

Arab Revolts and the Crisis of the European Border Regime

Perpetuating the failures of externalised migration control

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Discussion paper

Since December 2010, a contesting wind has been spreading in a growing number of countries characterised by a democratic deficit and important economic and social difficulties, and has led to so-called “Arab revolutions” or “Arab revolts”. Initiated in Tunisia, the popular wave against autocratic and corrupted regimes has especially affected North Africa where changes have turned to be radical. After the Tunisian President’s fall on 14 January 2011, followed by the resignation of his Egyptian homologue on 11 February, the “anger day” on 17 February in Libya started up an insurrectional situation accompanied, one month later, by a military intervention of an international coalition allowed by the Security Council at France’s and the United Kingdom’s request. The extent and intensity of Arab revolts heavily surprised European leaders who were used to strong and stable regimes at their border and expressed their concern before being able to eventually welcome people’s fight for their dignity (Declaration of the European Council, 11 March 2011).

The main concern regarded the possible migratory consequences of such an unrest. A relaxed vigilance at Tunisian borders, due to the revolt, gave the opportunity to hundreds of Tunisian nationals to leave the country and use this temporary break. After around 5,000 Tunisians had arrived on Lampedusa island, Italia declared the state of humanitarian emergency on 12 February 2011, and thus emphasised the seriousness and exceptionality of the situation. Five days after violence had begun in Libya, Italy claimed to fear a sudden afflux of 200,000 to 300,000 migrants, while Brussels’ estimation reached 500,000 to 700,000 persons. These figures correspond more or less to the number of people fleeing from Libya, but a tiny minority was heading to Europe, whereas Tunisia, already unstable, was facing the arrival at its borders of 10,000 persons a day, receiving 200,000 persons in a month, like Egypt a bit later (UNHCR).

A terrible lag thus appeared between the reality of movements of people in the Maghreb-Sahel space and the alarmist and disproportionate declarations in Europe. A similar lag emerged between the assertions announcing a coming invasion of migrants in Europe and the absence of collective measures aiming at bringing an adapted response to it. On 25 February 2011, the EU commissioner for Home Affairs, Cecilia Malmström, considered it premature to organize solidarity as “*no immigrant has arrived from Libya yet*” (*Le Monde*, 26 February 2011). One month later, a boat approaching the Sicilian coasts with 1,800 people on board was repelled towards Libya at war by the Italian authorities who

where accusing Malta to have also refused the access to its ports (PANA, 15 March 2011).

The fusion of North African events in a single expression, namely “Arab revolts”, has engendered a confusion of the collective movements linked to these revolts under a single issue of “illegal migration flows” to Europe, which would constitute a “threat to internal security” (according to the priorities defined by EU’s Polish Presidency to begin on 1st July 2011). Moreover, since forced departures from Libya have been subsequent to voluntary arrivals from Tunisia, European reactions towards the latter have oriented, and even supplanted, the management of the former, which has led to strengthen the walls in the Mediterranean rather than a hypothetical Euro-Mediterranean neighbourhood policy.

Since the beginning of the 2000s, EU member states have considerably accentuated North African countries’ responsibility in and participation to controlling European borders. Europe has progressively changed the political conditionality for cooperation introduced in the 1990s for a migratory conditionality. With migration issue at the core of any bilateral negotiation, it has obtained from Maghreb countries to contribute to strengthening borders at sea but then also in land, and has by this way shifted the containment as well as the management of migrants further to the South.

Considered as migrant origin and/or transit countries, North African states have progressively committed themselves to stopping upstream unauthorised departures of their nationals and foreign citizens to the EU. Tunisia and Libya had both revised their regulations in 2004 to strengthen sanctions against assistance to irregular migration and had concluded with Italy, among other European states, some agreements aiming at controlling maritime borders and readmitting nationals and aliens left from their coasts.

Since 2003, all the Maghreb countries have introduced in their regulations a new felony of irregular exit from their territory, likely to be applied to foreign as well as national citizens and even Algeria, supposed to contest the European approach of migration, opted for the penalisation of leaving the country without holding a visa delivered by the destination country. It is worth noting that, while European and Maghrebian governments’ discourses had focused on a demagogic target, namely the so-called “Sub-Saharan transit migrants”, the penalisation of “irregular emigration” has primarily affected Maghrebian citizens, arrested or/and condemned by their origin or transit country. This was the case in Libya where Algerian and Moroccan citizens, who were prevented from leaving their own coasts, had been put in jail for trying to use it as a transit territory to the EU, generating diplomatic tensions between neighbouring states. This was also the case in Algeria, where tribunals condemned a number of national citizens for “irregular exit” before recently stepping back due to the unpopularity of such a policy.

Besides, to avoid the arrival of “mixed flows” on the European territory, the EU has imagined selecting, on the Southern side of the Mediterranean, the people to protect in Europe, but has also considered ensuring their protection there rather than receiving them in Europe. In that purpose, it has undertaken a “capacity building” policy based on financial and technical aid, tending to develop the capacity of Maghreb countries to manage people in need of protection, through the development of “Regional Protection Programmes” enabling the constitution of a “protection space” beyond the Mediterranean. Till last February, Libya was still considered as a possible place where

such a protection could be developed and a “dialogue on refugees” had been foreseen in the “cooperation agenda” concluded in October 2010 between the EU and Gaddafi, a few months after the Libyan leader had expelled UNHCR from his country.

This policy not only consists in strengthening Southern European borders by externalising controls, but also in delocalising the management of immigration and asylum beyond the Mediterranean and transferring the “burden” of undesired human movements outside prosperous Europe.

The crisis of European border regime, in its external dimension, was foreseeable. It is confirmed in the context of Arab revolts, but EU’s response tends to perpetuate its scheme rather than questioning it.

The failures of externalized migration control was foreseeable in various aspects:

-Based on a purely securitarian approach, the externalized border control has fostered the development of an organized criminality to get round it, which has become more and more sophisticated as have border control instruments. Above all, this security-based policy implying hermetic borders induces that any vigilance weakening at the border, as was the case with the Tunisian revolt, causes collective and sudden departures, concentrated on furtive opening. As such, it constitutes a factor of human insecurity as well as state disorder. By generating “criminal” and “massive” border crossings, it has offered a basis for European populism’ blossoming and the rule of law’s decline, while reducing migration to a desperate or heroic choice.

-Based on the cooperation of authoritarian states, which also found there a renewed legitimacy for a securitarian management of their population, the externalized border control is fundamentally opposed to populations’ wishes and interests. It is obviously inconsistent with the development of individual liberties in Southern countries. It has not only violated international rules and national regulations (specifically regarding the freedom to leave one’s country), it has also increased social discontent towards governments in North Africa as well as towards European states considered as supporters of autocratic leaders.

-Based on shifting the European border to the Mediterranean then the Sahara and on multiplying hindrances to mobility, this policy is inconsistent with individual practices in these regions, with agreements concluded among these states to favour intra-regional links, and with obvious needs in terms of development.

Rather than generating a constructive questioning of European border management, the migratory consequences of Arab revolts have intensified phobic tension towards the Mediterranean Alter. The responses that were suggested these last months by EU member states, through the European Council or the JHA Council, but also by the European Commission, have shown to be fundamentally inconsistent with current events as well as with longer-term challenges in the region. The proposed measures have confirmed the irrational basis of European immigration and asylum policy, if any. They tend to reinforce a policy which has proved to be substantially misguided and ineffective, inadequate to the reality and interests on both sides of the Mediterranean.

-While insisting on the said necessary, yet open to criticism, distinction between economic migrants and refugees, the European institutions - European Parliament excepted - have offered a single response: border strengthening in the Mediterranean

thanks to a reinforced and extended FRONTEX as well as joint patrols to be negotiated with North African governments (JHA Council, 11-12 April 2011) and therefore the containment of people on the move on the Southern side. No common decision has involved Europe in “burden sharing” and receiving people leaving the African continent, whatever their origin.

-As far as people in need of protection are concerned, the EU appreciated international and non governmental organisations’ humanitarian action, as well as Egypt’s and Tunisia’s reception of people fleeing Libya (European Council, 11 March; JHA Council, 11-12 April). It then promotes the activation and extension of Regional Protection Programmes, which consist in externalizing the protection, without being able to show what would be this protection policy to export in a wished “protection space”. In all the recent documents, no European solidarity, but financial and technical thus external, has been considered. The Mediterranean border remains impassable, thousands of people fleeing from the Libyan coasts go on dying at sea, while the extended FRONTEX operation Hermès 2011 is still supposed to strengthen the border and, according to the French Foreign affairs minister (15 April), bring people back to the Southern side.

The only solidarity suggestion lies in resettlement, which has been exclusively considered for protracted refugees (JHA Council, 11-12 April), and will be, by definition, a long-term objective based on selecting people. On 5th April, the European Parliament recommended to activate the temporary protection, imagined at a time when the EU wished to show sympathy with its Eastern neighbourhood, to face collective arrivals and organize the repatriation of people in need of protection. One month later (COM(2011)248 final, 4 May), the European Commission indicated that it would be possible to think about it. Necessarily based on a European Commission’s initiative, the temporary protection has still not been suggested by a European institution supposed to be the safeguard of EU law implementation and is calling for a unified asylum policy in Europe.

-The EU institutions have multiplied emergence meetings and established an agenda supposed to lead, by June 2011, to a common response to current events in North Africa. Surprisingly, the suggested orientations and measures are essentially on a mid- or long-term basis: on the one hand, negotiating with North African governments so that they prevent illegal migration, manage the borders, and facilitate returns and readmissions. On the other hand, developing their capacity building in terms of international protection and committing in a development policy aimed at combating the roots of migration. Interestingly, the JHA Council considered these measures to be “immediate answers”, while a long-term strategy would be address “international protection, migration, mobility and security in general”.

With these projects, the EU confirms and tends to deepen a policy, which demonstrated its failures and its dangers. It suggests extending the migratory conditionality for cooperation, to strengthen borders and controls, to multiply returns and readmissions and to delocalize the protection of needy people. The immigration and asylum policy is reduced to a securitarian policy, likely to go against Southern Mediterranean populations’ wishes and fights as well as against their governments’ interests if those prove to be democrats. It is inconsistent with immediate migratory realities as well as expected subsequent evolutions. It is above all inconsistent with a promised new “Mediterranean partnership for democracy and economic prosperity” (European Council, 11 March) and

the proclaimed objective to foster development of migrant origin and transit countries. Finally, it is dangerous and unproductive for European states, even if their current populist governments imagine getting short-term interests from the instrumentation of fears.

The EU has most likely everything to lose with such reactions, not only since it puts at risk its own cohesion and existence – which has not been addressed here – but above all because it refuses to open up to the perspective of real changes in the Mediterranean. Based on a fundamental power asymmetry between the two sides of the Mediterranean on the one hand, and on rights deprivation of Southern Mediterranean people, this policy is expected to fail as and when democracy grows and powers change – which would not necessarily lead to a migration decrease. Without showing any doubt about the maintain of Maghreb governments' collaboration, the EU avoids sharing the short-term effects of the revolts in its “Southern neighbourhood” as it also ignores their possible long-term consequences, i.e the attractiveness of a more democratic Tunisia, the impact of a collapsing Libyan labour market, possible changes in Maghreb countries' migration policies, etc. The EU, as it stands, is not prepared for changes in the Mediterranean, whether Arab revolts get a happy end or not.

The European Parliament, whose role in immigration and asylum policy has been increased since the Lisbon Treaty, has been the only European institution to address both short- and long-term migratory challenges induced by Arab revolts (Resolution 2010/2269(INI), 5 April). Its propositions have not been heard by European institutions yet, while member states have offered a pathetic show in the reception of migrants, that all the stakeholders have great difficulties to name, insofar as terminology is still supposed to orientate the applicable law and remains a useful tool to avoid implementing it.