

The External Dimension of European Migration Policy: The Case of Libya and Tunisia in Light of the Recent Protests

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Emanuela Paoletti

Junior Research Fellow

Somerville College, University of Oxford

The internal conflict in Libya has given rise to massive outflows of people to neighbouring countries. As of 26 April 2011, a total of 634,835 people had crossed from Libya into Egypt, Tunisia, Niger, Algeria, Sudan, Chad and Italy (UNHCR, 2011). The response of European countries has been mixed. On the one hand, European Union (EU) Member States and the EU as a whole have committed to providing financial support for both the short-term resolution of the emergency at the border and the long-term process of institution-building. On the other hand, countries such as France and Italy have panicked over the potential “invasion” of irregular migrants from Libya and Tunisia and lamented the lack of support shown by the EU. Notably, on 26 April 2011, both countries called for a revision of the Schengen system, as well as the possibility of temporarily establishing internal border controls in case of exceptional difficulties in handling common external borders. In fact, the changing and, at times, contradictory manner in which European countries have dealt with political turmoil in North Africa is not new. Overall, relations with third countries in North Africa in the sphere of migration, i.e. the so-called external dimension of migration policy, have long been fraught with tension. Against this backdrop, this paper provides a brief historical analysis of the ideas and practices framing the external dimension of European migration policy, with a specific focus on the cases of Tunisia and Libya.

The following analysis is divided into two sections. First, I define the concept of the external dimension and introduce the (mainly academic) debate on the issue. I will argue that the prevailing view is skewed

towards criticism of the process for its inherently illiberal practices, which consolidate pre-existing power inequalities between countries. In brief, the process is taken to be a glaring example of the attempt by European states to circumvent international human rights obligations and thus shift the burden of managing migration to neighbouring countries. Against this general background, the second section provides an empirical analysis of Tunisian and Libyan negotiations with the EU on the subject of migration. Here one key idea will be put forward: the unfolding practices relating to the EU’s external border engender sources of leverage that benefit *both* migrant-sending and migrant-receiving countries. The ongoing political turmoil in North Africa has consolidated this dynamic. European concern over large-scale arrivals from North Africa and the multiple cooperation initiatives intended to co-opt third countries into the EU’s external dimension agenda have provided countries such as Tunisia and Libya with greater political clout vis-à-vis their counterparts in Europe.

Defining the External Dimension of European Migration Policy

Since the outbreak of protests across North Africa, the issue of managing irregular migration across the Mediterranean has been at the centre of the European debate (Cassarino and Tocci, 2011). Particular attention has been given to the contentious practice whereby Southern European states, such as Italy, seek to prevent the arrival of migrants fleeing North Africa and, if possible, to return them to their country of origin (Geddes, 2008). Broadly speaking, the EU’s external dimension refers to cooperation between Member States, third countries and regional and international organisations on issues such as

terrorism, organised crime, corruption, drugs and migration. Although definitions of externalisation in the area of migration are quite diverse, most observers seem to agree on one underlying feature: the process whereby European countries seek to transfer the location where migration control takes place outside their territorial borders is largely related to the gradual development of free movement within the EU and the consolidation of a single European external border enshrined in the Schengen Agreement. Externalisation takes numerous forms. Policies normally regarded as part and parcel of the EU's external dimension include: migration missions to develop a dialogue on migration with third-country authorities; circular migration, defined as the movement of people (temporary in most cases) between two or more countries, which may be beneficial to all parties; and readmission agreements to ensure that third-country nationals illegally residing in Member States can be returned to their countries of origin. Another prominent manifestation of the externalisation of migration policy is the expanding collaboration between police authorities on both sides of the Mediterranean. This involves operational co-operation between border police, liaison officers, intelligence personnel and magistrates, as well as data exchange through the Schengen Information System (SIS) and technological cooperation on document fraud and the fingerprinting of asylum seekers. In connection with this, pre-border surveillance and joint offshore patrolling operations, such as those led by the European External Border Agency, FRONTEX, are taken as further examples of what has also been called the de-territorialisation of migration policies (Carrera, 2007).

Most academics concur that the content of these measures is consistently security-oriented. The European approach towards migration from third countries is framed in terms of security and addressed through security measures. This is evidenced by the fact that, despite the emphasis placed on the synergies between migration and development, EU expenditure is overwhelmingly focused on control measures. Accordingly, academics tend to unanimously condemn such policies as inherently illiberal. The "paranoid" xenophobic "delirium" contributes to the "globalisation of domination" that reproduces and consolidates power inequalities between states on both sides of the Mediterranean (Bigo, 1991). Similarly, such practices fall outside the purview of international legal standards and are likely to breach

international human rights norms. Recent examples have included the notorious "push back" operations in 2009 and 2010 to Libya and Tunisia, in which the interception of migrants in international waters and their immediate return to third countries may have constituted a breach of the *non-refoulement* principle insofar as they may have been denied assistance and protection. Furthermore, the practice of transferring migrants to neighbouring countries is a marker of power relations between migrant-receiving and migrant-sending countries.

Transit countries are under pressure from the EU to control migration and either prevent arrivals or readmit migrants who manage to reach Europe. In short, the attempt by European countries to move their borders southward is understood as a further example of the expansion of EU normative power. However, an empirical analysis of the collaboration of Tunisia and Libya with the EU does not support such an account. On numerous occasions, these countries have been reluctant to acquiesce to European requests to control their borders. As will be seen in the following sections, the external dimension of European migration policy thus reveals complex give-and-take bargaining arrangements that defy the prevailing consensus on the matter.

Tracing Recent Cooperation Between the Two Shores of the Mediterranean

Bilateral and multilateral relations between the EU and North African countries have largely taken place within the so-called Barcelona Process, launched in November 1995 and involving 15 EU Member States and 14 Mediterranean Partners Countries. The Barcelona Declaration formed the basis of the Euro-Mediterranean Partnership, which was renamed in 2008, when it evolved into the Union for the Mediterranean (UfM). With the consolidation of the European Neighbourhood Policy (ENP) in 2004 – regulating bilateral policy between the EU and each Partner Country – the Barcelona Process has become the multilateral forum for dialogue and co-operation between the EU and its Mediterranean partners. In fact, at present, bilateral relations are managed under the ENP and through Association Agreements signed with each Partner Country. Tunisia was the first Mediterranean Partner Country to sign an Association Agreement with the EU, on 17 July 1995. Under the terms of the Agreement,

which came into force on 1 March 1998, the two parties undertook to cooperate on political dialogue, trade and economic, social, cultural and migration issues. The Agreement envisions financial co-operation to support political and economic reforms in Tunisia. Accordingly, since then, Tunisia has been collaborating with the EU to promote the use of legal channels of migration, prevent irregular immigration, readmit migrants who have irregularly entered the EU and support activities led by FRONTEX. Since the revolution in Tunisia in January 2011, reforms have become even more central to EU-Tunisian negotiations.

In an effort to encourage institutional reforms, on 11 March 2011, the EU committed to strengthening its collaboration with Tunisia in four main areas: (1) preparation for the elections of the Constitutional Assembly scheduled to take place on 24 July 2011; (2) support for civil society organisations in Tunisia; (3) the promotion of human rights, mainly through the Tunisian League for the Defence of Human Rights, as well as other organisations active in the field; and (4) support for the three National Committees established by the interim government to support the process of democratic transition.

To support such wide-ranging reforms, the EU promised to double its financial assistance to Tunisia for the years 2012-2013 from €160 million to €320 million. In this package, migration-related issues are key. The EU has asked Tunisia to readmit those of its citizens who have fled to Italy. The request relates to the agreement signed between Italy and Tunisia on 5 April 2011 whereby Italy committed to providing Tunisia with specialised border-control equipment with a value of up to €30 million (Ministero dell'Interno, 2011). The agreement also allows the 20,000 Tunisians who have arrived in Italy since the so-called Jasmine Revolution to remain for at least six months with temporary residency permits. In turn, Tunisia agreed to accelerate and simplify return procedures for those Tunisians who arrived in Italy on or after 5 April. Reportedly, as of 29 April, 650 Tunisians had been repatriated to Tunisia (Migrants at Sea, 2011). Significantly, this practice can be considered an example of externalisation as defined above, insofar as possible human rights violations are concerned. Yet this is not the whole story. The "externalisation" provision comes as part of a wider package, including a whole range of incentives intended to secure Tunisian collaboration. Hence it can be argued that the evolving agreements on migration normally situated

within the EU's external dimension cannot be reduced merely to the transfer of responsibilities to third countries. Current events demonstrate that in discussions on migration, especially those taking place since the political upheavals across North Africa began, both parties have been able to employ and benefit from a certain degree of leeway. Consequently, rather than weakening third countries, externalisation provides them with new opportunities to engage with, and extract concessions from, EU Member States.

The case of Libya, while markedly different from Tunisia, especially given the ongoing internal conflict, also sheds light on the multiple ways in which migration has reduced the margin of action of European countries. The extent to which the EU, and Italy in particular, have sought to entice Libya into collaborating on migration has already been amply documented (Paoletti and Pastore, 2010). Following the lifting of European sanctions in 2004, Italy and the EU sought to formalise broad relations with Libya, especially in the area of migration. As regards Italian-Libyan relations in particular, between 1998 and 2008, numerous formal and informal agreements on migration were concluded. Especially following the signing of the Friendship Treaty in August 2008, migration flows from Libya declined dramatically. As part of this agreement Italy undertook to pay a total of \$5 billion over 20 years as compensation for its colonial past. This package included investments in infrastructure, the largest project being a coastal motorway between the Egyptian and Tunisian borders. The agreement proved to be a turning point. Since then, according to the Italian Minister of the Interior, irregular migration from Libya to Italy has decreased by 90% (Camera dei Deputati, 2010). Until the civil war in 2011, relations with the EU, and in particular agreements on migration, saw major improvements.

On 12 November 2008, the EU launched negotiations on a wide-ranging Framework Agreement. After the release, in 2007, of the Bulgarian nurses and Palestinian doctor who had been detained, facing a possible death penalty, on charges of having infected Libyan children in a hospital in Benghazi, the European Commissioner Waldner-Ferrero announced an enhanced relationship between the EU and Libya. In fact, the proposed framework agreement was intended to cover, inter alia, economic and social development and "migration management." Notably, this agreement was under discussion despite Libya

THE EUROPEAN ASYLUM SUPPORT OFFICE

On 19 May 2010, the European Parliament and the Council of the European Union adopted a regulation establishing a European Asylum Support Office as part of the measures aimed at achieving the goals planned for completing the Common European Asylum System. The main function of the Office is to increase the coordination of operational cooperation between Member States in order to achieve a greater harmonisation of common rules and minimum standards through technical assistance and exchange of information and best practices. The Office is also intended to support Member States under particular pressure because of their geographical location or the sudden arrival of a large numbers of non-EU-country nationals by promoting the relocation of asylum seekers to other Member States, according to the principle of "burden sharing." With this mandate, the Support Office was set up as an autonomous financial and administrative body of the Union with legal personality. According to the provisions of the regulation, the Office should operate in close cooperation with Member State asylum authorities and services, the United Nations High Commissioner for Refugees, the European Migration Network and the FRONTEX agency.

The Commission first proposed the creation of a European Asylum Support Office in its Policy Plan on Asylum of June 2008 in order to reduce the great disparities between Member States in the procedures and

conditions for granting international protection as well as the forms that such protection takes.

Asylum became an integral part of the European Area of Freedom, Security and Justice with the Treaty of Maastricht in 1992. Since then, the European Union has worked to make progress on the construction of a common asylum policy with a view to achieving higher standards of protection for asylum seekers. However, the adoption of minimum standards left Member States considerable discretion in the application of European measures. The Treaty of Amsterdam transferred the issue to the first pillar and laid down the basis for the adoption of binding measures on asylum issues. So far, four directives have been approved, drawing on the two main pillars of the 1951 Geneva Convention relating to the Status of Refugees: the definition of "refugee" and the principle of non-refoulement. The Dublin II system was put into force together with the "Eurodac" Regulation in order to establish the mechanisms and criteria to determine which State is competent for an asylum application lodged in a State by a third-country national. In the context of the "Solidarity and Management of Migration Flows" programme, the European Union has set up a fund of €614 million for the 2008-2013 period to support action of a non-profit nature addressed to refugees or beneficiaries of international protection.

being party neither to the Barcelona Process nor to the subsequent UfM. Nevertheless, the discussions addressed a variety of issues, including readmission agreements. In concomitance with the temporary closure of the UNHCR office in Libya on 9 June 2010, the EU and Libya began the seventh round of negotiations on migration and asylum. However, Libya continued to refuse to sign a readmission agreement. In fact, during this round of negotiations, the two sides signed a set of guidelines that included the priorities for the EU in its financial and technical contribution to Libya and left out the readmission clause. Shortly afterwards the Commission announced that the issue of readmission of irregular migrants from third countries would not be retained in the negotiations with the aim of reaching an agreement with Libya and finalising the process (Council of the European Union, 2010a).

In short, two inter-related points are relevant here. First, Libya has selectively adhered to all requests put forward by Italy and the EU. Second, until the EU froze the negotiations on the framework agreement on 22 February 2011, significant compromises had to be made by both Italy and the EU in order to secure Libya's collaboration on migration. Notably, despite the escalating internal conflict in Libya and the imposition of the EU embargo on the country, Libya's leader has continued to threaten European countries – though in vain – with the potential for massive in-

flows of migrants from Libya onto European shores. A multifaceted picture thus emerges. Far from being a one-way transfer of ideas and practices, the external dimension of migration rests on changing bilateral and multilateral interactions in which North African countries have been capable of affecting the behaviour of their counterparts.

Conclusion

Countries on both sides of the Mediterranean have long used migration as a bargaining chip in their foreign policies. Importantly, the instrumental use of migration as a foreign policy tool applies to Libya as much as to other countries, for instance, in North or South America (Greenhill, 2010). As Aristide Zolberg observed as far back as 1982, the "deliberate action" of regulating immigration is fundamental to the nation-state system (Zolberg, 1982: 2-3). It has been amply acknowledged that ever since this system developed in its modern form, the right to regulate entry has been a fundamental concomitant of sovereignty (Zolberg, 1982). Simply put, the linkages of such movements of people to foreign policy are hardly new. In this sense, current events in the Mediterranean appear to follow established practice in foreign policy. The external dimension of EU migration policy lays bare the interactive, rather than

unilateral, nature of the relations between the two sides of the Mediterranean.

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Overall, the external dimension of EU migration policy is not limited to the transfer of migration control enforcement measures outside European territory. A much more complex bargaining process is in the making. The changing cooperative arrangements that Tunisia and Libya have engaged in with the EU do not provide for the outright de-location of migration control mechanisms. This leads to two tentative conclusions. Firstly, the fears aroused by unfounded projections of massive arrivals to Italy expose the European “hypocrisy” gap. While commentators and politicians have advocated international norms and the rule of law across North Africa, European discourses and practice have been driven by short-term electoral politics (Greenhill, 2010). Secondly, the cooperation and tensions between countries on either side of the Mediterranean take multiple forms, which, for one, refute the one-sided account implicit in the externalisation mantra. Accordingly, the ongoing political instability across North Africa may invite a more nuanced investigation of the diffuse and multi-layered power dynamic underpinning the EU’s external dimension.

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