EU-Morocco Cooperation on Readmission, Borders and Protection:
A model to follow?

Sergio Carrera, Jean-Pierre Cassarino, Nora El Qadim, Mehdi Lahlou and Leonhard den Hertog

Abstract

Greater cooperation with third countries is one of the EU's core responses to the refugee crisis. This cooperation is focused on the readmission of individuals irregularly staying in the EU, on border surveillance and control, and on the reception of refugees in third countries. The EU has attempted to co-opt Turkey and African countries into these priorities, using funding and specific mobility channels as incentives. This paper poses the question of what kind of cooperation the EU should pursue with third countries. As the current approaches are not new, we present the lessons from the EU's long cooperation with Morocco to inform the current debate.

We find that, first, the difficult negotiations on an EU Readmission Agreement with Morocco show that more funding or 'incentives' cannot guarantee such an agreement, let alone its implementation. Second, we highlight the challenges of the partly EU-funded and Frontex-coordinated cooperation on borders between Spain and Morocco, which hampers the capacity of third countries to respect migrants' rights and challenges the obligations of EU member states under European and international law. Third, as EU cooperation with Turkey and Africa now aims to 'stem' the flow of asylum-seekers, the capacity of third countries to offer reception and protection to asylum-seekers is crucial. We conclude that Morocco has limited capacities in this regard, which raises the question of whether third countries can be assumed to be able to offer such reception and protection.

We argue that the lessons learnt from the cooperation with Morocco illustrate the limited feasibility and appropriateness of the EU's approach towards third countries. Cooperation with third countries should not come at the expense of migrants' rights, but should open up regular channels for seeking asylum, and not link readmission to other fields of EU external action under the 'more-for-more' principle.

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1.   Introduction: The current EU policy context

The EU attempted to address the unfolding 'refugee crisis' through a broad range of policy priorities during the course of 2015. The so-called European Agenda on Migration defines cooperation with third countries as a major priority across the various thematic policy pillars to guide the Union's policy agenda in years to come.[1] Yet, what *kind* of cooperation with third countries should the EU pursue when it comes to migration policy? The Agenda pays specific attention to cooperation with third countries on the issues of removal or deportation;[2] the related readmission of irregular migrants; border controls and surveillance; and the reception of asylum-seekers and refugees. The recent EU-Turkey Summit in Brussels[3] and the EU-Africa Summit in Valetta[4] reaffirmed the EU's commitment to push this agenda outwards.[5]

Since the refugee crisis, the EU has expressed its determination to use the more-for-more principle and "a fine balance of incentives and pressure" to obtain cooperation from third countries on the readmission of irregular immigrants.[6] The more-for-more principle entails tying readmission demands to other areas of cooperation, and rewarding countries for their cooperation on readmission. Given that most of the targeted countries are developing African countries, this will often relate to EU development funding and activities.

Readmission has long been a priority underpinning the external dimension of EU migration policy as part of its 'Global Approach to Migration and Mobility',[7] but it has now come to the forefront more forcefully, as can be seen in the EU Action Plan on Return of 9 September 2015,[8] and the Council Conclusions on the future of the return policy of 8 October 2015.[9] High Representative Federica Mogherini is engaging in

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[1] Commission (2015a), "European Agenda on Migration", COM(2015) 240, 13.5.2015.

[2] We use the terms 'removal' and 'deportation' in this paper interchangeably, also including in them the more EU legal term of 'return' even though the EU Readmission Agreements apply to both origin and transit countries (see section 2.1 for more details).

[3] Council (2015b), "EU-Turkey Summit statement", Doc. 870/15, 29.11.2015

[4] Council (2015a), "Valetta Summit – Political Declaration", 11-12.11.2015.

[5] See also for an overview of EU responses to the refugee crisis: S. Carrera, S. Blockmans, D. Gros and E. Guild (2015), "The EU's responses to the Refugee Crisis: Taking Stock and Setting Policy Priorities", CEPS Essay No. 20, December 2015.

[6] Council (2015c), "Conclusions on the future of the return policy", 8-9.10.2015.

[7] Commission (2011a), "Communication – The Global Approach to Migration and Mobility", COM(2011) 743 final, 18.11.2011.

[8] Commission (2015b), "EU Action Plan on Return", COM(2015) 453. 9.9.2015.

[9] Council (2015c), op. cit.

'High-Level Dialogues' with third countries to help in "identifying leverage and enhancing cooperation on readmission".[10]

Much attention has been paid to the role of third countries in the surveillance and policing of borders, as well to their capacity to receive refugees. The role of third countries to "help to stem irregular migration"[11] is key to all these efforts, premised on the assumption that they can offer reception and protection.

Geographically, both Turkey and African countries are the prime targets of these demands, partly motivated by increased migration flows from or through these countries.[12] They are being courted with promises of European funding and targeted channels of legal mobility into the Union. For the African countries, an 'Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa' has been established, with €1.8 billion pledged by the Commission. The 'deal' with Turkey will allocate some €3 billion in the form of a 'Refugee Facility for Turkey'.[13] In addition, some limited mobility channels are offered to African countries, such as for business people, academics and students. The parallel nature of negotiations on the EU visa facilitation and readmission agreements has thus been reaffirmed. For Turkey, the visa liberalisation roadmap will be accelerated, conditional upon the EU-Turkey readmission agreement becoming "fully applicable".[14]

These recent EU policy responses are not really new in nature. In fact they resuscitate and somehow reboot previous priorities and the policy logic that announced the creation of the European Neighbourhood Policy in 2003. The EU's 'Global Approach to Migration and Mobility' (GAMM) has developed incrementally since 2005 and aims to present a more 'balanced' approach, in which readmission is one – albeit important – element.[15] The current use of the 'more-for-more' principle is a reminder of the failed 2002 UK-Spanish proposal to condition development aid funding on cooperation with the EU on migration management, in particular on the signature of a readmission agreement, and on border controls and surveillance. The instrumentalisation of development funding in the pursuit of migration control-related and EU-centric internal security interests has also been a source of internal Commission struggles for several years.[16] Although the pledged financing for Turkey and Africa does entail a considerable reprioritisation of EU funds, it follows the time-honoured logic of using money to make third countries more cooperative.

As these are not new approaches, we should be able to identify lessons learnt from past experience regarding EU cooperation with third countries in the migration policy domain. The European Agenda on Migration and

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[10] Ibid., pt. 12.

[11] Council (2015b), op. cit., pt. 7.

[12] See Frontex (2015a), FRAN Q2 2015 Report, Warsaw, 2015, p. 9, where the Agency states that between April and June 2015 "the number of detected sub-Saharan Africans was about 20% higher than in the same period of 2014. In particular, Nigerians were reported in significantly higher numbers. Moreover, irregular migrants from the Horn of Africa, in particular Eritreans, but increasingly also Somalis and Ethiopians, tried to cross the Central Mediterranean in higher numbers than one year ago". For 2015, Frontex also reported that on 'the Eastern Mediterranean' route (from Turkey to Greece) there was a substantial increase, up to more than 725,000 (Jan.-Nov. 2015) from some 50,000 in 2014, see: http://frontex.europa.eu/trends-and-routes/migratory-routes-map/. However, according to Eurostat, during 2014 the top five countries of citizenship of individuals refused entry at EU external borders were Morocco (168,735), Ukraine (16,150), Albania (14,275), Serbia (9,445) and Russia (9,375), see: http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation.

[13] See resp. Commission (2015c), "Fact Sheet – A European Union Emergency Trust Fund for Africa", Valletta, 12.11.2015, and Council (2015b), op. cit.

[14] Council (2015b), op. cit., pt. 5.

[15] The Commission proposed the 'Global Approach to Migration' in 2005, broadening its title to the 'Global Approach to Migration and Mobility' in 2011, see Commission (2011a), op. cit. On the important influential nature of the Spanish-Moroccan borders in the elaboration of this approach, see M. Collyer (2012), "Migrants as strategic actors in the European Union's Global Approach to Migration and Mobility", *Global Networks*, Vol. 12, No. 4, pp. 505-524.

[16] Now resulting in separate funds with strictly delineated objectives, according to which the home affairs funds (Asylum, Migration and Integration Fund (AMIF) and Internal Security Fund (ISF)) pursue EU internal objectives abroad and the development funds (Development Cooperation Instrument (DCI)) take the development perspective of the third country concerned as a point of departure. See also N. Reslow (2010), "Migration and Development ? An Assessment of Recent EU Policy Initiatives", *Journal of Contemporary European Research*, Vol. 6, No. 1, p. 10.

other subsequent EU policy responses seem to attest to the belief that past approaches may now work, perhaps due to changes in the configuration of the Commission. As the Dutch presidency intends to pursue some of these approaches,[17] now is a good time to ask ourselves what kind of cooperation the EU should pursue with third countries. We therefore present the lessons learnt from the longstanding EU cooperation with Morocco. Even though we are aware that the specificities of the Moroccan case do not always neatly relate to those of other third countries, looking at EU-Moroccan cooperation can tell us something about the kind or model of cooperation that the EU could pursue with third countries. On these matters, Morocco is a relevant case to consider as it has a history of cooperation with the EU, also being the recipient of considerable amounts of EU funding.[18]

With almost 15 years of negotiations – and still no agreement – on an EU readmission agreement, with ongoing joint border surveillance and control and with substantial EU and member state funding at play, what should inform the next generation of EU external migration policies? What does the evidence from Morocco suggest about a "fine balance of incentives and pressure" for the negotiations of an EU readmission agreement and the challenges inherent to externalising EU migration management, border control and asylum policies?

The cooperation between Spain and Morocco on border surveillance and policing, partly financed by EU funds, is often seen as a model to be promoted.[19] It has made Morocco a country in which certain categories of migrants are now blocked *en route* to Europe.[20] How, then, should we understand the 'new migration policy' that Morocco launched in 2013? This policy includes the adoption of new laws and institutional structures on migration, asylum, anti-trafficking and integration.[21] The capacity of Morocco to implement this policy can tell us something about whether non-EU countries of transit and destination can be assumed capable of offering reception and protection to asylum-seekers and refugees.

This paper draws lessons from the cooperation with Morocco to inform current EU debates about cooperation with third countries on readmission, borders and protection (section 2). The paper then draws conclusions (section 3) and identifies policy recommendations for the EU's priorities in these domains (section 4).

2.   EU-Morocco cooperation on migration, borders and protection: Lessons learnt?

Mobility between Morocco and Europe has been a constant in their shared history. The colonial past, the geographic proximity and the economic and political realities in both regions have constituted major drivers for cross-border mobility. Mobility from Morocco to Europe was particularly reinforced by the conclusion of labour force agreements with several European countries in the 1960s.[22] Mobility between Morocco and Europe has never been unidirectional, however. Many French and Spanish nationals settled in Morocco during the Protectorate times, and today a growing number EU citizens come to Morocco for economic opportunities and retirement, sometimes staying irregularly.[23]

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[17] The Netherlands, Ministry of Foreign Affairs (2016), "Programme of the Netherlands Presidency of the Council of European Union", 06.01.2016.

[18] El Qadim, N. (2015), "Le gouvernement asymétrique des migrations. Maroc/Union européenne", *Dalloz*, on the funding see in particular Chapter 3.

[19] As recently argued: *The Economist* (2015), "Forward Defence - What other Europeans can learn from Spanish efforts to limit illegal migration", 17.10.2015 (www.economist.com/news/europe/21674726-what-other-europeans-can-learn-spanish-efforts-limit-illegal-migration-forward-defence).

[20] See also M. Cherti and P. Grant (2013), "The Myth of Transit: Sub-Saharan Migration in Morocco", Institute for Public Policy Research, London, June.

[21] See for the official source of this new policy: Conseil National des Droits de l'Homme (2013), "Foreigners and human rights in Morocco – for a radically new asylum and migration policy", Executive Summary, September.

[22] See El Qadim (2015), op. cit., p. 188, and H. De Haas (2014), "Morocco: Setting the Stage for Becoming a Migration Transit Country", Migration Policy Institute, 19.03.2014.

[23] See e.g. *Morocco World News*, "More than 5,000 irregular Spanish irregular immigrants live in Tangier", 22.05.2014, and *Le Monde*, "Miguel, Marina, Carlotta… ces Espagnols qui fuient la crise au Maroc", 20.06.2013.

Since the 1990s, two developments have opened up opportunities for human mobility from Morocco to Europe: first, changing European migration policies; and second, the European integration process, which led to the installation and progressive development of the Schengen system comprising a common EU external border and the lifting of intra-EU border checks.

First, in the public discourse of many EU countries, migration is increasingly portrayed as an external threat to internal security and a danger to socio-economic wellbeing. This discussion has tended to focus on migration originating from third countries to the south of the EU. European governments have often attempted to achieve more control and selection in their respective migration policies and laws. While attempting to restrict access and stay for certain categories of migrants, other categories have been encouraged to come. This has been the case for so-called 'highly skilled workers', for instance. Moreover, public discourses on limiting migration have not always overcome the economic demands for labour, resulting in increasing numbers of undocumented migrants active in different sectors (such as agriculture, domestic services and the so-called 'black sector' or 'black market') of the European economy.

The second key development has been the European integration process in the areas of migration, asylum and borders, most notably as a result of the Schengen cooperation since the mid-1980s. Spain's membership of the EU in 1986 had profound implications for the mobility of Moroccan citizens and other migrants alike. The imposition of visa requirements on Moroccan citizens by Spain in 1991, in light of its Schengen membership, led to the emergence of irregular migration flows into the country and discouraged circularity and return.[24]

Moreover, as part of the logic of reinforced external borders as a prerequisite for internal free movement and Schengen participation, the Spanish-Moroccan border became the object of increased surveillance and control. This included the proposal of what is called in Spanish, *Sistema Integral de Vigilancia Exterior* (SIVE) (Integrated System of External Surveillance) and its implementation since 2002.[25] Mediatised events of irregular migration in the Strait of Gibraltar, around the Spanish enclaves of Ceuta and Melilla, and towards the Canary Islands (especially between 2002 and 2006) reinforced the impetus for Spanish-Moroccan cooperation on the surveillance and policing of migration. Morocco accepted to sign a 'bilateral' readmission agreement with Spain in February 1992 as a result of the signing of the so-called Treaty of Good-neighbourliness and Friendly Cooperation on 4 July 1991,[26] with the objective to obtain a special status in its relations with the EU.[27]

These developments were partly the result of Spain's increasing participation in the European integration process and were fostered by EU funding to Spain and Morocco on migration management and border controls/surveillance.[28] Operational cooperation on border management between Spanish and Moroccan authorities was subsequently complemented and financed by the actions of EU agencies such as Frontex (the EU External Border Agency), which was formally established in 2004.[29] Consequently, migrants intending to transit through Morocco have found themselves increasingly blocked *en route* to Europe.[30] This has in turn

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[24] De Haas (2014), op. cit. as well as X. Ferrer-Gallardo (2008), "The Spanish-Moroccan Border Complex: Processes of Geopolitical, Functional and Symbolic Rebordering", *Political Geography*, Vol. 27, pp. 301–21.

[25] For an analysis see M Iglesias. (2010), "Conflicto y Cooperación entre España y Marruecos (1956-2008)", Junta de Andalucía, España, pp. 428 and 429.

[26] J.-P. Cassarino (2010), "Readmission Policy in the European Union", European Parliament Study, Brussels.

[27] E.A. Mrabet (2003), "Readmission agreements: The Case of Morocco", *European Journal of Migration and Law*, Vol. 5, pp. 379-385.

[28] The EU has e.g. funded the 'SEAHORSE' network from the AENEAS funding programme, see: Commission (2008), "AENEAS Programme for Financial and Technical Assistance to Third Countries in the Area of Migration and Asylum - Overview of Projects Funded 2004-2006", Brussels, p. 12.

[29] See: section 2.2. See: Council (2004), Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), OJ L 349/1, 25.11.2004. The Frontex Regulation was amended in 2011 by: Parliament and Council, Regulation (EU) No 1168/2011, OJ L 304/1, 22.11.2011.

[30] See for more background: M. Collyer (2007), "In-between places: trans-Saharan transit migrants in Morocco and the fragmented journey to Europe", *Antipode*, Vol. 39, No. 4, pp. 668-690. See also for a critical take on 'transit migration',

presented Morocco with new fundamental questions around the treatment of asylum-seekers and irregular immigrants. As the Parliamentary Assembly of the Council of Europe has indicated,

> the European Union intensified its cooperation with these countries aiming to control this immigration to the EU. Partly due to this cooperation, Turkey and Morocco have increasingly become countries of destination themselves.[31]

It is only against this background that one can properly understand why the EU has granted special priority to an agenda based on readmission, border controls and the reception of asylum-seekers in its cooperation with the Kingdom of Morocco. Interestingly, as mentioned in the introduction of this paper, these are by and large similar policy issues to those that were highlighted in the summits with Turkey and African countries during the last quarter of 2015.

The next three subsections provide a brief overview of the cooperation with Morocco in the three areas of readmission (section 2.1), borders (section 2.2) and protection (section 2.3).

2.1 Readmission: A never-ending tale

In 2000, the Commission obtained the mandate to negotiate an EU Readmission Agreement (EURA) with Morocco. After many rounds of negotiations that produced no agreement, they were finally discontinued. Since 2013, the EU and Morocco have signed a 'Mobility Partnership', which includes a political commitment to restart the EU readmission agreement negotiations.[32] No agreement has been reached yet, despite additional financial and mobility offers to Morocco. The Mobility Partnership also envisages a number of EU and member state funded projects, although most of them already existed or were otherwise planned projects now classified under the Mobility Partnership.[33] Moreover, Morocco was offered negotiations on a visa- facilitation agreement, parallel to the negotiations on the EU readmission agreement.[34] In some ways, the approach taken with Morocco resembles the wider logic advanced towards other African countries.

The main sticking point in the negotiations on the EU readmission agreement was the clause on third country nationals (TCN clause) having transited through Moroccan territory. The EU insisted that Morocco also readmit those third country nationals, as well as its own citizens. The negotiations touched on this issue repeatedly, addressing the technical details of what proof of transit would be required. It became clear throughout the negotiations that Morocco strongly opposed such an EU readmission agreement, in view of its financial and political costs.[35] The Commission's evaluation of EU Readmission Agreements also showed that the TCN clause hampered negotiations and that its actual use was very limited.[36] The demand for this TCN clause by certain member states could indicate that they saw this as the possible added value of an EU Readmission Agreement; something they did not manage to negotiate bilaterally. The Commission's evaluation and the evidence from Morocco suggest, however, that this approach has limited feasibility.

M. Collyer, F. Düvell and H. De Haas (2012), "Critical approaches to transit migration", *Population, Space and Place*, Vol. 18, pp. 407-414.

[31] See Council of Europe Parliamentary Assembly, Rapporteur T. Strik (2014), "Countries of transit: meeting new migration and asylum challenges", para. 9. See also De Haas (2014), op. cit.

[32] Council (2013), "Joint declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States", Doc. 6139/13, 3.06.2013.

[33] See the 'Annex' to the 'Mobility Partnership'.

[34] See on these negotiations: EU Delegation to Morocco (2015), "Nouvelles discussions pour facilitation de visas et accord de réadmission", Communiqué de Presse, 16.01.2015

[35] El Qadim (2015), op. cit., pp. 229-239.

[36] As the European Commission concluded in its 2011 evaluation of EURAs, "If a TCN clause was not demanded by the EU or was underpinned with appropriate incentives, some negotiations could have been concluded already (e.g. Morocco and Turkey) and many others could have been concluded much quicker. It is, however, clear that an EURA with a major transit country for irregular migration to the EU without a TCN clause holds little value for the EU". See Commission (2011b), "Communication - Evaluation of EU Readmission Agreements", COM(2011) 76 final, 23.2.2011, p. 9.

This opposition is rooted in both domestic and foreign policy considerations. For domestic audiences the rejection of the agreement rests on arguments of fairness. It is seen as an inequitable responsibility division between the EU and Morocco. The EU readmission agreement is also rejected by Morocco in the light of its foreign policy interests. The country aims to rekindle its economic and political ties with sub-Saharan African countries, especially in West Africa, in the framework of its *politique africaine,* which the Kingdom has reinvigorated during the last ten years.[37]

This is motivated by economic interests – eyeing the opportunities of high growth rates in that region versus stagnating rates in Europe – as well as by Morocco's relations with the African Union and the ever contentious issue of the Western Sahara. Morocco needs the support of sub-Saharan countries, including from West Africa, to defend its Western Sahara policies. In this context, Morocco cannot afford to cooperate on the deportation of citizens of African countries on Europe's behalf. It not only hampers the economic interests of these countries, it also represents a public relations nightmare for Morocco, with images of coercion and camps used for the expulsion of irregular immigrants.

Even though the issue of third country nationals is the most divisive one in these negotiations, it does not mean that other aspects of readmission are problem-free. The costs of readmitting Moroccan citizens is sometimes seen as excessive as well, as it may concern those requiring financial support after their readmission.[38] Moreover, among those to be removed are Moroccan citizens that have resided in EU member states for long periods. As a result, their reintegration into Moroccan socio-economic life is not always straightforward. In short, signing a readmission agreement inherently represents a commitment to third countries that has unpredictable consequences.[39] This explains why existing bilateral readmission agreements are not necessarily implemented in a strict manner, but rather amount to case-by-case cooperation.[40] It is difficult to include any enforceable type of guarantee to this effect in the text of such agreements. Any such guarantee would be mitigated by the fact that it is very difficult to verify whether implementation and cooperation based on good will are indeed effective or not.

The Moroccan government has been hesitant in the practical implementation of these agreements, for example at the consular level, especially when it comes to the means with which proof or *prima facie* evidence of nationality and transit are provided by the requesting EU member state. Finally, decades of bilateral cooperation with Morocco have shown that the conclusion of a readmission agreement is just one means of consolidating a bilateral cooperative framework that includes other strategic – and perhaps more crucial – policy areas (e.g. police cooperation, the fight against international terrorism, trade, agriculture, energy security, to name but a few).[41] These wider foreign affairs considerations are of central importance to understanding that cooperation on readmission constitutes more of a means than an end in itself. Anything else would simply jeopardise diplomatic relations with a strategic partner.[42]

With the 'EU-Morocco Mobility Partnership' now signed, the more-for-more approach between readmission and visa facilitation through parallel negotiations is supposed to lead to one package deal. However, early

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[37] El Qadim (2015), op. cit., pp. 305-306.

[38] According to the Commission Evaluation "Financial assistance has very often been requested by the partner countries (notably Morocco and Turkey, but also Ukraine and some of the Western Balkan countries). It could be quite efficient as leverage, provided the money offered is substantial and comes on top of what has already been programmed or promised under the relevant EU geographic programmes". Commission (2011b), op. cit., p. 7.

[39] See N. Reslow (2012), "The Role of Third Countries in EU Migration Policy: The Mobility Partnerships", *European Journal of Migration and Law*, Vol. 14, pp. 393-415. Also: S. Wolff (2014), "The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey", *European Journal of Migration and Law*, Vol. 16, No. 1, pp. 69-95.

[40] L. Gabrielli (2015), "Corridor Report on Spain – the case of Ecuadorian and Moroccan immigrants", Interact Research Report 2015/15, p. 14.

[41] Cassarino (2010), op. cit. See also J.-P. Cassarino (2007), "Informalising Readmission Agreements in the EU Neighbourhood", *The International Spectator*, Vol. 42, No. 2, pp. 179-196.

[42] See also on 'regional challenges': Council of Europe Parliamentary Assembly, Rapporteur T. Strik (2014), op. cit., paras. 18-21.

signs from the restarted negotiations suggest that core differences of opinion remain.[43] Furthermore, the accompanying visa facilitation agreement would offer only limited mobility opportunities, due to its restricted scope.[44] The ongoing privatisation of member states' visa application procedures represents additional costs for Moroccan applicants, partly offsetting the benefits of visa facilitation. The Moroccan side thus perceives the 'incentives' as insufficient. The various funded projects under the Mobility Partnership are part of a political more-for-more package. These projects do not address the issue of the readmission agreement directly but appear to be intended as a 'financial support package' wrapped around Morocco's expected commitments. It should also be noted that the Mobility Partnership figures in a much wider range of cooperation issues with the EU, such as cooperation under the Association Agreement.[45] In that context, the recent ruling of the Court of Justice of the EU (CJEU) annulling a 2012 Council Decision regarding trade liberalisation between Morocco and the EU (after a case brought by the Western-Sahara based 'Front Polisario') is also important.[46] The further impact of this development on EU-Morocco cooperation remains to be seen.

Funded projects alone cannot address Morocco's concerns. The lack of open and flexible regular channels of entry and residence, and the limited acknowledgement of Morocco's peculiar interests and concerns cannot be compensated for with money. With EU citizens enjoying visa-free travel to Morocco, more mobility for its citizens beyond visa facilitation could potentially address Moroccan concerns in a more fundamental and credible way. This questions the current EU approach of 'throwing money at the problem', which cannot resolve the deep differences over *what* constitutes a fair division of rights and responsibilities between Europe and third countries.

2.2 Borders

Whereas the continuous attempts at concluding a EURA have produced no result, the cooperation with Morocco on border surveillance and control has often been seen as more productive. The cooperation in this domain is often cited as a 'model' for Europe's other external borders.[47] Is it really a model to follow, and what are the key challenges that it presents?

Did border surveillance and control at the Spanish-Moroccan borders indeed result in low numbers of detected irregular migrants choosing to make the crossing? It should be noted that Frontex distinguishes in its data between the 'Western Mediterranean Route' between mainland Spain and Morocco and the 'West African Route' towards the Spanish Canary Islands from Western African countries, including sometimes from Morocco. The two routes are incomparable, *inter alia* in terms of geographical proximity between Morocco and Spain. Although the West African Route saw a peak of 31,600 detected irregular border crossings in 2006, these numbers have not exceeded 350 yearly since 2010.[48] It is important to underline that the large majority of detected irregular crossings in 2006 consisted of departures from Mauritania, Senegal and Cape Verde.[49] Therefore, even though the several hundred crossings that currently take place annually on this West African Route also originate from Morocco, in terms of numbers this route has never been significant for Moroccan-Spanish border crossings compared to the numbers from the relevant Morocco-Spanish Western Mediterranean Route. This means that the trend of detected irregular border crossings from Morocco into Spain has increased every year since 2010, as confirmed by Table 1, below. Moreover, the doubling of numbers over 2015 is mainly due to Syrian asylum-seekers entering the Spanish enclaves,

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[43] Interviews carried out in Rabat with Moroccan and EU officials, October 2015.

[44] It only applies to short-term Schengen visas ("90 days in 180 day period"), see: See Art. 77(2) TFEU, also: European Parliament and Council (2013), "Regulation (EU) No 610/2013 of 26 June 2013 Amending Regulation (EC) No 562/2006 of the European Parliament and of the Council Establishing a Community Code on the Rules Governing the Movement of Persons across Borders (Schengen Borders Code)" *OJ* L 182/1 (2013).

[45] See: http://eeas.europa.eu/morocco/association_agreement/index_en.htm

[46] CJEU, Judgment of the General Court, Case T-512/12, Front Polisario v. Council, 10.12.2015.

[47] *The Economist* (2015), op. cit.

[48] See Frontex (2015b), "Annual Risk Analysis 2015", Warsaw, p. 19. See also: http://frontex.europa.eu/trends-and-routes/migratory-routes-map/

[49] All operational efforts were indeed aimed at those countries; for an interesting map of Frontex HERA operations at that time see: http://news.bbc.co.uk/2/hi/europe/5331896.stm

especially Melilla.[50] This underlines that border crossing numbers are influenced by many factors exogenous to border control, such as the major humanitarian crisis in Syria.

Table 1. Part of the Western Mediterranean Route within the main migratory routes into the EU

Year	Total detected irregular border crossings (all routes)	Detected irregular border crossings on Western Mediterranean Route (WMR)	Share of WMR irregular border crossings in total
2008	151,135	6,500	4,3 %
2010	104,120	5,000	4,8 %
2012	73,160	6,400	7,75 %
2013	101,800	6,800	6,68 %
1014	283,175	7,840	2,75 %
2015 (Jan. /Nov.)	885,410	12,516	1,41 %

Source: Mehdi Lahlou, from: http://frontex.europa.eu/trends-and-routes/migratory-routes-map/, December 2015.

Figure 1. Visualisation of the 'SEAHORSE' network
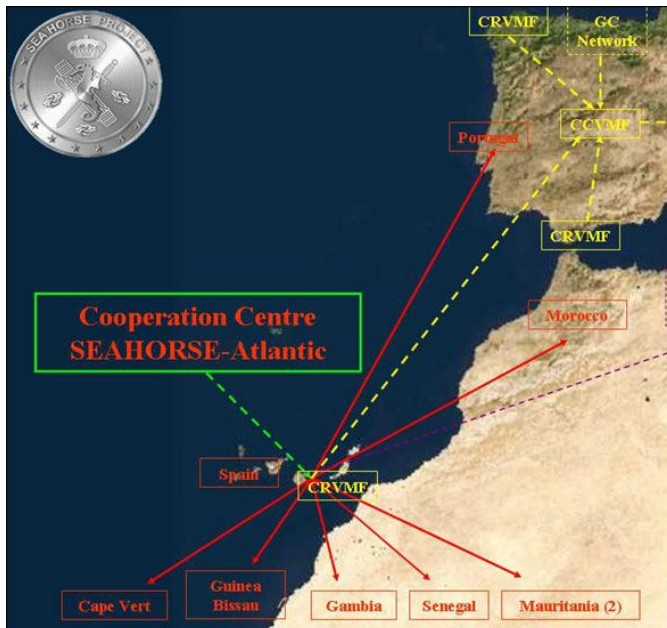
Source: BBC News, Satellite helps fight illegal immigration, 25.01.2009, image courtesy of Spanish Police.

There is close operational cooperation between the Moroccan and Spanish authorities, with ample use of high-tech surveillance and, as a result, the interception of irregular migrants. The model rests on the integration of a wide range of surveillance techniques and equipment, such as radars, satellites and drones. Several such systems and networks have been developed by the Spanish authorities, such as the above-mentioned SIVE system that provides surveillance of the maritime domain at and beyond Spanish southern borders.[51] Another is the 'SEAHORSE Network' comprising a network of border authorities across the Mediterranean and West African coast to exchange information (see Figure 1). These networks establish

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[50] For numbers on entries see: UNHCR Spain (2015), "Spain Country Update", October.

[51] For more technical information on SIVE see: Guardia Civil (2014), "Funciones y Capacidades Técnicas – SIVE" (www.guardiacivil.es/es/prensa/especiales/sive/funciones.html).

cooperation between national services, but often benefit from EU funding.[52] Moreover, the Spanish *Guardia Civil* also conducts joint patrols with the Moroccan *Gendarmerie*.[53]

The EU external border agency Frontex has also been operationally active in the maritime domain, focusing on migration towards Spain. This is the case for the 'HERA' joint operations and 'European Patrol Networks' (EPN) and the 'Indalo' and 'Minerva' EPNs.[54] These operations are led by Spain, with other member states giving operational support in the form of ships and other assets, and Frontex co-financing these operations. The Indalo EPN has been repeated for nine years, with the 2014 operation seeing the interception of 4,114 irregular migrants.[55] In the same vein, the HERA and Indalo EPNs for 2015 totalled 3,817 irregular migrant interceptions and smuggler arrests. These activities also often involve the seizure of drugs.[56]

The Frontex-led European Border Surveillance System EUROSUR also integrates various sources of surveillance of, *inter alia*, the southern maritime borders of Spain. It is thus clear that the EU and Spain have invested heavily in surveillance and control at the Spanish-Moroccan borders.[57]

The Spanish enclaves of Ceuta and Melilla represent the external land borders of the Schengen Area in Africa. Since the 1990s these enclaves have been increasingly fenced off. Today, their borders consist of multiple fences, high-tech surveillance, and close links between Moroccan and Spanish authorities. To depict the Spanish-Moroccan and EU external borders as 'closed' is not accurate, however. The smuggling of people and goods continues: according to Frontex statistics, Moroccan and Spanish nationals top the list of arrested facilitators at Europe's borders.[58] The data presented above about the increase of detected irregular border crossings between Morocco and Spain (Table 1) also illustrates that closing a border is impossible.[59] But most importantly, the borders have become more selective, making the Spanish enclaves "gated communities" and the borders "semi-permeable".[60] For example, the enclaves of Ceuta and Melilla rely heavily on the flows of goods and labour across the nevertheless multi-fence border. Mobility thus continues, also through numerous ferry connections. The increased border control and surveillance for some categories of migrants may, however, lead to more dangerous smuggling methods at the Moroccan-Spanish border.

Another effect of heightened controls is that an increasing number of migrants now find themselves stuck in Morocco, in miserable conditions; frequently vulnerable to abuse and exploitation and their route to Europe blocked. There are continuous reports of migrants being subjected to human rights violations.[61] Physical

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[52] See footnote 29, and: https://ec.europa.eu/anti-trafficking/eu-projects/seahorse-network_en., also: Guardia Civil (2013), "Nuevo marco de colaboración entre países del Mediterráneo para luchar contra la inmigración irregular", 19.09.2013 (www.guardiacivil.es/va/prensa/noticias/4582.html). For more information on EU funding see https://ec.europa.eu/anti-trafficking/eu-projects/seahorse-network_en

[53] Guardia Civil (2015a), El Director General de la Guardia Civil presenta en Málaga los medios que participarán en la operación INDALO 2015, 01.06.2015 (www.guardiacivil.es/es/prensa/noticias/5363.html).

[54] See S. Carrera (2007), "The EU Border Management Strategy FRONTEX and the Challenges of Irregular Immigration in the Canary Islands", CEPS Working Document No. 261. See also the Frontex webpage for an archive of operations:http://frontex.europa.eu/operations/archive-of-operations/Bsjcwy

[55] Guardia Civil (2015a), op. cit.

[56] Guardia Civil (2015b), "Culminadas las Operaciones Indalo y Hera 2015, lideradas por la Guardia Civil, con el rescate de 3817 inmigrantes irregulares, la detención de 21 traficantes de personas y la incautación de más de 54.000 kilos de hachís", 13.11.2015 (www.guardiacivil.es/es/prensa/noticias/5554.html).

[57] See also M. Manrique Gil et al. (2014), European Parliament Policy Department Directorate-General for External Policies, "In-depth analysis – Mediterranean flows into Europe: Migration and the EU's foreign policy", p. 9.

[58] Smuggling can in fact be seen as a consequence of more selective border control, see also L. Gabrielli (2014), "Securitization of migration and human rights: frictions at the southern EU border and beyond", *Urban People*, Vol. 16, pp. 311-322 at p. 134.

[59] Frontex (2015b), op. cit.

[60] Ferrer-Gallardo (2008), op. cit. On the view that these concepts apply to EU's external border regime more generally see: H. Van Houtum (2010), "Human blacklisting: the global apartheid of the EU's external border regime", *Environment and Planning D: Society and Space*, Vol. 28, p. 967.

[61] See e.g. Médecins sans Frontières (2013), "Violences, Vulnérabilité et Migration : Bloqués Aux Portes de l'Europe", See also reports and press releases by 'GADEM' (Groupe antiraciste d'accompagnement et de défense des étrangers et

mistreatment of these migrants occurs, such as in the context of the policy of continuous 'displacement' operations that transport migrants from the north to the south of Morocco or from the west to the east.

Moreover, there are reports about expulsions directly after interception at the border (in Spanish *devoluciones en caliente*: 'hot returns' or 'pushback' operations) from Spain to Morocco without consideration of personal circumstances or any remedy to challenge the return decision. This is especially the case for nationals of sub-Saharan countries.[62] The UNHCR has also reported that for Syrian refugees to apply for asylum in Melilla they have to either pay or pretend to be Moroccan to be able to enter the enclave.[63] A 2015 report by Amnesty International also indicated that pushbacks are happening at the Spanish-Moroccan borders 'in plain sight', also presenting evidence of the involvement of Moroccan forces in these pushbacks. Amnesty International argued that the difference with pushbacks at other borders of EU member states is that "the Spanish Government is not attempting to hide them, but instead tries to convince the world that they are lawful and are not in breach of Spain's national or international obligations".[64] The Commissioner for Human Rights of the Council of Europe recently intervened before the European Court of Human Rights (ECHR) in two pending cases against Spain concerning summary removals from Melilla and the lack of remedies against them.[65]

The 'model' of border surveillance and control thus comes at a considerable human cost for migrants, creating a situation of vulnerability, insecurity and human rights violations. It means that third countries are unable to comply with rule of law and human rights obligations, including on asylum in compliance with international standards. These policies entail costs to EU member states themselves, namely triggering their responsibility for violations of European and international human rights and refugee law as well.

2.3 Protection

A key assumption in current EU policy discourse and measures is that third countries will be able to offer reception and protection to asylum-seekers.[66] Morocco again constitutes a case from which lessons can be drawn, as it has embarked on a 'new migration policy' with the official stated aim to 'regularise' and integrate a number of irregular migrants.[67] Compared to Turkey's refugee population of over 2 million individuals, Morocco is attempting to establish policies, laws and institutions for a much smaller group of irregular migrants, asylum-seekers and refugees.[68] If Morocco thus encounters problems with offering reception, then the scale of other countries' challenges can perhaps be better understood. There are more than 5,000 persons of concern to the UNHCR in Morocco.[69] The figure below shows the nationalities of these persons of concern, the largest groups being from Syria and Ivory Coast. The diverse nationalities of these persons of concern present in Morocco, including sub-Saharan African nationals, also underlines the problematic nature of the 'hot returns' targeting mostly that group.

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migrants), e.g. : GADEM (2015), Joint Declaration: ten years of violence at EU's southern borders (www.gadem-asso.org/Joint-Declaration-Ten-years-of), 7.10.2015.

[62] UNCHR Spain (2015), op. cit.

[63] UNCHR Morocco (2015a), "Morocco update – Information note on Syrians applying for asylum in Morocco", October.

[64] Amnesty International (2015), "Fear and fences: Europe's approach to keeping refugees at bay", 17.11.2015, pp. 30-48. The report also covers in-depth the Moroccan involvement in these practices, as well as the legal changes in Moroccan law regarding summary returns from the Spanish enclaves.

[65] Council of Europe Commissioner for Human Rights (2015), "Third party intervention", Applications No. 8675/15 and No. 8697/15 N.D. v. Spain and N.T. v. Spain, Doc. CommDH(2015)27, 9.11.2015.

[66] See for more on the term 'protection': UNHCR (2006), "Master Glossary of Terms", Geneva, June.

[67] CNDH (2013), op. cit., Ministère Chargé des Marocains Résidant à l'Etranger et des Affaires de la Migration (MCMREAM) (2015), "Stratégie Nationale de l'Immigration et de l'Asile – Présentation aux partenaires internationaux", 10.03.2015.

[68] UNHCR Turkey (2015), "External Update", November.

[69] UNHCR Rabat (2015b), "Factsheet November 2015", Rabat. See also: UNCHR Morocco (2015c), "Morocco update – Information note on Syrians applying for asylum in Morocco", October.

Figure 2. Persons of concern to the UNCHR in Morocco by nationality

By nationality in %

Others 12%

MLI 1%
3%

NIG 3%

CMR 3%

PAL 5%

IRQ 9%

DRC 12%

ICO 13%

SYR 39%
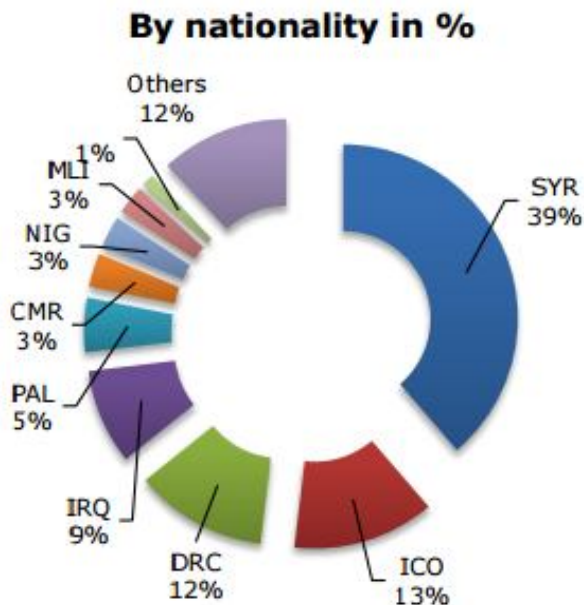
Source: UNHCR Rabat, Statistical report on UNCHR population of concern, September 2015. SYR: Syria, ICO: Ivory Coast, DRC: Democratic Republic of the Congo, IRQ: Iraq, PAL: Palestine, CMR: Cameroon, NIG: Nigeria, MLI: Mali.

The semi-permanent nature of irregular migrants' stay requires responses that go beyond first reception. With migrants blocked in Morocco for many years, the Moroccan government announced a "new migration policy" in 2013 on the basis of a critical report of the *Conseil National des Droits de l'Homme*.[70] An important element of this policy aims to regularise and integrate migrants in Morocco. A one-off campaign resulted in the regularisation of some 18,000 migrants by 2014[71] and a strategy has been adopted with the stated aim to encourage their integration into Moroccan socio-economic life and their access to housing, health care and education.[72] However, 10,000 applications have been rejected due to strict and non-uniformly applied criteria, with some appeals still pending.[73] Moreover, an Amnesty International report of November 2015 indicated that the regularisation procedure was followed by raids on migrant camps in the north of Morocco, and the detention of a large number of individuals.[74]

What is more important for the structural improvement of the situation of asylum-seekers in Morocco is the planned establishment of asylum authorities and the adoption of new laws on migration, asylum and anti-trafficking. The current legal framework in Morocco takes a repressive approach, following a law adopted in 2003 that criminalises both irregular entry and stay.[75] So far, however, the Moroccan authorities have been reluctant to establish permanent legal and institutional structures. Of the three laws, only the one on anti-trafficking is prepared for discussion by the House of Representatives. The Moroccan *Bureau des Réfugiés et*

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[70] CNDH (2013), op. cit.

[71] M. Lahlou (2015), "Morocco's Experience of Migration as a Sending, Transit and Receiving Country", IAI, Rome, Italy. See also: UNHCR Rabat (2015c), op. cit.

[72] Ministère Chargé des Marocains Résidant à l'Etranger et des Affaires de la Migration (MCMREAM) (2015), "Stratégie Nationale de l'Immigration et de l'Asile – Présentation aux partenaires internationaux", 10.03.2015.

[73] UNHCR Rabat (2015c), op. cit.

[74] Amnesty International (2015), op. cit., p. 28.

[75] Bulletin Officiel, Loi 02-03 relative à l'entrée et au séjour des étrangers au royaume du Maroc, à l'émigration et l'immigration clandestine. See also M. Collyer, M. Cherti, E. Galos and M. Grosso (2012), "Responses to irregular migration in Morocco – promising changes, persisting challenges", Institute for Public Policy Research, London, July.

des Apatrides was formally opened in 2013 but has so far not engaged in determination procedures itself. The UNCHR in Rabat is currently fulfilling this role, with its decisions checked and usually confirmed by an ad hoc inter-ministerial commission.[76] This last step is important for the applicants themselves, as it gives them access to a *carte de séjour* in Morocco.

However, Morocco has a difference of opinion with the UNCHR regarding Syrian nationals applying for asylum, discouraging the UNHCR from giving refugee certificates to the approximately 1,700 Syrians registered with the organisation.[77] Under the regularisation procedure undertaken by the ad hoc inter-ministerial commission, the cases of some 450 Syrians have been considered since June 2014, so far with no decision from the Moroccan authorities on their status. Although there is no risk of *refoulement*, nevertheless these Syrians currently have little guarantee of access to public services and socio-economic life.

Moreover, linked to the sensitive issue of the Western Sahara is the situation and treatment of Sahraouis refugees in Morocco. The United Nations (UN) Economic and Social Council recommended in 2015 that Morocco "take measures to ensure that the rights of Sahraouis refugees are respected upon their return".[78]

Although the partly EU-funded[79] new migration policy attempts to find a solution to the reality of migrants blocked *en route* to Europe, the faltering implementation of the structural elements needed in the area of international protection raises question about the capacity of Morocco to provide adequate reception and protection to migrants. It is important to underline that the new migration policy has also served Morocco's foreign policy interests of rapprochement to sub-Saharan African countries. Images of maltreatment and human rights abuses of citizens of these countries with which Morocco has closer political and economic ties have been unwelcome in this context. The new policy, and especially the mediatised campaign of the regularisations in 2014, was evidence of an approach more favourable to Morocco's foreign policy interests.

Putting in place permanent structures for international protection requires long-term political, institutional and financial commitment. This is far from straightforward in countries that are themselves struggling with development challenges. The capacities of Morocco to shoulder such long-term commitments are thus limited. In any case, the example of Morocco shows that third countries need time to set up the necessary structures for reception and protection, something we know all too well from certain EU member states. The assumption that third countries can offer reception and protection is thus not always borne out by the evidence.

3. Conclusions: What kind of third country cooperation on migration for the EU?

The EU policy responses of 2015 showed a preference for cooperation with third countries in the areas of readmission, border controls and surveillance and the reception of asylum-seekers. Lessons from the longstanding cooperation with Morocco show the limited feasibility and appropriateness of a security-driven approach. These lessons also question the widespread assumption in current EU policy and media discourse that cooperation with third countries is the solution to Europe's refugee crisis. Although the lessons learned from Morocco concern only one third country and each third country has its own context-specific considerations, some points are significant for the EU's cooperation with third countries at large. The aim of this paper was thus not to compare Morocco and other countries, but rather to flag up certain issues flowing from the cooperation with Morocco to inform the current policy debate.

First, the more-for-more or conditionality approach with the aim to obtain a EURA is not always feasible, effective and can even be counter-productive. EU cooperation with Morocco shows us that continuous pressure to conclude a EURA has alienated rather than brought Morocco closer. 'More for more' can easily turn into 'less for less'. The EU's strong focus on readmission, and especially on third country national

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[76] UNCHR Morocco (2015b), op. cit.

[77] For the moment they are given 'asylum-seeker certificates'. See: UNHCR Rabat (2015a), op. cit.

[78] United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, "Concluding observations on the fourth periodic report of Morocco", Doc. E/C.12/MAR/CO/4, 22.10.2015.

[79] The EU has financed a €10 million project linked to the integration of migrants in Morocco, see MCMREAM and EU Delegation (2015), "Communiqué de Presse – Lancement du projet 'promouvoir l'intégration des migrants au Maroc'", Rabat.

(TCN) clauses, is furthermore disproportional to its practical salience in the actual number of returns to third countries.[80] To use the overall EU cooperation (including policies such as development or trade) as leverage to obtain a EURA under the more-for-more principle puts the EU's broader interests with third countries at risk. Rather than viewing readmission as an end in itself, the EU should draw on the bilateral experiences of its member states with third countries where cooperation on readmission has rarely been a goal pursued to the exclusion of others.

The example of Morocco also shows that its particular foreign policy interests are opposed to the conclusion of a EURA. It also shows that third countries have to balance demands and interests from different directions, among which EU demands for readmission are not necessarily deemed the most important. Cooperation on readmission, borders and reception does not take place in a vacuum. Hence, even with the application of a lot of conditionality, it cannot be assumed that targeted third countries will in fact cooperate. Of course, we should underline here that the situation for Turkey is different, as it has signed the EU Readmission Agreement, even though it is not yet "fully applicable".[81] It should also be stressed that the regional interests of Turkey cannot be compared to those of Morocco. However, the EU push to work more on readmission with African countries does resemble some of the EU demands towards Morocco, bringing to the forefront similar questions as to the feasibility of that approach.

Second, the EU-Turkey and EU-Africa summits affirmed the re-labelling of billions of euros of EU and member state funding. However, the EU funds have specific and delineated legal mandates and objectives, such as the pursuit of development cooperation versus those of internal security interests abroad. The resetting of priorities for this funding in the wake of the 2015 refugee crisis cannot go beyond the democratically established legal frameworks of this funding.[82] The EU development and humanitarian aid funds should thus not be used for pursuing internal security objectives abroad. Moreover, the approach of 'throwing money at the problem' is no guarantee of policy success. The profound differences of opinion over what is an equitable division of responsibilities between Europe and third countries cannot be bridged by financial means alone. More legal channels for mobility and asylum-seeking could address the concerns of third countries and individuals more effectively.

Third, the Spanish-Moroccan joint border surveillance and controls are often seen as 'productive' in lowering the numbers of irregular migrants. This also seems to be the clear objective of the current cooperation with Turkey. The Dutch prime minister stated after the EU-Turkey summit that the refugee flows from Turkey to Europe should go "in the direction of zero". Otherwise, no money from the EU side will be transferred.[83] However, section 2.2 shows that Spanish-Moroccan border cooperation has not prevented the increase in irregular border crossings detected since 2010. More importantly, lessons from Morocco also show a considerable human cost, with migrants left vulnerable, resorting to more dangerous smuggling methods and prone to human rights abuses and exploitation. Chiefly, transforming neighbouring countries into Europe's border police abroad[84] prevents those countries from duly safeguarding and protecting the human rights of asylum-seekers and refugees, with e.g. mass arrests of migrants by the Moroccan authorities, among whom are asylum-seekers.[85] Furthermore, it produces challenges for EU member states such as Spain, as they find themselves scrutinised for their actions in light of their legal obligations under European and international human rights instruments. The example of Morocco also shows that 'closing the border' has in fact little to do with reality. Rather, selectivity at the border has increased, but irregular migration and smuggling persist.

Fourth, the assumption that third countries have the capacity to provide adequate reception and protection is thrown into doubt by the evidence from Morocco. Clearly, every euro invested in refugee reception, in Turkey, for example, is welcome, especially against the background of continuous UNCHR funding

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[80] See also: Commission (2011b), op. cit.

[81] See footnote 15, supra.

[82] See footnote 17, supra.

[83] See: www.europa-nu.nl/id/vjzhldnrvbvi/nieuws/rutte_asielstroom_uit_turkije_moet?ctx=vh6ukzb3nnt0&tab=0

[84] See the declarations in August 2012, of the Moroccan Foreign Minister Saâdeddine El Othmani stated that Morocco would not be the "*gendarme of the European Union.*" (http://www.statewatch.org/news/2013/mar/05eu-morocco.htm)

[85] See also: Council of Europe Parliamentary Assembly, Rapporteur T. Strik (2014), op. cit., para. 44.

shortfalls. However, doing so on the condition that Turkey stops migrants from leaving its shores will put more pressure on its already strained capacity to receive and protect the more than two million Syrian refugees present on Turkish soil. As the Syrian war intensifies, the numbers of refugees arriving in Turkey will probably increase. Moreover, Turkey maintains its geographic reservation to the Geneva Refugee Convention. It should however be noted that Turkey is a party to the European Convention on Human Rights (ECHR) and is thus bound to European human rights standards that are clearly not applicable to Morocco. This also includes Turkey's *non-refoulement* obligations under Article 3 of the ECHR. Directly after the 'deal' with the EU, the first reports of a mass arrest of 1,300 migrants and several smugglers at Turkey's external borders appeared.[86] As with Morocco, if the new controls at the Turkish borders are indeed upheld, it will probably trigger a displacement of irregular migration flows to more costly and dangerous routes. This will boost rather than 'disrupt' the business model of smugglers.[87] With strict visa regimes and carrier sanctions in place, migration routes become deadly and smuggling becomes profitable. The numerous air and ferry connections across the Mediterranean present a safe alternative at a fraction of the costs.[88]

As the refugee crisis resulting from the Syrian war intensifies, the EU has chosen to co-opt third countries into its policy of actively 'stemming' irregular migration, stepping up cooperation on readmission and encouraging reception in the already overburdened region. This is a parochial way of understanding and addressing the common challenges flowing from conflicts and refugee flows close to Europe's borders. From the lessons of the longstanding cooperation with Morocco, we can also expect that this approach will quickly run into feasibility constraints. More importantly, we can expect that it is the migrants who will experience the adverse consequences of this approach.

The next section outlines policy recommendations for a more evidence-based and forward-thinking EU policy.

4.   Policy Recommendations

When reflecting on the question of *what kind of cooperation with third countries is needed* we identify three main issues, based on the lessons learned from cooperation with Morocco, leading to a number of more specific recommendations:

First, **respect for migrants' rights should be central to cooperation with third countries.**

- More funding for the reception and protection of refugees and asylum-seekers in third countries is necessary – such as under the Commission-proposed 'Regional Development and Protection Programmes'.[89] Such initiatives should offer long-term and non-project based EU financial commitment to the protection of asylum-seekers and refugees, to help third countries build a durable legal and institutional framework for reception and protection. Moreover, NGOs should be supported for their work with asylum-seekers and refugees.

- Notwithstanding this further support to third countries, EU member states should continue to fulfil their own obligations under international and European law regarding the reception and protection of asylum-seekers and refugees.[90] This means that member states and the Commission should strive for external

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[86] See *The Guardian* (2015), "Turkey arrests 1,300 asylum seekers after £2bn EU border control deal", 30.11.2015 (www.theguardian.com/world/2015/nov/30/turkey-arrests-1300-asylum-seekers-after-2bn-eu-border-control-deal).

[87] This is the stated objective of many recent EU anti-smuggling actions, such as the 'EU NAVFOR' operation in the Mediterranean, see: European External Action Service (2015), "European Union Naval Force – Mediterranean Operation Sophia", 15.12.2015.

[88] For more on the EU carries sanctions and visa regime, and on the alternative travel modalities see: E. Guild, C. Costello, M. Garlick and V. Moreno-Lax (2015), "Enhancing the Common European Asylum System and alternatives to Dublin", Study for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, p. 21.

[89] See: the European Migration Agenda: Commission (2015a), op. cit., p. 5.

[90] See: Council of Europe Parliamentary Assembly, Rapporteur T. Strik (2015), "Countries of transit: meeting new migration and asylum challenges, addendum to report", Doc. 13867 Add., 28.09.2015.

borders that are 'refugee-friendly',[91] also meaning that the EU funding available for Turkey and Africa following the recent summits should not be made conditional on the imposition of stricter border controls that effectively prevent asylum-seekers and refugees from having access to Europe. This would have the likely effects of more dangerous and profitable (for smugglers) migratory routes used by those seeking asylum. It will hamper the right to seek asylum and will leave asylum-seekers stuck in third countries that have limited capacities to offer adequate reception and protection.

- The EU and its member states should refrain from cooperation with or funding of third countries' police and border guard authorities where that cooperation allows third country authorities to use violence and coercion towards migrants, involving mass arrests, detention, and 'hot returns' or pushbacks.

Second, **new legal channels for migration and asylum-seeking should be opened up**.

- The Commission should work towards having more places available under the EU resettlement programme than proposed in the European Migration Agenda and should make proposals for more binding commitments by member states.[92] The Commission should also explore the possibilities for more EU incentives and frameworks for the issuing of humanitarian visas by member states.

- The Commission should make legislative proposals that would lift the main obstacles for those individuals seeking asylum in Europe, namely the EU visa requirements and the EU carrier sanctions.[93]

- The Commission should acknowledge that the current EU set of legal and labour migration incentives to third countries is inadequate and unfeasible to attain a real Mobility Partnership. The Commission should therefore, together with the member states, identify more labour migration opportunities.

Third, **readmission should not dominate the EU's relations with third countries**.

- Given the growing and wide-ranging interdependence between third countries, and the EU and its member states, readmission cannot be pursued as a goal to the exclusion of others. Dealing with readmission as an end in itself jeopardises the legitimacy of the EU's external action. The recent placing of the more-for-more principle at the heart of these efforts should be revoked by the Council.[94]

- The Commission should draw on the bilateral experiences of member states to realise that making development aid or visa facilitation/liberalisation conditional on 'effective' cooperation on readmission is neither realistic nor constructive. Moreover, the Commission should once more attempt to convince member states that the third country national clause in EU Readmission Agreements is unrealistic and should be abolished.[95]

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[91] E. Guild, E. Brouwer, K. Groenendijk and S. Carrera (2015), "What is happening to the Schengen borders?", CEPS Paper in Liberty and Security in Europe No. 86, December, p. 23.

[92] The Migration Agenda issued in May 2015, the Commission had proposed 20,000 resettlement places over the course of two years, see: Commission (2015d), op. cit., pp. 4-5. At that time, and in light of the current situation even more so, that number seems inadequate.

[93] Both these recommendations echo those proposed by Guild et al. (2015), op. cit., p. 70.

[94] Council (2015c), op. cit.

[95] See Commission (2011), op. cit. and also: Council of Europe Parliamentary Assembly, Rapporteur T. Strik (2014), op. cit., p. 4.

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Commission (2015d), "Communication – A European Agenda on Migration", COM(2015) 240 final, 13.05.2015.

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