

EU-Migration Governance in the Mediterranean Region: the Promise of (a Balanced) Partnership?

Panorama

Med.2012

284

Jean-Pierre Cassarino,

Professor,
Robert Schuman Centre for Advanced Studies,
European University Institute, Florence
Research Associate,
Institut de Recherche sur le Maghreb Contemporain
(IRMC), Tunis

Sandra Lavenex

Professor of International Politics,
University of Lucerne
Visiting Professor,
College of Europe, Natolin, Warsaw

A year after the Arab Spring, EU migration policies towards its Southern Mediterranean neighbours are at a crossroads. The revolutions in Arab countries saliently disclosed the nature of the regimes – long criticised by foreign policy experts – with whom the EU and its Member States had been cooperating for years in an effort to stem migration flows from the South. Notwithstanding the rhetoric of a “global approach” to migration that the EU officially endorsed as early as 2005, cooperation under the European Neighbourhood Policy (ENP) has clearly concentrated on the aspect of migration control and has consisted in the gradual involvement of Eastern European and Southern Mediterranean neighbours in securing the EU’s external borders.

For authoritarian leaders such as Zine el-Abidine Ben Ali in Tunisia or Muammar al-Gaddafi in Libya, cooperation with northern neighbours was a means to boost their national prestige and international reputation in spite of their dubious domestic legitimacy (Paoletti, 2010; Cassarino, 2010).

The conformity of this cooperation with human rights standards and the EU’s liberal values has repeatedly been questioned, leading the EU to intensively dis-

cuss the political thrust of its external migration policy. The last major crisis before the Arab Spring occurred in summer 2005, when Spanish border guards and Moroccan authorities brutally deterred irregular migrants from climbing over the fences at the Spanish exclaves of Ceuta and Melilla and later deported them as well as other migrants and refugees to the Moroccan desert. These events and their publication in the media acted as an external shock and provoked a major re-thinking of the prevailing repressive migration policy in cooperation with the neighbouring countries. The result of this reconsideration was the proclamation of the “global approach to migration” in the fall of 2005, aiming at the formulation of comprehensive and coherent policies in partnership and solidarity with countries of emigration and transit. These comprehensive policies were meant to address a broad range of migration-related issues, comprising, apart from border management and readmission, legal migration matters such as labour market access schemes, migrant rights and asylum; and the nexus between migration and development, including the use of remittances, reintegration policies, professional training schemes for migrants and the like.

However, apart from recurrent rhetorical commitments and the launch of broader dialogues in the framework of EU-Africa conferences and summits, the emphasis of EU policies towards its Southern neighbours remained stable. The EU continued trying to conclude a readmission agreement with Morocco which would oblige Morocco to take back, not only its own nationals staying irregularly in the EU, but also third-country nationals who possibly travelled through Morocco before entering Europe. In 2012, these negotiations have reached their 17th round, and are still open. In 2002, two years after having received the mandate from Member States to negotiate a readmission agreement with

Morocco, the European Commission attempted to start negotiations with Algeria. But, like Morocco, Algeria is not interested in taking on such comprehensive obligations and even refused to start negotiations. In the absence of formal agreements, a dense web of informal cooperation activities has developed within the ENP and beyond, basically focusing on the establishment of migration systems in Mediterranean countries, the transfer of technical equipment and know-how to border guards and capacity-building of migration officials, through both EU channels and Member State activities.

The question arising now from the Arab Spring is to what extent the peaceful uprisings for democratisation and the deposition of former dictators constitute a second, more profound crisis of the EU's repressive migration policy that will eventually lead to a breakthrough of the comprehensive approach officially endorsed seven years ago.

The signs at the moment are ambiguous. Soon after the revolutions in Tunisia and Egypt, the European Union was quick to promise major innovations in its migration policy, which culminated in the proposal to negotiate so-called "mobility partnerships." According to Cecilia Malmström, European Commissioner for Home Affairs, "Hopefully Mobility Partnerships will be an important part in the democratisation process in countries across North Africa" (Malmström 2012). Such partnerships have been proposed to Egypt, Morocco and Tunisia. However, according to the Commissioner, the proposal has thus far been turned down by Egypt.

What is the rationale behind these proclaimed instruments of comprehensive migration cooperation? Although the content of the future partnerships with Mediterranean countries is not yet known, a look at the existing mobility partnerships with Eastern European countries and Cape Verde, as well as the EU's most recent programmatic document, on a "Global Approach to Migration and Mobility" adopted in 2011, do not portend a major overhaul of existing priorities. Mobility Partnerships were introduced as platforms for ongoing migration dialogue and cooperation between the EU and individual third countries and should reflect the three main facets of the comprehensive approach: legal migration, development, and the fight against irregular migration. Notwithstanding this promising agenda, analyses of existing mobility partnerships unequivocally show that they emphasise projects in the field of migration control, readmission and re-

turn, and hardly open any new avenues for legal migration to Member States (Lavenex and Stucky 2011; Carrera and Hernandez 2011). The crux of the problem is that, given the repartition of competences in the field of Justice and Home Affairs, the European Commission has no powers to negotiate on legal avenues for migration. On the contrary, the Lisbon Treaty stipulates that competence over the admission of migration quotas shall remain with Member States. There are a few exceptions, however, which are reflected in the title of the revised "Global Approach to Migration and Mobility," and these are short-term visas (the so-called Schengen Visas); the temporary admission of students and researchers as well as – pending adoption of the respective directives by the Council of Ministers and the European Parliament – intra-corporate transferees and seasonal workers.

The question arising now is to what extent the peaceful uprisings for democratisation and the deposition of former dictators constitute a second, more profound crisis of the EU's repressive migration policy that will eventually lead to a breakthrough of the comprehensive approach officially endorsed seven years ago

To what extent Member States will support an evolving EU policy on temporary admission based on mobility partnerships is difficult to tell. For the time being, Mediterranean Member States such as France, Italy and Spain have all maintained their own bilateral migration arrangements with their southern neighbours as part of their foreign relations. French cooperation with Tunisia prior to Ben Ali's forced flight and soon after allows a glimpse of the complex interplay between Member State and EU policies regarding the Mediterranean Region.

Tunisian-French Migratory Governance

When considering bilateral cooperation on migratory governance between Tunisia and France, the

framework agreement on cooperative management of migration flows and inclusive development signed in April 2008 immediately comes to mind. Before its entry into force in July 2009, the former French Minister of Foreign and European Affairs, Bernard Kouchner, explained to the Senate that the agreement was structured around “the organisation of legal migration based on mobility [...], the struggle against irregular migration [through stepped up cooperation on deportation or readmission of irregular Tunisian migrants] and the establishment of cooperation aiming to foster the implementation of a development model to the benefit of the country of origin.” These three dimensions sum up the intentions formulated in this type of agreement.

Why the three dimensions associating the control of both regular and irregular migratory flows with development aid? To answer this question, it is important to keep in mind that bilateral cooperation on migratory governance cannot be isolated from a broader framework of interaction between States, which involves strategic interests or interests more vital than the struggle against irregular migration. In other words, we must not only go beyond the issue of migration, but also analyse factors that have contributed to France’s developing this type of framework agreement with certain African countries, among them Tunisia, and then attempt to understand the reasons and the strategic interests (expected and actual) that led Tunisia to ratify this agreement in 2009.

Predominantly Temporary Migration

Any agreement, whether bilateral or multilateral, entails costs and benefits. What is too often omitted, however, is that the latter vary over the course of time according to the crises and political priorities of the moment, rendering bilateral cooperation more complicated and even uncertain. To remedy this, recourse is often made to compensatory measures or incentives that, in theory, should ensure compliance with the commitments contained in the agreement, even if they may be reformulated (Cassarino, 2010). In the sphere of cooperation on migratory flow control and the struggle against irregular migration between EU Member States on the one hand, and South Mediterranean countries and other African countries on the other, the matter of incentives (and their compensatory value) has always

been at the heart of debate. Tunisian-French cooperation is not an exception.

We have established that the framework agreement comprises three different strands. However, like the mobility partnerships (Lavenex and Stucky 2011) cited above, it addresses a specific order of priorities without explicitly stating so, namely: developing mechanisms of control to ensure the temporary stay of Tunisians in France and their effective return to their country. To do this, a complex array of administrative and bureaucratic procedures have been established, both “upstream” and “downstream” of actual migration, i.e. before and after the actual move to the host country.

In the sphere of cooperation on migratory flow control and the struggle against irregular migration between EU Member States and South Mediterranean countries the matter of incentives (and their compensatory value) has always been at the heart of debate

“Upstream” in the migration process, Tunisian candidates for emigration must meet highly selective criteria in terms of skills and labour, employment conditions, their housing in France and the duration of their stay. Moreover, the agreement stipulates that family reunification applications will be processed “diligently.” However, according to the Law of 26 July 2006 on Immigration and Integration, foreign nationals in France are not entitled to family reunification unless they can attest to 18 months (and not a year) of legal residence in the host country. It is true that the agreement fosters the migration of “young professionals” from Tunisia, who are allowed to stay for longer than 18 months. In any case, in order to be entitled to this prolonged residency, their emigration candidacy must necessarily be associated with a “post-sojourn professional project” in their country of origin. These measures, applicable before actual migration takes place, well reflect the overall goal stipulated in the preamble of the framework agreement: “to encourage organised migration based on

mobility,” in other words, on the selective, temporary nature of said migration.

After migration has taken place and once the migrant is in the host country, a series of provisions aiming to ensure the temporary nature of said “mobility” are also mentioned. While the agreement reiterates the reciprocal obligations insofar as readmission (or deportation) of irregular migrants, it also mentions so-called voluntary returns by people subject to an obligation of leaving the territory. Moreover, even if the obligations regarding readmission of illegal migrants are formulated based on the principle of reciprocity, the latter remains imbalanced (for obvious reasons). It is precisely due to this imbalanced reciprocity that the dimensions of “technical operational cooperation” and “inclusive development” were added to the framework agreement. The underlying idea aims to incentivise Tunisia to cooperate more in readmitting its nationals by contributing surveillance equipment to the Tunisian police authorities, on the one hand, and in exchange for development aid and support for the reintegration of returned migrants, on the other. The majority of these so-called “development” actions generally take place in the form of short-term projects corresponding to priorities aiming to channel migratory flows (both on their departure from Tunisia and on their return). These projects are assigned to different actors by NGOs, intergovernmental institutions or local Tunisian associations.

Strategic Alliances and Security Paradigm

It would be erroneous to believe that the former government under Ben Ali had agreed to ratify the framework agreement in 2009 because of the compensatory measures and incentives it contained. The regime of the time knew that playing the card of efficiency in migration and border management negotiations would allow it to attain other ends. In exchange for its cooperation, Tunisia knew that it could count on the support of certain European countries (such as France and Italy) in order to convince the EU to start discussions on Advanced Status for Tunisia.

Said discussions, greatly hoped for by the Zine El-Abidine Ben Ali regime in its search for international legitimacy, began *de facto* in May 2010. This manoeuvre allowed the regime to conceal internal social discontent and strengthen its strategic posi-

tion, especially since it was able to capitalise on the latter in its relations with EU Member States. The struggle against international terrorism and religious fundamentalism likewise constituted shared problems that, in the context of foreign relations, had direct implications on the way in which cooperation on migratory governance was addressed, readjusted and codified according to a security paradigm.

After the fall of Ben Ali, the establishment of a freely elected government, the growing mobilisation of Tunisian civil society, it is legitimate to believe that yesterday’s security priorities and paradigms insofar as migration governance cannot be those of today’s Tunisia

This security paradigm progressively gained ground as a necessary evil in the need to “manage” international migration, relegating respect for fundamental human rights – i.e. those of the migrants and asylum-seekers – to the background without denying their value (Cassarino, 2012). The recourse to this “necessary evil,” emerging from the security paradigm, not only explains how to deal with a given priority, for instance, the “struggle against illegal immigration.” It also diverts attention from the real causes of the problem (social inequality, poverty, underdevelopment, underemployment and political violence and repression), creating the illusion that bilateral cooperation on migration and tighter border controls constitutes an adequate solution to address this problem.

Beyond the Necessary Evil: Towards a Sovereign Tunisian Migration Policy?

After the fall of Ben Ali, the establishment of a freely elected government, the growing mobilisation of Tunisian civil society (in Tunisia and abroad) and restored relations between citizens and the State, it is legitimate to believe that yesterday’s security priorities and paradigms insofar as migration govern-

ance cannot be those of today's Tunisia. This does not mean they will disappear from one day to the next. But it does mean that the task facing the new Secretary of State for Emigration and Tunisians Abroad, appointed in January 2012, is colossal. On the latter rests the urgent need to rethink the new Tunisia's migration priorities from the political, legal and economic standpoints. This effort will depend on the need to disengage the migratory issue from an exclusively security-oriented analysis framework in order to place it in a humanitarian perspective based on respect for and defence of fundamental rights and address national development imperatives. Only through this disengagement will it be possible to reconsider the soundness and usefulness of certain agreements and decisions made in the past.

In the meantime, and even more fundamentally, it is urgent for the Tunisian government to define its own priorities and underlying principles on migration policy and make them public. This sovereign step, necessary for any balanced interstate dialogue, has never been taken in Tunisia. It will depend, among other things, on the Tunisian authorities' capacity to produce autonomous knowledge and expertise, indispensable elements for consolidating Tunisia's credibility and reception on the bilateral and multilateral levels. Understanding and defining the priorities and underlying principles of Tunisian migration policy in a sovereign manner, avoiding ready-made solutions based on the principle of necessary evil, constitutes the major challenge facing Tunisia today.

References

- CARRERA, Sergio and HERNANDEZ i SAGRERA, Raul. "Mobility Partnerships: 'Insecurity Partnerships' for Policy Coherence and Migrant Workers' Human Rights in the EU," in KUNZ, R., LAVENEX, S. and PANIZZON, M. (eds.). *Multilayered Migration Governance. The Promise of Partnership*, London: Routledge, 2011, pp. 97-115.
- CASSARINO, Jean-Pierre. "Reversing the Hierarchy of Priorities in Euro-Mediterranean Relations," in Joel Peters (ed.), *The European Union and the Arab Spring: Promoting Democracy and Human Rights in the Middle East*. New York: Lexington Books, 2012, pp. 1-16.
- CASSARINO, Jean-Pierre (ed.). *Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area*. Washington: The Middle East Institute, 2010.
- LAVENEX, Sandra and STUCKY, Rachel. "Partnering for Migration in EU External Relations," in Kunz, R., Lavenex, S. and Panizzon, M. (eds.), *Multilayered Migration Governance. The Promise of Partnership*. London: Routledge, 2011, pp. 116-142.
- MALMSTRÖM, Cecilia (2012). Articles under: "Tag 'Mobility Partnership,'" blog at <http://blogs.ec.europa.eu/malmstrom/tag/mobility-partnership/>, last visited on 14/5/2012.
- PAOLETTI, Emanuela. *The Migration of Power and North-South Inequalities: The Case of Italy and Libya*. Basingstoke: Palgrave Macmillan, 2010.

Many European states have long and complex histories with the Middle East and North Africa. Today, it is clearly in the EU's best interest to have a safe and secure MENA region. As the Soviet Union collapsed, the geopolitics of the region shifted focus and Europe began to expand its influence in its Mediterranean neighborhood. Increasingly, issues such as immigration, terrorism, trafficking, and energy needs shifted European attention to the southern and eastern parts of the Mediterranean. Since 1995, the region has taken on further importance for the EU, both within the foreign policy and domestic arenas. This mostly EU driven and risk averse agenda has driven transregional governance efforts in the region. Transregional governance refers to sets of formal and informal institutions that cut across and connect different geographical regions. It can involve inclusive and exclusive practices of regulatory governance of migration via different regional, interregional or bilateral norms.¹¹ Until now though, it has been used mainly by receiving countries or regions such as the EU to externalise the EU's border controls. Furthermore, the design of transregional migration and refugee governance is greatly influenced by the internal politics and legal competences of the EU. The European Union (EU) throughout its history has been the destination of diverse migratory flows. Therefore, migration has acquired special relevance by occupying a prominent position on the EU's political, economic, cultural, and social agenda. In short, there is a profound crisis of governance, in which migration plays a catalyst role. It is an issue that has occupied for years a relevant place in the EU policies, but not in the public opinion as was the case with the migratory crises determined by the Arab uprisings in 2011. Moreover, the governments of the EU states face migration challenges differently, without a joint strategy, which is perceived by some countries as a security threat and a challenge for institutional stability.

Start by marking "Eu External Relations and Systems of Governance: The Cfsp, Euro-Mediterranean Partnership and Migration" as Want to Read: Want to Read saving; Want to Read. Not initially a CFSP project, EuroMed has become the frame for EU foreign policy in the region as an emerging system of governance in which the EU institutions play a central role. Having recently been relaunched as the Barcelona Process: Union for the Mediterranean, it is a topical subject. But regional tempers are boiling over regardless. Egypt, which holds the eastern Mediterranean's largest discovered gas reserves, warned of repercussions for any measures that violate Cyprus's sovereign rights over its resources and threaten the security and stability of the region. Cyprus, split in 1974 and its northern part only recognized as a separate state by Turkey, went further still: "Turkey is turning into a pirate state in the eastern Mediterranean," the Foreign Ministry said on Sunday. Turkey's alliance with Moscow is already in evidence through Erdogan's purchase of a Russian S-400 missile system in the face of U.S. and NATO protests.