

The EU-Southern Neighbourhood Relationship in Transition: From “Closed” to Semi-Open Borders in the Mediterranean?

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The war in Ukraine has brought to the forefront the question of borders, both as a priority but also in terms of displacement in the EU’s neighbourhood. Rather than moving closer to a “borderless” world as heralded by the advent of globalization, states are increasingly seeking to reinforce their control over specific territorial entities delineated by borders and boundaries.

This is also reflected in the European project. The vision of a borderless EU, through the Schengen area of free movement, was grounded from the beginning on the assumption that internal mobility relies heavily on the external strengthening of its borders. Free mobility only applies to the citizens of the Member States and third country nationals legally residing within European borders. Inevitably, this has created a distinction between internal boundaries, which have diminished in importance, and external borders, which are at the forefront of the policy debate on migration.

There is little doubt that migration remains a critical challenge for both the EU and the broader neighbourhood, particularly in the absence of effective ways of reducing and preventing the factors that produce humanitarian crises and displacement. Following the 2015 European “refugee crisis,”¹ irregular migration is increasingly dominating the EU’s re-

lationship with its Mediterranean partners, often affecting other policy fields. The arrival of a million asylum seekers in 2015 triggered a discussion around responsibility sharing within the EU,² but also *vis à vis* its partner countries. More importantly, migration and asylum governance since 2015 has thrown into question the normative and value-based framework the EU is promoting and seeking to export to other countries. The informalization of aspects of migration management (e.g., the EU-Turkey Statement) is compounded by the strengthening of the securitization approach; the latter has always been a core facet of the management of migration but perhaps never so explicit as in recent years.

EU migration policy has also radically changed our understanding of where the border begins and ends. No longer situated at the limits of territory, EU borders are digitalized and externalized,³ transcending the European space. Through practices of externalization, borders expand to third countries, which are asked to pick up the mantle of guardians of the EU, especially concerning irregular migration. Nowhere is this more apparent than in the relationship between the EU and its southern neighbours, where the border is no longer delineated by the Mediterranean Sea.

On Borders

Borders have played a critical role in the construction of the European Union since its early days. How bor-

¹ CRAWLEY, Heaven. “Managing the Unmanageable? Understanding Europe’s Response to the Migration ‘Crisis.’” *Human Geography*, vol. 9, no. 2, July 2016, pp. 13-23, doi:10.1177/194277861600900202. <https://doi.org/10.1177/194277861600900202>.

² UNHCR, “Over one million sea arrivals reach Europe in 2015.” December 2015, www.unhcr.org/news/latest/2015/12/5683d0b56/million-sea-arrivals-reach-europe-2015.html

³ WALTERS, William, “Europe’s Borders.” in RUMFORD, Chris (ed.) *Sage Handbook of European Studies*, 485-505. Washington, DC: Sage, 2009. TRAUTMANSDORFF, Paul and FELT, Ulrike, “Between Infrastructural Experimentation and Collective Imagination: The Digital Transformation of the EU Border Regime.” *Science, Technology, & Human Values*. November, 2021. doi:10.1177/01622439211057523.

ders are understood depends on the function they serve. The European Union has long sought to eliminate internal borders and barriers, through the project of European integration. Though state sovereignty continues to be defined on the basis of delimited spaces, the European integration project has created a dual system where internal borders do not serve the same purpose as the EU's external borders. While the former are partly eroded in support of a supranational entity, the latter are continuously strengthened in "defence" of the European community.

The New Pact on Migration and Asylum which forms the core approach on migration governance focuses on the Mediterranean, as the immediate frontier which migrants cross on their way to Europe

The Mediterranean border, perhaps more so than the EU's eastern external borders, has, for a long time, been "fortified" as a response to migratory movements from Africa and the Middle East. The southern neighbours have received the attention of EU policymakers since 2011, following the aftermath of the Arab Spring. From political transitions (e.g., Tunisia), to violent conflicts (e.g., Syria) the southern neighbours, particularly the countries in North Africa, are perceived as countries of origin as well as transit for mixed migration. For the EU, the main concern remains sub-Saharan migration, which utilizes the central and western Mediterranean routes to Europe,⁴ as well as the overall reduction of irregular migration from countries like Tunisia, Morocco and Libya. Beyond the natural sea barrier, the border is also technological, economic, political, legal and begins from the countries of origin, extending all the way through the Mediterranean crossing, before it is reinforced once more on arrival to the EU.

The Mediterranean border is first and foremost a deadly one. The Missing Migrants project indicates that since 2014, 24,023 migrants have disappeared at sea, 17,000 of which were attempting the crossing along the central Mediterranean route. It is also an increasingly fortified border with prevention externalized from the north to the southern neighbourhood where – in a similar vein as in the EU – barriers gradually materialize, seeking to govern migrants' daily lives and drawing "lines of separation between political, social and economic spaces."⁵

Categorizations and distinctions are crucial in EU migration governance, which attempts to determine who will be allowed entry, and under what conditions, to the European Union. The New Pact on Migration and Asylum (henceforth the Pact), which forms the core approach on migration governance, seeks to create clear-cut distinctions between those who are invited to enter and those who are pre-deemed undesirable and should be prevented and/or returned. It focuses on the Mediterranean, as the immediate frontier which migrants cross on their way to Europe. The EU-southern neighbourhood relationship is cemented in the Pact through the notion of partnerships.

The Quest for Partnerships

In September 2020, a few days after the catastrophic fire in the Moria camp in Lesbos, the European Commission released the Pact. The long-awaited reform was framed as a new start, seeking to bridge differences between Member States and enable them to reach consensus on critical issues such as responsibility sharing. The crux of the Pact is the external dimension. From the ground floor of the house all the way to the internal solidarity mechanism, which includes return sponsorships, the Pact is geared towards preventing and reducing irregular migrants at the external borders and in the territory of Member States. Like all policy documents on migration, it draws a subtle distinction between asylum seekers and irregular migrants, even though research

⁴ PASTORE, Ferruccio and ROMAN, Emanuela, "Migration Policies and Threat-based Extraversion. Analysing the Impact of European Externalisation Policies on African Polities." *Revue européenne des migrations internationales*, vol. 36, n°1, 2020, 133-152, <https://journals.openedition.org/remi/14591>

⁵ NEWMAN, David. "The Lines That Continue to Separate Us: Borders in Our 'borderless' World." *Progress in Human Geography*, vol. 30, no. 2, 2006, pp. 143-161, doi:10.1191/0309132506ph599xx.; NEWMAN, David. "On borders and power: A theoretical framework." *Journal of Borderlands Studies*, vol. 18, no. 1. 2003, pp. 13-25, doi: 10.1080/08865655.2003.9695598.

has shown that mixed migratory flows are the norm rather than the exception. In other words, prevention measures and policies influence anyone who seeks to move outside legal channels and those may very well be asylum seekers. In the Pact, countries of origin and/or transit acquire renewed priority.

One of the key proposals are tailor-made partnerships, presented as a “restart” in the relationship with priority countries. Partnerships pre-exist the Pact, already a key element in the Global Approach to Migration and Mobility (for example the preferential Mobility Partnership framework). This was also the framework of the multi-billion Emergency Trust Fund for Africa that sought to address irregular migration with particular emphasis on the Sahel and Lake Chad Region, North Africa and the Horn of Africa. Within the Migration Partnership Framework introduced in 2016, the EU negotiated bilateral compacts with Niger, Senegal, Ethiopia and Nigeria to name a few.

The European Commission’s website indicates that the priority – as evident from the examples of these partnerships – is the deterrence of irregular migration whether through border controls, capacity building for law enforcement and/or countering smuggling.⁶ It is worth noting that the experience of partner countries has not necessarily been positive. Success is limited at best and often at a high cost for the countries and migrants. Partnerships have also not been entirely fruitful for the EU, which often pushes, unsuccessfully, for readmission and return agreements.

Partnerships with third countries rely heavily not only on incentives, but also on domestic interests. This is highlighted in the recent Court of Auditors assessment of readmission agreements, which found that “Overall, during the 2015-2020 period, the EU did not achieve tangible progress in the EURA negotiations with Algeria and Morocco. The EURA negotiations with Tunisia and Nigeria progressed on technical issues, but the most contentious points were set aside.”⁷ A recent survey⁸ highlights the different priorities both between the Maghreb and Mashreq area *vis à vis* EU priorities and investment on migration. Though border management, capacity building and legislative

progress are key areas of cooperation, the survey suggests that migration experts surveyed in the respective countries wish for more cooperative, inclusive partnerships that also bring in non-state actors, as well as investments to facilitate the integration of the migrant population. Their perspective is reflective of domestic priorities. As regards the assistance offered, the survey found that the EU Emergency Trust Fund (EUTF) for Africa and EU Regional Trust Fund in Response to the Syrian Crisis (Madad Fund) instruments were perceived to be ineffective. In contrast, the European Humanitarian Aid and Civil Protection’s assistance was overall positively evaluated, which indicates that the predominant focus of the EUTF on border management and small-scale pilot projects does not adequately address needs on the ground.

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Acknowledging the need for a more balanced approach, the Pact expands the areas where cooperation can be offered as a counterbalance to migration management, by incorporating more issue areas i.e., development, visa policy, trade agreements, agriculture, job creation, energy, climate and even research. Following the Pact’s announcement, the High-Level Working Group on Migration and Asylum identified the priority regions, which included North Africa, the Sahel region and sub-Saharan Africa, among others. Priority countries for establishing tailor-made partnerships are Tunisia and Morocco, with full utilization of the Neighbourhood and International Cooperation Financial Instrument (NICI), with irregular migration as a priority area. Thus, the immediate focus is on the southern Mediterranean, supported by the “*New Agenda for the Mediterranean*” presented in February 2021.

⁶ EUROPEAN COMMISSION, *Acting together to deepen international partnerships*, https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum/acting-together-deepen-international-partnerships_en

⁷ EUROPEAN COURT OF AUDITORS, *EU readmission cooperation with third countries: relevant actions yielded limited results*, 2021, www.europa.eu/en/Pages/DocItem.aspx?did=59347

⁸ IEMED & ICMPD SURVEY, *Towards sustainable and mutually beneficial migration partnerships in the Southern Mediterranean*, 2021, www.euromesco.net/news/euromed-survey-2021-descriptive-results/

The southern neighbours,⁹ according to the New Agenda for the Mediterranean, share some commonalities, including low economic integration, socioeconomic inequalities, limited capacity to meet the needs of their population, particularly youth, and a direct threat from climate change to access to food and water.¹⁰ All of those and more are also considered drivers for displacement and migration, which has now acquired a prominent, horizontal role, in the EU's relationship with the southern Mediterranean. The Agenda proposes "jointly" addressing forced displacement and irregular migration and "seizing the benefits of legal migration" through "tailormade" beneficial partnerships. The Economic and Investment Plan is seen as the way forward in reducing drivers for irregular movement to Europe. The problem with the rationale is it assumes the key driver for movement to be the pursuit of economic betterment. This simplifies the complexity of human mobility, which often includes multiple motives for migration. Reducing drivers for irregular mobility is also far from simple, since it requires long-term structural changes. The border, thus, transforms into the final frontier for reducing irregular migration.

Migration from the Southern Neighbourhood

The Covid-19 pandemic had a dramatic impact on mobility across the two shores. As the EU Member States closed their borders, legal migration channels dwindled, followed by "a noticeable increase in irregular flows along certain routes, particularly from Africa."¹¹ In 2020, Frontex recorded around 17,000 border crossings on the western Mediterranean migratory route, whereas the West African route through the Canary Islands registered around 22,000

detections. The biggest increase was in the central Mediterranean, from Libya to Italy. In 2020, 35,628 detections were recorded. In 2021 that number increased to 65,632, accounting for a third of all reported border crossings. Tunisian migrants make up a significant share of those trying to reach Italy, alongside Egyptian migrants. Similarly for the western Mediterranean, Moroccans, Algerians and West Africans make up the main nationalities arriving in Spain.

Despite continuous efforts, the border between the north and south of the Mediterranean has never been fully "closed"

The increase is indicative not only of the closed avenues of entry due to the pandemic but also of the broader socioeconomic situation in many of these countries. For example, Tunisia is facing a double-pronged challenge, which is, on the one hand political and, on the other hand, financial. As the country slides into political turmoil and faces significant unemployment, particularly amongst the youth, the socioeconomic drivers that may encourage migration are being exacerbated. Libya continues to be the most controversial of all the countries in the region. The EU has funded and continues to fund the Libyan coast guard in undertaking "search and rescue,"¹² despite the fact that returnees are often detained in conditions that have been widely criticized by human rights actors and the UN.¹³

Since 2011 and the Arab Spring, more and more barriers are being erected at the external borders of

⁹ The southern neighbourhood is clearly defined in the Agenda, and includes Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia.

¹⁰ HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY, Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Renewed Partnership with the Southern Neighbourhood*, February 2021, https://eeas.europa.eu/sites/default/files/joint_communication_renewed_partnership_southern_neighbourhood.pdf

¹¹ VILLA, Mateo. "Irregular Migration Across the Mediterranean: The Long Road Ahead to Revamp Partnerships." in IEMed & ICMPD, *Survey of migration experts in the European Union's Southern Neighbourhood: Towards sustainable and mutually-beneficial migration partnerships in the South Mediterranean*, 2021, www.euromesco.net/wp-content/uploads/2022/04/2.-EuroMeSCo-survey_Matteo-Villa.pdf

¹² ECRE, *Med: More Deaths and Returns to Libya, EU Funding and Cooperation with Notorious Coast Guard as Situation in Libya Deteriorates*, October 2021, <https://ecre.org/med-more-deaths-and-returns-to-libya-eu-funding-and-cooperation-with-notorious-coast-guard-as-situation-in-libya-deteriorates/>

¹³ ECRE, *Med: Eight Years on from Deadly Tragedy Lives Continue to Be Lost, EU Complicit in Libyan Abuse, Fact-Finding Mission Finds Possible Crimes Against Humanity in Libya*, October 2021, <https://ecre.org/med-eight-years-on-from-deadly-tragedy-lives-continue-to-be-lost-eu-complicit-in-libyan-abuse-fact-finding-mission-finds-possible-crimes-against-humanity-in-libya/>

the EU. Naval operations to counter smuggling (EU-NAVFOR MED), the criminalization of search and rescue by non-state actors, refusals for disembarkation and fast-tracked processing at the border and returns, are some of the ways Member States have sought to reinforce the EU border. Despite continuous efforts, the border between the north and south of the Mediterranean has never been fully “closed.” It has always entailed, as all borders do, a level of porousness that can function as a positive driver for better cooperation between the EU and its neighbours.

A Semi-Open Border through Legal Pathways

At the forefront of policy discussion for years, legal avenues are pushed forth as a viable alternative in establishing global responsibility sharing mechanisms as well as to create opportunities for migrants who wish to move in pursuit of economic betterment. In the New Pact on Migration and Asylum, legal pathways have a significant place in the original proposal penned by the Commission, for asylum seekers but also for skilled migrants. The aim is to utilize legal pathways in improving cooperation with countries that are already on the receiving end of the EU’s externalization policies.¹⁴

Resettlement, a critical legal pathway for refugees, reduced significantly in 2020 due to the Covid-19 pandemic¹⁵ and border closures. Yet even the year before, in 2019, Europe resettled 29,066 people, according to UNHCR, and 76% of all resettlement submissions were received by five countries (Germany, Sweden, Norway, the UK and France). Overall participation is limited and voluntary. There are Member States that simply do not wish to resettle refugees, from Greece to the Visegrad group. The lesson of the 2015 “refugee crisis,” as well as the Ukrainian displacement, is that there are preferences on behalf of Member States regarding who to welcome and under what conditions.

The European Commission affirmed its willingness to support national sponsorship schemes and particularly community sponsorship, as a way of involving the private sector and civil society, which contribute to the burden sharing. It would facilitate the establishment of a more comprehensive system, yet experience from community sponsorship schemes in countries like Italy and Belgium shows that the process is bureaucratic and applies to very few, as selection is grounded predominantly on characteristics such as religion, ethnicity or vulnerability (an already problematic framework). Despite the difficulties, sponsorship schemes could function as a pathway through the EU-Med border and a way to indicate to the southern neighbours that responsibility sharing lies at the heart of the relationship. This would be of particular importance to countries already hosting significant numbers of refugees such as Lebanon and Jordan, as well as transit countries like Libya and Morocco.

The second proposal in the Pact is in the form of Talent Partnerships targeting skilled migrants. Their aim is to facilitate mobility schemes between EU Member States and specific countries by matching skills with labour demand in the EU. There is little evidence that legal pathways can reduce irregular movement,¹⁶ partly because such schemes apply to those who already possess skills that are transferable to the labour markets of Member States. The language factor is also crucial. While training schemes can be developed in the long run to address potential shortages, the fact remains that this would also rest squarely on the needs and priorities of Member States. Additionally, the demand for particular skills may not be available *vis à vis* the potential supply. The incorporation of a scheme for skilled migrants is nonetheless crucial, mostly in paving the way to engaging with the notion of legal migration as a potential way forward.

The Pact offers some opportunities to improve migration partnerships across the Mediterranean. The introduction of skills for asylum seekers is beneficial, as is the incorporation of legal pathways. However, these

¹⁴ LEBOEUF, Luc, *Legal Pathways to Protection: Towards a Common and Comprehensive Approach?*, December 2020, <https://eumigrationlawblog.eu/legal-pathways-to-protection-towards-a-common-and-comprehensive-approach/>

¹⁵ EASO ASYLUM REPORT, *COVID-19 exposes strengths and weaknesses of EU asylum systems*, 2021, <https://euaa.europa.eu/news-events/easo-asylum-report-2021-covid-19-exposes-strengths-and-weaknesses-eu-asylum-systems>

¹⁶ SCHNEIDER, Jan, “Beyond Talent Partnerships: Boosting Legal Mobility under the New EU Migration Pact.” IEMED & ICMPD, *Survey of migration experts in the European Union’s Southern Neighbourhood: Towards sustainable and mutually-beneficial migration partnerships in the South Mediterranean*, 2021, www.iemed.org/publication/beyond-talent-partnerships-boosting-legal-mobility-under-the-new-eu-migration-pact/

are positive aspects that are heavily reliant on the political preferences of Member States that remain fundamentally cautious on what to offer third countries. This is particularly evident when looking at schemes for labour migration, visa schemes for training, for students, and academics etc. Similarly, responsibility sharing continues to be absent for asylum seekers between the two shores of the Mediterranean.

The Future of the EU-South Mediterranean Relationship

Any discussion on the relationship between the EU and the southern Mediterranean on migration, cannot ignore the volatile domestic situation in a lot of the countries in question and the more immediate needs of their citizens, in addition to those of the migrants and asylum seekers hosted in their territory. The war on Ukraine is already perceived as a potential driver for future migration “crises,” due to the increase in energy prices and disruption of the global supply chain, which is already having a disproportionate impact on the poor and is raising concerns over social and political unrest.

There is a fundamental gap in priorities that can be addressed by offering positive incentives to the partner countries in the southern Mediterranean

While European policymakers focus on preventing irregular departures and creating partnerships that facilitate returns, the southern partners prioritize structural support for their economies, the facilitation of legal migration for their nationals and opportunities for responsibility sharing on asylum seekers and vulnerable migrants with the north shore. The difficulty

lies not so much in understanding the different priorities, but rather in whether they can, in fact, be met.

The agency of the southern neighbours must also be taken into account. Countries such as Morocco or Tunisia have been engaging with the EU for a long time on migration and have seen little progress as regards their priorities. They have significant experience in negotiating as well as opposing EU priorities without explicitly rejecting them. Morocco has been negotiating an EU readmission agreement for more than a decade. Tunisia has drafted a law on asylum but has not passed the bill through parliament, thereby delaying the possibility of transforming into a safe third country for the EU. These practices of agency and resistance suggest that the southern shore of the Mediterranean is not singularly dependent on the EU. The relationship may be valued, but it is not the only criterion for partnerships in the field of migration. Additionally, the EU is not the only partner that is relevant in the foreign policy of migration. Relationships with West African countries for Morocco and sub-Saharan Africans for Tunisia are a key determinant in how their partnership with the EU will be structured.¹⁷ This is easily forgotten in a Eurocentric approach to the Mediterranean that is seeking to find a middle ground with the southern priorities by offering limited legal avenues of mobility.

There is a fundamental gap in priorities that can be addressed by offering positive incentives to the partner countries in the southern Mediterranean. It could create a constructive “dependency” between the EU and the southern neighbourhood and a cooperation that would also benefit migrants and asylum seekers. The alternative is to continue replicating the current relations; the EU engages in formal and informal arrangements focused on border controls, while the countries in the region instrumentalize migration (e.g. Morocco), reduce their expectations and willingness to concede to the EU’s priorities (e.g. Tunisia) or collaborate with the EU but in a manner that violates migrants’ human rights (e.g. Libya). It is a vicious cycle that produces little reward for either side.

¹⁷ EL QADIM, Nora, “De-Europeanising European Borders: EU-Morocco Negotiations on Migrations and the Decentering Agenda in EU Studies.” in Woons, Marc & Weier, Sebastian (eds), *Critical Epistemologies of Global Politics*, www.e-ir.info/2017/06/24/eu-morocco-negotiations-on-migrations-and-the-decentering-agenda-in-eu-studies/