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# THE GOVERNANCE OF MIGRATION AND BORDER CONTROLS IN THE EUROPEAN-NORTH AFRICAN CONTEXT

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## ABSTRACT

Against the backdrop of the growing leverage that MENA states have been acquiring vis-à-vis Europe on the issue of migration and border controls over the last decade, this paper identifies a number of trends in the responses of MENA states on these issues. By providing examples from the western Mediterranean, especially North African countries, it focuses on two interrelated aspects: First, it highlights the tendency to “localize” international norms and practices in the realm of migration management, that is, to adapt and modify these norms according to domestic preferences and conditions. Second, we discuss the ever-growing trend to criminalize migration and the ever-diminishing attention paid to human rights. The paper concludes by pointing to the growing embeddedness of the region in the international governance of migration, but with a twist: MENA governments are “embedded” in the broader trend of criminalizing migration and reinforcing state control, to the general detriment of human rights standards.

## INTRODUCTION

With the substantive growth of migration from the Middle East and North Africa (MENA) region to Europe after the Arab uprisings, the issues of refugees, migration and border controls have moved to the top of the agenda of European policy-makers (and publics), as well as of the international community at large (Rózsa 2017). A number of studies have highlighted the leverage, or the potential leverage, that MENA states have been acquiring vis-à-vis European states on the issue of migration over the last decade (e.g. Cassarino 2007, Del Sarto 2010, Paoletti 2011, El Qadim 2015). Considering the high degree of interdependence between the two sides, the leverage held by MENA countries mainly results from Europe’s attempts to co-opt MENA governments in the management of migration flows to Europe and thus to “socialize” MENA states. After the Arab uprisings, Europe’s incapacity or inability to manage the influx of refugees and migrants internally, together with the threat and urgency ascribed to the “migration crisis” in Europe, only added to the power of MENA states to impose conditions on Europe (Cassarino 2014, Okyay and Zaragoza-Cristiani 2016).

Against this backdrop, this paper identifies a number of trends in the responses of MENA states to the issues of migration and border controls, particularly vis-à-vis Europe, by focusing on two interrelated aspects. First, it highlights the rather usual approach of states to “localize”

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international norms and practices in the realm of migration management, that is, to adapt and modify these norms according to domestic preferences and conditions. Examples are provided here from the western Mediterranean, especially North African countries. Second, we discuss the ever-growing tendency to criminalize migration and the ever-diminishing attention paid to human rights that have characterized the international governance of migration in recent years. In the light of these major trends, the paper concludes by assessing the embeddedness of the region in the international governance of migration.

## 1. LOCALIZING NORMS

The socialization of non-Western countries has often been sought by the Western community in order to claim the universalism and “effectiveness” of liberal values (Goodman and Jinks 2004). There is a growing literature which sets out to uncover the rationale behind this claim as well as the mechanisms aimed at exporting rules and practices in various regional settings (Epstein 2014, Cebeci 2016, Del Sarto 2016, Epstein 2017). The main contribution of this very diverse body of literature is to draw attention to the fact that there is no stable point from which to observe international systems and analyse socialization, because we are dealing with dynamics of communication and multiple meanings for the actors involved. Various scholars have thus examined the ways in which socialization has been biased towards a predominantly Western structure-oriented approach (Jabri 2013), which discards the identity and the agency of those who are meant to be socialized (Epstein 2012: 136). This biased approach also dismisses the voices of the socializees, treating them as “resistant” or “defective” (Cebeci 2016: 180). Epstein rightly remarks that, once the socialization process takes place, change in the “adopter population” (Checkel 1999: 86) is simply depoliticized by conventional constructivist scholarship. Rejection of certain norms by the socializee is all too often “infantilized” (Epstein 2012: 141) or dismissed as a form of unmotivated “resistance” or defection. However, it may well result from a domestically localized (Acharya 2004) and historically specific set of values that policy-makers should consider.

In other words, not only do socializees have a clear vision about what they want to attain through cooperation, they also turn out to be *active* borrowers able to reshape the reception of global norms. Here, the notion of congruence introduced by Acharya (2004: 245–6) when dealing with norm localization is of paramount importance to realize that transferred norms may be readapted to local conditions. Localization makes “an outside norm congruent with a pre-existing local normative order” (Acharya 2004: 244). This process thus is not necessarily a response to demands for new norms imposed from the outside. Rather, it is a proactive strategy aimed at accommodating foreign norms and ideas to local sensitivities. Under certain conditions, local norms and administrative traditions are strong enough to ensure the selective reception of global norms, with a view to limiting their domestic social and political costs. Local norms and traditions may also be sufficiently robust to integrate the global norms into existing local systems, with a view to buttressing their authority and command.

It is important to realize that the agency of socializees and their “cognitive priors” have usually been “ignored or assumed away with simplifying assumptions” (Checkel 1999: 86), and a growing body of literature has started to pay attention to these flaws (Cassarino forthcoming, Del Sarto and Tholens forthcoming). Indeed, despite their permeability to external influences, non-Western countries

have never been passive recipients. Nor can their varied capacity for “local” readjustment when faced with external pressures from their foreign “partners” be dismissed. Norm localization thus invites us to rethink a host of assumptions in international relations. Firstly, instead of detecting signs of “resistance”, we may hypothesize that socializees are motivated by cost minimization because of their “cognitive priors” (Acharya 2004: 269). Secondly, local structures and beliefs may be used as domestic sources of legitimation for the selective borrowing and modification of international norms. Thirdly, localization sets out to analyse the extent to which, and the conditions under which, external ideas may be “simultaneously adapted to meet local practices” (Acharya 2004: 251). Finally, by shedding light on local practices and political structures, a focus on localization processes of international norms uncovers a new investigative area beyond the mere assumption that international norms are, or ought to be, internalized.

This local readjustment involves two interrelated dimensions. The first relates to the ability of the norm-recipient country to locally readjust the effects and scope of external norms transfers. The second pertains to the desire of norm-making countries and institutions to demonstrate that a transfer has effectively taken place through incentives, pressure, learning or emulation, even if each actor knows that acceptance does not always lead to implementation. Therefore, it is not so much a matter of resisting external influences or rules, as of trying to understand why norm-making countries accept local readjustments. This double-edged effect is illustrated in the next chapter with reference to the gradual involvement of some MENA countries in the international and European management of borders and migration.

## 2. MENA COUNTRIES’ PERMEABILITY TO EXTERNAL INFLUENCES

As early as the 2000s, MENA countries were engaged in international talks on migration and border controls. This period coincides with the adoption of the International Agenda for Migration Management (IAMM), which became, from 2001 onwards, the spearhead of many informal regional consultative processes on migration matters.

The IAMM is described as being based on a set of “common understandings” of “shared assumptions and principles [between states] underlying migration management” (IOM 2005: 18). However, this agenda implies much more than the management of migratory flows.

Beyond their divergent interests, the countries of destination, origin and transit share a common objective for managing migration: introducing mechanisms to strengthen their centrality in controlling the mobility of their nationals and of foreigners. This agenda brings together and structures the roles of each actor, if one considers that it “is the product of individual subjects and, once created, provides a context for the further development of their subjectivity” (Dryzek et al. 1989: 502). Indeed, it constitutes a product of states created for states. This sufficiently explains the consensus on which the IAMM has rested.

The 5+5 dialogue initiated in 2002, the dialogue on transit migration in the Mediterranean launched in 2003, the 2006 Euro-African Partnership on Migration and Development (or the Rabat Process) and the 2008 Paris Process constitute various meetings in which Algeria, Morocco, Libya and Tunisia took part. This is not the place to analyse them in detail. The common denominator of these

intergovernmental meetings, organized on a regular basis, is their reinforcement of cooperation on three main components of the IAMM: firstly, the establishment of mechanisms to guarantee the temporary mobility of regular migrant workers and to adapt labour migration to the needs of markets in destination countries; secondly, the fight against illegal migration, including enhanced cooperation on readmission; and finally, the mobilization of the diaspora for development in the countries of origin (IOM 2005), including the need to lower the costs of remittances. At the same time, the recurrence of such consultative meetings has not only been aimed at addressing these three components. It has also been conducive to the gradual repositioning of states and their law enforcement agencies well beyond the realm of migration management matters. The government of Tunisia is no exception.

### 3. MIGRATION MANAGEMENT RE-APPROPRIATED

Playing the efficiency card in border control, and renewing or strengthening strategic alliances with major Western powers, have been key factors motivating MENA countries' involvement in the abovementioned regional consultative processes. For example, the managerial centrality of the state, which constitutes the cornerstone of the IAMM, has enabled the Tunisian leadership to reinforce existing forms of control exercised by the authorities over society in general and over Tunisian nationals living abroad. Indeed, the concepts of "management" and "control", as defined in the IAMM, were consistent with the desire of the former regime to discipline any form of dissent, both in Tunisia and abroad. The fight against so-called "illegal" migration allowed the regime to conceal the real causes of migration from Tunisia and to silence those who had been excluded from the Tunisian "economic miracle" (Hibou 1999). The latter were generally described in the media as individuals attracted by the dream of the European El Dorado. This paternalistic and infantilizing vision, which was repeatedly adopted in Europe, made it possible to divert public attention from the real motives driving migrants' departure, namely underemployment, poverty, social discontent and political violence.

The constant reference to European pull factors also served as a rationale for the implementation of a system of control and domination over Tunisian society, with the backing of Europe and its member states. For example, Tunisian Law 2004-06, dated 3 February 2004, clearly illustrated the ambivalent use by the Tunisian authorities of the managerial discourse in the field of migration control. Strongly supported by the European Union following the adoption of the European Neighbourhood Policy (ENP) and the establishment of action plans and a road map, this law punished "those who have provided information for, planned, facilitated, assisted, acted as intermediary in or organized the smuggling of a person in and out of Tunisian territory by land, sea or air, even if no payment was received". On the one hand, it reflected the willingness of the Tunisian government to tackle the "clandestine exits" of its citizens while responding to European calls for enhanced cooperation on the matter. On the other hand, and more ambiguously, its scope encompassed not only irregular Tunisian migrants, but also those who remained in the country and who would have been aware of clandestine exits without reporting them to the authorities (Perrin 2009).

As noted by Hamza Meddeb (2012: 389), by adopting Law 2004-06, the Tunisian authorities "create deviance by extending the scope of the law to social categories living on the margins of legality. [...]"

The adoption of this law allows the regime to ensure at low cost its domination and to reinforce its authority with fear”.

While it is true that this skilful readjustment of policy transfers from the Europe Union to Tunisia existed in other policy areas, such as trade liberalization, economic reforms, the promotion of civil society and democratization, the support that Law 2004-06 received from Europe, to the detriment of fundamental freedoms, reflected the strength of an image which the regime was able to disseminate abroad, especially with reference to the fight against religious extremism and international terrorism. As long as it could capitalize on this image, the regime knew that attempts to readjust *locally* policy transfers and practices from abroad would be tolerated by the EU and by its member states, either explicitly or tacitly.

Territoriality remains a key explanatory notion of past and current policy developments in North African countries. It not only refers to the space where legitimate power and legal rules are applied by the state and its law enforcement authorities. It also pertains to an area where state–society relationships can be reconfigured, altered, if not reinvigorated to overcome domestic social and political divisions.

It could even be argued that claims for territorial integrity in North Africa have been used by the sovereign as an asset to embolden its own political and symbolic centrality in a context marked by the perceptible retrenchment of the state from the economy, especially when domestic political and social tensions loom large.

For example, in Morocco, domestic politics, territoriality, identity and regime stability have become closely intertwined to forge a nationalistic sense of unity among “previously hostile forces behind the monarchy” (Willis 2014: 272). From the mid-2000s up to the early 2010s, Morocco’s reinforced cooperation on border controls and deportation with Spain alienated the country from its traditional sub-Saharan African partners (especially Senegal, Mali, Niger and Côte-d’Ivoire). Subsequently, the collapse of the regime of Muammar Gaddafi and the declining influence of Libya in sub-Saharan Africa opened a new window of opportunity. Morocco reactivated its “African strategy” based on a form of soft power which, incidentally, turned out to be consonant with its desire to co-opt some sub-Saharan countries with a view to narrowing Algeria’s African playground and to buttressing the territorial claims of Morocco on Western Sahara.

Moreover, while the reinforced militarization of Algeria’s borders with Morocco and Libya has been presented as an attempt to counter cross-border arms-trafficking and people-smuggling, it has invariably been conducive to the centrality of military power in Algeria’s domestic political apparatus (the *Sulta*) (Cook 2007) and to opaque foreign alliances with strategic European countries, especially France, Belgium and Italy, against jihadist movements encroaching on the whole North African region. Border management implies not only a logic of inclusion and exclusion. It also engineers a sense of allegiance to the ruling authority (be it a king or a head of government), especially when territorial integrity is presented as being threatened.

In a similar vein, the former Tunisian regime of President Zine el-Abidine Ben Ali was quick to understand that appearing to be an efficient player in the field of border management would not

only increase its international legitimacy in the West but also reinforce the power of the ruling party while concealing mounting social discontent and repression at the domestic level (Cassarino 2014).

North African states' involvement in the reinforced control of migration and of their national borders has often been tantamount to an attempt to harness domestic territorial, societal and political challenges. In this connection, the memorandum of understanding (MoU) signed on 2 February 2017 between Italy and the Libyan Government of National Accord (GNA) headed by Prime Minister Fayez Al-Sarraj is no exception. The MoU has been officially presented as an attempt to stem migration flows en route to the EU and to reinforce the control of Libya's southern borders with technological material and financial support from Italy and the EU. That being said, one is entitled to view the hasty signature of the MoU as an attempt by the GNA to buttress its international legitimacy in the West at a time when Al-Sarraj's leadership is being increasingly challenged domestically. It could even be argued that the quest for international legitimacy and military support from the West has been the major driver for the signing of the MoU despite the overt reticence of local municipal officials, who are wary of its disruptive implications for the country's deepening civil war (St John 2015).

The above examples demonstrate that reinforced cooperation on migration and border controls implies the re-codification of external relations. Moreover, it invariably brings about a reformulation of the relations between the parties involved. Today, unprecedented patterns of interconnectedness among countries located in the western Mediterranean have consolidated so dramatically that any unilateral form of conditionality (be it soft or coercive) must be carefully evaluated lest a whole framework of cooperation be jeopardized. In their bilateral interactions with MENA countries, Western countries have learned that conditionalities cannot be equated with pressures when it comes to cooperating with empowered "partner" countries, which MENA countries certainly are. Using an oxymoron, it is possible to argue that, in recent decades, cooperation on border and migration controls has become a central priority in MENA-EU relations. While being central, this priority has however remained peripheral to other strategic issue areas including the fight against international terrorism and the reinforced control of land and maritime borders. Among many others, these are critical priorities on which some North African countries have managed to capitalize to varying degrees.

There is no question that the responsiveness of North African countries to the securitization of migration policies, including the adoption of legal provisions criminalizing irregular migration and border crossing, has been shaped by their respective domestic and regional concerns. Far from adopting passively the guidelines and rules transferred from the West, they adaptively and selectively transposed them to buttress their own position domestically and internationally. Moreover, the perceptible militarization of the region has fed into the criminalization of migration policies, just as the criminalization of the "unmanaged" mobility of people (be they citizens or foreigners) has fed into the centrality of states and their law enforcement agencies.

To date, the establishment of transgovernmental channels (linking MENA officials from the ministries of the Interior and Defence with their European counterparts) has resulted in the conclusion of various bilateral security agreements and arrangements and in the provision of

technological and logistical military equipment. Exchanges of information and technical cooperation in the field of identification – for example, using the Automated Fingerprint Identification System (AFIS) – constitute key elements. While it is true that identification constitutes a challenge when it comes to accelerating the removal of undocumented migrants who are found in an irregular situation in Western countries, in MENA countries, as elsewhere (Bigo 2014, Jeandesboz 2016), cooperation on identification not only raises a host of legitimate questions about the potential use of computerized personal data, it also calls into question the various factors that motivated it and justified it. To be sure, transgovernmentalism and its modus operandi contribute to making the long-sought reform of MENA countries' security sectors a daunting challenge, especially in Tunisia (Bouguerra 2014, Querine 2016).

## CONCLUSION

This study demonstrates that moving the debate beyond the criminalization of international migration begins with taking seriously the measure of its cumulative effects on foreigners and citizens alike. Such cumulative effects may explain why the drive for criminalization has gained so much momentum in all countries of migration, be they rich or poor, democratically organized or authoritarian, conflict-ridden or in peace. In short, criminalization is not simply a name for the obvious securitization of migration policies, or for how the latter have restricted the movement of people across borders. It is a name for a premise that gradually has come to regulate the complex relationships between states and their own citizens (be they mobile or not) as well as the organization of states' interactions.

Secondly, we can clearly discern an increasing amount of leverage by MENA states vis-à-vis the EU and its member states in the realm of the management of migration in recent years. Significantly, this leverage is also expressed in the acquiescence of the EU and the international community at large towards the practice of MENA governments to localize European and international norms on migration management and to "use" them for their own interests. Most prominently, this includes the increasing non-differentiation between "regular" citizens and migrants and the expansion of state control over both.

Finally, this study points to the growing embeddedness of the region in the international governance of migration, but with a twist: MENA governments are "embedded" in the broader trend of criminalizing migration and reinforcing state control, to the general detriment of human rights standards.

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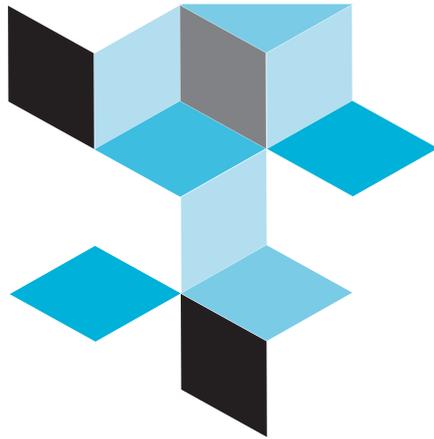
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**MENARA** maps the driving variables and forces behind these dynamics and poses a single all-encompassing research question: Will the geopolitical future of the region be marked by either centrifugal or centripetal dynamics or a combination of both? In answering this question, the project is articulated around three levels of analysis (domestic, regional and global) and outlines future scenarios for 2025 and 2050. Its final objective is to provide EU Member States policy makers with valuable insights.

**MENARA** is carried out by a consortium of leading research institutions in the field of international relations, identity and religion politics, history, political sociology, demography, energy, economy, military and environmental studies.



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