values in the country is the result of a poll conducted by the Government and whose results were announced in November in the course of a meeting at the European Delegation which states that Macedonian citizens perceive a just rule of law and justice reform of greater importance than a better economical situation in the country. This is significant, given that the average salary is around €500⁴¹.

The countries of the Western Balkans continue therefore in their quest for a full-fledged EU membership, despite the many years the process is taking (North Macedonia has been an accession candidate country for 14 years now and Serbia for 10 years and counting), the domestic difficulties and resurgence of nationalist movements and the influence of other non European countries in the area (namely Russia, China and to a lesser extent Turkey).

Through these examples I have tried to see to what extent a Normative Power Europe is successful. For Manners, the EU has proved its normative power through the pursuit of a global abolition of the death penalty which has given some results; whereas for Whitman the practices used by the EU in Bosnia tend to undermine its normative power. Whitman has come to this conclusion by analysing ‘what the EU does’ instead of just taking into consideration ‘what the EU is’. By looking at the processes, he came to the conclusion that a Normative Power Europe carries more coercive rather than attractive power and it tends to generate practices of domination, othering and double standards. With the example of North Macedonia, I wanted to show the strong commitment taken by the government to the European values and criteria and reiterate the concept of the EU has ‘the only way’ for Western Balkans countries. Whilst Whitman argues that this is due to a coercive factor, I think that the example of Skopje is able to show that the EU still has an attraction power, with the unanimity of the Macedonian political scene that agree to see the EU as the future destiny of the country, the prompt rejection of the Russian invitation to join the Eurasian Union (unlike other countries)⁴² and the poll’s result that show the citizens’ strong interest in a justice and rule of law reform, which is one of the main aim of EU’s activities in the country and in the whole region. Nonetheless, the economic benefits of joining the European Union certainly still play an important factor in Skopje’s pursuit of a full membership.

⁴¹ Data taken from: http://www.stat.gov.mk/PrikaziSoopstenie_en.aspx?rbtxt=40

⁴² Armenia, after the rejection of the European Union Association Agreement, promptly accessed the Eurasian Union.

After having seen through some examples the actions that the European Union is undergoing it is time to see how are the European Union actions and values perceived by the European citizens. Through the Eurobarometer, it is possible to see that just 14% thinks that the EU contributes to democracy in their country and just 1% is generally in favour of the EU. On the other hand, 34% and 20% think that EU membership improves cooperation between their country and other countries inside and outside the EU respectively. Actions undertaken by the European Union to strengthen European democracies and the rule of law do not seem to matter to European citizens, which nevertheless acknowledge the attraction force of the Union in improving and offering better opportunities for cooperation between countries.

Table 9: Main reasons for benefit of EU Membership (Max. 3 answers)

	EU28		
	EB90.1 September 2018	EB91.5 June 2019	Diff.
The EU contributes to democracy in (OUR COUNTRY)	13%	14%	+1
The EU contributes to maintaining peace and strengthening security	30%	34%	+4
The EU contributes to economic growth in (OUR COUNTRY)	38%	31%	-7
Membership of the EU improves co-operation between (OUR COUNTRY) and the other countries of the EU	31%	34%	+3
Membership of the EU improves co-operation between (OUR COUNTRY) and countries outside the EU	19%	20%	+1
(NATIONALITY) people have an important influence in decisions made at EU level	12%	11%	-1
The EU gives (NATIONALITY) people a stronger say in the world	22%	22%	=
The EU improves (NATIONALITY) people's standard of living	22%	19%	-3
The EU helps (OUR COUNTRY) in the fight against terrorism	15%	15%	=
The EU helps (OUR COUNTRY) to tackle climate change	11%	14%	+3
The EU brings (NATIONALITY) people new work opportunities	31%	31%	=
You are generally in favour of the EU (SPONTANEOUS)	0%	1%	+1
Other (SPONTANEOUS)	1%	1%	=
DK	2%	2%	=

Table taken from: Socio-demographic trends in national public opinion - Edition 6; European Parliament - Public Opinion Monitoring Unit; 2019; retrieved from: <https://www.europarl.europa.eu/at-your-service/it/beheard/eurobarometer/socio-demographic-trends-edition-6>

2.4 Conclusion

It is difficult to determine precisely which type of power the European Union is. There has been much debate over this issue. Some scholars (above all Duchêne) claimed that Europe was a civilian power, that is an actor which is able to provide stability through civilian means such as its economical and political force. For him, a military Europe was not only unlikely, but also undesirable. On the other hand, Hedley Bull claimed that Europe needed to step up its military

game, in order to be considered an actor on the international sphere and regain its prestige, rather than being subject to the American protection. Those discussions were the starting point for Manners and his concept of Normative Power Europe, that is the promotion of European norms and values to the rest of the world, the ability to ‘determine what is normal’, as he put it.

As it is often the case, the exact truth is not possible to determine and might lie somewhere in the middle, but ultimately the concept of a Normative Power Europe prevailed. The abovementioned European norms and values have been enshrined in the founding treaties of the Union are universal principles of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. Those values and norms found their way in the founding treaties of the European Union. The EU is prone to spread these norms – also at the cost of facing critics and big economic expenditure – because of its particular nature and because of the context in which it was born, according to Manners, and because those norms should be the guidelines in dealing with third-parties.

However, the concept of Normative Power Europe faces many critics. As it is been argued in the course of this chapter with examples from literature, when the EU exercises its normative power, it tends to fall in practices of domination, othering, double standards and lack of consideration for the third-party interests, by imposing reforms. The EU would not therefore promote universal principles, but rather it would merely try to protect its interest. Third-countries would still undergo this reforms, as the benefits of joining or associating themselves with the EU would surpass the costs of said reforms and practices. Moreover, it has been argued that the only true effective tool at EU disposal to be a credible normative power is the enlargement, which has momentarily been stopped. In order not to lose its credibility, the EU launched the European Neighbourhood Policy (ENP), which has proven to be not as effective as an accession prospect, as the ENP does not prefigure a future accession into the European Union.

Whilst both sides present valid points, the true nature of the EU normative power might lie somewhere in the middle. With the example of North Macedonia, I have tried to argue that, notwithstanding the economic impact of a future EU membership would entail, European sponsored values and norms still play an important role in the country’s willingness to pursue accession in the Union, despite the long wait and the recent delusion.

With the Belarus example in the discussion of the European Neighbourhood Policy, an interesting starting point of discussion rose. As it is easy to see just by looking at the countries

taking part in the ENP, the EU tends to deal with authoritarian countries; nevertheless it still has relations with them, because those countries are useful in pursuing the Union's interests. This has not always been the case, but the situation started changing with the migration crisis, when the European Union started preferring internal stability and external control of its borders over democratization process in its neighbourhood.

This tendency to overlook democratisation and putting the EU founding principles at the drive of its foreign policy are going to be matter of discussion of the next chapter.

The application of the concept of power in the migration crisis

Borders are socially constructed rules that condition the flow of people, goods, capital and information between States.

In the course of this chapter I am going to try analyse what type of power the European Union exercised in the aftermath and during the migration crisis. Did the European Union continue to act as a normative power, with a mission civilisatrice to spread universal norms and values? Did it act accordingly to the principles and the law enshrined in its founding treaties? Or did it, to defend itself from excessive migration flows, adopted new policies that might contradict the image of the EU we were used to know?

I am going to begin by analysing the various transformation of the European borders and what that has meant in terms of identity development and policy changes. Then, by analysing the different policies concerning the protection of the European borders from the menace posed by migration, I am going to provide examples of how the concept of power in the European Union shifted from a mere normative one, to a EU which is able and willing to project military power outside its territories and by doing so it contravenes those principles and norms that have guided – and are still supposed to guide – its foreign policy for decades. As a matter of fact, universal principles such as the respect of human rights and the rights of migrant are – at least on paper – still respected and play an important role in defining the scope of policies that deal with migration. However, oftentimes this respect has proven to be granted just on paper, as actions differ from words.

Finally, I am going to provide more detailed information about the new European Border Surveillance System, commonly known as EUROSUR and which is strictly connected to European Border and Coast Guard Agency, which is the emblem of the abovementioned shift. This part is going to provide insights about the increasing capabilities that have been awarded to it, economic expenditure, building of a military-alike arsenal and the systematic breaches of European and international laws to whom the agency should abide and which is going to be part of the final chapter.

In order to try and give a complete analysis of a complex scenario, I have consulted a wide array of literature, reports from think tanks and NGOs as well as official documentation and publication of the European Union.

3.1 Transformation of the European borders

European borders have undergone a wide and complex transformation, starting from the 1950s' and especially in the last decades of the XX century (1980's – 1990's). These transformation were due to many factors, with the implementation of the *Schengen* Area for the free movements of goods, services and people – as to fulfil one of the main founding value and principle of the European project – being one of the main propellant to fuel the changes that brought to current shaping of the European borders. It was not the first time that the free movements of persons was a matter of discussion, as it could be found already in the Treaty of Rome (1957), which sought to eliminate 'as between Member States, of obstacles to freedom of movement for persons, services and capitals' (Treaty of Rome; Part I, Principles; Art. 3(c)) in order to carry out the purposes set out in article 2, which stated:

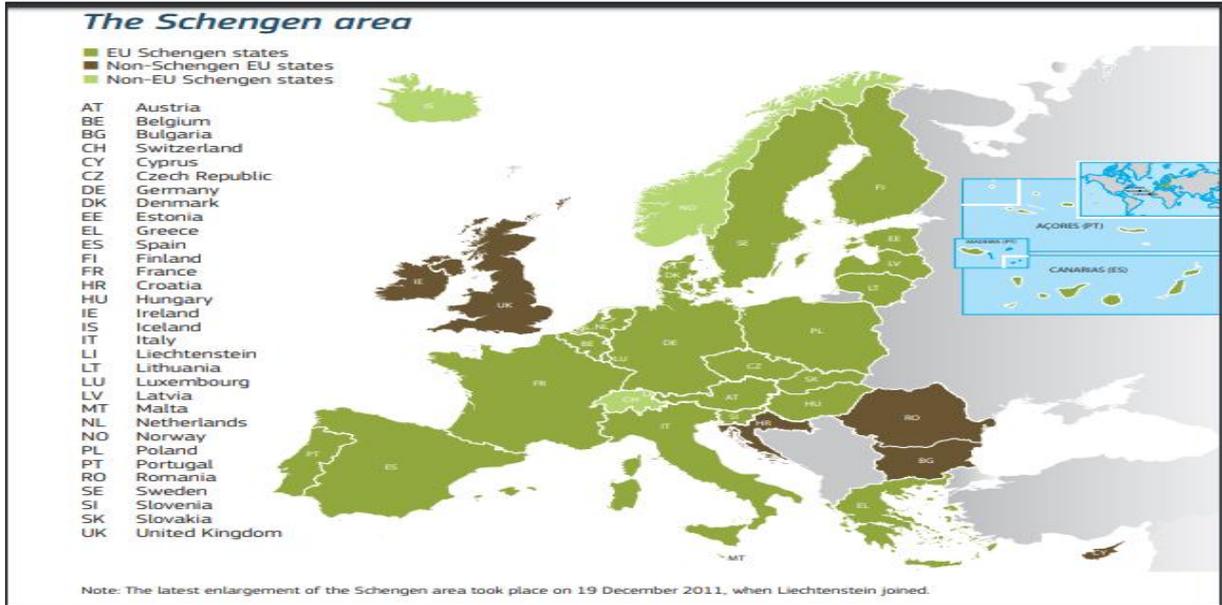
'The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it'.

Whilst this was true – as citizens from those States could travel freely just showing their passports or national identity cards – however controls were still being performed at the borders.

The Schengen Agreement was signed the 14th of June 1985 by five Member States of the then European Economic Community: Belgium, France, Luxembourg, the Netherlands and West Germany. The signing brought to the gradual abolition of common border controls. In 1990, the Schengen Convention supplemented the Agreement and actually led to the creation of the Schengen Area, where border checks were eliminated and a common visa policy. At the moment of the creation, just some Member States implemented the Agreement and the Convention, but by 1997 all Member States – with the sole exception of Ireland and the United Kingdom – signed the Agreement. Finally, it was incorporated into European law

during the Amsterdam Convention, as it was originally signed independently from the European Union, and entered into force the 1st of May 1999. Currently, the Schengen Area comprises 22 EU Member States and the 4 European Free Trade Association (EFTA) Member States, which are not EU MS: Switzerland, Lichtenstein, Norway and Iceland. The four EU MS which are not yet in the Schengen Area are Bulgaria, Croatia, Cyprus and Romania, but they are legally obliged to join the area in the future. As of 23rd of October 2019, Croatia obtained the green light from the Commission to join the Area, which invited the European Council to integrate the country into the area. Potentially speaking, the Schengen Area is bound to become even bigger, when those countries are going to be fully integrated into it. The territories of the Holy See, San Marino and the Principauté de Monaco – whose territories are within EU Member States – are *de facto* part of the Schengen Area, even though they are not members of the European Union. Two EU Member States, Ireland and the United Kingdom (at the moment I am writing Brexit has not been implemented yet) have maintained the right of opt-out, but with the possibility to opt-in.

Table 10: The Schengen Area



source:https://ec.europa.eu/homeaffairs/sites/homeaffairs/files/elibrary/docs/schengen_brochure/schengen_brochure_dr3111126_en.pdf

To quote some numbers about the Schengen Area and why the creation of this space brought a change in the nature of the European Borders, the Area comprises a population of 419,392,429 people and an area of 4,312,099 square kilometres (European Commission,

2018)⁴³. It comprises 42,673 km of external sea borders and 7,721 km of land borders (United Nations, 2013, 5)⁴⁴. The results of such a wide area without controls over the movements of people, services and goods have economic relevance: 1.7 million people commute to work across a European border each day; each year, there are 1.3 billion crossings of Schengen borders in total; 57 million crossings are due to transport of goods by road, with a value of €2.8 trillion each year (European Parliament, 2016)⁴⁵.

The implementation of the Schengen Area have had an impact – both positive and negative ones – also on third countries, which have shared borders with the European Union. With the expansion of its border, consequently the EU had new neighbours to deal with. In order to maintain fruitful relations with the newly acquired neighbours, in the course of the year the European Union signed agreements with third-countries and established programs to engage them and to tie them to the EU. Also, one of the aim of these kinds of initiative is to maintain order and stability at the EU's external borders. The most famous instrument of this kind is the *European Neighbourhood Policy* (ENP). As already mentioned in the previous chapter, this policy was conceived after the Big Bang Enlargement of 2004 and it covers countries which border – or not – with the Union even though a future accession to the Union is not foreseen. This means that the countries covered by the ENP are not going to become members of the European Union. With this instrument, the Union offers financial assistance to third-countries that meet the conditions set by the EU in the realm of government, society and economic reforms. The European Union is therefore trying to harmonise its values and norms outside its physical borders. Some countries participating in the ENP are among others Morocco, Algeria, Tunisia, Moldova, Ukraine, Georgia and Azerbaijan. The European budget devoted to the ENP is €15.4 billion for the period 2014-2020, accounting for the 24% of the EU's external action expenditure. After the expansion of the EU territory – and the consequent implementation of the Schengen policy in the newly European Member States – some complaints were made, especially from third countries. The nature of these complains lie in the fact that those third-countries had special relations – due to closed economical and cultural ties – with the newly EU Member States and these special relations resulted in preferential trade agreements or visa facilitation (with the latter being important due to the strong presence of ethnic groups living near the borders, especially in the Eastern European

⁴³ European Commission; (2018); The Schengen Area.

⁴⁴ United Nations; (2013); 'Report of the Special Rapporteur on the Human Rights of Migrants'.

⁴⁵ European Parliamentary Research Service; (2016); 'The economic impact of suspending Schengen'.

Countries). However, since the entrance into the European Union, the newly EU Member States had to comply with the *acquis communautaire* and therefore adjust also their external relations in certain fields to the European norms.

Moreover, it has been shown that countries outside of the Schengen area gain some economic benefits from the abolition of internal barriers (Felbermayr G.; Gröschl J.; Steinwachs T., 2017, 18), such as for example Russia and Turkey, whose average trade costs for goods and services have decreased. On the other hand, states in the Schengen Area have strengthened border controls with non-Schengen countries, in order to protect the internal European territory. The implementation of such measure – aimed at the well being of the internal European population – created the necessity to defend the external borders of the newly created European common territory, as the free movements of people was just intended for European citizens, and not for people entering the area without the rights to do so. The erosion of internal borders brought to many changes under the symbolic values of the borders itself, as it brought to a stronger distinction between “us” and “them”, from the inside and the outside. Many scholars argue that this distinction is necessary and fundamental when talking about the European identity. Moreover, Jacques Derrida, a French philosopher, in his *The Other Heading* (1992), went on to say that what is being perceived as a threat to the European identity must be actually considered as a part of the given identity, as European identity ‘is constituted by and therefore intrinsically indebted to alterity’ (Vaughan-Williams, 2015, 148). Furthermore, Stuart Mclean adds that the own identity, culture and sense of self is permeated with differences within, given by various influences, such as for example Graeco-Latin, Arab, Jewish and Turkish (Vaughan-Williams, 2015, 148)⁴⁶. Therefore, having emphasised this common identity, what comes from the outside is perceived as a threat to the common identity. What has been conceptualised as “other” provides a useful distinction between policies, projects, initiatives and activities that can be considered acceptable and on the other hand those that cannot be consider acceptable. It has always been like this in the history of the human kind, where outsider populations were called barbaric, as they were thought to be primitive and non civilised, just because they did not belong to that certain population. The very idea of border itself has a double nature, one of inclusion and on the contrary one of exclusion (as the idea of migrant, which is at the same time considered as a threat but also as a human being in need of assistance). As already mentioned, from the

⁴⁶ McLean, Stuart; (2014); ‘Other Shores: Insularity, Materiality and the Making (and Unmaking) of “Europe”’; in *Europe after Derrida: Crisis and Potentiality*, edited by Agnes Czajka and Bora Isyar; pp. 61-79; quoted in Vaughan-Williams (2015,148).

outside the European Union is often perceived as a “Fortress Europe”, whose borders are inaccessible for many people who do not meet the required criteria to enter it regularly. What is the meaning of “Fortress Europe”, and why has this name been chosen? Originally, it was used to refer to the continental European areas occupied by Nazi Germany during the Second World War. Nowadays, it is used by pro migration NGOs and activists to describe the state of immigration into the European Union, especially with regards to fortification of certain external borders of the EU, such in the Spanish enclaves of Ceuta and Melilla (the first two “walls” to be built in the 1990s’) and many others, or more broadly to the system of border patrols and detention centres which is currently in place in the European Union, especially through the work of the EU Agency Frontex. As it is easy to understand, the strong symbolic linkage between the original use of the term and the current used by pro migration society is deliberately wanted to compare the two historical periods. On the other hand, some right wing conservatives political parties – especially in Austria and Germany⁴⁷ – have used the term “Fortress Europe” with a positive acceptance. Conversely, police officers and security experts like to use another term to describe the European external border: “sieve Europe”, as it is able to highlight the level of vulnerability of the European Union towards transnational threat, due to the porous and open nature of them. Other scholars like to describe the EU as a *maze*, as it is ‘a construction that manages to keep some out, some in and most confused about their whereabouts’ (Christiansen, T. and Jorgensen, K E., 2000, 74). Finally, other scholars such as Houtum, Pijpers and Zaiotti have started defining the European Union as a *gated community*, as it allows some third-country nationals to enter, whilst at the same time there are in place some strict admission policies to avoid the entrance of “unwanted” TCNs. According to them, this could be found in policies such as the European Neighbourhood Policy (ENP) and the Global Approach to Migration and Mobility (GAMM), whose aim is the cooperation and friendship with neighbours third countries and at the same time the strengthening of border security.

This brought to a securitisation of the European borders, as properly defined by Nick Vaughan-Williams in his *Europe’s Border Crisis: Biopolitical Security and Beyond* – terminology that I am going to use from now on in the writing of this thesis – through different methods, tools and securitising discourse from the European Institutions. Alongside

⁴⁷ <https://www.dw.com/en/germanys-afd-calls-for-a-fortress-europe-at-party-conference/a-44474739>

the securitisation of the European borders, the process of migration has been securitised as well. This is going to be the subject of the next subparagraph.

3.2 Securitisation of EU borders and migration

‘Securitization is a rule-governed practice, the success of which does not necessarily depend on the existence of a real threat, but on the discursive ability to effectively endow a development with such a specific complexion’

Balzacq, Thierry (2005); "The Three Faces of Securitization: Political Agency, Audience and Context"

What is the definition of the term securitisation? Can it be useful for the purpose of this research? The term was first coined by the Danish professor Ole Wæver in 1933 and started becoming relevant through the work of the *Copenhagen School* around the mid-1980s'. The idea behind the concept is that the world is socially constructed, therefore it is not possible to assess whether a threat is credible or not credible. So the aim of security scholars, according to the Copenhagen School, is to analyse the processes through which the issue becomes perceived as a security threat. Analysing Balzacq's quote with whom I opened this subparagraph, it can be noted that, in order to undergo this process there must be a threat – or a supposed one – that has to be turned into a credible menace, through discursive ability, or as it been called, through securitisation speech. The elements that compose this process are the *referent object* which is subjected to the threat (the Nation state, a common identity etc.); its speech act must be accepted and therefore the threat perceived as real by an *audience* (governments, public opinion, supranational institutions). Finally, if the supposed threat had successfully undergone this process and is now perceived as a credible, real threat, it is possible to apply emergency and extraordinary measure, justified by the credibility of the threat. It is therefore possible to utilise methods that would have not normally been allowed in a normal political context. For the scholars of the Copenhagen School, the only way to *securitise* an issue is through speech act. However, it is possible to do so even through the implementation of processes and extraordinary measures, not always followed by speeches that make the issue perceived as a real threat, and that is what has been done by the various European Institutions, which often depict the implementation of securitising tools under the framework of humanitarian issues, whereas the practice shows differently.

How does an issue become securitised without going through the discursive phase theorised by the Copenhagen School? Scholars tend to agree that there needs to be two main

types of practices that turn an issue into a threat that needs to be assessed. These two *securitising practices* are: the use of tools, strategy and military practices usually deployed when against a foreign country army or a terrorist group and the use of *extraordinary* practices, used when the threat cannot be answered with measures that would be used normally. Conversely from the Copenhagen School thought, which by extraordinary always imply something illegal or a situation of emergency, scholars that prefer to analyse securitisation process through the study of actual practices refer to extraordinary as *out of the ordinary*, in the sense that it implies a procedure which has not been implemented before. As a matter of fact, the migration flows from 2015 have been defined in official EU documents as *unprecedented, record, impressive and frightening* (State of the Union, 2015)⁴⁸ just to name a few. So, being the migration phenomenon an extraordinary one, it calls for extraordinary measures that were never implemented before. By putting the migration issue under the securitisation lens though, it becomes perceived as *an existential threat to the identity, economy, and welfare of the EU* (Vaughan-Williams, 2015, 19). Moreover, according to Vaughan-Williams (he quotes many authors such as Bigo, Guild, Huysmans and Van Munster) this process goes alongside with the strengthening of border security, as this has been identified as the best solution for the irregular migration issue. The securitising of the European borders and of the migration issue are therefore intertwined. It is generally believed that the EU started enhancing its security in the first 2000s' (9/11 attacks and march 2004 terrorist attacks in Madrid) but already in 1989 the TREVI – an intergovernmental forum made of officials from the national ministries of interiors and justice and that established in 1976 with the aim to coordinate policing and counter-terrorism in the EEC – integrated in its competences immigration and asylum matters.

The Schengen Agreement went further into implementing stricter security measures for third nationals, shifting this issue from politics to security. This could be found in art. 6, paragraph 2(a; c); paragraph 3 and paragraph 5, in TITLE III: POLICE AND SECURITY and in the final declarations by the Ministers and State secretaries. In particular, the latter states

the risks in the field of security and illegal immigration [...] underline the need for effective external border controls in accordance with the uniformed principles laid down in Article 6, whose paragraphs 2(a;c), 3 and 5 call for checks to detect and prevent threats to the national security and public policy of the Contracting Parties; thorough check and the use of mobile units to carry out external border

⁴⁸ State of the Union 2015: Time for Honesty, Unity and Solidarity. Briefing by the European Parliamentary Research Service; March 2019; The migration issue

surveillance between crossing points [...] to discourage people from circumventing the checks at crossing points.

This evolution of the policies regarding European borders – which must be considered as strictly intertwined with migration policies – went on with the 1999 Treaty of Amsterdam, which integrated the Schengen Agreement (originally signed outside of the EU framework) into European law and established the *Area of Freedom, Security and Justice*. After that, the infamous events of 9/11, March 2004 in Madrid and July 2005 in London and the Arab Spring uprisings of a decade later. These events created a modern apparatus concerning the European border security, an apparatus which is ready to adjust to the different situations and which is provided with an always growing budget and with modern technologies and equipments. Whilst the new provisions regarding border security are claimed to perform a better distinction between regular citizens and migrants versus irregular migrants, the reality shows that this is not always the case, as often migrants are taken without ascertain their situation, whether they are refugees, economic migrants or threats to the security of the EU. This is because migrants are perceived as both a “life to be saved” and a “threat” at the same time. It is often the case, that this sort of theoretical paradox could be found in the EU policies about border security and migration; for example, the success of the borders is measured by the numbers of irregular migrants which are stopped. Therefore, the paradox lies in the fact that irregular migrants are ultimately the cause for stronger security processes and at the same time the effect that the successful implementation of those processes create. If the processes are successful, a bigger number of irregular migrants is going to be identified, therefore augmenting the need for stronger security at the borders.

According to Vaughan-Williams, the path of European border security – and therefore migration management – could be summed up in three aspects:

1. Neo-liberalisation, technologisation and outsourcing of border controls;
2. External, pre-emptive and increasingly militarised projection of bordering practices outside the territory of the European Union;
3. The emergence of a stronger *humanitarian* border security to go alongside the militarisation of the EU borders.

The processes of securitisation of European borders read together with a securitisation of migration differ from the principles which are described as founding

principles of the European Union, especially the respect of human rights, human dignity, freedom and equality. Moreover, there is a striking paradox that clashes with what the European Union has been preaching in these decades, that is the figure of the migrant being both a threat and a life to be saved. This paradox is further highlighted by the fact that it guides the European policies, where migrants are the cause and the effect of stronger policies.

To sum it up, the closely intertwining between the securitisation of the European borders and securitisation of migration set up a series of policies and actions which strongly go against the normal actions of a normative power. Furthermore, these policies might systematically fall into breaches of European and international law.

3.2.1 Neo-liberalisation, technologisation and outsourcing of border controls

When talking about neo-liberalisation, many scholars refer to it as the huge economical growth of a wide sector of the industry whose task is to provide up-to-date and performance security tools; the shifting of the actual implementation of security processes from States to public and private profit businesses and a growing impact of the importance of enhancing and making the experience of crossing a border safer for those who are deemed regular and trusted travellers.

The current migration crisis has brought to the creation and the spreading of private companies which are able to provide high tech tools to the European institutions in order to perform checks and controls. Some of these companies are for example Safran Morpho, Thales International, Raytheon Systems, Leonardo and Airbus. Moreover, every year conferences are held, where these enterprises present their products to prominent figures of the European institutions as well. One of the most prominent conferences on the topic is the yearly Round Table Symposium on European Border Security organised by the International Centre for Parliamentary Studies. Company profits come from the supplying of tools such as radars, sensor systems and helicopters. A report by the Transnational Institute (TNI), a research and advocacy institute, claims that the global market for border security was estimated at €17.5 billion in 2018 with a 8% annual growth and that EU countries spend €900 million on land walls and fences since the end of the Cold War⁴⁹.

⁴⁹ <https://www.tni.org/en/businessbuildingwalls>

A useful point to explain the neo-liberalisation and the technologisation can be the explanation of some programmes whose birth can be attributed to the greater attention paid to technology, such as for example the EES Program and the RTP Program, among many others. Entry/Exit System (EES) and Registered Traveller Programme (RTP) have been nominated for the first time in the Communication of 13 February 2008 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Preparing the next steps in border management in the European Union. The EES has been established by Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 and should enter into full forces in 2020. RTP has been established in 2013. Those programmes were the foundation behind the “Smart Borders” Package proposed by the Commission in February 2013 and their aim is to ‘improve the management of the external borders of the Schengen Member States, fight against irregular immigration and provide information on over-stayers, as well as facilitate border crossings for pre-vetted frequent third country nationals (TCN) travellers’⁵⁰. These systems allow for the collection and storage of biometric data, which are data related to the physical and physiological, as well as behavioural characteristics of an individual, with the aim to make a unique identification, such as for example unique and distinctive facial features and dactyloscopic data. These data are then accessible to all the designated authorities, as well as the Europol. As openly stated in the Commission proposal 2013/0059 for the establishment of the RTP, the ‘potential offered by new technologies in the of Integrated Border Management - (IBM) has been under active consideration at EU level since 2008’ (European Commission, 2013, 2).

Other examples that serve the purpose of showing the technologisation of European border security are the Visa Information Center (referred to as VIS); Second generation Schengen Information System (SIS II); European Travel Information and Authorisation System (ETIAS); Stolen and Lost Travel Document (STLD) and I-CheckIt. VIS allows Member of the Schengen Areas to exchange visa data, through a central IT system and a communicational infrastructure which link the central system with the national ones. This system allows for the exchange of data in third-countries as well, connecting Member States consulates in territories outside the Union. The system is able to perform biometric matching, such as fingerprints, in order to verify and identify visas holders. The purposes of this tool, as stated in its website, are the facilitation of checks and the issuance of visas; fighting abuse,

⁵⁰ https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/smart-borders_en

especially the practice of “visa shopping” (it consists in making more than one visa applications to EU States even if a first application has already been rejected); helping with asylum application and finally enhancement of security. Fingerprints of asylum seekers are collected and stored as well. This is the function of the European Dactyloscopy (EURODAC). It was established in 2000 and entered into force the 15th of January 2003 and it is used by all EU Member States as well as Switzerland, Norway and Iceland. Governed by the Regulation (EU) 603/2013, its aim is to make it ‘easier for EU States to determine responsibility for examining an asylum application by comparing fingerprint datasets’ and ‘its primary objective is to serve the Implementation of [...] the Dublin Regulation’⁵¹. NGOs that advocate for the respect of the human rights of the migrants have criticised this tool, as they claim that physical force can be used to force migrants to collect their fingerprints, as they might reasonably be unwilling to cooperate since once the fingerprint is stored, they are bound to stay in that country, as per the Dublin Regulation established. The abovementioned factors (the need to facilitate crossings for trusted TCNs’ travellers; the growth of a wide sector of industry tasked with providing high-tech mechanisms and the outsourcing of migration control to third parties) are closely intertwined. In order to speed up controls and visa checks for trusted third-country national travellers, more modern and technological tools are required. This is due to an attempt to show ‘a tangible confirmation of the EU’s openness to the world and commitment to facilitating travel and cross-border contacts including for business’ (European Commission, 2011, 12), as it could be found in the European Commission documents. Those tools are going to be provided by private enterprises and companies, which are able to provide modern and better security performance enhancing mechanisms and technologies such as the ones listed above. This is also to show that currently the idea of implementing technology in border checks has been now fully accepted and technology has been deemed as a neutral tool. These processes gave birth to a greater presence of private companies and different enterprises in the management of migration. Some of these companies benefit out of the involvement in the migration management process, whereas some others have been pulled into it not willingly. A useful example provided in the Vaughan-Williams book deals with stowaway migrants – those migrants who hide in boats and vessels to try and reach European soil. According to Migreurop’s annual report of 2010-2011, this process is widely common in the southern part of the Mediterranean Sea. Interviewing an official of the Tangier Port, it is possible to know the sophisticated and

⁵¹ https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en

high-tech processes that are carried out in order to discover “irregular” stowaway migrants:

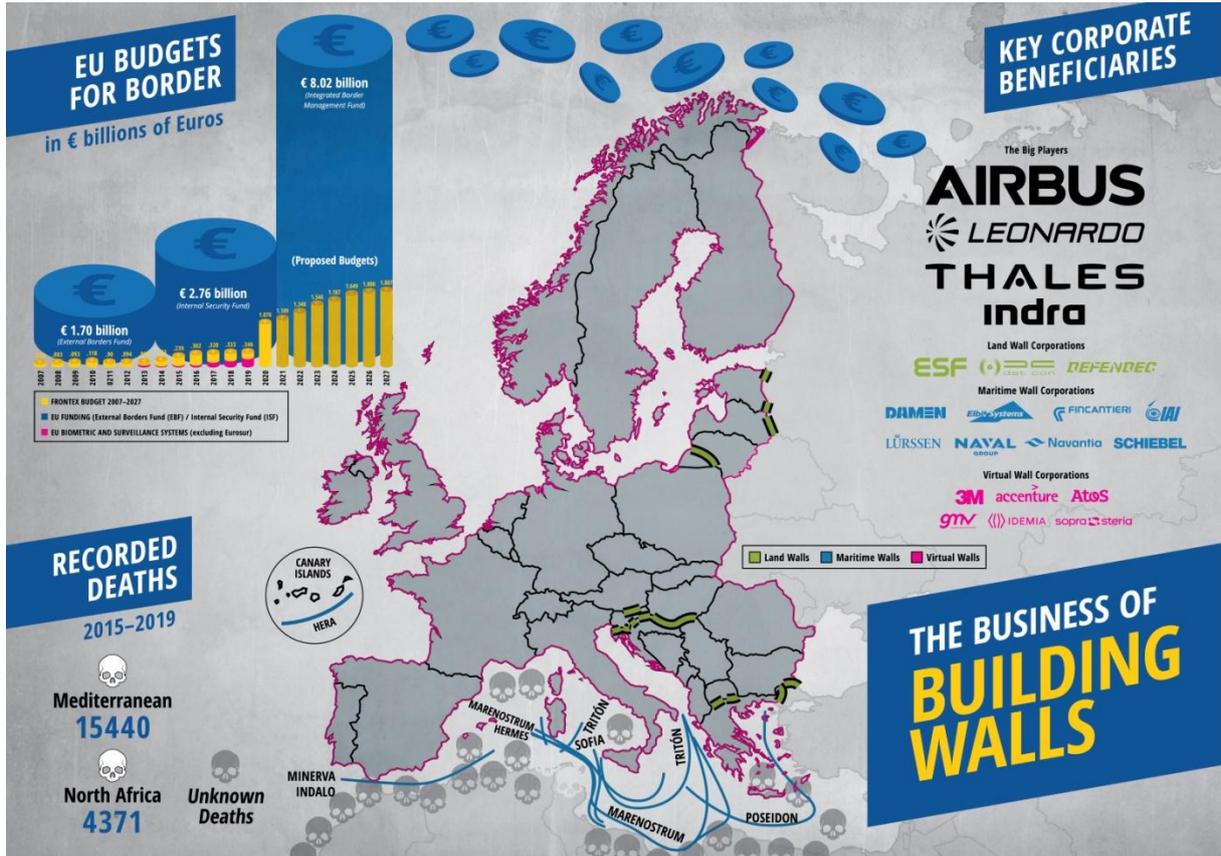
‘The lorries are checked by customs officers [...] Then, the cargo’s radioactivity is verified. Afterwards, [...] with the help of heartbeat detectors. We conduct between two hundred and one thousand controls every day and, in this way, we catch between six and eight stowaways every month’ (Migreurop annual report 2010-2011; 2012; 55).

In the previous sentence, I put the word *irregular* in quotation marks because, as the report writes, it is often the case that the migrants claims are not listened, as captains of vessels usually tend to get rid of stowaways and put forwards practices for their repatriations with external private security companies. This is an example of outsourcing of border controls to third parties, which might or might now have a financial benefit out of it. This is also due to the fact that Member States of the European Union, among whom France and Spain, have the right to fine companies that let stowaways disembark in their ports. This process could prefigure a violation of the *non-refoulement* principle, that forbids countries to return asylum seekers to a country in which they would be in danger. However, if the asylum claims are not reviewed by the competent authorities, how could it be sure, that the principle is respected? Another critic which has been posed by scholars and NGOs is that, whilst the European Union declares that ‘management of EU’s external borders is based on the principles of solidarity, mutual trust and co-responsibility among Member States, and has as a basic pillar full respect for human rights in both actions and procedures’ (Council of the European Union, 2006), this tendency of using high tech surveillance methods and collecting data is a challenge to fundamental rights, especially due to the fact that data is collected not only when an individual is deemed as a suspect.

It is already possible to highlight some critical points in these processes of neo-liberalisation, technologisation and outsourcing of border control. For example, whilst according to officials EU documents the management of the external borders is based on certain principles and respects, practices show otherwise. The EU claims that using new technologies is a way to facilitate the management of external borders and speed up controls for pre-vetted third-country nationals, however those new technologies might create problems because their main purpose is the collection of data and because of the forceful methods sometimes used to collect data. Moreover, the development of new technologies entailed a greater presence of private companies in the European management of external border and consequently in the management of migration. Whilst some companies benefit greatly from

this involvement, others become part of it unwillingly but play an important role and sometimes they substitute the European Union setting in motion processes of repatriation. That is the case of the stowaways migrants, clearly explained in the abovementioned lines. In some cases, private enterprises are pushed to act in a certain way to avoid fines from EU Member States that do not wish for stowaways migrants to be disembarked in their ports. If this were to be proven true, it would prefigure a breach of the principle of *non refoulement*, which has been established with the 1951 Geneva Refugee Convention. This Convention came from the spirit of the 1948 Universal Declaration of Human Rights, which has been fully embraced by the EU and has been used to guide the European external policy. The EU – through its policies and technological development – and its Member States would therefore breach principles and laws which are enshrined in its founding treaties and which are at the core of the external relations and which they actively try to promote elsewhere, as it has been proven in the previous chapter.

Table 11: info graphic



Retrieved from: <https://www.tni.org/en/businessbuildingwalls>

A useful info graphic about the issues discussed above, the neo-liberalisation and technologisation, with the consequent involvement of private companies and enterprises in the management of EU borders is provided by the Transnational Institute, an international research and advocacy institute. The table shows the key corporate beneficiaries of the process that has been put in motion during these years, as well as showing the growing European budget allocated to borders in the course of the years. The info graphic also provides an overview of the walls presented in the territory of the European Union and outside of it. This subject is going to be one of the topics discussed in the following section 3.2.2 of this research.

3.2.2 External projection outside the territory of the European Union and militarisation of EU borders

In Vaughan-Williams' second point regarding the evolution of European border security, he talks about external projection outside the territory of the European Union. A definition of externalisation might be a series of processes (in this case performed by the European Institutions or by EU Member States) through which the actors involved extend their control over migration far beyond their natural borders, in an attempt to block future possible migration waves, acting in a pre-emptive manner. These processes might include rewards and incentives, putting the two actors involved in a quid pro quo situation determining a conditional approach, where one is dependent on the other, creating an asymmetrical relation build on conditions; as well as penalisation. It is noteworthy to say that an asymmetrical relation could turn into a bilateral relation, it could go on with the two actors becoming strategic partners and finally with the actor – that was originally at the bottom of the asymmetric relation – becoming the dominant one.

The European Union, through its Institutions and Member States, started in the last decade to build a wide web of third countries in order to contain migration flows towards its coasts and borders. One of the various instruments used in order to do so is the Global Approach to Migration and Mobility (commonly referred to as GAMM), which has been established in 2005 and it gives the guidelines for the EU external migration and asylum policy, by defining how the Union dialogue and cooperate with third-countries, with defined priorities and objectives. This is going to be further analysed in the course of the fourth chapter, where the role of the various EU Institutions is discussed. The main objectives, as defined in the European Commission website, are:

- better organising legal migration, and fostering well-managed mobility
- preventing and combating irregular migration, and eradicating trafficking in human beings
- maximising the development impact of migration and mobility
- promoting international protection, and enhancing the external dimension of asylum

Source: https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration_en

The objectives are defined to be of equal importance and the respect of human rights is indicated as ‘a cross-cutting priority for this policy framework’.

The best way to maximize ‘the development impact of migration and mobility’, whilst at the same time “preventing and combating irregular migration” is through the so-called Mobility Partnerships (MPs). The definition of MPs, per the European Commission, is as such:

Provide the overall framework for managing various forms of legal movement between the EU and non-EU countries. Such partnerships are agreed with those non-EU countries committed to fighting illegal immigration and that have effective mechanisms for readmission.

Source: https://ec.europa.eu/home-affairs/e-library/glossary/mobility-partnership_en

As it possible to notice at a fist glance, those fruitful partnerships are agreed to third-countries that could provide a gain for the European Union, by tightening controls in the immigration area and through the signing of readmission agreements. Benefits for third-countries engaging in more controls over their border usually consist of visa facilitation and projects enhancing the mobility of third-country nationals towards the European Union. The EU has signed various Mobility Partnerships with third countries all over the world, from eastern Europe to Africa: Republic of Moldova (2008); Cape Verde (2008); Georgia (2009); the Republic of Armenia (2011); the Kingdom of Morocco (2013); the Republic of Azerbaijan (2013) and finally with the Republic of Belarus (2016)⁵². The European Union underwent discussions with Tunisia, Egypt and Libya – countries involved in the Arab Revolutions in 2011 – to finalise agreements with. These agreements are intended to enhance regular migration, in order to cover the need for men force in Europe, whilst at the same time

⁵² https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/eastern-partnership/mobility-partnerships-visa-facilitation-and-readmission-agreements_en

reinforcing its borders through the help of third-countries which would enhance security at their borders and in some cases sign readmission agreements with the EU. In a way to frame this process under a humanitarian lenses, the Commission has claimed that the ‘increased engagement with third countries [is] in order to avoid that migrants embark on hazardous journeys towards the EU’ (European Commission, 2014, 5). However, when controls over a particular area or border are tightened, migrants start to undergo more dangerous and longer journeys to reach EUropean borders. For example, migrants from Eritrea (169), Morocco (345) and Algeria (772) have been detected in North Macedonia in the period of January-September 2019, a country which is part of the Balkan route for migration and which is usually used by migrants coming from Afghanistan, Pakistan and Iran, as per the Frontex website⁵³. Those data were revealed during a presentation on migration situation in North Macedonia, which was held in a OSCE meeting that I attended during my traineeship in Skopje. I consider them to be useful, as they prove that in fact migrants do tend to engage in more perilous journeys to reach the EUropean borders, notwithstanding the enhanced controls in those countries that signed Mobility Partnerships with the European Union. Furthermore, another interesting data presented during the aforementioned OSCE meeting and that could serve this purpose is the number of asylum application presented in the Republic of North Macedonia in the same period mentioned above. 7 asylum applications came from Algerian migrants, 6 from Eritrean, 5 from Libyan and finally 11 from Moroccan migrants.

The following table shows the readmission, visa facilitation and visa liberalisation agreements signed by the European Union with third-countries:

Table 12: Agreements signed by the EU with third-countries

<i>Country</i>	<i>Type of agreement</i>	<i>Start of negotiations</i>	<i>Agreement signed</i>	<i>Entering into force</i>
Albania	RA	May 2003	April 2005	May 2006
	VF	November 2006	April 2007	January 2008
	VL	March 2008	November 2010	December 2010
Bosnia	RA	December 2006	September 2007	November 2007
	VF	November 2006	November 2007	January 2008
	VL	May 2008	November 2010	December 2010
Macedonia	RA	December 2006	September 2007	November 2007
	VF	November 2006	November 2007	January 2008
	VL	February 2008	December 2009	December 2009
Moldova	RA	December 2006	October 2007	January 2008
	VF	December 2006	October 2007	January 2008

⁵³ <https://frontex.europa.eu/along-eu-borders/migratory-routes/western-balkan-route/>

	VL	June 2010	April 2014	April 2014
Russia	RA	January 2003	May 2006	June 2007
	VF	2005	April 2007	June 2007
Serbia	RA	December 2006	November 2007	November 2007
	VF	November 2006	May 2007	January 2008
Ukraine	VL	May 2008	July 2009	December 2009
	RA	November 2002	June 2007	June 2007
	VF	November 2005	June 2007	June 2007
Algeria	VL	November 2010	-	-
	RA	June 2005	-	-
Morocco	VF	-	-	-
	RA	April 2003	-	-
Pakistan	VF	-	-	-
	RA	April 2001	-	-
Turkey	VF	-	-	-
	RA	May 2005	December 2013	-
	VL	December 2013	-	-

Source: Data compiled from the EU's official website

Source: Yildiz, A.G.; 2016; page 72. The EU also signed RA, VF and VL agreements with Montenegro (2008), Georgia (2011) and Azerbaijan (2014) and RA and VF with Cape Verde (2014). VL with Turkey experienced an acceleration after the 2016 EU-Turkey Deal but an agreement has not been signed yet.

Some ethical questions arise from the actions that the EU is doing in order to create a wide network of third-countries that could perform enhanced controls on migration, especially due to the fact that those countries are undemocratic elected regimes and are not well known to respect human rights. Therefore, the European Union deals with countries that do not respect the rights and principles enshrined in the EU's treaties, that are 'respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities' (art. 2 TEU) and upon which the Union is founded. Some other problems that arise from those deals with third-countries is that, according to Migreurop's report, there is not any mechanism to control whether the inalienable rights of "irregular" migrants are respected or not; they claim it is also been proved that third-countries officials which are tasked by the EU to control migration flows, tend to sub-contract controls activities to local militias and private security companies. This sets up a vicious circle, as it is in the interests of all the actors involved to report larger number of irregular migrants. By doing so, the migration threat for the European Union would be further perceived and the methods used would be consider to be successful and functional ones. This is due to the fact that the success of enhanced border security is measured numbers

of irregular migrants detected. As a result of that, larger sums of money and better benefits would be accorded to those third-countries.

As the Danish Professor Thomas Gammeloft-Hansen wrote, this framework of externalising the asylum and migration policies used by the European Union and by its Member States create a *protection lite*, meaning that they ‘are instrumentalising the territorial principles of the present refugee regime to relieve themselves of international legal obligations’ (Gammeloft-Hansen; 2007; Abstract).

These processes and policies have also been defined as part of a ‘remote control’ approach, that is policy transfer beyond the physical territory of the EU towards third-countries. Those third-countries are supposed to be safe and here other questions arise: what are the defining features of a safe third-country, according to the European Union? What are the characteristics that make a country suitable for managing and controlling migration flows? As per art.38 of Directive 2013/32/EU, a safe-third country is a country in which a person seeking international protection is going to be treated in accordance to the following principles:

- (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- (b) there is no risk of serious harm as defined in Directive 2011/95/EU (Recast Qualification Directive);
- (c) the principle of non-refoulement in accordance with the Geneva Refugee Convention and Protocol is respected;
- (d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and
- (e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Refugee Convention and Protocol.

With the concept of ‘safe third-country’, the European Member States can shift their responsibilities to countries which do not usually have the capacity to manage migrants and asylum seekers. For the EU Member States this is easier and it has a lower cost, whereas for the receiving countries this could be a heavy burden, especially considering that those countries are often developing ones. Some ethical problems might arise from this practice, as the right to seek and to enjoy asylum from persecution is enshrined in article 14 of the Universal Declaration of Human Rights and article 18 of the Charter of Fundamental Rights

of the European Union. Transferring the asylum seekers towards area outside the EU where the protection granted to them is not clear and where they might be in danger of persecution is not in accordance with the abovementioned principles. A useful example might be the pilot multipurpose centre located in Niger. The situation of the country is characterised by food shortages and instability with neighbouring countries such as Nigeria, Libya and Mali. By establishing this kind of centres in third-countries through European funds, the European Union is respecting its duty to afford the right to seek asylum but, at the same time, it is shifting the responsibility towards countries which are usually countries of origin and transit of migrants, where human rights are not always respected – as reported by many NGOs – and aggravating a situation which is already unstable, by attracting more migrants and asylum seekers due to the presence of those centres. Another example of this outsourcing tendency and the tendency to deem safe haven third-countries which might not meet the European standards can be found in the proposal advanced by the European Council to establish regional disembarkation platforms in third countries outside the European Union, such as Algeria, Morocco and Tunisia.

During the years characterized by bigger migration flows towards its borders, a new tendency appeared, which is the wider and more frequent use of military-alike measures and means to manage the abovementioned flows. This tendency gave birth to the militarisation of the EU borders and the projection of EU “military” procedures in territories far away from the physical European borders.

In order to project its control over its physical borders and in outside territories, the European Union uses a wide range of tools, whose budget allocations have grown consistently during the years. The first one that comes to mind is the European Border and Coast Guard Agency, commonly known as Frontex. Its aim is to promote, coordinate and develop European border management, in line with the European Union principles. As Frontex is the main tool at EU disposal, it is going to be the subject of in-depth analysis in the next chapter, therefore I am not going to talk about it in this part of the research.

Other measures have been implemented by the European Union and by its Member States, whose tools and means at disposal resemble what would be used in situation of wars and danger. For example, the security of the European borders is relying in a growing way on aerial surveillance techniques that can be compared to the ones used in military operations, such as drones, reconnaissance aircraft, offshore sensors and satellite remote sensing. Due to the technologisation of the means used in border security, nowadays the use of GPS and

satellites play an important role for the competent authorities, as it helps them detecting boats at the sea and groups of people moving towards the borders. The European Border Surveillance system (commonly known as EUROSUR) is ‘a multipurpose system for cooperation between the EU Member States and Frontex in order to improve situational awareness and increase reaction capability at external borders. The aim is to prevent cross-border crime and irregular migration and contribute to protecting migrants’ lives’⁵⁴. EUROSUR comprises all the countries within the Schengen Area and the EU Member States which are not yet part of Schengen: Bulgaria, Romania and Croatia⁵⁵. Regulation (EU) No 1052/2013 of the European Parliament and of the Council establishing EUROSUR prefigures the creation of national coordination centres (point 4 of the Regulation) to improve the exchange of information and cooperation between Member States and with Frontex. This framework would help building a situational awareness and a stronger and quicker reaction capability, because of the rapid sharing of information between Member States. The Regulation establishing EUROSUR also provides for surveillance in ‘designated third-country ports and coasts’ (Art.12, paragraph 2a) and ‘selective monitoring of designated pre-frontier areas at the external borders [...] identified [...] as being potential departure or transit areas for illegal migration’ (Art. 12, paragraph 2e). Art. 3(g) gives a definition of “pre-frontier area”, as ‘the geographical area beyond the external borders’, thus augmenting the space that is going to be pre-emptively controlled. The system, which started on December 2, 2013 and was put into effect by a positive vote of the European Parliament – held one week after the death of over 300 people on the Italian coast of Lampedusa – on October 10, 2013, has a budget of €244 million that should cover the costs until 2020. However, some European MPs claim that the system is going to cost more. One of the main critics that has been done to EUROSUR is linked with the controls exercised outside the European borders, in the so called pre-frontier areas. Controls over those area could, according to NGOs, augment the possibility of operating push backs without having performed the vetting and checking procedures of an asylum applicant, therefore breaching the infamous principle of non-refoulement.

Another example of militarisation of border controls might be the abovementioned ⁵⁶ practice of sub-contracting controls to local militias and private security companies performed by third-country officials tasked by the EU to control migration flows, as claimed by many

⁵⁴ <https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/border-crossing/eurosur-en>

⁵⁵ At the current date of writing this research, Croatia has not been yet integrated in the Schengen Area.

⁵⁶ Page 81.

NGOs. Those private companies and militias are hardly held accountable for their actions, moreover they operate in third-countries (with whom the European Union signed agreements) which are not usually considered as “champions” of democracy and do not have a good track in respecting human rights.

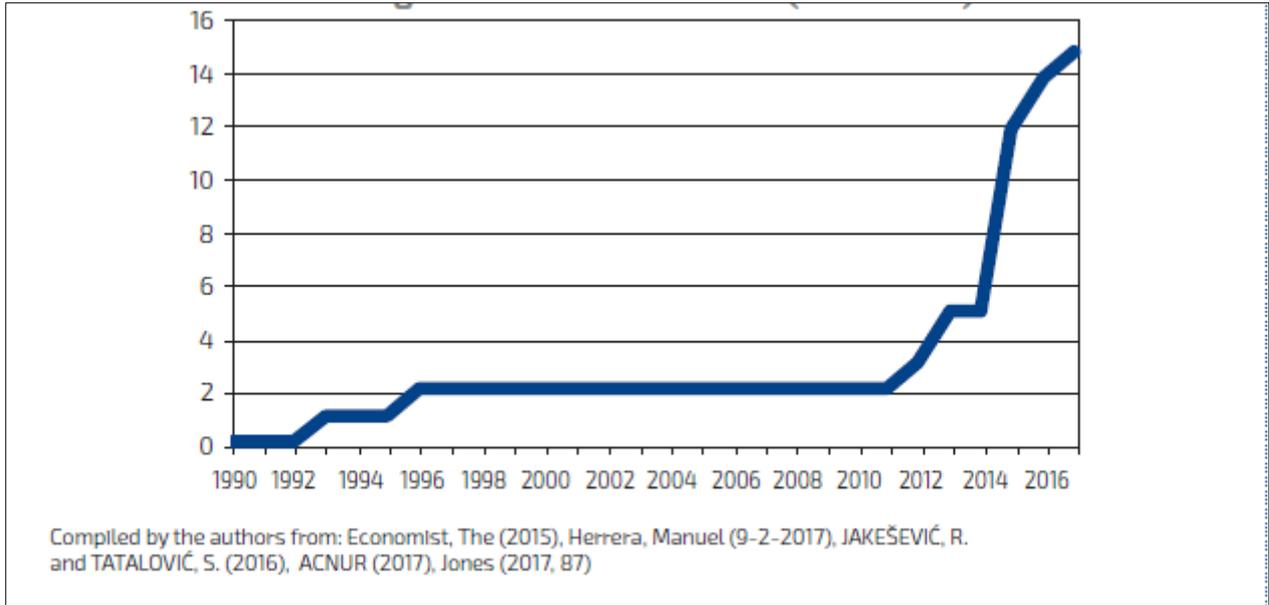
Before the implementation and the establishment of such initiatives and the allocation of growing part of budget, Member States used a “simple” tool in order to stop immigration into their countries: the erection of walls. Walls can be put into the realm of militarisation of the borders, as the management and the personnel used clearly show the military nature of them. Moreover, those walls have been erected as a response to a national threat – unorthodox migration flows – and therefore the label “military” can be used, as one of the aim of military forces is to protect the nation. The first ones were erected by Spain in its overseas territories of Ceuta and Melilla. Lately, walls and barriers have been erected in Eastern Europe, as countries tried to face migration flows coming from the Middle East – and in a minor way from North Africa – due to the Syrian conflict: just to name a few, walls have been erected at the borders of Hungary and Serbia and at the border between Greece and the Republic of North Macedonia (at the time the name of the country was the Former Yugoslavian Republic of Macedonia – FYROM). A research investigated by Ainhoa Ruiz Benedicto and Pere Brunet of the Centre Delàs d’Estudis per la Pau by the title ‘Building Walls: Fear and Securitization in the European Union’ claims that the Member States of the European Union have built almost 1000km of walls since the 1990s’. This practice underwent a rapid development in the last years, as in the 1990s’ there were just 2 walls, whereas in 2017 the report registered 15 walls. In 2015, which was the apex of the migration crisis especially in the so called Balkan Route⁵⁷, the number of walls grew from 5 to 12, registering the biggest increase. 10 out of 28 EU Member States have built walls to prevent immigration, namely Spain, Greece, Hungary, Bulgaria, Austria, Slovenia, Latvia, Estonia, Lithuania and the UK as well as Norway, which is not a EU Member State but is indeed a member of the Schengen Area. A country which is not an EU Member State nor part of the Schengen Area that built a

⁵⁷ The Balkan Route is the path that migrants – usually from Middle East – use to reach the European Union. This route used to go through Turkey, Greece, Bulgaria or North Macedonia, Serbia and Hungary. Now, due to the deal between the European Union and Turkey and due to the new directive of Dublin III the route is changing, as migrants started to go through Albania, Montenegro and Bosnia. During a meeting with the Austrian chancellor Sebastian Kurz held in May 2018, Albanian Prime Minister Edi Rama claimed that the number of migrants crossing illegally into his country rose from a mere 162 in January 2017 to 23.111 in 2018 (source: <https://www.jacobinmag.com/2018/07/eu-migrants-refugees-balkan-route-frontex-dublin-schengen>).

wall and is included in the research in North Macedonia, as it is a transit country of the Balkan Route.

The next table shows the evolution of walls built by European Union Member States, members of the Schengen Area and North Macedonia from 1990 to 2017, date of the publication of the report.

Table 13: evolution of walls built by EU Member States, Schengen Area Members and North Macedonia from 1990 to 2017



Source: Building Walls: Fear and Securitization in the European Union; page 23.

The number of walls amount to 15, as Slovakia built internal urban walls, to separate the Roma population, whereas the other ones were built with the intent to stop migratory movements. Norway built up a wall because of the establishment of the so called Arctic Route, with small numbers of migrants crossing from Russia into the country. The Baltic Republics, which are Estonia, Latvia and Lithuania, built walls both for managing migration flows, but also due to recurrent tensions with their neighbour country Russia. The wall “between” the United Kingdom and France is located at the Port of Calais, to prevent migrants from reaching the Eurotunnel connecting the two countries. The United Kingdom pressured France into building these fences and invested millions into the strengthening and

the maintenance of the control tools around the Port of Calais. This is the only “wall” within a EU Member State.

The following table shows more details about the walls erected by members of the European Union, the Schengen Area and North Macedonia in the period from 1990 to 2017, date of publication of the research. The table has been taken by ‘Building Walls: Fears and Securitization in the European Union’.

Table 14: Details about walls of EU Member States, Schengen Area Members and North Macedonia from 1990 to 2017

BUILDING COUNTRY	COUNTRY AGAINST WHICH IT IS MADE	STARTING YEAR	REASONS
Spain (1)	Morocco (Ceuta)	1993	Immigration
Spain (2)	Morocco (Melilla)	1996	Immigration
Greece (3)	Turkey	2012	Immigration
Slovakia (4)	Internal cities: Kosice, Velka Ida, Ostrovany	2013- under construction	Segregation, security
Bulgaria (5)	Turkey	2013	Immigration
Hungary (6)	Croatia	2015	Immigration
Hungary (7)	Serbia	2015	Immigration
Macedonia (8)	Greece	2015	Immigration
Austria (9)	Slovenia	2015	Immigration
Slovenia (10)	Croatia	2015	Immigration
United Kingdom (11)	France (port of Calais)	2015	Immigration
Latvia (12)	Russia	2015	Security, territorial tension, smuggling, immigration
Norway (13)	Russia	2016	Security, Immigration
Estonia (14)	Russia	2016-2017	Security, territorial tension, immigration
Lithuania (15)	Russia	2017	Security, territorial tension, immigration

*The Republic of Macedonia is included despite not being a member of the EU or Schengen area because it is an essential part of the Balkan Route through the EU countries. Compiled by the authors with data from the sources: (1) (2) (3) (5) (7) Economist, The (2015), (4) Herrera, Manuel (9-2-2017)(6) JAKESEVIC, R. and TATALOVIĆ, S. (2016), (8) (9) (10) (11) (13) ACNUR, 2017 (12) (14) (15) Jones, 2017, 87

Source: Building Walls: Fear and Securitization in the European Union; page 23. At the date of publication of the report, the country which is now under the name of North Macedonia was called Macedonia.

The report claims that, by the date of publication (July 2018), countries pledged to build other fences: Latvia, Poland, Ukraine and Lithuania against Belarus and Belarus against Latvia.

All of these fences present more or less the same characteristic of being heavily militarised and controlled, with the presence of soldiers and border guards and the use of off-road vehicles, as well as the use of technology, such as: heat sensors, thermal cameras, drones, night vision cameras, infra-red, heat and motion sensitive cameras, optical and acoustic sensors etc. Moreover, European countries sent national police forces to support local forces in the control activities of the walls, as it is the case of the wall between North

Macedonia and Greece, where more than 60 police officers were deployed⁵⁸ at the beginning of the crisis. Those numbers have fluctuated during the years, reaching an apex of 300 police officers from Czech Republic at the border town of Gevgelija, whereas now the number of Czech police enforcers is 40⁵⁹.

The following table provides the estimated costs of walls erected within the territory of the European Union and has been taken from ‘The Business of Building Walls’ (2018). Among those, Hungary had an estimated expenditure of €440 million in order to build its walls with Croatia and Serbia.

Table 15: Estimated costs of walls in the territory of the European Union

BUILDING COUNTRY	COUNTRY AGAINST WHICH IT IS BUILT	ESTIMATE OF COSTS (MILLION €)	REMARKS
Spain	Morocco (Ceuta)	95.9326	For first fence (1995–2000), installation new fence and maintenance (2005–2013)
Spain	Morocco (Melilla)	36.6727	For first fence (1998), installation new fence and maintenance (2005–2013)
Greece	Turkey	7.5028	Of which €3.16 million for a private company building the wall
Bulgaria	Turkey	87.3529	
Hungary	Croatia	440.0030	
Hungary	Serbia		
Macedonia	Greece	?	No information found
Austria	Slovenia	8.00–10.0031	Initially leased, later purchased
Slovenia	Croatia	80.0032	
United Kingdom	France (Port of Calais)	2.7033	Not including other fences at several points in and around Calais
Latvia	Russia	21.1734	Including wooden footbridges, patrol paths, culverts and a footprint strip
Norway	Russia	0.4435	
Estonia	Russia	130.536	
Lithuania	Russia	30.0037	Estimation before start of project
TOTAL		940.26	

Source: The Business of Building Walls; 2018; page 16

Along with maintenance costs, the amount has most certainly exceeded €1 billion.

The case of Ceuta and Melilla is particular and deserves further attention. The two territories are physically part of the African continent and even though they are autonomous cities, the two enclaves are an integral part of the Kingdom of Spain and therefore part of the European Union. This particular situation means the Ceuta and Melilla represent the only physical border between the European and the African continents. In a broader sense, these two cities represent a division between one of the most advanced trade areas of the world and

⁵⁸ <https://www.dailymail.co.uk/news/article-3437717/A-second-wall-razor-wire-stem-human-tide-Macedonia-builds-fence-border-Greece-send-message-migrants-attempts-cross-illegally.html>

⁵⁹ Those numbers were referred to me by a junior officer of the Czech Republic Embassy to North Macedonia.

the poorest continent of the world, between “us” insiders and “them” outsiders, between a civilised society and a barbarian society. Another peculiarity of the Spanish enclaves’ border is that it allowed certain Moroccan nationals to cross freely in order to conduct trades. As per a protocol attached to the Schengen acquis, Moroccans from the province of Nador and Tetouan can enter the territory of Ceuta and Melilla without a visa. This is due to the geographical proximity of the provinces and due to historical economical interactions between the enclaves and the Moroccan hinterland, which would constitute a great deal of the local economy. The same historical and cultural interactions have been neglected to third-countries in the Eastern Europe involved in the Big Bang enlargement, as already referred at page 67 of this thesis (section 3.1).

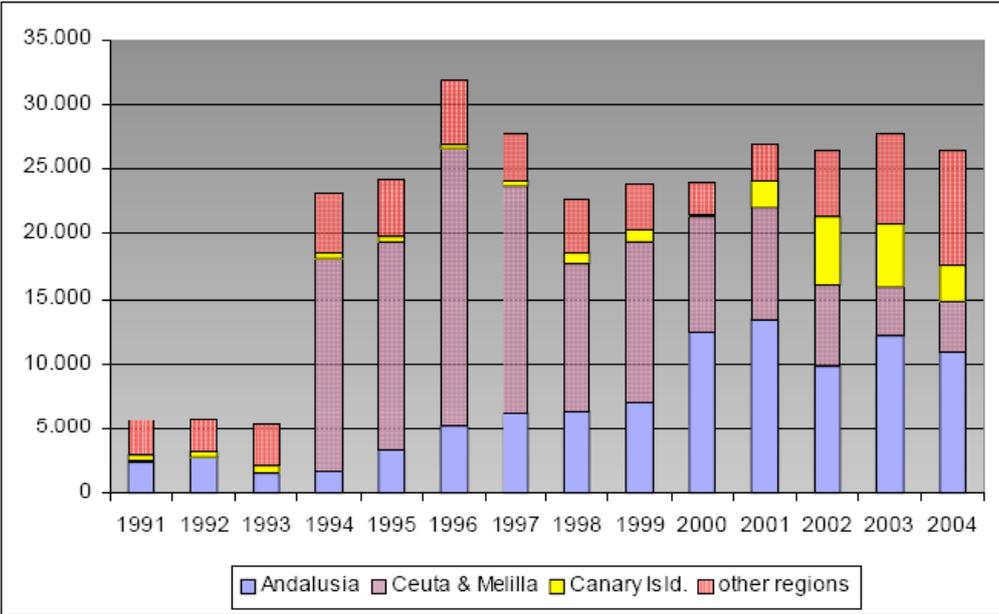
The abovementioned trades consist of “smuggling”, as Moroccans would buy products such as clothes and food in Spain that would eventually be resold in the Northern provinces of Morocco. According to some data reported by the Spanish newspaper *El País*, this atypical trade system account for an estimated total of almost €1 billion. Moreover, inhabitants and small businesses in the cities of Ceuta and Melilla counted on Moroccan labour force as it would be cheaper for them. As of October 2019, Spanish and Moroccan authorities are trying to control the activity of the portadores, resulting in economic turmoil for the Spanish enclaves as well as for the Moroccans who usually do cross daily, as reported by *El País*⁶⁰. It is easy to see how this could represent a paradox, as on the one side the Kingdom of Spain might be keen to further enhance exchanges between its enclaves and the Moroccan hinterlands, but on the other side the frontiers of Ceuta and Melilla are central for the European Fortress, as they represent the only physical border between the EU and Africa. This frontier is not impenetrable though, as it allows third-country nationals from certain provinces to cross freely.

Whereas now the fences between Spain and Morocco are provided with high tech equipment such as motion detectors, video and infrared cameras and much more, at the beginning of the 90s’ the situation was not the same, allowing for an easier path for people who intended to enter illegally in the Spanish territory. The fences were therefore modernised in various occasions, with consistent EU investments, also due to the public outrage after tragedies occurred whilst migrants were trying to cross the fences. However, the crossing is continuing – even if in a smaller way – and new and more dangerous routes have been established towards other Spanish provinces (namely Andalucía) and towards the Canary

⁶⁰ https://elpais.com/elpais/2019/12/10/inenglish/1575972423_610599.html

Islands, prompting a “military” operation in the waters between Morocco and Canary Islands. As a matter of fact, Frontex Operation Hera has been underway in the sea between Morocco and the Canary Islands since 2006. When it comes to the case of the Canary Islands, increased migration flows have brought to the birth of new professional groups of human smugglers; this trend goes along with the use of wooden boats such as pateras and cayucos (traditional fishing boats from Mauritania and Senegal) which are not suitable for such a trip in the sea. As a result, in 2006 over 6000 migrants died in the sea separating Morocco from the Canary Islands, according to the IOM and the Spanish authorities. Due to the stringent nature of controls in the northern part of Morocco, in 2019 there has been a 12% rise compared to last year in the number of migrants reaching the coasts of the Canary Island⁶¹. The following table serves as a purpose to show this trend.

Table 16: deportation and removal in Spanish regions from 1991 to 2004



Source: Alscher (2005) based on statistical yearbooks, Spanish national Police, Comisaria General de Extranjeria y Documentación, 1991-2004.

Source: Castan Pinos, J.; 2010; ‘Building Fortress Europe? Schengen and the Cases of Ceuta and Melilla’; page 21

By analysing it, it is possible to notice that the highest point of deportations and devoluciones⁶² from the enclaves of Ceuta and Melilla was reached in 1996, that is the year that the Schengen Treaty came into force in Spain. After that year, the trend starts to decrease

⁶¹ https://elpais.com/elpais/2019/12/09/inenglish/1575886424_184167.html

⁶² Spanish term that can be translated with immediate or expedited removal. The main difference with the process of deportation is that this process has to be realised within 72 hours.

for the enclaves' territories, whilst growing for the territories involved in the new routes, which are principally the region of Andalucía and the Canary Islands. This serves to the purpose to show that enhancing controls in order to reduce migration flow is not an effective tool, as migrants start employing other routes, sometimes more dangerous ones.

Moreover, fences rather serve as a constant reminder of the differences between us and them, of the cultural, economical and political differences between Africa and the EU instead of working as an effective tool in reducing migration flows. Being fences a military tool – since it involves national security issues – the issue of migration is diverted into the security sphere. This is the opposite of the aim of the ENP, which is to avoid the emergence of dividing lines between the Union and its neighbours, who have been already excluded from any possible future membership of the Union. Another paradox that might be useful to show the double standard of the European Union and its Member States is that, whilst a third layer fence between the two already existing ones was being built, the Spanish Government signed a statement to oppose the construction of a building between the United States of America and Mexico, as ‘building walls is incompatible with friendship relationship and cooperation between States [...] walls do not stop migration [...] but encourage migration and xenophobia’⁶³. At the same time, the Kingdom of Spain and the European Union itself have relations and cooperate with Morocco, as the various donations could show. For example, after the 2005 tragedy that saw the death of 13 migrants trying to reach Spain by crossing the fences, the European Union donated €40 million for tackling irregular migration, by the creation of Centres of Temporary Stay of Migrants (in Spanish: *Centros de Estancia Temporal de Inmigrantes* CETI), which are already present in the Spanish enclaves. Another source of money for the Northern African countries is represented by the MEDA Programme of the European Union. Through this programme the EU collaborates with Northern African countries, with the aim of boosting development in order to reduce migration through investments.

By trying to control future possible excessive migration flows, the EU has signed a series of agreements with third-countries in its external neighbourhood. Those include readmission, visa facilitation and visa liberalisation agreements, which would reduce the possibility for migrants to start perilous journeys to reach the European territory. As it has been demonstrated with the example of North Macedonia, where migrants from Northern

⁶³ Comunicado especial de la XVI Cumbre Iberoamericana de Jefes de Estado y de gobierno contra la construcción de un muro en la frontera México-Estados Unidos.

Africa are been found in an increasing way, and from the example of new routes from Morocco to Spain, this is not the case. Migrants are still embarking in even more dangerous journeys. Moreover, the EU has signed agreements with countries which are not considered “champions” of democracy and which do not tend to respect the principles enshrined in article 2 of the TEU. It has been reported that those countries tend as well to sub-contract control activities to local militias and private enterprises, who do not have any interests in ascertain the rights – or not – of migrants, but rather the contrary, in order to gain more money. Third-countries are also deemed as ‘safe haven’, therefore considered to be able to handle migration management, which is oftentimes not the case and this designation actually aggravate situations which are already severe. Furthermore, this designation might prefigure some breaches in international law, as transferring migrants in territories where their protection is not sure might contravene the right to seek and enjoy asylum which is enshrined in article 14 of the Universal Declaration of Human Rights and article 18 of the Charter of Fundamental Rights of the European Union. The EU is not therefore acting as a normative actor which actively promotes universal norms and values and in a superior position, but rather in relations where it is dependent on the third-country, which might as well threaten the EU with the menace of relaxed border controls, as the case of Belarus reported in the previous chapter. The shift from an actor which perceives norms as fundamental guidelines to its policies towards an actor which is more pragmatic and less interested in the abovementioned norms can be seen in the EUROSUR as well, whose Regulation provide for controls in designated pre-frontier areas. According to many critics, such controls might further enhance breaches of the principle of non-refoulement, as pre-vetting operations might not assure a complete revision of the migrants’ asylum claim procedure. It shows as well the European tendency to deploy force and control outside its borders, in territories which are far from the EU. This is a tendency which is not a characteristic of a normative power actor. The EU is therefore creating for itself a buffer zone, but one which is not characterised by rule of law, good governance, democracy and respect of human rights, as claimed in official European documents.

3.2.3 Humanitarian border security

The third and final point in Vaughan-Williams’ theory about the evolution of European border security is the presence of a new *humanitarian* discourse that goes alongside with the militarisation of the borders.

According to some scholars, most notably W. Walters in its '*Foucault and Frontiers: Notes on the Birth of the Humanitarian Border*' (2011), together with the securitisation of migration – that started in the late 1980s/early 1990s, in the time when the newly signed Schengen Agreement was starting to be implemented by a larger number of European States – a wider concern for the safety and the conditions of the migrants has grown. This new attention gave birth to what Walters defined as humanitarian border. This attitude can be found in the Global Approach to Migration and Mobility, in which it is possible to find an approach where the figure of the migrant is put at the centre. For example, in the very first pages of a Communication about the GAMM, the European Commission calls for Member States to be *frontrunners* in the promotion of international protection, which should be awarded to each migrant, whose well-being, safety and human rights must be respected. That is because migrants should be categorised on the basis of some juridical definition, as 'In essence, migration governance is not about "flows", "stocks", and "routes", it is about people' (European Commission, 2011a, 6). This humanitarian approach entails the importance that the Commission gives to the Charter of Fundamental Rights and the focus on the protection of the migrants not just in the European territory, but starting from their country of origin, country of transit and final destination, meaning for all the duration of their route.

In the GAMM, a strong emphasis is put on vulnerable migrants and their definition – asylum seekers, non accompanied minors and women – nevertheless the document mentions that all migrants, as they are human beings, are entitled to democratic principles and human rights, whatever their country of origin or conditions might be. In fact, the Communication states that 'A migrant-centred approach is also about empowering migrants, and ensuring that they have access to all relevant information about the opportunities provided by legal migration channels and the risk of irregular migration' (European Commission, 2011a, 14). The word empowering is further used in other communications of the Commission, for example in the Commission's Report on the Implementation of the GAMM 2012-2013. Here, it is stated that projects carried out under the GAMM framework empower migrants, and especially vulnerable groups, 'through effective integration policies and promoting access to basic services such as healthcare' (European Commission, 2014, 17).

The attention put by the Commission on the humanitarian side was highlighted by the UN Special Rapporteur on human rights of migrants, which acknowledged that the protection of human rights of migrants is enshrined as a cross-cutting priority in the GAMM, as reported in the abovementioned communication from the Commission. Moreover, when talking about the future implementation of the GAMM, the document outlines 'Constant attention [...] to

the human rights of migrants' (European Commission, 2014, 18) as a feature to be implemented both at the European level, Member State level and partner countries level.

By looking at the official communications and documents of the European Commission, it seems that the humanitarian side of the migration is highly taken into consideration, when dealing with this phenomenon. As a matter of fact, the importance of the human rights in the European narrative of migration management flow might also be found in the regulation (EU) no. 1052/2013 establishing the EUROSUR. Article 2(4) of said regulation states that 'Member States and the Agency shall comply with fundamental rights, in particular the principles of non-refoulement and respect for human dignity and data protection requirements, when applying this Regulation. They shall give priority to the special needs of children, unaccompanied minors, victims of human trafficking, persons in need of urgent medical assistance, persons in need of international protection, persons in distress at sea and other persons in a particularly vulnerable situation'.

This tendency of humanitarian border security derives from the fact that – as already stated in the course of this research – the figure of the migrant is at the same time seen as a threat to stability and security as well as a life to be saved. The former is due to the fact that migration has been closely intertwined with border security and that these issues underwent a securitisation process, calling therefore for extraordinary methods. The latter is due to the European tradition as an actor and an entity which is prone to respect the rights of everybody and actively try to promote those through its foreign relations and agreements. However, this complex paradox calls for actions which are opposed in nature and contradict themselves. How can the same actor promote and advocate for the respect of fundamental rights and the right to seek asylum, whilst at the same time undergoing a massive expenditure increase to equip itself with tools for rapid deployment, amongst other. This is going to be one of the subject of the following chapter, in which Frontex is going to be analysed in details, as well as systematic breaches of international and EU law through the actions undertaken by the various Institutions, namely the Commission and the Council.

To sum it up, it is possible to see that, at least on paper, the humanitarian side is deemed as crucial and fundamental when dealing with migration and asylum. Nevertheless, this has not always been the case, because the actions undertook by the various European Institutions and Agencies and by European Member States are not always and fully in

accordance with the respect of human rights and the rights of migrants, as it has been proven in the previous parts of this research.

3.4 Conclusion

In the course of this chapter I have tried to show how the concept of power in the European Union has switched during this last institutional cycle. On the international arena, the European Union stance is unclear. The EU still acts as a normative power, by actively trying to promote its norms and values on the international arena through instruments such as the enlargement process and the European Neighbourhood Policy (ENP). On the other hand, the Union is growing into a military-alike actor when it comes to deal with border management – which is closely intertwined with migration management – through different tools and methods, such as EUROSUR and especially its agency Frontex.

At the same time, the normative power character of the EU is changing: when the EU signs agreements with third-countries relating to readmission of TCNs and enhancing of border controls in exchange for visa facilitation and projects involving the movement of skilled TCNs the EU is not anymore in a superior position with regards to the third-countries, as the relation that those kinds of agreements prefigure are not asymmetrical, as the EU is counting on those countries in order to avoid unwanted waves of migrants. The example provided in the previous chapter of Belarus, which threaten to relax its border controls in exchange for bigger amount of money, is exemplifying of this. The EU relies more and more on third countries to help them securitise its borders and carry on procedures, whilst offering benefits in exchange. It is no longer an attraction normative power, it is rather becoming a quasi strategic partner relationships, where it looks like the EU needs more the third-state than vice versa. The EU is not trying to extend its norms and values to help enhance the situation in third countries (even if by looking at official documents this might seem the case, as those policies aim at enhancing rule of law, good governance and the respect of human rights), but rather to create buffer zones that would prevent unwanted people to reach the EU. Another example to show that the European Union's normative power is weakened might be that some countries – Turkey and Morocco for example – refused to sign readmission agreements, as the benefits coming from signed those would be smaller than the costs of readmitting people. Moreover, the European Union has been accused by critics to have a tolerant stance towards what are deemed 'stabilitocracies'. The term has been widely to define regimes characterised by weak democratic institutions and strong, autocratically-minded leaders who claim to

provide stability. Because of external dynamics, the EU has tolerated this dynamic ‘despite that fact that the status quo does not foster stability or guarantee pro-European governments’ (Emini, Stakic; 2018; 7).

On the other hand, as the normative power is weakening – or changing from how it was conceived in the past – the ability of the Union to project itself in outside territories is augmenting. The analysis provided in the following chapter of Frontex is going to be illustrative of this. The European Agency is being granted more and more capabilities, economic resources and operational capacity in order to bring back the Schengen Area to its full functions of stability, security and prosperity. In order to do this, there has been a budget increase in the course of the years that has reached a peak in 2013, the year where the migration crisis got to its apex; new capabilities granted to the Agency, which is now able to deploy itself in territories outside the European Union, has the capacity to buy equipment and coordinate readmission operation. Bearing in mind that countries and entities such as the European Union have the right to defend their territories from what is perceived as a credible threat, the various tools which are used to do so are subjected to Regulations and are governed by European and international law. Therefore, when pursuing the management of border security and migration, one should keep in mind the necessity to respect human rights and the rights of migrants and asylum seekers, as those principles are enshrined in the European Union founding treaties and in the conventions that the EU and its Member States have signed. Even though those abovementioned principles and their respects are openly stated in the Regulations establishing the various tools used by the EU to manage border security and migrations, it has been alleged that many times those have not been respected and various principles, above all the one of non-refoulement, have been breached. Therefore the Union would be breaching those norms which are a fundamental part of its core values and upon which it was created, whilst at the same time actively trying to promote said norms elsewhere. Moreover, when signing agreements with third-countries to manage migration and border controls, the EU has signed reached deals with countries that do not respect those rights who are deemed fundamental by article 2 of the TEU and that are supposed to serve as guidelines for the European Union external relations.

There are some other paradox that arise from the use of military-alike tools and equipments such as the ones used by Frontex and EUROSUR, as well as the construction of walls around and within the European Union. By using these, the issue of migration is going through a process of securitisation. This is resulting in the perception of migration as a

security issue, and this does not go along with the principles that the EU proclaim to honour and spread, such as freedom. Instead, it goes in the opposite direction.

This tendency can also be expressed through the Eurobarometer which is the visual representation of the general feeling of the European population. As it can be easily seen, the EU is considered important in contributing in maintaining peace and strengthening security, with this voice that accounts for 34% expressing a 4% increase compared to the polls previously held. This is the voice that has registered the biggest increase from one year to the other. This data gains further importance, as also in polls redacted in the previous three years that voice accounted for 30%.

Table 17: Main reasons for benefit of EU Membership (Max. 3 answers)

	EU28		
	EB90.1 September 2018	EB91.5 June 2019	Diff.
The EU contributes to democracy in (OUR COUNTRY)	13%	14%	+1
The EU contributes to maintaining peace and strengthening security	30%	34%	+4
The EU contributes to economic growth in (OUR COUNTRY)	38%	31%	-7
Membership of the EU improves co-operation between (OUR COUNTRY) and the other countries of the EU	31%	34%	+3
Membership of the EU improves co-operation between (OUR COUNTRY) and countries outside the EU	19%	20%	+1

Table taken from: Socio-demographic trends in national public opinion - Edition 6; European Parliament - Public Opinion Monitoring Unit; 2019; retrieved from: <https://www.europarl.europa.eu/at-your-service/it/be-heard/eurobarometer/socio-demographic-trends-edition-6>

Because of the things that have been written above, because of the fact that ‘the EU clearly tends, in some cases, to prefer authoritarian stability over democratization in its neighbourhood’ (Yakouchyk and Schimd, in Bossong and Carrapico; 2016; 126), the growing military-alike equipment at its disposal at the expense of a proper sharing of universal norms and principles, the concept of power deployed by the European Union is shifting from a soft, normative power driven one to a more pragmatic one, which cares less about norms and values. The European Union still try to define what passes as normal on one hand, whilst it acts adjusting itself to the current global context, without trying to change it, but rather shaping its policies and actions around it. If once the Union was rigorous about the respect of its norms and values when it came to signing agreements and deals with third-countries, the various examples provided before show that this is no longer the case, and that the European

Union is oftentimes dependent on third-countries. This changes what Manners said about the main difference between the European Union and other international actor, which is the fact that the EU does not need ‘a backing of force’ behind its actions. Now, not only countries are not attracted to the European Union because of its values, but rather they are becoming important partners for the EU. The ‘carrot and stickism’ has evolved, and now it is uncertain who has the carrot and who has the stick.

Because of the complex nature of the European Union, the various institutions and methods that govern it, one must look closely at the contributions that the EU institutions gave in order to arrive at this shift. The role played by the main European Institutions – the Parliament, the Commission, the European Council and the Council of the European Union – is going to be the focus of the next chapter, as well as the role of Frontex.

The role of the European Institutions and Frontex

Due to the complex nature of the European Union, one must look into how the various European Institutions that compose it have contributed in this process of shifting concept of power. Differences might arise because of the different and unique nature of those institutions. According to article 13 of the Treaty on European Union, there are seven institutions:

- the European Parliament;
- the European Council;
- the Council of the European Union (simply called ‘the Council’);
- the European Commission;
- the Court of Justice of the European Union;
- the European Central Bank;
- the Court of Auditors.

For the purpose of this research, only the first four Institutions will be taken into account. I am going to start by providing a timeline of the actions taken with regards to the migration crisis and analyse them with insights from the previous chapters, in order to try understand if there has been or not a change in the concept of power and if this change has been different from an institution to the other. Finally, I am going to analyse also the European Border and Coast Guard Agency (commonly known as Frontex). Even though it is not an institution, it plays a fundamental role in explaining the shift in the concept of power that has been going on in the European Union during the course of the last institutional cycle.

4.1 The European Parliament

The European Parliament is the only body in the European Union which is directly elected by citizens. It is composed of 705 members⁶⁴, 22 committees, 7 political groups and 44 delegations. Elections for the European Parliament are held every 5 years. The powers of the European Parliament have increased during the years and especially with the Lisbon

⁶⁴ With Brexit becoming effective on 01/02/2020, the number of MEPs went from 751 to 705.

Treaty. The European Parliament has legislative power, which means that it is a co-legislator, together with the Council, where representatives of EU MS national governments sit, under the ordinary legislative procedure (OLP). The co-decision procedure was introduced by the 1992 Maastricht Treaty, it was further extended and made more effective by the 1999 Amsterdam Treaty. With the 2009 Lisbon Treaty, the renamed ordinary legislative procedure became the main legislative procedure of the EU's decision-making system. OLP grants the same decisional power to the European Parliament and the Council of the European Union on many issues such as for example, economic governance, immigration, energy, transport, the environment and consumer protection. The vast majority of European laws are adopted jointly by the European Parliament and the Council. On some other issues, the European Parliament is not a co-legislator but it is required to give an opinion and this is called consultation process, with the Council that cannot legislate without having consulted with the EP. The European Parliament also has budgetary power, meaning that it is requested to vote for the annual budget of the European Union and oversee its implementation. The budget, which is first drafted by the European Commission, must then be agreed upon by the Parliament and the Council; once it is approved, the European Commission has the task to implement it. This extended power has been granted to the EP with the entry into force of the Lisbon Treaty. The EP holds supervisory power on other European Institutions as well. One of the main task that the European Parliament is required to perform is the approval – or not – of the European Commission. The candidate to the Presidency of the European Commission and the candidates for Commissioners proposed by the elected President of the European Commission must appear in an EP hearing and they must pass a vote. Moreover, the EP has the right to dismiss the European Commission. As of today, there has not been a case yet in which the Parliament exercised this power, however the 1999 Santer Commission resigned before the Parliament expressed itself on the matter. For what concerns the European Council, the President of the European Parliament has the right to speak at the start of each meeting and after those have ended, the President of the European Council has to present a report to the European Parliament. When it comes to the Council of the European Union, at the beginning and at the end of each six-months presidency (which rotates between Member States) the President of the Council of the EU discusses its programme in a plenary session of the European Parliament, that is when all the MEPs are present. Moreover, MEPs have the right to present questions to the Council and to ask it to initiate new policies. Another important characteristic of the supervisory power of the EP is that it can ask the

Court of Justice to initiate actions against the Commission or the Council, whether it feels that these Institutions have acted in a way that is opposed to the spirit of European law.

When talking about migration, one of the main topic of focus of this research, one must look further into details the European Parliament pursue of a revision of the Dublin System, which is one of the cornerstone in the establishment of a Common European Asylum System. The Dublin Convention was signed in 1990 and came into force in 1997. Even though the Convention was meant just for members of the then European Community, Norway and Iceland concluded some separated agreements in 2001 with the EC in order to apply the Convention in their countries as well. The aim of this Convention was to determine the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities. In the preamble of the Convention and in Article 2 the willingness to keep with the common European humanitarian tradition is reaffirmed, as well as the intention to ‘guarantee adequate protection to refugees in accordance with the terms of the Geneva Convention’ (EC; 1990; 1). This is further affirmed in article 2, as well as the European commitment in cooperating with the High Commissioner for Refugees of the United Nations. An important provision – and the beginning of many problems between Member States in the last years – is given by article 6, which states that ‘When it can be proved that an applicant for asylum has irregularly crossed the border into a Member State by land, sea or air, having come from a non-member State of the European Communities, the Member State this entered shall be responsible for examining the application for asylum’ (Art. 6 – Dublin Convention 97/C 254/01). At that time, when physical frontier still existed, this provision was just considered common sense. As a matter of fact, the important provisions were for migrants that had members of their family already recognised as refugees or that were already in possession of a regular residence permit. Then in 2003 the Dublin Convention was amended by the Dublin II Regulation (EC) No 343/2003/EC. This was to be extended to all EU Member States – with the exception of Denmark which eventually signed a separate agreement in 2006 – as well as Norway, Iceland, Switzerland and Lichtenstein and reaffirmed the principles that only one country was responsible for the examination of an asylum application and that in case of irregular entry the first country was to be considered responsible. Countries were allowed to deport migrants into the country in which they first entered and submitted an asylum application. Moreover, with the entry into force of EURODAC in 2003, countries were now requested to collect and store fingerprints. As already explained in the section 3.2.1 of the previous chapter, EURODAC is governed by

Regulation (EU) 603/2013 and its aim is to make it ‘easier for EU States to determine responsibility for examining an asylum application by comparing fingerprint datasets’, whilst ‘its primary objective is to serve the Implementation of [...] the Dublin Regulation’⁶⁵. In 2008, the Commission with its proposal (COM) 2008/0243 proposed a new revision to Dublin II, with the aim to ‘increase the system’s efficiency and to ensure higher standards of protection’, as well as ‘contribute to better addressing situations of particular pressure on Member States’ reception facilities and asylum systems’ (European Commission; 2008; 6). However, the Commission’s proposal maintained the principle that responsibility laid directly with the Member States where the application was first lodged. The Dublin III Regulation no. 604/2013 (therein after referred to as Dublin Regulation) was approved in June 2013. Despite three revisions, the principle that the first country to be reached by a migrant must be held responsible for the examination of an asylum application remained. This provision, when the migration influx started growing exponentially in 2014, made the situation for certain Member States unbearable, namely Italy, Greece and Spain, as they are the “frontline” countries therefore the firsts to be reached from migrants coming from the northern parts of Africa. Countries in eastern Europe suffered as well because of the bigger influx of people coming from the Balkan route. Other critics posed to the Dublin System were that it was unsuccessful in providing an effective protection, meaning that in many cases migrants were not able to lodge an asylum application, therefore risking to go back to where they are fleeing. This is due, according to critics, to the fact that during the procedures required by the Regulation to determine which country should be responsible, ‘asylum seekers wait in limbo, too often in detention, with their protection needs unassessed’ (European Council on Refugees and Exiles; 2009; 3). Other accusations have been made claiming that countries were not protecting unaccompanied minors.

The European Parliament has been trying since 2009 to call for a ‘binding mechanism for the distribution of asylum-seekers among all EU Member States’ (European Parliamentary Research Service; 2019; 3) through almost ten resolutions. The EP has played a vital role in trying to reform the Dublin Regulation, which has proven to be in need of structural reform, having revealed ‘significant structural weaknesses in the design and implementation’ and not ‘designed with a view to ensure the *sharing* of responsibility’ (European Parliamentary Research Service; 2019; 2). Parliament has fought for a system that was based upon the principle of sharing solidarity among Member States, without leaving an unbearable burden

⁶⁵ https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/identification-of-applicants_en

on just a few. One of the main actor involved in this was the Committee on Civil Liberties, Justice and Home Affairs (LIBE), one of the 22 committees of the European Parliament which is responsible for protecting civil liberties and human rights, including those of minorities, as listed in the Charter of Fundamental Rights of the European Union. For the purpose of this research, the fields taken into consideration are going to be that of asylum, migration, and integrated management of the common borders⁶⁶. A useful overview of the actions taken by the European Parliament was given by former MEPs Cécile Kashetu Kyenge and Elly Schlein at a conference held in Forlì on the 11th of April 2019 with the title “The European migration policy” which I attended as audience (for full text: see appendix). The two former MEPs were members of the Progressive Alliance of Socialists and Democrats (S&D) political group in the European Parliament and were invited to speak about the matter, as they were actively involved in this process. MEP Kyenge was the author of a non-binding resolution about a holistic approach to migration in the EU, whereas MEP Schlein was among the rapporteurs of a revised regulation that would reform the Dublin Regulation. The two former MEPs were asked to give a brief recap about the last legislative cycle and actions taken in the realm of European migration policy. To this question, MEP Kyenge answered “I remember that 2014 when we arrived at the European Parliament, it was marked by the Arab Springs and the crisis in Lybia and the situation was starting to get worse. After the heartbreaking death of over 300 people on the coasts of Lampedusa, the EU needed to get to a point of solidarity and sharing of responsibility. [...] Together with Roberta Metsola, a Maltese MEP from the European People’s Party, we drafted a text which was voted by a vast majority of the European Parliament calling for a holistic approach to migration. A holistic approach would take into consideration root causes of people leaving their country, [...] then to move on and deal with transit problems and [...] finally deal with welcoming policies in the destination countries as well as return policies. The main points of our non-binding resolution were the importance of article 80 of the Treaty on the Functioning of the European Union, which calls for solidarity and fair sharing of responsibility among Member States; respect of everyone’s fundamental rights; development of safe and lawful routes for asylum seekers and refugees into the EU; development of legal economic migration channels; better cooperation with third-countries on resettlement, returns and addressing root causes as well as a complete overhaul of the Dublin System, with the establishment of a central collection of application at the Union level, with the concept in mind that people are not trying to enter one single

⁶⁶ <https://www.europarl.europa.eu/committees/en/libe/home.html>

country, but rather the entire European Union. After this, the Commission proposed seven reforms about Regulations such as Dublin and EURODAC as well as about directives on asylum policies. [...] The European Parliament was ready to engage in this, however there was no interests from the Council, which holds the role of co-legislator with the EP. Therefore, there were no trilogues negotiations. A trilogue is an informal meeting between representatives of the Parliament, Council and Commission to discuss a legislative proposal under the OLP. Another field in which we as European Parliament played an important role was in the discussion for the EU Multiannual Financial Framework for the period 2021-2027. Not only did the Parliament managed to increase the funds allocated to integration that the European Commission had planned to decrease, but also it was able to impose the conditionality of respect of article 2 TEU to participate in the ‘Rights and Values’ Programme”. The Rights and Values Instrument is a funding programme intended to support the civil society platforms in Europe that defend and promote the rule of law, EU values and democracy as enshrined in article 2 Treaty of European Union.

According to MEP Schlein, “the overall evaluation of the last institutional cycle was to be considered positive for what concerns the European Parliament, but negative for the rest of the Institutions. Among other things, [...] the absolute non respect for articles 78 and 80 TFEU. I actively tried to have a reform of the Dublin Regulation because for her and many others ‘Dublin is dead’. With this intention in mind, I was part of the rapporteurs that wrote a reformed Dublin Regulation, which was eventually approved by 2/3 of the European Parliament, but did not succeed in overcoming the opposition of the Council. This new Dublin Regulation would have put a stronger emphasis on family reconciliation; if this option would have not been available, the choice would have been among the four countries with the lowest quota of migrants, according to a European standard based on the GDP and the population. However, the solution given from the Commission and the Council to the migratory crisis was an externalisation of competences on border and migration managements, with big amount of money to be given to countries in order to do this instead of being used to address the root causes for migration”. As a matter of fact, her declaration resounds what has been said in the section 3.2.2 of the previous chapter, where the processes through which the European Union built a wide network of third-countries in order to contain migration flows towards its coasts and borders, through economic exchanges, visa facilitation processes and mobility of skilled TCNs.

What was the context that prompted the European Commission to propose a reform of the Dublin Regulation on May 2016? In its proposal, the Commission outlined that the EU was working towards a more efficient and sustainable approach to migration, both for people who are seeking asylum and people who migrate for other reasons. In order to do this, the Commission envisages a future model composed of new legal and safe ways to replace the actions of smugglers, as well as protection in the region of origin and resettlement from there to the European Union. At the moment, the situation was characterised by ‘large-scale uncontrolled arrivals’, which brought up difficulties for the asylum system of Member States, resulting in a non full respect of the rules as well as a non attention to the principle of sharing of responsibility from other Member States not directly involved in the issue. Moreover, the migration crisis showed ‘significant structural weaknesses and shortcomings’ on the Dublin System in particular, which ‘was not designed to ensure a sustainable sharing of responsibility for applicants across the Union’ (European Commission; 2016; 3). The Dublin Regulation is deemed responsible for taking a toll on MS asylum systems, as well as lengthy procedures and complex rules on the establishment of which country should be held responsible. The Commission therefore called for a reform to simplify the system, enhance its effectiveness and to put an end to the non fair sharing of responsibility. The objective of the Directive – to allow asylum seekers a quick access on asylum procedures and that only one State is to be considered responsible for the evaluation of said application – were to remain the same. Whilst keeping the same criteria, the Commission envisaged the establishment of a ‘corrective allocation mechanism’ if countries were to face disproportionate migration pressure. If a country was not to take part in this for a maximum of a year, said country would be supposed to make a ‘solidarity contribution’ (European Commission; 2016; 19). The Commission’s proposal made a reference also to fundamental rights, saying that it was compatible with them and with general principles of European and international law. In particular, the proposal aimed to enhance the information of asylum seekers, the effectiveness of the right to judicial remedy, the right to liberty and freedom of movement, the right to family reunification and finally the right of unaccompanied minors. The proposal of the Commission seemed to answer some of the issues raised by the Parliament and by the holistic approach document, which was in fact quoted by the Commission’s proposal in footnotes. The Commission’s proposal was assigned to the LIBE Committee, which prepared a report on it and then presented it to the European Parliament, which voted with a large majority to start interinstitutional negotiations with the Council in

order to finalise a revision of the Dublin Regulation. The main points of the LIBE's report, as reported in European Parliament documents, are:

- *asylum-seekers who have a 'genuine link' with a particular Member State should be transferred to it – the first relocation criteria;*
- *asylum-seekers that have no genuine link with a particular Member State will automatically be assigned to a Member State according to a distribution key; that Member State will then be responsible for processing the asylum application;*
- *asylum-seekers would be able to choose among the four countries which at that given moment have received the fewest asylum-seekers according to a distribution key;*
- *countries of first arrival must register all asylum-seekers, and check their fingerprints as well as the likelihood of an applicant being eligible for international protection;*
- *applications from applicants with a very small chance of receiving international protection would be examined in the country of arrival;*
- *individual guarantees for minor asylum applicants, and an assessment of their best interests are a priority;*
- *faster family procedures should be introduced under which asylum-seekers are immediately transferred to a country in which they claim to have family; furthermore, applications for international protection of a family should be processed together, without prejudice to the right of an applicant to lodge an application individually;*
- *a clear system of incentives and disincentives should be introduced for asylum applicants to avoid absconding and secondary movements. Furthermore, the meaning of absconding needs to be clearly defined;*
- *frontline Member States that fail to register applicants would see relocation from their territory stop, while Member States refusing to accept relocation of applicants would face limits on their access to EU funds.*

Moreover, by looking at the report, it is possible to see that the European Parliament deleted the Recital 34 of the Commission's proposal which envisaged the establishment of a 'solidarity contribution' by Member States who decided to not accept the allocated applicants. The first criterion was established to be the presence of a 'genuine link' with a Member State. For genuine link, it means the presence of 'family members' or 'a prior residence or having studied there' (European Parliament; 2017; 112). If this genuine link was not to be found, then the migrants would have the possibility to choose between the four Member States with the lowest amount of asylum-seekers hosted. Therefore, the Parliament was on board with a corrective allocation mechanism based on population size and national GDP. The European Parliament has been ready since 2017 to face a reform of the Dublin Regulation but continued facing opposition from the Council. The position of the European Parliament on the matter

was solid and not prone to changes on its fundamental revision points, as per the rapporteur Cecilia Wilkström: ‘The European Parliament will only sign off on reforms of the Dublin regulation that change the situation on the ground and allow us to take back control over the failed asylum system. We will not repeat the errors of the past and sign off on a watered-down compromise, which is guaranteed to fail again on first contact with reality. Any new Dublin system must include an automatic relocation system, with the full participation of all member states, as well as fostering true solidarity between all member states’⁶⁷. Another field related to migration on which the European Parliament has been working is the strengthening of a European resettlement framework. A resettlement is a ‘transfer of individual displaced persons in clear need of international protection, from a third country to a Member State’⁶⁸. After the Commission’s proposal in 2016 for a Union Resettlement Framework and the call upon the Council and the European Parliament in the 2017 State of the Union Letter of Intent by former President of the European Commission Juncker to adopt the proposal by the end of 2018, in October 2017 the Parliament voted a report presented by the LIBE Committee and confirmed the mandate to the Committee to enter into interinstitutional negotiations with the Council. The EP demands were for a:

- *Long-lasting solution, first and foremost by granting refugee or subsidiary protection status. Member States may issue permanent residence permits;*
- *to increase resettlement efforts and the number of resettlement places in order to shoulder a fair share of global responsibility. The EU should take on at least 20% of the annual projected global resettlement needs, as defined by UNHCR, which would equate to around 250 000 people in 2017;*
- *resettlement should be a humanitarian programme and the EU resettlement framework should be based on the annual global projected resettlement needs. The UNHCR should be the main institution to select refugees for resettlement to the Member States;*
- *A Union resettlement plan should be adopted every two years in consultation with the High-Level Resettlement Committee, and should be based on UNHCR Projected Global Resettlement Needs*⁶⁹

The third point is of particular interest for the matter of this research, as it opposes the Commission’s vision of using resettlement as a political tool and dependent on the cooperation of third-countries in the management of migration, but rather as a humanitarian programme, to reinforce the vision and values of the European Union. The Commission tendency of using a quid pro quo attitude was a matter of discussion of the previous chapter.

⁶⁷ <https://www.ceciliawikstrom.eu/en/asylum-reform-eu-leaders-must-not-drag-feet-new-dublin-rules/>

⁶⁸ <https://iate.europa.eu/search/standard/result/1581012185367/1>

⁶⁹ <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-jd-eu-resettlement-framework>

Trilogues between the Institutions started in December 2017 and a partial provision agreement was reached between the Parliament and the Council in the summer of 2018. However the Council never endorsed the agreement, putting an halt to the deal.

As it could be noticed, the European Parliament has preferred a humanitarian approach to the migration situation, one that would respect the fundamental rights of everyone and one that would enhance a fair sharing of responsibility between Member States as stated in article 80 TFEU. This approach goes more in the direction of a classical normative actor, whose aim is to spread the values and principles it deems fundamental and universalistic. As a matter of fact, the Parliament has always been depicted as a pressure force on other institutions and governments in taking human rights and democracy in greater consideration, for example by promoting the ‘Annual Report on Human Rights and Democracy in the World’ and assigning yearly the Sakharov Prize. The former gives an overview of the European engagement and actions aimed at the protection of human rights and democracy, whereas the latter is a prize given to people or organisations that dedicate their lives to the defence of human rights and freedom of thoughts. Apart from the economic sum given to the laureate, it represents a strong political statement that gives authority and interests about the cause supported by the winner. Moreover, in 2016 the European Parliament approved a resolution calling for an European mechanism on democracy, the rule of law and fundamental rights. In the resolution, the importance that the EP attributes to the values upon which the Union is founded can be seen from the fact that they are stated as the first point to be taken into consideration. Furthermore, ‘the full respect and promotion of those principles is the essential prerequisite for the legitimacy of the European project as a whole and the basic condition for building citizens' trust in the Union’ (European Parliament; 2016; 3) and ‘fundamental rights recognised by the Charter are at the heart of the legal structure of the Union and respect for those rights is a condition of the lawfulness of Union acts, so that measures incompatible with those rights are not acceptable in the Union’ (2016; 4). Another interesting fact to be noticed is that the document highlights the double standard, considered as one of the causes of weakness of the normative power by Whitman that was reported in section 2.3 of this research, as it says that ‘the failure of a candidate country to meet the required standards, values and democratic principles results in a delay of accession to the Union, until it fully meets those standards, while the failure of a Member State or an institution of the Union to meet those same standards has little consequence in practice’ (2016; 5-6). To conclude, the Parliament calls for article 2 TEU and the Charter of Fundamental Rights of the European

Union to become a legal basis for legislative measures to be adopted under the ordinary legislative procedure, if future revisions of the Treaty were to occur. On the other hand, the European Parliament expressed itself in favour of the EU-Turkey Deal and – holding the co-legislative power together with the Council – played an important role in the establishment and the management of the new Frontex. The European Parliament has urged the Commission to establish a system of European border guards and once it was established it sought to expand the role of the Agency on return operations.

Although the focus of this research is the last European institutional cycle, I think it is worth mentioning a declaration from the current President of the European Parliament David Sassoli. During an event held in Modena on 07/01/2020⁷⁰ that I attended as audience he called for a quick opening of the Conference on the future of Europe and said that one of the point of discussion would be the request of changing the veto power in the Council and further increase the power of the European Parliament ‘because when a decision such as the reform of the Dublin Regulation gets voted by such a vast majority in the European Parliament, that must be the path to follow’. However, in the same conference, he talked about his recent visit to Finland and he highlighted the fact that the 150.000 soldiers that Finland deploys to protect its border ‘also works for our security’. Whether this is to be considered as a response to Russian pressure or as a tool to avoid migration coming from the recent Arctic Route (see 3.2.2 of this research), this example might be useful to show how the situation is shifting and military tools are always more considered when it comes to defence, rather than civilian or normative methods.

All things considered, the European Parliament places itself as an actor within the European Union which actively engages in trying to make sure that fundamental rights and values are respected and promoted in all fields in which the European Union acts, whether it is signing a trade deal or managing migration and external borders. The European Parliament is using all of its tools, such as resolutions, reports, political statements and most importantly its co-legislative power, to ensure that the European Union continues to be a community of values.

⁷⁰ <https://www.comune.modena.it/europa/news/leuropa-immaginata-e-leuropa-che-ce-con-david-sassoli>

4.2 The European Commission

The European Commission is executive arm of the European Union. It is politically independent and it is composed by a “college” of commissioners, one for each Member State. The European Commission has the exclusive power of initiative, meaning that it is the only actor which is allowed to prepare proposal for new European legislation; it is also tasked with implementing the decision of the European Parliament and the Council of the EU. Moreover, the Commission draws the budget draft, sets the EU spending priorities and overview how the money is spent; together with the Court of Justice, it enforces EU law by ensuring that it is applied in the Member States and represents the European Union internationally, by taking part in international bodies and by negotiating international agreements. The candidate to President of the European Commission is put forward by European national leaders and must then be voted by a majority of the European Parliament in order to be appointed. Generally, decisions are taken by consensus, but in case there is a vote, decisions are taken by simple majority. The European Commission is politically independent because their objective is to protect the EU and its interests, rather than the interests of their home countries. As a matter of fact, Commissioners are asked to sworn a solemn oath at the European Court of Justice, ‘pledging to respect the EU Treaties and to be completely independent in carrying out their duties during their mandate’⁷¹. Since 2010, Commissioners pledge to respect the Charter of Fundamental Rights of the European Union. This is in according with article 245 of the TFEU which states that ‘when entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising’ from the Treaties. The respect of the Charter of Fundamental Rights is in the same line as the respect of the Treaties, to testify the importance given to it.

The Juncker Commission made migration and border security important priorities for its term. The aim were to face collectively the common challenges and to obtain a ‘more sustainable way of managing migration and border security in the EU’ (European Commission; 2019; 1). During the presidential campaign Juncker explained his 5-points plan for migration⁷²: implementation of the Common European Asylum System; step up the assistance provided to Member States under high pressure; step up cooperation with third-countries; stronger political commitment to increase legal migration and finally more secure

⁷¹ https://ec.europa.eu/commission/presscorner/detail/en/IP_10_487

⁷² <http://juncker.epp.eu/my-priorities>

EUropean borders. When the Juncker Commission took office on November 2014, it announced a new European Agenda for Migration to be presented in June, which was eventually presented in March. The main points of interest in the European Agenda for Migration were a growing budget for Frontex operation to save lives at sea, an enhanced relocation scheme, resettlement, enforcement of successful return procedures, cooperation with third-countries, pursuit of legal ways for migration and a stronger border management. It is interesting to see that in the introduction of the Communication the Commission firstly highlights the shock and the sadness for the thousands of people that put their lives at risk to try reaching the EU, then it talks about the ineffectiveness of a collective European policy on the matter as ‘there are serious doubts whether our migration policy is equal to the pressure of thousands of migrants, to the need to integrate migrants in our societies, or to the economic demands of a Europe in demographic decline’ (European Commission; 2015; 2). The Commission calls for a coordinated action at the European level, in order for the EU to maintain its international commitments and values whilst at the same time securing the borders and creating appropriate conditions for economic prosperity and societal cohesion. Moreover, Europe still needs to be a safe haven where people whose lives are at risk as well as skilled people are welcomed. This has to be achieved with some measures that would also meet the internal and ethical European obligations. A few months after this, Member States agreed on a EU resettlement scheme, that would eventually resettle 22.000 refugees on a voluntary basis in EU MS. On December 2015, the Commission puts out a proposal to transform Frontex into a European Border and Coast Guard; this proposal is going to be adopted in a record time of nine months, on 6th October 2016 the new European Border and Coast Guard is established with the deployment of over 900 guards to help securitise the EUropean borders. In the meantime, the Commission finalised a deal with Turkey that would drop the arrivals to Greece by 97% in exchange of €6 billion contribution to Turkey, as well as establishing new frameworks and funds to cooperate with third-countries, especially in Northern Africa. Finally, in 2018 the Commission proposed to triple the funding allocated to migration and border security for the EU 2021-2027 budget as well as an ulterior reinforcement of Frontex with a 10.000 guard standing corps and a growing role in return procedures. Another Commission’s proposal would envisage an overhauling of the European rules on return, allowing for quicker return procedures, better prevention of absconding and a reinforced EU asylum agency. Another important role taken by the Commission in the summer of 2018 and early 2019 has been a role of coordination between NGOs vessels and national governments. NGO vessels with rescued people on board would remain many days at

the sea, because of the resistances of national governments on disembarkation. The Commission worked ad-hoc temporary agreements with Member States to allow safe disembarkations and to avoid any further tension between Member States. By looking at the factsheet ‘A step-change in migration management and border security’ provided by the Commission, the main successes of the last institutional cycle are that the number of irregular arrivals to the EUropean borders has decreased: 150.000 irregulars have been detected in 2018, marking the lowest level in 5 years, a 25% decrease from 2017 and a 90% decrease if compared to the numbers registered at the peak of the crisis in 2015; 730.000 people saved at the sea by EU actions since 2015; the return of 37.000 migrants that were stranded in Libya; the fight to smugglers; the establishment of the new European Border and Coast Guard; readmission agreements signed with 23 countries of origin and transit; €140 million allocated between 2015 and 2017 to the Asylum, Migration and Integration Fund; the resettlement of 50.000 refugees since 2015; a new sharing of responsibility between Member States with the relocation of 35.000 asylum seekers from Greece and Italy and finally over 5.3 million vulnerable migrants, refugees and displaced people that benefitted from the EU Emergency Trust Fund for Africa.

However, what the Commission deems as successes under the new European Agenda for Migration have been highly criticised because of their apparent non respect of human rights and breach of rights and principles that are enshrined in the Treaties and that the Commission swears to protect. Critics have claimed that the European Union is more interested in blocking the arrivals, without improving conditions for people in their origin countries to avoid that they embark in perilous journeys. This can be seen from the fact that the European Commission deems as successes the fact that the EU-Turkey deal made the number of arrivals to Greece drop by 97% as well as that 2018 saw the lowest level of arrivals since 5 years. Moreover, the EU-Turkey deal has been harshly criticised because, notwithstanding the amount of money given to Turkey, the conditions for refugees there are not optimal; another point of critic has been that the 1:1 framework would violates international laws. Turkey agreed to secure its borders and host irregular migrants to be returned from Europe, in exchange for that the EU agreed to resettle Syrian migrants living in Turkey who had qualified for asylum and resettlement within the EU on a 1:1 basis. Being only available to Syrian refugees, it might violate article 21 of the Charter of Fundamental Rights of the European Union and the 1951 Geneva Refugee Convention. Article 21 states that:

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

It has to be further remembered that the Commissioners swear a solemn oath to respect the Charter before taking office. Another main critic posed is that Turkey should be considered a “safe third-country” to whom return migrants, as many NGOs claimed and as it has been ruled by a regional court in Germany which suspended the transfer of a Syrian refugee to Greece due to the risk of him being returned to Turkey⁷³ (for defining characteristics of safe third-countries: see 3.2.2 of this research). This could be breach the principle of non-refoulement, as asylum-seekers should not be returned to countries where they are likely to face persecution. As Amnesty International reported many times, there have been cases in which Turkey has forcefully returned people to Syria, as well as Iraq and Afghanistan, countries which are not deemed safe by the EU. Moreover, when the Commission highlights the result of less people arriving to Greece, it has to be said that it is not true that if one migration route is closed, migrants do not embark anymore in journeys to reach the EU, as it has been proven in the previous chapter (see: 3.2.2) with the example of migrants from Morocco to Spain which found new and more dangerous routes when the principal one was closed and from growing numbers of migrants coming from Northern Africa detected in North Macedonia, which is usually a transit country for migrants using the Balkan Route. When it comes to the new European Border and Coast Guard (Frontex), there have been many critics that are going to be matter of discussion in the course of this chapter. Amongst those, the most important consist in the fact that Frontex’s aim would not be to save people at the sea, fulfilling one of the point of the new European Agenda on Migration, but rather do push back operations, breaching various principles of international law. This was even more true when Frontex first started to deploy missions, as it was not allowed to do search and rescue operation. Therefore the main aim of Frontex, which is strengthening the EU external borders whilst at the same time avoiding the death of migrants was not respected, but rather it was just strengthening the borders. Concerning the agreements signed by the Commission, the main questions and concerns regard the fact that the EU signed agreements with countries which

⁷³ <https://ahvalnews.com/syrian-refugees/german-court-rules-turkey-not-safe-third-country-return-syrian-refugee>

are not democratic and fully respect human rights, therefore do not respect the core EU principles that have guided European external policies for decades. Here the Commission showed the shift from a normative power actor into a more pragmatic one, that has to deal with a different context and which tries to avoid tensions within the Union and between the different realities that compose the Union, but in order to do so do not pay attention to the respect of its own principles and laws, which it should guard. For what concerns the resettlements and the relocation scheme, the Commission was successful in relocating thousands of people. When it comes to pursue legal ways for migration of skilled workers, the Commission pursued its Global Approach on Migration and Mobility, that opened possibilities for skilled migrants, whilst at the same time enhancing the security of third-state borders in exchange, as referred in chapter 3.

It is possible to notice that the European Commission expresses mixed feelings about how to deal with migration and how to position itself, because it both incorporates wordings of emergency and respect of human rights, as well as wordings of threats and security. For example, in the Communication on the European Agenda on Migration, it is possible to find phrases such as ‘the immediate imperative is to protect those in need’ and the need to uphold ‘our international commitment’, to meet ‘our international and ethical obligations’ (page 2), as well as wording pertaining to the realm of security, such as ‘a robust fight to illegal migration’ (6), ‘times of emergency’ (12) and ‘the risk of illegal migration and security’ (16). Therefore, it is possible to clearly notice the mixed attitude that the European Commission has when it comes to migration and security, as it was already notice in the subparagraph about Humanitarian border security (see: 3.2.3) in this research. This is typical of European securitisation process, as per Buonfino (2006) which stated that ‘in European discourses, [...] security is implied within discussions of humanitarian assistance, fundamental rights and protection’. Why the Commission would go to such length as to “sacrifice” some of the principles that it should promote and upon which it swore in order to protect the European borders? To defend a functional European common space, a Schengen where people are able to move freely inside. As previously pointed in the course of this research (see: 3.1), with the elimination of internal borders external ones became more important in term of security. As a matter of fact, in the course of a speech given by then European Commission President Juncker at the European Parliament Plenary in preparation for the European Council of 17-18

December 2015⁷⁴, he stated that ‘We Europeans no longer have many borders – we have one and we have a shared responsibility to protect it’. When talking about Schengen, he said ‘let me be absolutely clear. Under my leadership we will do everything possible to protect what we have built – and to make it better and to make it stronger. We want to defend everything that Schengen represents, and as we prepare for a new year, our determination is stronger than ever. So let me tell you: Schengen is here to stay’. In order to do this, the Commission presented the new Frontex which in their mind would have been ‘the missing link to strengthen our external borders, so that people can continue to live and move freely within our Union’. Of course, the Commission knows that an internal area where people can move freely must not come at the price of security loss for Member States and because of this it actuated security policies such as Frontex or signed agreements with third-countries. However, these moves are contrary to ‘many of the core values [...] which the Union claims to uphold and represent’ (Kostadinova; 2017; 68). Kostadinova provides also a useful example. By searching through various speeches of European Commissioners and Commission documents, she provides the ‘Commission’s understanding of the EU self’, with the main characteristics being ‘a tradition of tolerance, welcome and shelter, equality, respect for human rights, the rule of law and human dignity’ (2017; 64). Notwithstanding this, she writes of a 2015 ECRE report that ‘refers to the shortcoming of the Commission human rights guidelines, despite their invocation of human rights and proportionality’. According to this report, ‘the Commission guidelines fail to foster trust between member states’ authorities and migrants, as they feature physical force and detention threats in order to fingerprint the arrivals. Consequently, there are suggestions for setting up appropriate legal safeguards or limiting the use of force against individuals in a legally acceptable way’ (2017; 74). This, as she states, is contrary to the EU image that the Commission articulated in its documents.

On the other hand, as previously said the Commission has tried to push for stronger relocation and resettlement, a reform of the Dublin Regulation that would share the responsibility between Member States and augmenting the funds allocated to the integration. However, on most issues the Commission tends to concur with the Member States, especially on the matter of human rights. On this, the Commission could have done more but tended to avoid risking losing its political capital, acting in a pragmatic way, that is without making proposals that would certainly not pass. The Commission acted in an entrepreneurial way,

⁷⁴ Speech by President Juncker at the EP Plenary – Preparation of the European Council meeting of 17-18 December 2015, retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_15_6346.

looking for opportunities to increase its supranational power and to be able to further protect and expand the European interest, but by doing this, it partly sacrificed those core values it should actually protect. Therefore, the Commission can be considered between the responsible actors for the shift in the concept of power of the European Union, because it no longer put the respect and the promotion of its core values and principles in the first place, but rather decides to use tools which have the opposite effect.

4.3 The European Council and the Council of the European Union

The European Council is composed by the Heads of State or Government of the EU countries and it is tasked with defining the general political direction and priorities of the European Union, setting up the European Union's political agenda. It is therefore the highest political organ of the EU. Born outside of the then EC framework, it was due to the need for national political leaders to discuss issues present on the agenda of European integration concerning the deepening and the widening. The first summit was held at The Hague in 1969 and it was institutionalised by the 1974 Paris Summit. Its existence was acknowledged by the Single European Act in 1986 but eventually it acquired a formal status with the treaty of Maastricht, which defined its status and role as well, with the latter being 'to provide the impetus and general political guidelines for the EU'. Finally, it became one of the EU institutions with the 2009 Lisbon Treaty. The European Council is chaired by a semi-permanent President; it meets twice every six months, but special meetings shall be convened if the president deems it necessary. It plays a fundamental role in defining the strategic direction and main decisions of the EU, according to article 22(1) TEU, which states that it 'shall identify the strategic interests and objectives of the Union'. Per article 22(2) TEU, 'Decisions of the European Council on the strategic interests and objectives of the Union shall relate to the common foreign and security policy and to other areas of the external action of the Union'. It generally decides issues by consensus, but on some issues unanimity or qualified majority is required. The European Council does not pass law, but it can address the European Commission to make a proposal about a certain topic, or pass it to the Council of the European Union. The Council of the European Union (commonly known as 'The Council') is composed by government ministers of each Member State, according to the matter of discussion. It meets in ten different configurations, according to the policy area to be discussed. Ministers meet to discuss about laws to be adopted or amended and coordinate

policies. Ministers represent their governments and they have the authority to commit them to the actions chosen by the Council. Together with the European Parliament, the Council holds the co-legislator role of the European Union. The presidency is held by each EU MS on a six-months rotating base. Usually, a decision requires a qualified majority to pass, that means 55% of the countries representing at least 65% of the total EU population; on the other hand, at least 4 countries are needed (representing at least 35% of the total population) to block a decision. On sensitive national matters such as foreign policy, justice and home affairs and EU membership a unanimous vote is required. Among the other important roles played by the Council, there is the provision of the mandate to the European Commission to negotiate on behalf of the EU agreements between the EU and international organisations and between the EU and non-EU countries.

The timeline of the European Council's involvement in the migration crisis starts in 2015, after one of the many tragedy across the Mediterranean Sea. At a special meeting held in April 2015 the European Council committed to: strengthen its presence at the sea, by reinforcing Operations Triton and Poseidon and allowing it to increase their search and rescue possibilities; fight traffickers in accordance with international law; prevent illegal migration flows and reinforce internal solidarity and responsibility. In order to fight the business of human traffickers, the European Council instructed the Council to establish EUNAVFOR Med, an EU military operation. In the Conclusion of a meeting held the 25-26 June 2015, the European Council agreed on the relocation in two years of 40.000 asylum seekers from Italy and Greece, as well as to the resettlement of 20.000 asylum seekers. About readmission agreements, the European Council pushed for the quick signing of such agreements. Moreover, it sets out the "more-for-more" principle, that is providing EU assistance and policies to create incentives for implementing existing readmission agreements and concluding new ones. 'Commitments set out in trade agreements regarding the temporary presence of persons for the provision of services should be used as an incentive to conclude readmission agreements; development policy tools should reinforce local capacity building, including for border control, asylum, counter-smuggling and reintegration' (European Council; 2015; 4). It is possible to notice the characteristics of the Mobility Partnerships signed by the Commission with third-countries in order to create a network of third-countries to manage the migration flows to reach European territories that have been discussed in the third chapter (see: 3.2.2). At the European Council of 15th October 2015, EU leaders agreed on stronger cooperation with countries of origin and transit, welcoming a EU-Turkey Action

Plan; strengthening of the European external border through an integrated border management system and full deployment of Rapid Border Intervention Team and finally improving implementation of the return and readmission agreements. In the first months of 2016, the European Council called many times for stronger cooperation with Libya in order to ‘stem the flow of migrants’ in the Central Mediterranean Route, as well as further efforts to increase returns. Moreover, they called for readmission agreements with non-EU countries to be urgently put in place. When it comes to the reform of the Dublin Regulation, pledging to reach a consensus in the first half of 2018. At the following 14-15/2017 December summit, Donald Tusk made some remarks about the question. About the reform of the Dublin Regulation, he said ‘I received a positive answer as to the readiness to work in consensus. Mandatory quotas remain a contentious issue, although its temperature has decreased significantly. If only for this reason, it was worth raising this topic. Will a compromise be possible? It appears very hard. But we have to try our very best. We will assess progress in this respect in March, while the leaders want to make decisions in June’. Among EU leaders there were questions about the effectiveness – or lack of – mandatory quotas, which were the main point of discussion about the reform of the Dublin Regulation. Leaders agreed that relocation, although welcoming the efforts of countries taking refugees, was not an effective solution to the issue of illegal migration. again, during a summit held the 28-29 June 2018. They called for further measures to reduce illegal migration and prevent a return to the extreme migration flows of 2015. In the Conclusions, they said ‘The European Council reconfirms that a precondition for a functioning EU policy relies on a comprehensive approach to migration which combines more effective control of the EU’s external borders, increased external action and the internal aspects, in line with our principles and values’. In the course of this summit, they supported the development of regional disembarkment platform to be established in third-countries in Africa, to ‘rapidly and safely distinguish between economic migrants and asylum seekers’.

The Council, on the matter, in 2015 decided to reinforce the scope of the EU civilian mission EUCAP Sahel Niger to support the Nigerian authorities in preventing irregular migration and combating associated crimes, as well as established the EUNAVFOR military mission, as instructed by the European Council, which then would be launched in June 2015. Following a special meeting of the European Council called because of the many tragedies occurring in the Mediterranean sea, in the course of a Foreign Affairs Council the Council reiterated the need to enhance work on the links between migration and development, as

stated in the outcomes of that meeting ‘The EU’s comprehensive approach includes working on root causes of irregular migration. The EU is committed to enhancing work on the links between migration and development. By addressing political, economic and social instability, development cooperation can contribute to ensuring that migration is a choice rather than a necessity’. In order to do that, the Council ‘encouraged’ the Commission and the European External Action Service to work on finding concrete measures to implement the already agreed upon decisions of the Council on the matter and in particular to strengthen the migration dialogues with partner countries and regions and to improve the operational approach. In the Justice and Home Affairs Council of 20th of July 2015, countries agreed to a temporary relocation framework of 40.000 asylum seekers from Greece and Italy, as well as the resettlement of 20.000 persons in need. Moreover, countries agreed on the importance of a coordinated approach between them on the designation at national level of third countries as safe countries of origin within the meaning and criteria of the Asylum Procedures Directive, as well as suggesting that Western Balkans countries should be considered safe countries by all Member States. The Council welcomed the idea of the Commission to a possible establishment of a common EU list of safe countries of origin. When a country is deemed as a safe country of origin, the receiving country is able to reject the application without examining it. In the first months of 2017, the Council allowed a temporary extension of internal border controls due to exceptional circumstances for 5 Schengen Member States. The circumstances were ‘serious threat and to safeguard public policy and internal security resulting from the continued risk of secondary movements of irregular migrants’⁷⁵. After a meeting held the 08/06/2017, the Council adopted conclusions to reaffirm the right of children to be protected in migration, in line with the EU Charter of Fundamental Rights and international law. This is one of the first occasion in which the EU Charter of Fundamental Rights of human rights in general make their appearance as principal subject of talks, as they are usually addressed as side notes, not an element that plays an important role and that should be respected. As a matter of fact, the leitmotifs of talks in the European Council and in the Council of European Union are usually ways to stop illegal migration, reinforcement of cooperation with countries of origin and third-countries in readmission procedures,

⁷⁵ <https://www.consilium.europa.eu/en/press/press-releases/2017/05/11/schengen-area-six-month-prolongation-internal-border-controls/>

reinforcement of Frontex and augmenting its scope in returns operation, as agreed in the JHA Council of 11-12/10/2018.

When it comes to the Dublin Regulation reform, the Council did not adopt yet its negotiating mandate. After Commission's proposal 2016/0133, the Asylum Working Party, which is the Council preparatory body for Common European Asylum Space issues, started the examination of it. Many Member States were on board about changing the Dublin Regulation, supporting two main points of it, namely the rapid determination of the Member State responsible for the examination of the claim and prevention of secondary movements. However, Member States were not on board on issues such as: one single Member State responsible for the examination of asylum claims and the removal of the cessation of responsibility; the obligation for Member States where the application was lodged to do certain checks before applying the criteria for determining the Member State responsible; the definition of 'family members'; amended rules for remedies; shorter deadlines for detention and transfers; the corrective allocation mechanism and the financial solidarity contribution; questions of practical, operational and financial nature in relation to the new automated system (Council of the European Union; 2016; 3). Discussions continued for more than two years in the Council, with the solidarity mechanism and the responsibility principle being the most controversial subjects. As a matter of fact, a 2017 JHA meeting highlighted that the aim was to 'reach[ing] a compromise on the effective application of the principles of solidarity and responsibility. This work has been based on the common understanding of the need to strike the right balance between the principles of responsibility and solidarity' (Council of the European Union; 2017; 2). In order to reach said compromise, the Commission outlined a plan, with the broad outlines for an agreement to be reached by April 2018; said agreement would then be reached at the EU leaders meeting in Sofia in May 2018 which then would have been translated into a negotiating mandate for the Council and finally, a political agreement to be reached by June 2018 at the European Council on the overall reform of the CEAS⁷⁶. Due to the unanimity required in order to give the mandate to start interinstitutional negotiations, it is going to be difficult to reach a deal. A group of four countries – Czech Republic, Hungary, Slovakia and Poland, commonly referred to as “the Visegrad countries” – have voiced their opposition to the reform, especially to the compulsory relocation of refugees. Hungarian Minister of Foreign Affairs and Trade Szijjártó strongly stated in an

⁷⁶ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20171207_communication_on_commission_contribution_to_the_eu_leaders_thematic_debate_on_wa_y_forward_on_external_and_internal_dimension_migration_policy_en.pdf.

interview that is government ‘will be objecting to and vetoing any and all proposals that would prescribe or establish admittance quotas or mechanisms either directly or indirectly’⁷⁷. Moreover, frontline countries such as Cyprus, Greece, Malta, Italy and Spain presented a position paper where they argued for a reduction of their “fair share” of refugees, due to the pressure they faced as frontline countries. Each following Presidency of the European Council tried to reach a consensus on a possible reform of the Dublin Regulation, based on a balance between solidarity and responsibility. The Bulgarian government, which held the Presidency from the 1st of January 2018, presented a compromise proposal. This proposal would change the requirements for a third-country to be considered a first country of asylum, a safe third-country and a safe country of origin, with ‘sufficient protection’ being the only element required to have that designation. The term was not properly defined in the Proposal, as it was still a matter of discussion among the leaders and because of the European Council request of an alignment with the Geneva Convention and EU law. The proposal foresaw the creation of a European list of safe countries, in parallel with national lists. That means that, if a third-country was present in a national list’s of safe countries and not on the European one, the country would be able to reject the claim. Therefore, countries could examine more rapidly and reject applications from people coming from those countries, without asserting the Dublin criteria. The proposal distinguished between three level of crisis mechanism: normal circumstances, challenging circumstances and severe crisis. This, being based on numbers of applicants that each country is allowed to take, would solve the problem of share of responsibility between Member States. Reallocation, if necessary, would be done firstly on a voluntary basis, then ‘as measure of last resort’, on the basis of a Council Decision. The proposal introduces also shortened deadlines to comply with the Dublin procedures, financial support and strengthen of rules to determine the country responsible. Many ethical and practical questions arose after the Bulgarian proposal (see ECRE; 2018 and the Meijers Committee; 2018). One of the main critic was about the phrasing of ‘sufficient protection’, which has not been defined and was therefore too general and not containing provisions regarding the socio-economic benefits as the third-national national, when talking about ‘first country of asylum’. Moreover, defining a ‘safe third-country’ based solely on transit of a person has been strongly criticised by the UNHCR as not constituting a sufficient bond. Other critics have been posed on the EU safe country list, because if a country can be considered safe can change from an applicant to the other, making necessary for the applicant the option

⁷⁷ <https://www.kormany.hu/en/ministry-of-foreign-affairs-and-trade/news/there-are-15-million-internal-refugees-and-people-in-need-of-humanitarian-aid-living-in-the-immediate-vicinity-of-europe>

to challenge that decision. If the applicant has to challenge that decision at the European level, it can take a large amount of time. Therefore, mandatory application of the safe country concept could result in serious human right violations. Other critics posed to the proposal are about the complexity of the system and the pre-Dublin checks, that could create ‘set of different, partly overlapping procedures in different Member States’ as well as situations in which criteria such as familiar reunification would not be taken into consideration due to procedural restraint, as it is a criteria that would not be taken into consideration if an application is found inadmissible due to pre-Dublin checks, which would be mandatory in some of the circumstances presented in the Proposal. This would be opposed to Article 7 of the Charter of Fundamental Rights of the European Union which is about the protection of private and family life and which applies to anyone regardless his/her legal status; this means that a migrant, even if irregular, cannot be removed from the territory of the European Union. Finally, these procedures would actually be counterproductive to the Regulation’s objective of efficient procedures ensuring rapid access to asylum procedures and would not alleviate the burden for frontline countries, ultimately resulting in the use of coercive measures, detention in facilities which cannot be considered appropriate and further exacerbate tensions. Notwithstanding the Bulgarian proposal, Member States have not been able to reach an agreement at the following European Council meetings, with the main point of disagreement being the reform of the Dublin Regulation, followed by the European asylum policy and more broadly aspects of migration in general.

As it has been shown by a brief examination of the policies and the documents of the European Council and the Council of the European Union, the main aim with regards to migration is not respecting the Human Rights of migrants, but rather protect the territory of the European Union from more migrants approaching it. This is clearly stated by then President of the European Council Donald Tusk, in his remarks following the European Council meeting of 14/15 December 2017, where he started by saying that ‘Yesterday's discussion on migration confirmed the hierarchy of our aims, where protecting our territory, protecting our external borders as well as stemming illegal migration come first’⁷⁸. As it can be seen, there is no reference to respect of rights and international obligations coming from the Treaties and Charters. This attitude is found in another documents and declarations as well, for example when the European Council defined the EU-Turkey deal necessary and

⁷⁸ <https://www.consilium.europa.eu/en/press/press-releases/2017/12/15/remarks-by-president-donald-tusk-on-the-european-council-meetings-on-14-and-15-december-2017/>

commented that it would ‘take any necessary measures to prevent new sea or land routes for illegal migration’⁷⁹ between the two contracting parts. Again, the focus is put on the defence of the EUropean borders and stopping illegal migration, rather than addressing the root causes and the respect and promotion of fundamental rights. This is further exacerbated by the presence of human rights rhetoric in the documents, which is used as a legitimising tool for further extraordinary measures such as Frontex and the growing capacities that have been granted to the Agency.

Being the representation of national governments in the EU, it is obvious that the actions taken and policies initiated by the European Council and the Council of the European Union are directed towards serving what national governments believe to be national interests. During these years that have been characterised by a growing economic crisis for a majority of European states, a growing inequality and challenges to the welfare state, migration has been used as a scapegoat that would cover all problems, as well as a tool to allow governments to reassert their control and their political integrity in the face of citizens who often see the EU as something bad and mysterious. Whilst it is natural and recommended that Member States securitise their borders and provide safe conditions to their citizens, they should however respect the international and European laws they adhered to and whose respect they demand for their citizens. By their actions at the European level, Member States have contributed to the shift in power expressed by the European Union, which can no longer be defined solely as a normative actor, but rather an actor who deploys military tools on its borders and above as the main method of defence of its lifestyle. That is contrary to what expressed in the Treaties that laid the foundations for the European Union.

4.4 Frontex

The European Border and Coast Guard Agency (known as Frontex, from the contraction of the French *frontières extérieures*) is a European agency tasked with promoting, coordinating and developing the EUropean border management. Frontex has the task of coordinating and organising joint operations and rapid border interventions to assist European Member States at their external borders and these operations might include as well humanitarian emergencies and sea rescue missions. When it comes to rapid intervention operations, Frontex has at its disposal at least 1500 border guards and other staff relevant to the operation; the tools and means to be used during the operations such as aircrafts, vessels

⁷⁹ <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>

and land vehicles must be provided by Member States. Frontex has also the power to carry out operations in non-EU countries that neighbour with at least one EU country, when a migratory pressure is found at a non-EU country's border.

To talk about the origin of Frontex, one must go back to the establishment of the Schengen Area and the need to reinforce external surveillance in order to maintain the security of the now borderless European Union. Since 1999, the European Council on Justice and Home Affairs worked to improve cooperation in the areas of migration, security and asylum. Its work brought to the creation of a External Border Practitioners Common Unit, a group composed by heads of the national border control services and members of the Strategic Committee on Immigration, Frontiers and Asylum. This Unit coordinated Ad-Hoc Centres on Border Control to be implemented nationally with the aim to oversee European pilot projects and to implement common operations in the management of the borders. After the implementation of such centres, the Council decided to establish the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), to improve procedures and working methods of the Common Unit. This was established with Council Regulation (EC) no. 2007/2004 of 26th October 2004. The tasks of the newborn agency were:

- (a) coordinate operational cooperation between Member States in the field of management of external borders;*
- (b) assist Member States on training of national border guards, including the establishment of common training standards;*
- (c) carry out risk analyses;*
- (d) follow up on the development of research relevant for the control and surveillance of external borders;*
- (e) assist Member States in circumstances requiring increased technical and operational assistance at external borders;*
- (f) provide Member States with the necessary support in organising joint return operations (art.2(1) Regulation (EC) no 2007/2004).*

On 14th September 2016 Regulation (EU) no 2016/1624 amended the former, establishing the European Border and Coast Guard Agency (Frontex). The background situation for this new regulation was the new flow of migration. As a matter of fact, the Regulation states that:

'At its meeting on 25 and 26 June 2015, the European Council called for wider efforts in resolving unprecedented migratory flows towards Union territory in a comprehensive manner, including by

reinforcing border management to better manage growing mixed migratory flows. Furthermore, at their informal meeting on migration on 23 September 2015, the Heads of State or Government stressed the need to tackle the dramatic situation at the external borders and to strengthen the controls at those borders, in particular through additional resources for the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the European Asylum Support Office (EASO), and Europol, with human resources and technical contributions from Member States.'

The legal ground to the proposal of the Commission can be found in article 77 paragraph 2(b) and (d) and article 79 paragraph (c), TFEU which respectively gave the power to adopt measures regarding persons crossing external border, 'any measure necessary for the gradual establishment of an integrated management system for external borders' (art. 77, 2(d) TFEU) and the possibility to develop a common immigration policy that would include 'removal and repatriation of persons residing without authorisation' (art. 79 2(c) TFEU). The task of the then European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union were expanded and the key role of the new Frontex would have been

'to establish a technical and operational strategy for implementation of integrated border management at Union level; to oversee the effective functioning of border control at the external borders; to provide increased technical and operational assistance to Member States through joint operations and rapid border interventions; to ensure the practical execution of measures in a situation requiring urgent action at the external borders; to provide technical and operational assistance in the support of search and rescue operations for persons in distress at sea; and to organise, coordinate and conduct return operations and return interventions'.

Compared to the previous regulation, the tasks of the new Frontex show the expanded role granted to the agency. Just to name few of those tasks, that can be found in article 8 of the Regulation (EU) no 2016/1624:

(d) assist Member States in circumstances requiring increased technical and operational assistance at the external borders by coordinating and organising joint operations, taking into account that some situations may involve humanitarian emergencies and rescue at sea in accordance with Union and international law;

(f) provide technical and operational assistance to Member States and third countries in accordance with Regulation (EU) No 656/2014 and international law, in support of search and rescue operations for persons in distress at sea which may arise during border surveillance operations at sea;

(j) support the development of technical standards for equipment, especially for tactical-level command, control and communication as well as technical surveillance to ensure interoperability at Union and national level;

(k) deploy the necessary equipment and border guards and other relevant staff from the rapid reaction pool for the practical execution of the measures needed to be taken in a situation requiring urgent action at the external borders;

(l) assist Member States in circumstances requiring increased technical and operational assistance to implement the obligation to return returnees, including through the coordination or organisation of return operations;

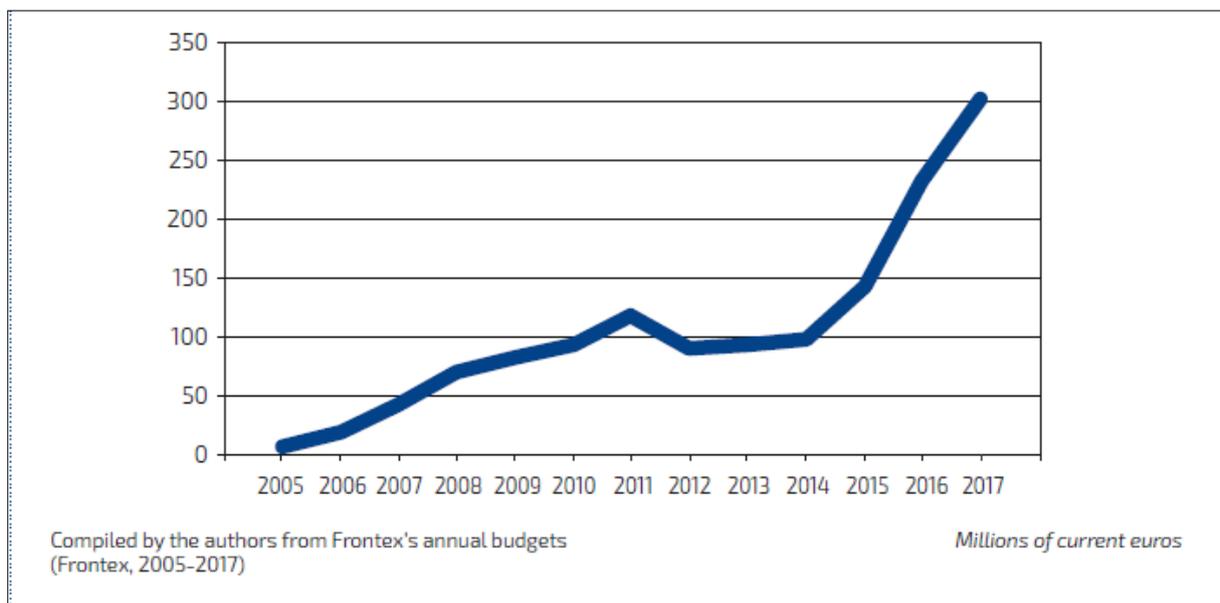
(o) set up and deploy European return intervention teams during return interventions;

(u) assist Member States and third countries in the context of technical and operational cooperation between them in the matters covered by this Regulation.

As it can be seen, the new Regulation gave the Agency its operational staff, the ability to carry out return operation and border management operation and the possibility to conduct search and rescue operations, as the previous limitations were weakening Frontex's ability to face successfully the migration crisis. On the 6th October 2016 at the border between Bulgaria and Turkey the Agency was officially launched.

Frontex's budget has widely increased in the course of the years. In the following table, it is possible to see the growth of the Agency's budget in the period 2005-2017:

Table 18: Evolution of the Frontex budget from 2005 to 2017



Source: Building Walls: Fear and Securitization in the European Union; page 15

When the Agency was first established, the budget was €5.5 million and the staff was composed of just 45 people, whereas now the budget of Frontex is of €333 million. As Frontex uses equipments and personnel provided for by the Member States, in the past it has expressed concern about the availability of said resources. That is why in 2015 the Agency was granted budget in order to buy or lease equipments for its missions, as stated in article 38, paragraph 1 and 2 of the Regulation(EU) no 2016/1624 establishing Frontex. The article says that ‘1.The Agency may acquire, either on its own or as co-owner with a Member State, or lease technical equipment to be deployed during joint operations, pilot projects, rapid border interventions, return operations, return interventions, migration management support team deployments or technical assistance projects in accordance with the financial rules applicable to the Agency.’ and ‘2.The Agency may acquire technical equipment by decision of the executive director in consultation with the management board. Any acquisition or leasing of equipment entailing significant costs to the Agency shall be preceded by a thorough needs and cost/benefit analysis. Any such expenditure shall be provided for in the Agency's budget as adopted by the management board’. The budget is going to be increased, as under the new EU budget cycle for 2021-2027 the Commission has allocated €2.2 billion to ‘allow the Agency not only to acquire, but also to maintain and operate the air, maritime and land assets needed for its operations’⁸⁰ with the aim of giving Frontex the ability to deploy immediately equipments such as vessels, helicopters and vehicles. Concerning the staff, the Juncker Commission proposed in 2018 to create a standing corps of 10000 operating staff by 2020, that would be enabled to carry out border control and return tasks as the national border guards. In its opening statement in the European Parliament Plenary Session of 16th July 2019 in Strasbourg, the elected President of the European Commission Ursula von der Leyen called for a ‘need to reach a standing corps of 10,000 Frontex border guards not by 2027, but way earlier, at least by 2024’ in order to ‘allow us to return to a *fully functioning Schengen Area* of free movement, the key driver of our prosperity, security and freedoms’. Central for this aim is a ‘*reinforced European Border and Coast Guard Agency*’⁸¹.

The equipment used by Frontex, whether leased or bought by the Agency or borrowed from European Member States, is starting to resemble an army asset, and the increased budget to buy more equipments is going to go in that direction. Moreover, one must not forget the

⁸⁰ State of the Union 2018: A fully equipped European Border and Coast Guard – Questions and Answers, retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_5715.

⁸¹ Opening Statement in the European Parliament Plenary Session by Ursula von der Leyen, Candidate for President of the European Commission, retrieved from: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_4230.

military or quasi-military equipments that might be created in the field of PESCO, such as for example the European Attack Helicopters TIGER Mark III, as then these can be provided for the Agency's activities by Member States. As of December 2018, contributions by Member States in terms of equipment were as such:

Table 19: Composition of Frontex Technical Equipment Pool (December 2018)

MEMBER STATE	FIXED-WING AIRCRAFT	HELICOPTERS	PATROL VESSELS / BOATS	TOTAL	MEMBER STATE	FIXED-WING AIRCRAFT	HELICOPTERS	PATROL VESSELS / BOATS	TOTAL
Austria		1		1	Lithuania		3	1	4
Bulgaria			1	1	Luxembourg	1			1
Croatia			6	6	Malta	3		11	14
Cyprus		1	1	2	Netherlands	2		2	4
Estonia	1		1	2	Norway			3	3
Finland	1		3	4	Poland	2	2	1	5
France	2	2	5	9	Portugal	2	1	95	98
Germany		3	3	6	Romania		1	4	5
Greece	2	1	82	85	Slovakia	1			1
Iceland	1	1	1	3	Slovenia		4		4
Italy	12	26	140	178	Spain	1	1		2
Latvia		2	4	6	Sweden			1	1
					Total	32	48	365	445
Belgium, Czech Republic, Denmark, Hungary, Switzerland, United Kingdom									0

Source: The Business of Building Walls; page 21

As for the contracts/tenders for assets in use or to be used by the Agency, the situation is the following:

Table 20: Contracts/tenders for assets in use or to be used by Frontex

Frontex			
YEAR	PURCHASE / LEASE	DESCRIPTION	VALUE (MILLION €)
2017	Lease	Trial of long endurance maritime surveillance with MALE Remote Piloted Aircraft Systems (RPAS) ⁷²	6.4
2018	Lease	Lease of one surveillance aerostat to carry out a pilot project in Greece ⁷³	0.5
2018	Lease	Framework contract for leasing of off-road vehicles for Frontex operational activities ⁷⁴	1.0
2019	Lease	Framework contract for provision of mobile surveillance systems for Frontex operational activities ⁷⁵	28.0
2019	Lease	Maritime surveillance aerostat trial ⁷⁶	0.5
2019	Lease	Aerial surveillance services for border and coast guard functions ⁷⁷	29.0
2019	Lease	Remotely Piloted Aircraft Systems (RPAS) for medium altitude long endurance maritime aerial surveillance ⁷⁸	50.0
2019	Purchase	Framework contract for provision of vehicles for migration management support ⁷⁹	2.0

Source: The Business of Building Walls; page 21

In order to understand the importance of the new Frontex as established in 2016 by Regulation (EU) no 2016/1624 in the management of migration flows, one must look at the diversity of operations that are run by Frontex in term of budget. From 2005 to 2015, Frontex played a facilitator role in the return operation, whilst in 2016 its role in those kind of operation was expanded into a coordinator one. This is shown in the increased budget allocated to return operation since 2016, which grew considerably. The amount of budget dedicated to joint operations grew as well, starting from a mere €3.4 million in 2005 to €129.3 million in 2017 and saw a slight decrease in the years 2011 and 2012, starting to grow again in 2013 with the peak of the migration crisis. A considerable part of the budget, even though smaller than the other budget items, is reserved to trainings.

In the following table, the budget situation written above is presented:

Table 21: Frontex budget allocation

	<i>Current euros</i>				
	OPERATIONAL ACTIVITIES	JOINT OPERATIONS (Land, sea and air)	COOPERATION OPERATIONS FOR DEPORTATION	SUPPORT OPERATIONS FOR DEPORTATION	TRAINING
2005	4,024,300	3,400,000	80,000,00		250,000
2006	19,166,300	10,764,300	325,000,00		1,060,000
2007	27,326,000	19,865,000	600,000,00		3,505,000
2008	70,432,000	38,450,000	560,000,00		6,410,000
2009	83,250,000	42,900,000	2,250,000,00		6,500,000
2010	61,611,843	34,770,843	9,341,000,00		7,200,000
2011	86,730,500	73,223,500			5,600,000
2012	58,951,000	46,993,000			4,000,000
2013	62,550,900	39,531,900	8,850,000,00		4,760,000
2014	60,348,700	46,330,700			4,050,000
2015	111,228,000	92,009,000			4,320,000
2016	188,897,000	121,977,000		39,585,000	5,000,000
2017	225,652,794	129,365,000		53 060 000	8,978,285

Compiled by the authors from Frontex's annual budgets (Frontex, 2005-2017)

Source: Building Walls: Fear and Securitization in the European Union; page 15

The main operations currently undergoing with Frontex's support are: operation Poseidon in Greece, which is tasked with the patrol of the area between Turkey and Greece; Operations Hera, Indalo and Minerva in Spain, which are deployed in the sea between Morocco and Spain; Operation Themis in Italy (which replaced Operation Triton) whose area comprises

Algeria, Tunisia, Libya, Egypt, Turkey and Albania and various operations in the Western Balkans.

Frontex is a key element in the shift of power in the European Union. The changes that the Agency underwent with Regulation (EU) no 2016/1624 indicates well this new tendency present in the European Union and its purpose, as the background was the ‘unprecedented migratory flows’. In order to face this threat, the Agency was granted new capacities such as operational staff, the ability to carry out return operation and border management operation, the possibility to conduct search and rescue operations and a coordinating role in returning operation. Moreover, the Agency underwent an exponential budget increase during the years, from €5.5 million when it was established to €333 million in 2017. With these new economic resources, the Agency is now able to deploy rapid intervention teams and has equipped itself with an operational staff that counts at least 1500 border guards. Moreover, the budget allocated to Frontex is going to be further increased with the new European budget, and the Agency has been granted the possibility to acquire directly assets needed to operate. Tools used by Frontex, such as high tech vessels, helicopters and vehicles resemble those of an army, giving Frontex a military-alike equipment and Frontex has been granted the capability to carry out operations in non-EU countries. The exponential growth in term of capabilities, economic resources and importance in coordination and operational capacities is due because Frontex is deemed as fundamental for the return to a ‘*fully functioning Schengen Area*’ as stated by the President of the Commission Von der Leyen. The fact that a new strong and independent Frontex is considered fundamental for the survival of the Schengen Area strikes with the spirit of what the European Union has represented due to its history and the norms which it actively try to spread and conversely further exacerbate the idea of a fortress Europe and a distinction between “us” civilised people and “them” which are a threat to our lifestyle, security and stability.

4.4.1 Critics to Frontex

Frontex’s operations have received many critics, especially from scholars and NGOs. For example Operation Triton – which has now been replaced by Operation Themis – was launched after the Italian Government suspended the Operation Mare Nostrum, as it was deemed too expensive for the country to run it by itself (the expenditure was about €9 million per month). Even though Operation Triton was coordinated by Frontex, the number of

migrants death rose if compared to when Italy was conducting Operation Mare Nostrum, as was claimed by many NGOs and especially by the IOM. Moreover, the New York Times wrote an article⁸² saying that the number of migrants who drowned in the Mediterranean Sea trying to reach the European Union in early 2015 was 1600% higher than compared to early 2014. Furthermore, the budget allocated to Operation Triton initially was less than the budget dedicated to Operation Mare Nostrum by the Italian Government, with the latter operation having more equipments and whose mandate was also to conduct search and rescue operations. This clashes with the intent of Frontex, which is strengthening the EU external borders whilst at the same time avoiding the death of migrants. Eventually, the budget of Operation Triton was increased and search and rescue operations were included and are still included in the current Operation Themis.

Another fundamental critic posed to Frontex's joint operations is that those operations do not aim to save people at the sea, but rather to locate them in order to push them back outside the European space into third-countries which are not safe. If these allegations were true, it would mean that the principle of non-refoulement would be breached. The principle says that 'No Contracting Parties shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion', as stated in article 33(1) of the Refugee Convention of the United Nations Charter of Human Rights signed in 1951. Moreover, immediate push backs prefigure also breaches of the rights of migrants to pursue an application for asylum, to be informed about asylum procedures and to present their case to competent courts, as per the European Directive 2005/85 on Asylum Procedures.

According to an NGO called Platform for International Cooperation on Undocumented Migrants (PICUM), the first forced return operation conducted by Frontex happened on 21st June 2009. In that occasion, a German helicopter used in Operation Nautilus IV picked up a large number of 'irregular' migrants and eventually handed them over to a vessel from Libya (Vaughan-Williams, 2015, 61). As I wrote previously in the course of this thesis, the term irregular is in quotation marks because, if the handing over actually happened, it would have not been possible to process the asylum claims of the migrants, therefore it cannot be said for sure that those migrants were irregular and not entitled to protection. Other cases in which operations were not carried were reported, for example the Parliamentary Assembly of the

⁸² <https://www.nytimes.com/interactive/2015/04/20/world/europe/surge-in-refugees-crossing-the-mediterranean-sea-maps.html>

Council of Europe reported in 2012 that a Frontex airplane did not respond to a boat in distress, causing the eventual death of 56 passengers.

When faced with this critics of not respecting human rights, the former Executive Director of Frontex Ilkka Laitinen claimed that ‘Frontex is legally incapable of violating human rights’⁸³ as reported in an interview with a Finnish newspaper. This incapability is given by the fact that Frontex is not a State, but merely a coordinating agency. According to him, the responsibility rests solely on the Member States, tasked with processing asylum procedures and run rescue operations.

The respect of human rights and of the various charters governing this field are enshrined in the Frontex Regulation, as it is stated that ‘arrangement between a Member State and a third country does not absolve the Agency [...] from obligation under Union or international law, in particular [...] with the principle of *non-refoulement*’. Moreover, the various actors involved

‘should fulfil its tasks in full respect for fundamental rights, in particular the Charter of Fundamental Rights of the European Union (‘the Charter’), the European Convention for the Protection of Human Rights and Fundamental Freedoms, relevant international law, including the United Nations Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Relating to the Status of Refugees and obligations related to access to international protection, in particular the principle of non-refoulement, the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, and the International Convention on Maritime Search and Rescue. In accordance with Union law and those instruments the Agency should assist Member States in conducting search and rescue operations in order to protect and save lives whenever and wherever so required’.

With the Regulation of 2016 giving Frontex extended power, the Agency is now able to sign agreements with third-countries, in order to avoid possible wave of migrants arriving into the territory of the European Union. Agreements with third-countries are regulated in article 54 of said Regulation (EU) no 2016/1624:

1. In matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate and encourage technical and operational cooperation between Member States and third countries, within the framework of the external relations policy of the Union, including with regard to the protection of fundamental rights and the principle of non-refoulement. The Agency and the Member States shall comply with Union law, including norms and standards which form part of the Union acquis

⁸³ <https://migrantsatsea.org/tag/ilkka-laitinen/>

also when cooperation with third countries takes place on the territory of those countries. The establishment of cooperation with third countries shall serve to promote European border management and return standards;

2. The Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation with the support of, and in coordination with, Union delegations. When doing so, it shall act within the framework of the external relations policy of the Union, including with regard to the protection of fundamental rights and the principle of non-refoulement. It shall also act within the framework of working arrangements concluded with those authorities in accordance with Union law and policy. Those working arrangements shall specify the scope, nature and purpose of the cooperation and be related to the management of operational cooperation. The draft arrangements shall have received the Commission's prior approval. The Agency shall inform the European Parliament before a working arrangement is concluded. The Agency shall comply with Union law, including norms and standards which form part of the Union acquis;

3. In circumstances requiring increased technical and operational assistance, the Agency may coordinate operational cooperation between Member States and third countries with respect to management of the external borders. The Agency shall have the possibility of carrying out actions at the external borders involving one or more Member States and a third country neighbouring at least one of those Member States, subject to the agreement of that neighbouring third country, including on the territory of that third country. Operations shall be carried out on the basis of an operational plan that has the agreement of the Member State or Member States bordering the operational area. The participation of Member States in joint operations on the territory of third countries shall be on voluntary basis. The Commission shall be informed of such activities.

Frontex has signed 18 working arrangements with Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Canada, Cape Verde, North Macedonia, Georgia, Kosovo, Moldova, Montenegro, Nigeria, the Russian Federation, Serbia, Turkey, Ukraine and the United States.

Out of 18 working arrangements, just 4 state explicitly human rights. Nevertheless, Frontex must act in compliance with the EU law, therefore respecting human rights. Moreover, since the aim of this working arrangements is to 'promote European border management and return standards', the respect of human rights should play a fundamental role in that, as stated in various documents from the European Institutions. Those agreements with third-countries have faced many critics, as for example there is a lack of attention to the respect of human rights and other issues such as the concept of accountability is not clear. Moreover, some third-countries that have signed agreements with the Agency are not well known for respecting human rights and did not ratify the 1951 Geneva Convention.

The critics which Frontex faces are multiple and they prefigure serious breaches of international and European law. If operations are not aimed at the rescue of people, but rather to locate them to eventually push them back outside the EU, this would violate principles such as the one of non-refoulement and the right of migrants to pursue an application for asylum. Those principles are enshrined in treaties and charters that the European Union is supposed to respect. Moreover, those principle are openly stated in the Regulation establishing Frontex, which is obliged to respect them and act in accordance with the various provisions which form part of the international and European conventions and law. Another critic which has been posed to Frontex is its unaccountability with regards to the law. According to the former director of the Agency, having Frontex just a coordinating role, it would not be possible for it to be held accountable and the accountability would fall only on Member States. Conversely, Frontex has been granted greater capabilities such as the ability to sign working arrangements with third-countries. Even if in the majority of these agreements the respect of human rights is not openly stated, being Frontex a European agency and being it subordinate to the European law, respect of human rights and other universal principles which are supposedly at the core of the European Union should be respected and promoted. Conversely, those agreements have been criticised as not paying enough attention to the respect of human rights and for the fact that some of the countries with whom Frontex signed those working agreements did not ratify basic conventions for the respect of human rights such as the 1951 Geneva Convention.

To sum it up, the actions and methods pursued and used by Frontex – which is an Agency of the European Union and is therefore bound to respect its laws and principles – go in the opposite direction of the principles and values that the European Union preaches to spread and that are enshrined in its fundamental treaties and that should guide the Union’s foreign policy, especially when signed agreements with third-countries.

4.5 Conclusion

In this chapter I have tried to analyse how the different European Institutions have contributed in the shift in the concept of power of the European Union in the course of the last institutional cycle. Through the recap provided by MEPs Kyenge and Schlein it was possible to see how the European Parliament actively tried to change the Dublin Regulation, bearing in mind the importance of article 78 and 80 TFEU for a fair sharing of responsibility between Member States, as well as the respect of fundamental rights of migrants. Both the holistic approach redacted by MEP Kyenge and the reform of the Dublin Regulation which saw the

involvement of MEP Schlein saw a positive vote from the European Parliament with vast majority. This approach from the European Parliament can be understood through the humanitarian experience of this Institution, which has always been active on such matters. However, as I have noted in the course of the chapter (see: 4.1) the European Parliament expressed itself in favour of the EU-Turkey Deal and has an important role for what concerns Frontex, due to its co-legislative power. Notwithstanding this, it can be said that the European Parliament is the institution that contributed less in the abovementioned shift in the concept of power of the European Union. Rather than that, the European Parliament has maintained the characteristic of a normative power, also through the use of declarations, resolutions and political statements.

The European Commission, for its part, had a mixed attitude towards the issue, but mostly sided with the Council. It is true that the Commission pushed for reallocation and resettlement of people in need, but it was also responsible for the signing of agreements with third-countries that tend to promote securitisation of the borders and therefore coercive methods, rather than addressing the root causes of migration and supporting the respect of fundamental rights. Moreover, the EU-Turkey deal, which the Commission deems as a success because it reduced by 97% the number of arrivals to Greece, has been subject of critics from many NGOs and human rights experts, because among other things it would prefigure breaches to the principles of non-refoulement. Therefore, the Commission has pursued policies and initiatives that go in the opposite direction to the Treaties and the Charter upon which the Commissioners solemnly swear before taking office and of which it should be the guardians.

The European Council and the Council of the European Union, being the representatives of the national governments and national interests, have always been more focused on providing a safe space and secure the borders, rather than addressing root causes and assessing the respect of human rights of migrants. This can be seen from the analysis of documents, in which the main topics of discussion have been the fight to illegal migration and an increased presence at the sea. The remarks given by President Tusk are exemplifying of this, as he stated the hierarchy of the Council's action and protecting "our" territory comes at the top of this hierarchical order. By the analysis provided of the Bulgarian proposal for a reform of the Dublin Regulation, it is possible to see that said reform would not only be insufficient in addressing the lack of solidarity between Member States, but it would also be detrimental when it comes to respect of human rights, because due to its complexity and

procedural norms it would prefigure many breaches of international and EU law. Notwithstanding the right of a country to defend its territory from credible threats, Member States should remember to respect those values and principles they have adhered to. Instead, with their demands of a stronger presence at the sea and augmented role for Frontex, they contribute in the shift in the concept of power of a EU that does not see normative and civilian tools anymore as its primary method for its external action.

The European Border and Coast Guard Agency (Frontex), even though is not a European Institution, plays a fundamental role in this process. In order to “bring back the Schengen Area to its full functions of stability, security and prosperity” it has been granted more capabilities, economic resources and operational. In the course of the chapter I have illustrated the budget increase which saw a peach in 2013, the year where the migration crisis reached apex; and the new capabilities granted to the Agency, which is now able to deploy itself in territories outside the European Union, has the capacity to buy equipment and coordinate readmission operation. Being a EU Agency, it is subjected to Regulations and it is governed by European and international law. Moreover, being one of its aim the sharing of European knowledge about border management it should keep in mind the necessity to respect human rights and the rights of migrants and asylum seekers, as those principles are enshrined in the European Union founding treaties and in the conventions that the EU and its Member States have signed, when operating. Conversely, it has been alleged that many times those have not been respected and various principles, above all the one of non-refoulement, have been breached. Frontex – and therefore the European Union – would be breaching those norms which governs it and which are part of its core values and upon which is was created, whilst at the same time actively trying to promote said norms elsewhere. By an analysis of the Frontex equipment, it can be seen that the Agency deploys military-alike tools such as high tech vessels, helicopters and vehicles. Being referred to by many EU official documents as the main tool at EU disposal to manage border operations as well as returns operation, Frontex is illustrative of the shift that the power concept of the European Union underwent during the last institutional cycle.

Conclusion

The scope of this research was to determine whether there have been a shift in the concept of power of the European Union in the course of the last institutional cycle (2014 – 2019). In order to do this, in the first chapter a brief overview on the different features of power has been given. The European Union does not fall in the natures of power that were presented for various reasons: when it comes to military power, the European Union does not possess a full-fledged European Army; whereas for what concerns economic power, the economy of the European Union – that is the joint economy of its Member States – would be the second largest in the world in nominal terms and in PPP. Its economic strength comes therefore from the union of the singular economies of its Member States, rather than being properly a characteristic of the European Union. In terms of technologic power, few EU countries could be mentioned in the discussion. Conversely, when it comes to cultural strength and soft power – which are closely linked – the European Union, due to the history of its Member States, is considered one of the strongest “attractive” power and, as a matter of fact, the *Elcano Global Presence Report* ranks the European Union at the first place for soft power in its chart, when the Union is considered as a whole excluding its Member States. The EU itself – even though it is not a full-fledged State actor – is increasingly devoting part of its budget to enhance what has been defined as Public Diplomacy, that consists of government-sponsored efforts with the aim to communicate directly with the foreign publics, in order to influence a supports for the government policies.

After having acknowledged that the European Union does cannot properly be considered as a power in any of the abovementioned field, the second chapter has been dedicated to the types of power that have been attributed to the EU during the decades. After having briefly discussed the concept of civilian power explored by Duchêne in 1972. He claimed that Europe was bound to become the first of the world’s civilian centres of power, due to the increasing importance attributed to economics and diplomacy and the parallel decreasing importance attributed to military power. Conversely, Bull claimed that Europe needed to build an autonomous military defence, without depending solely on the U.S., as power politics was not going to lose its importance in the global sphere. Those were the starting points for Manners and his famous formulation of a Normative Power Europe, which has been – and still is – widely accepted by academics and researchers. For him, what must be taken into greater consideration than it was is the European ability to shape ‘what is normal’.

He argues that it is not fair to say that the EU is promoting its own norms and rules like an empire would do, rather that the different nature of the European Union and its uniqueness in regards to any other pre-existing political forms predisposes it to act in a normative way, that is promoting its norms. Moreover, the EU must be studied for what it is, instead of what it does, according to him. The norms that the EU promotes are the ones enshrined in the founding Treaties of the EU and are namely peace, liberty, democracy, rule of law, respect of human rights, human dignity, freedom and equality. By putting them in its founding documents, the European Union is obliged to respect them. Manners identifies in contagion and transference the tools through which the EU is able to 'shape what passes as normal in world politics'. I have argued that, whilst Manner's view might have been more appropriate to the historical context in which it was theorised, now it is no longer the case. This is because the EU now needs a force to back up the promotion of its values, contrary to what Manners said. What that force might be, varies from case to case. In order to prove the validity or not of Normative Power Europe, I have used the example of the EU engagement in Bosnia and Herzegovina as described by Whitman in his book 'Normative Power Europe: Empirical and Theoretical Perspectives', as well as the example of North Macedonia which I have directly experienced having spent three months in Skopje interning at the Italian Embassy. What Whitman reports is that through its actions in Bosnia and Herzegovina the EU is promoting not only its norms and principles, but also divisive practising such as 'othering' and securitisation, failure in support 'local ownership' of reforms and double standards. The EU would impose reforms and would act in order to secure its area, rather than the development of the Bosnian society. All of these elements are undermining the validity of the European Union as a normative actor. Conversely, with the example of North Macedonia I have tried to say that the EU is still able to exercise – in some cases – attraction power. The various governments of the Republic of North Macedonia have been trying for almost two decades to pursue a full-fledged European membership, which has been once again denied in October 2019. Nevertheless, Skopje is continuing to pursue the European path, claiming it is the only way possible and that there are no other alternatives. Whilst Whitman claims that this is due to coercive power, I think that in this case it is different, as the Government of the Republic of North Macedonia has turned down the Russian offer to join the Eurasian Union that was delivered a few days after the negative European answer by the General Affairs Council. Moreover, it is possible to see how the European ideas and norms have permeated in the society, as some polls conducted show that citizens deem more important a just reform of the

judicial system and rule of law, rather than a better economical situation in a country which is not rich and where the average salary is around €500.

After having analysed the definition of Normative Power Europe and having provided contrasting examples between themselves on the credibility – or not – of the concept, I have tried to see how the European Union responded to the migration crisis, which started at the beginning of the last institutional cycle and presented the EU with many unprecedented challenges especially from the ideological point of view, which is central for this research. This context of changing started from the 1980s'-1990s', a period of time in which Europe experienced many changes concerning its border and a period in which it started to fully implement the famous Schengen Area, which allowed for the free movement of goods, services and people. With Schengen comprising 22 EU Member States as well as 4 non-EU Member States and – potentially – even more countries (Bulgaria, Croatia, Cyprus and Romania are not yet members but they are legally obliged to join soon) and covering an area of almost 5 million square kilometres which is inhabited by almost 420 million people⁸⁴ the implications have been multiple from the economic point of view, as well as from an identity point of view. On the one hand there has been an abolition of internal borders, whereas on the other hand there has been a reinforcement of the external borders, which now provides a strong distinction between “us” which are found within the border and “them”, which are outside the borders and whose access to the EU must be controlled and verified, as they are now perceived as threats to what is on the inside. This has brought to what scholars have identified as securitisation of the borders, which is closely intertwined with a securitisation of migration. For the thinkers of the securitisation process, if an event is considered extraordinary, then it calls for extraordinary measures, which would have not been otherwise foreseen. This has been the case with the migration crisis, which has been defined in EU documents as unprecedented, record, impressive and frightening, prompting therefore an adequate response in terms of policies and actions. Bearing in mind that it is legitimate for a country to defend itself from credible and dangerous threats, the measures that have been adopted by the European Union and by its Member States do not go in the direction of a Normative Power, concept with which the EU has been usually associated. The securitisation of EU borders and migration has been divided in three categories, as taken by the book *Europe's Border Crisis: Biopolitical Security and Beyond* by N. Vaughan-Williams, which have then been contraposed with EU official documents and NGOs' report, to see if it was

⁸⁴ For further details about the Schengen Area, refers to section 3.1 of this research.

possible to find correlations. The three categories are: neo-liberalisation, technologisation and outsourcing of border controls; external projection outside the territory of the European Union and militarisation of EU borders and finally humanitarian border security. As it has been reported in the chapter, the new technological methods that are been used by the EU to manage its external borders such as the Entry/Exit System, the RTP and EURODAC pose threats to fundamental rights, as they collect data from every person which enters the borders, moreover it has been reported that in some cases those data are collected with coercive methods, because asylum seekers and migrants might not want to have their data collected in a certain country in which they would then need to stay in order to have their application reviewed, as the reception facilities of that country might not be adequate or they have familiar links in other countries. Furthermore, the technologisation has brought into a mix a series of private companies, which benefit if the numbers of illegal migrants discovered is high, as this would be the sign that their method is functioning, as well as the symptom for more control on the borders. There is also the case of private companies detecting “irregular” migrants and immediately setting up operations for their repatriation, without ascertaining the application for asylum. In this, private companies are substituting Member States and more importantly with their actions they might breach the principle of non-refoulement, which is part of the EU and international laws that the Union and its Member States are obliged to respect. When it comes to external projection outside the territory of the European Union, the agreements that have been signed with third-countries and measures such as EUROSUR and Frontex are taken into consideration. Contrary to what the EU claims in its official documents, working agreements with third-countries in order to enhance securitisation of their borders and manage migration do not block migrants from embarking on perilous journeys, rather migrants embark in more dangerous journeys, once a route has been closed. This has been proven with the example provided of migrants from Morocco to Spain and with the data that shows that increasing numbers of Northern African migrants have been detected in North Macedonia, a country which is usually affected by migrants coming from the Balkan Route, rather than from Africa. Therefore, those working agreements with third-countries are not been done to help migrants and address root causes, rather they serve to the European Union to outsource the protection of its borders to countries which are usually undemocratic and that do not fully respect those values and principles which are at the core of the European foundation and that have provided the guidelines for the EU’s external actions for decades. In exchange for those agreements, which something includes readmission agreements, the EU provides third-countries with facilitated visa processes as well as possibilities for their skilled

nationals, through the GAMM and Mobility Partnerships. It might seem the case that the EU, through these kinds of deals, is more dependent of third-countries than viceversa, and this was also explained by the case of Belarus reported in the section 2.2 of this research, with Minsk threatening to relax control over its borders to receive greater amounts of money from Brussels. If this was true, with the European Union being dependent on third-states, it would indicate that the EU is moving from a Normative Power, which is (or was?) able to attract countries to it, due to its economic and political force. The situation is now much different from the times of the Mediterranean Enlargement or the enlargement to the Central and Eastern European Countries in which countries were attracted to Europe to anchor to it their transition to democracy or to be freed from any kind of Russian influence. In the third chapter (section 3.2.3) it has been shown as well that all the measures that have been above listed do, at least on paper, respect the human rights and the fundamental principles that are a vital part of the EU tradition. However, as it has been extensively explained through the analysis and the data provided, this is not true, as through its actions the EU systematically breaches principles and laws. Furthermore, this gives birth to a paradox which is always going to come out when dealing with EU migration policy: the figure of the migrant being both a life to be saved and a threat.

For what concerns militarisation of EU borders, one must take into account European Border Surveillance system (EUROSUR) and the European Border and Coast Guard Agency (Frontex). The aim of the first one is to improve situational awareness and increase reaction capability at external borders, by allowing a quicker interaction between Frontex and Member States. However, Regulation No 1052/2013 which established EUROSUR provided for surveillance in pre-frontier areas which have been designated as possible departure points for illegal migration. In this way, the Union is not only projecting itself outside of its territory, but through this method proper controls and evaluation of asylum procedures might not be performed and instead push back operations might be performed, contravening to various principles of international and EU law. When it comes to Frontex, the Agency represents well the shift that the EU is undergoing. Established on 14th September 2016 by Regulation (EU) no 2016/1624, the Agency has seen its role growing, together with the budget at its disposal. It has at its disposal 1500 border guards for rapid intervention (there is a Commission proposal to expand it to 10.000 standing guard corps), it has the ability to intervene in non-EU territories, sign working agreements with third-countries and it has been allowed to buy its own vessels and aircrafts. Moreover, since 2016 its role in return operations went from that of

facilitator to coordinator. Ethical problems arise because Frontex has been accused of not being a search and rescue tool, but rather locates vessels in the sea to push them back to third-countries, breaching the principle of non-refoulement. However, Frontex is legally incapable of being held accountable, because of its role who should be just a coordinating one, which in fact it is not. I have argued that Frontex represents the focal part of the shift in the concept of power that the EU underwent in the last institutional cycle, and that is because, through an analysis of official EU documents, I have found that the top priority of the most important EU Institutions – the European Commission, the European Council and the Council of the European Union and to a lesser extent the European Parliament – is strengthening Frontex’s presence at the sea, as a way of stopping illegal migration. Addressing the root causes of migration is considered a priority to a lesser extent, whereas the protection of the borders and the elimination of illegal migration sit at the top of the hierarchy, as clearly stated by then President of the European Council Donald Tusk. This tendency of the Council is due to the fact that it represents national governments; the European Commission which instead represents the European interests, played a role in this shift as well, especially because of its role of negotiator in the deals with third-countries, the EU-Turkey Deal and the various proposal to extent the role of Frontex. The European Parliament, on the other hand, as emerged through the analysis as the Institution that cares the most about respecting the founding principles of the European Union. This has been shown through its actions in order to change the Dublin Regulation and to enhance ways for legal migration to the EU. However, it must be noted that the Parliament played a role – to a lesser extent – in the shift in the concept of power of the EU, as it has expressed itself favourably to the EU-Turkey Deal and, by holding the role of co-legislator of the Union, has an important role in the management of Frontex.

Because of all the things that have been said in the course of this research, it is possible to say that the European Union has as a matter of fact experienced a shift in its concept of power in the course of the last institutional cycle. In front of the many challenges posed by the migration crisis that shocked the Continent, the European Union did not respond in ways that would be typical of a Normative Power actor, but rather in ways which resemble a more pragmatic actor, which is not compelled to act according to certain principles and values that have been considered as guidelines for many decades and an actor which is not afraid to resort to means that would be more appropriate for a military power. This tendency might be shown as well by the Permanent Structured Cooperation (PESCO), whose aim is to

'jointly develop defence capabilities and make them available for EU military operations [...] this will enhance the EU's capacity as an international security actor, contribute to the protection of EU citizens and maximise the effect of defence spending' (European External Action Service, 2019) and which has been activated in December 2017 by 25 out of the then 28 Member States. In the future of PESCO there is a wide variety of weapon system envisaged (178 compared to the US that utilises just 30), as well as many other projects, among which it might be useful for the purpose of this research to quote the European Attack Helicopters TIGER Mark III. PESCO, which has been initiated on a voluntary base by Member States, which are responsible for the expenditures – though they might receive some funds from the EU – is useful to show the shifting of the European Union, driven by its Member States, towards becoming an increasing power which is ready to deploy its equipments, to jointly invest in the defence apparatus and to jointly patrol its borders and seas.

The European Union and its Member States have all the rights to defend themselves in ways they deem appropriate from credible threats and I am not suggesting they should do otherwise. However, this comes to a price and that is, that the EU cannot longer be considered and that cannot longer present itself as a beacon of human rights.

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Appendix

Transcription of the Conference ‘The European migration policy’, 11/04/2019, Forlì

[M. Borraccetti] Le chiedo come prima domanda di fare un bilancio di come è stato il 2014.

[C. Kyenge] Noi siamo nel 2014 quando noi entriamo nel parlamento europeo mi ricordo bene cercherò di fare una specie di viaggio con voi quindi ripercorrendo quello che può essere i contenuti tecnici la storia politica attraversato anche da quello che la storia umana quindi tutti insieme per cercarli di accompagnarvi in questo percorso di cinque anni. 2014 noi arriviamo al parlamento europeo e troviamo dentro il piano Juncker e pochissime righe che parlavano dell'immigrazione io venivo dall'Italia quindi dal parlamento nazionale ma prima ancora dal governo Letta. Quindi io venivo dall'Italia dove tutti voi sapete che insomma sono stati anni molto difficili insomma anche di discussione di confronto di difficoltà per quello che riguarda anche le leggi che vengono messe in campo. Venivo dall'Italia con l'esperienza che ho portato dentro le istituzioni che era quello di mare nostrum e delle politiche difficile da spiegare all'interno di un'Unione che doveva mettere l'accento sulla solidarietà e l'equa ripartizione delle responsabilità. Faccio una piccola parentesi per ricordare perché vedo che siete tutti giovanissimi: Mare Nostrum nasce all'indomani della tragedia di Lampedusa del 3 ottobre 2013, io ero allora ministro all'integrazione del Governo Letta e succede che perdono la vita 368 a largo delle coste di Lampedusa. Io in quanto rappresentante delle istituzioni – ero ministra – mi sono recata a Lampedusa e quindi da lì e sono dei momenti che difficilmente dimenticherò ed è per quello che ho detto facciamo un viaggio metà politico metà tecnico ma anche umano. Ho dovuto assistere al ripescaggio di quasi tutte le salme e questo per me è uno dei momenti più importanti che mi ha fatto davvero cambiare tantissime cose, aldilà del mio approccio che avevo già prima, del mio pensiero perché io prima di entrare in politica ero un'attivista molto convinta scendevo nelle piazze. Quando mi sono accorta che la piazza non è sufficiente sono entrata in politica. Quindi ho assistito al ripescaggio di quasi tutte le salme e uno dei ricordi che ancora oggi mi sono rimasti di quelle giornate lì; ho fatto due giorni e quindi insomma la ricomposizione delle bare all'interno di questo deposito e io non ho mai visto tante bare così in fila. La cosa che mi aveva fatto davvero soffrire erano le bare bianche perché insomma sappiamo tutti che sono bambini. Quando sono tornata a Roma ho parlato con l'allora Premier e da lì ci siamo costituiti un piccolo gruppo e abbiamo costituito Mare Nostrum. Mare Nostrum è praticamente un programma di ricerca e salvataggio; ricerca e salvataggio per cominciare a dire “mai più dentro al nostro mare che possa succedere una tragedia del genere”. Ahimè, non solo non abbiamo saputo fermare tutto questo e addirittura la situazione in alcuni periodi è peggiorata. Mare Nostrum fu finanziato interamente dal governo, 9 milioni al mese senza pensare ad altri tipi di risorse. Arrivo al Parlamento Europeo dove mi ritrovo con pochissime righe, ecco perché ho fatto un passo indietro. Non potevamo accettare di vedere dentro il programma della Commissione pochissime righe per quello che riguardava l'immigrazione. Lì è incominciata la nostra ribellione con alcuni deputati abbiamo detto “No. Qui dobbiamo cambiare tutto. L'immigrazione deve essere una priorità”. Siamo andati avanti per alcuni mesi fino al momento in cui la commissione accetta e quindi mi dà l'incarico a me e un'altra deputata di Malta e qui comincia tutta la rivoluzione di quello che sta succedendo al Parlamento Europeo. Il Parlamento quindi mi affida il compito di scrivere la strategia per come gestire l'immigrazione e

l'asilo. Io faccio parte del gruppo socialisti e democratici e la mia collega fa parte dei Popolari. E' una scelta strategica ecco perché ho apprezzato molto le parole iniziali "aldilà del colore politico"; si tratta di temi trasversali che devono riguardare tutti i partiti politici, per questo abbiamo scelto questa modalità di lavoro per cercare di avere la più larga condivisione possibile perché laddove non troviamo una condivisione è chiaro che permane uno scontro ma un tema come quello dell'immigrazione deve dare delle risposte concrete e deve riguardare tutti i cittadini. Abbiamo iniziato questo lavoro con la mia collega, questo lavoro è durato 18 mesi in cui abbiamo girato tutta l'Europa, siamo andati addirittura fuori dalle nostre frontiere, siamo andati sulle navi di Mare Nostrum, nell'Africa del Nord, nei grandi campi dei rifugiati ne cito alcuni il campo del Dadaab in Kenya, in Etiopia, siamo andati in Libano, ovunque. Perché il Parlamento, se c'è una cosa di cui mi sono profondamente innamorata è che il Parlamento una volta che ti affida un dossier dove devi lavorare ti dà anche gli strumenti per sostenerti e accompagnarti. Noi avevamo scelto questa modalità di lavoro: uno direttamente sul territorio, per portare dentro il programma e la proposta e la strategia tutti gli elementi possibili da dare alla Commissione; dall'altra parte abbiamo incominciato ad avere delle audizioni, quindi chiamando le università, ho contattato moltissimi accademici, le organizzazioni internazionali, con la società civile, parlamenti, senati, con tutti. Questo per rafforzare la cultura legislativa, cioè prima di andare a cambiare qualcosa, riuscire a portare dentro quei cambiamenti, dentro quelle modifiche, anche ciò che viene dal basso quindi direttamente da chi vive questo tema. L'altra parte della nostra strategia di lavoro era anche quella di un lavoro culturale, abbiamo cominciato a proiettare dei docu-film, mi ricordo che uno dei film che aveva avuto più successo era 'Io sto con la sposa' che faceva vedere le ambiguità del Regolamento di Dublino. Quindi noi con questi film che facevamo al Parlamento cercavamo di parlare a tutti, a tutti i gruppi politici ma chiamavamo anche la società civile per aiutarci a cambiare quella che nell'impostazione per noi sbagliate delle politiche e della strategia sull'immigrazione dell'Unione Europea. Dopo 18 mesi abbiamo un prodotto. Nel mese di Aprile 2016 fu approvata a larghissima maggioranza quella che è la base di tutto quello che noi stiamo cambiando oggi a livello delle istituzioni europee. L'approccio olistico: perché l'abbiamo chiamato approccio olistico? Perché abbiamo detto che per uscire da un approccio emergenziale noi dobbiamo utilizzare tutti gli strumenti e tutte le strategie dell'Unione Europea, metterli insieme e non in un modo settoriale metterli insieme per avere una visione a breve e lungo termine. Quindi abbiamo riassunto all'interno di questo documento che io considero un documento politico. Lo abbiamo diviso in diverse fasi: la prima fase è quella che riguarda le cause profonde, cominciamo a interrogarci sul perché le persone si muovono, perché le persone lasciano il proprio territorio. Si parla poco delle cause profonde, le cause profonde comprendono anche uno dei temi di cui parliamo oggi e per cui la gente scende per le strade: il cambiamento climatico. E' uno dei temi più importanti e abbiamo introdotto all'interno di questo documento anche la figura del rifugiato climatico per la prima volta con tantissime difficoltà all'interno un modello delle istituzioni europee perché nessuno voleva sentir parlare del rifugiato climatico realtà che ancora più triste pressante semmai. Andiamo a guardare per esempio il Pacifico, nel Pacifico dove oggi ci sono persone che cercano già tra 30 40 anni una terra futura dove devono andare a stabilirsi perché ci sono alcune isole che saranno inghiottite dall'innalzamento delle acque dell'Oceano quindi è un dramma per alcune popolazioni, mentre quando abbiamo iniziato ad affrontare questo tema sembrava comunque un tema così lontano ma non riguarda solo il Pacifico riguarda anche il continente di fronte a noi, l'Africa, tutta la parte del Sahel, riguarda anche altri territori e alla desertificazione che sempre di più colpisce moltissime popolazioni. Siamo di fronte ad altre cause profonde che sono anche quelle del terrorismo e la mancanza di democrazia e di stabilità politica e

così via quindi il capitolo delle cause profonde e qui anche cominciare a vedere non solo analizzare ma dalle anche delle proposte: quella di lavorare sulle vie legali. Se non abbiamo delle vie legali su cui lavorare difficilmente potremo cominciare a parlare di una buona gestione del fenomeno migratorio e perché se una persona non trova una via legale cioè e qui entra il concetto della libera circolazione che è riconosciuta ovunque c'è anche nella Convenzione universale dei diritti umani c'è proprio l'articolo 13 che parla della libera circolazione ma questa la troviamo anche in altre convenzioni. E quindi le vie legali, dare la possibilità a tutte le persone rafforzando queste vie legali attraverso dei pacchetti legislativi che seguivano nella seconda parte di questo racconto. Quindi prima vi faccio vedere quali sono stati gli input che noi abbiamo dato alla Commissione e queste sono delle proposte. Quindi noi vogliamo una strategia. Abbiamo questa strategia che ha cambiato il codice dei visti cambiare e rafforzare quelli che sono la mobilità di lavoratori, la mobilità per quello che riguarda anche altri settori come anche il settore dell'asilo. Abbiamo introdotto per la prima volta il tema del corridoio umanitari, corridoio umanitario vuol dire la possibilità di poter lasciare il territorio dove si è in pericolo attraverso una via sicura, quindi una via legale. E questo è stato poi realizzato da alcune realtà. Quindi la prima fase è quella delle cause profonde, del paese di partenza, da molte persone che lasciano il proprio territorio per arrivare poi alla seconda fase che è quella del transito, quindi le persone che passano in alcuni Paesi e cadono nelle mani dei trafficanti e qui abbiamo messo in atto tutto il capitolo che riguarda la lotta contro il traffico di esseri umani e quindi chiediamo alla Commissione di poter aprire quindi per ogni tema che vi sto dicendo dopo aver approvato questo dossier si apre una proposta legislativa. Entreremo poi nei dettagli per poter sviluppare. Quindi lotta contro il traffico di esseri umani, la possibilità che le persone possono scegliere liberamente dove stabilirsi, quindi se vogliono anche nel Paese di transito e la scelta anche che il Paese dove si può vivere. Sempre nel transito ho messo il tema della ricerca e salvataggio, quindi Mare Nostrum che ebbe fine il 31 di ottobre 2014, noi l'abbiamo preso all'interno delle istituzioni europee e abbiamo continuato a lavorare su questo e abbiamo chiesto che gli obiettivi contenuti all'interno del programma Mare Nostrum potessero far parte anche di quelle che sono le politiche europee quindi ricerca e salvataggio. Azioni che devono fare parte di tutti quelli che sono i progetti legislativi dell'unione europea, quindi ricerca e salvataggio che inizialmente noi avevamo chiesto la presenza di tutta l'Unione Europea e quindi la presenza degli stati membri; purtroppo non avevamo tutti gli stati membri del mediterraneo. Dal 2015 poi sono subentrate le ONG proprio perché c'era la mancanza della politica, l'assenza della politica, la non presenza della politica e dei diversi governi che non hanno sostenuto questo progetto ha fatto sì che insomma ci fossero anche altri soggetti insomma, capaci di poter dare una risposta concreta. Cosa positiva, perché noi chiedevamo una maggior presenza nel Mediterraneo per non far sì che insomma il nostro Mediterraneo si trasformasse sempre di più in un cimitero. Dopo questo passaggio arriviamo al Paese di arrivo, dove la grande sfida è avere delle buone politiche di accoglienza e integrazione, è qui che l'Unione Europea si sta giocando tantissimo e quindi noi su questo, nel Paese nell'arrivo abbiamo chiesto di poter rivedere tutto il capitolo delle politiche migratorie che sono state fallimentari. Da una parte le politiche dell'asilo che viene conosciuto soprattutto per un pilastro che è il regolamento di Dublino. Quindi la proposta era rivedere tutto il pacchetto asilo. Il pacchetto asilo è composto da due regolamenti e poi tre direttive. Nel 2016 abbiamo cambiato i due regolamenti sono il regolamento di Dublino che abbiamo modificato e l'altro regolamento è quello delle impronte digitali che si chiama regolamento EURODAC, l'identificazione e registrazione di tutte le persone che arrivano sul territorio Europeo. Per tanto tempo e di fronte anche al fatto che il regolamento di Dublino rimanda tutta la responsabilità ai paesi di primo approdo cioè dove arrivano le persone

per tanto tempo sono stati accusati Grecia Italia e Spagna di far passare le persone per andare in altri paesi. Quindi la Commissione fa la proposta di rafforzare il regolamento e aiutare tutte le persone che arrivano devono poter essere identificati registrarsi attraverso le impronte digitali quindi attraverso questo regolamento EURODAC e in seguito a quella modifica quindi di tutto l'impianto per quello che riguarda l'identificazione, registrazione e arrivo e furono creati anche gli hotspot, sono i luoghi dove arrivano le persone e dove si fanno l'identificazione e la registrazione riducendo così che quella che era la gran parte delle persone che lasciano l'Italia senza avere nessuna traccia. In questo modo i paesi del nord si rifanno agli altri paesi dicono "bene se noi guardiamo dentro il sistema queste persone si sono registrati da voi e quindi su base del regolamento di Dublino ve li rimandiamo" in questo modo tutte le persone che lasciano l'Italia, la Spagna o la Grecia o tutti i paesi frontalieri vengono rimandati indietro. Gli altri tre punti del pacchetto asilo che noi abbiamo detto di cambiare dentro questa proposta, strategia del Parlamento Europeo sono la direttiva accoglienza, la direttiva che è rimasta sempre una direttiva perché la differenza tra una direttiva è un regolamento e che quando noi abbiamo regolamento il regolamento non può essere modificato e deve essere applicato immediatamente subito dopo averlo elaborato e solamente così deve essere applicato in tutti i paesi; mentre la direttiva è sempre a discrezionalità anche del colore politico di uno stato. Quindi ti da l'impianto ma molte volte l'interpretazione non è come per il regolamento, è qui che giocano molto i partiti politici insomma su come applicare una direttiva in una direzione piuttosto che un altro. Vi do solo un esempio di applicazione di una direttiva: vi ricordate che in Italia alcuni anni fa c'erano i centri d'identificazione e di espulsione. Dentro la legge si diceva comunque entro massimo tre mesi di permanenza all'interno dei centri dopo di che la persona doveva essere espulsa oppure comunque lasciata libera se poi non si riesce a capire i paesi di origine. Ma non è che non si capisce il paese di origine, in molti dei casi sono i paesi che non vogliono le persone perché mancano degli accordi di riammissione, quindi bisogna avere degli accordi. La legge dice così, la direttiva dice che proprio quando si tratta di persone che sono socialmente pericolose per estrema ratio si può in qualche modo trattenere le persone fino a 18 mesi, ma non è la regola. E quindi l'Italia nel 2009 con il governo invece di seguire la legge che era molto chiara che parlava di tre mesi si rifà a questa direttiva che diceva semplicemente per le persone socialmente pericolose e lo mette come un'applicazione dentro una legge dice tutti dovete stare dentro per 18 mesi e quindi le persone potevano stare dentro un centro di identificazione ed espulsione per un anno e mezzo, la dentro per capire che cosa devono fare da che parti devono andare perché le direttive sono così quindi a discrezionalità del colore politico del governo. Le tre direttive sono accoglienza, quella del pacchetto asilo; procedure e qualifiche. E noi sulle basi di queste difficoltà anche perché molti stati membri non volevano accogliere quelle persone abbiamo detto "cerchiamo di cambiare alcune direttive in regolamento" perché quando un regolamento deve essere applicato così come è e immediatamente. Agevoliamo un pochino il processo anche di applicazione anche di integrazione di accoglienza all'interno dell'Unione Europea quindi trasformiamo la direttiva procedure e la direttiva qualifica in regolamento e lasciamo la direttiva accoglienza semplicemente come una direttiva. Quindi questo è quasi tutto il pacchetto asilo, l'unico di cui si parla molto è il regolamento di Dublino. Però ricordatevi che il pacchetto è costituito da questi cinque punti che avevo appena elencato e poi accanto a questo noi all'interno delle politiche che volevano cambiare dell'Unione Europea abbiamo detto lavoriamo anche qui su una strategia dell'Unione Europea da quello che riguarda le politiche di accoglienza e integrazione quindi abbiamo cominciato a prendere tutti quelli che erano strumenti già esistenti dalla carta blu che era la carta che si usava per l'immigrazione qualificata, l'Italia l'ha sempre utilizzata pochissimo perché ha

sempre detto io attraverso le sanatorie non ho bisogno della carta blu mentre nel 2015 la Germania ne ha utilizzato circa 114.000, l'Italia ne aveva appena utilizzato 115. Ma quindi vedete la differenza questa permette comunque la mobilità anche dei lavoratori, un'immigrazione qualificata, abbiamo detto cambiamo non solo l'immigrazione qualificata ma cambiamo la carta blu, modifichiamo e mettiamo dentro anche un'immigrazione non solo qualificata ma lavoratori con anche una qualifica. Quindi insomma cambiamo anche questo. Il quarto invece è quello che riguarda le politiche di ritorno, il ritorno delle persone al Paese di origine. Allora qui per poter tornare al Paese di origine bisogna tornare attraverso un progetto, degli accordi di riammissione. Di fronte all'essenza di queste politiche è difficile fare delle politiche di ritorno. In più, abbiamo detto di incominciare a fare delle politiche di reinserimento delle persone all'interno del Paese di origine nel rispetto della dignità della persona non come i pacchi che vengono depositati all'aeroporto, le persone hanno bisogno di essere reinserite nella propria società anche attraverso progetti di sviluppo. Il documento è stato votato ad altissima maggioranza nel mese di aprile 2016. Il Parlamento prende questo dossier e lo dà alla Commissione e noi diciamo "bene queste sono le cose da cambiare". La Commissione prende il documento e comincia a farci delle proposte legislative, ci fa sette proposte legislative, dal Regolamento di Dublino, dalla guardia costiera e di frontiera dal cambiare quelli che sono il codice dei visti e cambiare anche tutto il pacchetto asilo per andare verso una politica comune dell'asilo e anche una proposta legislativa sulla carta blu. Abbiamo lavorato su tutti i dossier che vi ho detto ma purtroppo non abbiamo finito. Perché la parte del Parlamento l'abbiamo fatta, abbiamo votato le proposte legislative, ci siamo confrontati con la Commissione, ma manca la parte che riguarda i negoziati, i cosiddetti triloghi che si fanno tra Parlamento, Commissione e Consiglio. Il soggetto latitante in tutto questo è proprio il Consiglio, sono i diversi governi. Quando un governo esce fuori e dice "L'Europea non ci ascolta" io lo guardo con molta diffidenza perché probabilmente non ha capito che in Europa è proprio lui perché il Consiglio molto spesso ha il voto finale sui punti che portiamo. Uno dei punti centrali che sta succedendo anche della crisi, molti Stati non si ricordano che hanno sottoscritto e ratificato dei trattati, dove l'articolo 80 83 funzionamento dell'Unione Europea parla di solidarietà, una forma arte di collaborazione ed equa ripartizione delle responsabilità e quindi se si viene meno a questo articolo subentrano di egoismi e questa non è la base dell'Unione Europea. Un altro articolo che l'articolo 2 perché dice che l'Unione si fonda sui valori del rispetto della dignità umana, della libertà della democrazia, dell'uguaglianza dello stato di diritto e del rispetto dei diritti umani, compresi i diritti delle persone appartenenti a minoranze. Questi valori sono comuni agli stati membri in una società caratterizzata dal pluralismo, dalla non discriminazione, dalla tolleranza, dalla giustizia, dalla solidarietà e dalla parità tra donne e uomini. Tutti i valori che sono stati violati da alcuni Stati. La terza fase che stiamo facendo è quella degli strumenti di finanziamento, quindi politica, concretezza ma anche come finanziare queste politiche. Stiamo facendo la programmazione del 2021-2027 tra cui anche la parte che riguarda tutta la parte delle politiche migratorie. Gli strumenti finanziari che su cui stiamo lavorando sono: il fondo asilo migrazione, dove la Commissione voleva togliere l'integrazione. Abbiamo rimesso dentro questo pacchetto la parola integrazione perché la Commissione non la voleva mettere dentro di fronte a una resistenza di tanti stati membri che non volevano fare le politiche di integrazione sul proprio territorio. L'altro documento si chiama "diritti valore uguaglianza e cittadinanza" che è molto importante perché legato direttamente all'articolo 2. Se uno Stato non rispetta i valori contenuti nell'articolo 2 noi possiamo cercare in qualche modo di sanzionarlo e di non dargli i fondi e darli direttamente alla società civile, questo ci permette anche di dare una mano alla società

civile. Questo è un po' il grande tema, dove stiamo andando e dove dobbiamo andare. Non ci siamo ancora. Noi come Parlamento abbiamo fatto tutto.

[E. Schlein] Allora è un bilancio dal punto di vista del lavoro fatto dal Parlamento Europeo secondo me positivo, tutto sommato, perché abbiamo tenuto alta l'ambizione e soprattutto la tutela dei principi fondamentali dei diritti fondamentali. Per metterla in prospettiva voi sapete che nel 2015 la Commissione appena insediata ha proposto un'agenda europea dell'immigrazione che devo dire che aveva un approccio complessivo alla tematica e quindi questo è positivo; non è un'agenda perfetta chiaramente ma aveva il privilegio di trattare come si può dire la tematica migratoria nel breve termine, nel medio termine e nel lungo termine con alcune proposte concrete. E' chiaro che lo sviluppo del dibattito su questo che è stato il tema più divisivo tra i Governi europei negli anni a seguire ha in qualche modo condizionato anche l'atteggiamento della Commissione che è stata successivamente meno ambiziosa e non coraggiosa sul tema così cruciale. Non è quella che abbiamo di fronte oggi la stessa Commissione; ogni tanto io faccio questa battuta al commissario che aveva proposto quell'agenda e che aveva proposto diciamo un'ambiziosa riforma anche del regolamento di Dublino. Che cosa è successo in mezzo? Nel 2015 c'è stato il momento in cui la Cancelliera Merkel disse la famosa frase "Wir schaffen das" "ce la possiamo fare". Invece a seguire abbiamo assistito al panico dei governi europei rispetto ad un flusso piuttosto importante sulla cosiddetta rotta balcanica, la reazione dei governi europei è stata del tutto scomposta sono stati issati nuovi muri di filo spinato alle frontiere di molti di questi paesi; questo ha messo in forte crisi anche il sistema Schengen. Ora chiaramente cos'è mancato quindi in questi anni è mancato di mettere al centro i principi fondamentali dei trattati che all'articolo 78 e l'articolo 80 del TFUE ancora di più chiedono solidarietà e equa condivisione della responsabilità sull'accoglienza. Principi che in questi anni se guardiamo i dati abbiamo violato perché negli ultimi anni abbiamo avuto più o meno 6 paesi su 28 affrontare l'ottanta per cento delle richieste d'asilo presentate in tutta l'Unione Europea. Quindi a un certo punto la Commissione Europea per dichiarazioni del Vicepresidente Timmermans e del Commissario per l'immigrazione Avramopoulos dicono una frase molto forte "Dublino è morta". Non funziona più e arriva il momento di modifica dell'intero sistema europeo comune di asilo che come sapete si compone di diverse direttive e regolamenti. Il Regolamento di Dublino ha un compito relativamente semplice, dovrebbe essere quello che stabilisce per ogni richiesta d'asilo effettuata nell'Unione e non solo, perché anche altri paesi fuori dall'Unione fanno parte del sistema di Dublino come la Svizzera, stabilisce per ogni richiesta d'asilo qual è lo stato membro che è responsabile per l'esame di quella specifica richiesta d'asilo e si basa su vent'anni da un criterio piuttosto ipocrita: il criterio del primo paese di accesso irregolare. Potremmo già obiettare che è ipocrita parlare di accesso regolare quando come sapete mancano quelle vie legali e sicure alternative per l'accesso all'Unione Europea e ai suoi stati membri. Quindi bisogna fare una riflessione, noi ce la stiamo prendendo con le politiche europee in particolare dell'asilo perché la competenza europea è forte sul tema dell'asilo, meno forte sul tema migratorio generale ci sarebbe anche da ovviamente lavorare per una riforma dei regimi migratori nazionali dei vari paesi dell'Unione, perché anche le leggi nazionali pensiamo alla nostra legge bossi fini sono criminogene nel senso che non permettendo adeguati canali di accesso regolare finiscono in qualche modo per creare irregolarità, però questa appunto non è competenza europea. Per quanto riguarda la competenza europea come vi dicevo la riforma di Dublino si basa su quel criterio che ha ovviamente lasciato la responsabilità sull'accoglienza a quei paesi che si trovano ai confini caldi dell'Unione Europea come l'Italia, la Grecia e alcuni altri. Cosa abbiamo provato a fare al Parlamento Europeo? Abbiamo provato a ribaltare la logica di quel regolamento per istituire un vero sistema europeo, a scardinare cioè quel

criterio del primo paese di accesso che è la norma di chiusura dell'intero sistema Dublino e a sostituirlo invece con un meccanismo di ricollocamento permanente e automatico che da un lato valorizzasse il più possibile i legami significativi dei richiedenti asilo, perché sono persone non sono pacchi che possiamo depositare dove ci conviene nel resto d'Europa, quindi valorizzando tutti i legami di tipo familiare, ma anche di studio, di precedente soggiorno o visto. Valorizzare il più possibile questi legami per favorire l'inserimento sociale, ma in assenza di questi legami il nostro meccanismo prevede il ricollocamento automatico con un margine di scelta per i richiedenti asilo tra quattro paesi che sono i più distanti dal raggiungimento di una giusta quota di richieste d'asilo che tutti i paesi europei. In questo sistema sarebbero tenuti ad esaminare una quota stabilita in base a criteri oggettivi, il PIL e la popolazione. Con questo strumento abbiamo lavorato due anni di riunioni negoziali molto delicate come potete immaginare, in cui però questa idea ha potuto prevalere, a dimostrazione che il metodo comunitario davvero prevale dentro il Parlamento Europeo cioè anche a partire la posizione di politiche molto diverse siamo riusciti a trovare quel punto di equilibrio ed interesse comune di interesse che europeo nel senso che nel novembre del 2017 abbiamo votato in approvazione storica questa riforma con di due terzi di maggioranza del Parlamento. Hanno votato favorevolmente sia la sinistra, che i verdi e i socialdemocratici e in più anche i liberali, la gran parte dei popolari europei hanno votato a favore della riforma che chiaramente chiederebbe a tutti i paesi europei di fare la propria parte sull'accoglienza. Ed è stato piuttosto significativo vedere votare favorevolmente anche alcuni colleghi del centrodestra polacco a dispetto di alcuni preconcetti che potremmo avere. Lì è prevalsa la forte richiesta del Parlamento di avere una condivisione delle risposte alle sfide che sono chiaramente comuni come quella della accoglienza dei richiedenti asilo. Ci siamo molto spesi per chiedere una risposta umanitaria europea sulle rotte non solo la mediterranea dove servirebbe una missione europea di ricerca e soccorso in mare, anziché fare la guerra alle organizzazioni non governative che salvano le vite e che stanno solo sopperendo alla grave mancanza di una risposta istituzionale come la missione Mare Nostrum mai realmente sostituita da una vera missione europea con pieno mandato umanitario. Sul medio termine chiaramente servirebbe superare Dublino come ha già indicato il Parlamento ma anche procedere con tutti e altri aspetti di riforma del pacchetto del sistema europeo comune d'asilo, quindi le procedure, quindi le qualifiche, quindi la direttiva sulle condizioni di accoglienza e ovviamente anche il sistema EURODAC per la presa delle impronte. In quel pacchetto c'è anche una proposta molto importante della Commissione sui reinsediamenti cioè uno strumento appunto di accesso legale in Unione per poter vedere riconosciuta qui la necessità di una protezione internazionale. Purtroppo i governi sono molto bloccati su questo, così come bloccano la riforma di Dublino. Ora chiaramente che bilancio si può fare per quanto riguarda le politiche dell'Unione, ovviamente c'è da dire che le politiche del Consiglio e della Commissione Europea purtroppo in questi anni sono state orientate prevalentemente all'esternalizzazione delle nostre frontiere e delle nostre responsabilità; diverso è il discorso per il Parlamento Europeo di invece che a queste tendenze si è sempre o quasi sempre opposto molto duramente. Anche sulle politiche sulla Libia ci sarebbe molto da dire, perché insomma non dimentichiamo che c'è stato un supporto europeo in termini di risorse e di formazione della guardia costiera libica su cui con tanti colleghi abbiamo sollevato la questione con delle interrogazioni parlamentari, chiedendo conto di questa scelta che troviamo insomma molto discutibile oltre che pericolosa come purtroppo siamo vedendo anche in questi giorni con l'acuirsi delle tensioni in Libia. Sulla prospettiva di lungo termine è vero che non basterà ne diciamo maggiore sforzo di risposta umanità europea e neanche la solidarietà interna qualora finalmente riuscissimo ad approvare nel prossimo mandato questa riforma di Dublino che rimarrà la

posizione del Parlamento anche per il prossimo mandato, non basterà neanche l'apertura di vie legali e sicure per l'accesso a tutti i Paesi dell'Unione, bisognerà lavorare anche sulle cosiddette cause profonde dei flussi, cosiddette root causes dei flussi migratori. Ecco su questo è necessario che diciamo l'Unione abbia delle politiche più coerenti, delle politiche commerciali più coerenti perché non dimentichiamo a chi dice aiutiamoli a casa loro che molte delle ragioni da quelle persone scappano sono molto più vicini a noi di quello che ci piace immaginare. Dipende anche dallo sbilanciamento delle nostre politiche commerciali con diversi paesi africani, accordi cui è chiaro che essendo più forti evidentemente quando li negoziamo non si garantisce mai un giusto prezzo per le risorse importanti che da questi paesi esportiamo, allo stesso modo servono politiche fiscali coerenti. Me ne sono occupata come relatrice per il Parlamento perché l'evasione e l'elusione fiscale dei grandi gruppi multinazionali nei paesi africani ha un costo elevatissimo e sottrae risorse fondamentali per i servizi ai cittadini, per gli investimenti per avere maggiori risorse anche per irrobustire i sistemi sanitari, i sistemi di formazione ed educativi e quindi chiaramente anche lì servirebbe uno sforzo per evitare di avere politiche fiscali in Europa che in qualche modo agevolino l'evasione e l'elusione fiscale in quei paesi che secondo l'Unione Africana in un suo rapporto è costata in questi ultimi cinquant'anni fino a mille miliardi di dollari di flussi finanziari illeciti in uscita. E' più o meno la stessa somma che hanno ricevuto gli stessi paesi negli ultimi 50 anni come cooperazione allo sviluppo. Quindi se noi non insistiamo sulla coerenza delle politiche fiscali europee rischiamo di sottrarre con una mano ciò che invece diamo con l'altra, con le nostre fondamentali politiche di cooperazione allo sviluppo. Per darvi un quadro complessivo su questo cos'ha fatto il Parlamento Europeo ad esempio nella commissione DEVE ha istituito un gruppo di lavoro specifico sull'immigrazione per andare a vedere come i fondi che devono essere destinati alla cooperazione, allo sviluppo purtroppo spesso siano li reindirizzati, diciamo deviati su obiettivi di sicurezza e di controllo delle frontiere. Questo va evitato perché altrimenti va ulteriormente diminuita quella parte di risorse che giustamente devono andare allo sradicamento della povertà, alla lotta contro le disuguaglianze e alla creazione di vere opportunità per i giovani africani.

