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Analyzing the instrumentalization of migration  
flows in exchange for geopolitical benefits -  
Reflections on the New Pact on Migration and  
Asylum

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# 1. INTRODUCTION

## 1.1 Migration Diplomacy: definition and scope

The phenomenon of migration has characterized world politics for centuries. Since ancient times, people have migrated for various reasons including economic factors, conflicts, natural disasters or simply the pursuit of a better life. Even though migration often entails cross-border mobility, the vast movement of people occurred during the twentieth century as a result of urbanization, a process that is still characterizing human history.<sup>1</sup> However, during the latest century, migration became a key dimension of states' diplomatic relations and foreign policy. The latest developments in migration flows, especially the unprecedented crisis that arised in the latest years, redefined migration policy taking the issue at the top of political agendas.<sup>2</sup> Although the humanitarian aspects of migration flows should represent the primary consideration of every migration management system, the reality shows an intricated net of interactions, geopolitical interests and political objectives that drives migration governance. Especially after the 2015-2016 migration crisis, political actors recognized the potential gains of migration used as a bargaining tool in order to pursue power and national interests. Indeed, based on a realistic approach of international relations<sup>3</sup>, states, regardless of their position in the migration system, namely the extent to which they are migration-sending, migration-receiving, or transit states, tried to consolidate, maintain or improve their relevance in the international system through the systematic securitization of the migration phenomenon.<sup>4</sup> Migration and the consequential weaponization of migrants became a tool in the hands of political actors to obtain geopolitical or economic advantages. Several scholars defined this

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<sup>1</sup> Porumbescu, A. (2015). Outlook on the history of migration in the XXth century's Europe. *Analele Universității din Craiova. Istorie*, 161-170.

<sup>2</sup> Cardwell, P. J. (2018). Tackling Europe's migration 'crisis' through law and 'new governance'. *Global Policy*, 9(1), 67-75

<sup>3</sup> Realism represents one of the most dominant schools of thought of International Relations since World War II. Although other major doctrines of IR have been formulated, realism continues to have relevance also in the current international scenario. This prominent line of thinking is based on the concept of power and on the assumption according to which sovereign states represent the principal actors of the anarchic international system. In an anarchic international system, national security and survival are the primary national interests of sovereign states. As a matter of fact, the dynamics in the international arena are shaped by states' interests, defined in terms of national power. Power, according to realism, shapes states' interactions and actions in international relations. This school of thought is vastly considered the main doctrine governing also international migration. According to several scholars, migration policies are in fact shaped by state's national interests and asymmetrical power relationships. See: Ghosh, P. (2020). *International relations*. PHI Learning Pvt. Ltd..

<sup>4</sup> Adamson, F. B., & Tsourapas, G. (2019). Migration diplomacy in world politics. *International Studies Perspectives*, 20(2), 113-128

newly conceptualized aspect of cross-border mobility management as Migration Diplomacy. In particular, as defined by Tsourapas, Migration Diplomacy describes:

*“states’ use of diplomatic tools, processes, and procedures to manage cross-border population mobility, including both the strategic use of migration flows as a means to obtain other aims, and the use of diplomatic methods to achieve goals related to migration.”*<sup>5</sup>

Historically, the focus of migration has primarily been on the domestic political consequences of cross-border mobility. However, the phenomenon of migration, and the cross-border movement of people, has also an influence beyond domestic policymaking, thus including also foreign diplomacy. Foreign diplomacy represents the way in which governments negotiate and conduct their affairs with one another and with other entities such as international organizations.<sup>6</sup> Being a phenomenon that transcends national borders, the increase of migration flows affects the relations between national actors and other players of the international system, namely international organizations, institutions, and non-governmental organizations, thus creating an intricate net of interstate activity and diplomacy. The intrinsic nature of migration that overcomes national borders and the increase in flows produced the concept of migration diplomacy.

Although migration diplomacy has not been deeply examined and defined by scholars, this is not an entirely new phenomenon.<sup>7</sup> A prominent historical example is represented by the restriction of Mexican migration into the United States that translated into a significant process of bilateral negotiation which led to the introduction of the Bracero Program. Since 1942, this agreement controlled the immigration of Mexican manual workers (*braceros*) to the United States for more than 20 years, with several revisions based on the two Nation’s economic and political objectives. The program was responsible for the immigration of roughly 4.5 million Mexicans into the United States until its discontinuation in 1962. Bilateral migratory diplomacy has resulted in various political spillovers over the previous two decades, including significant coordination in security, law enforcement, and irregular migration control across the US-Mexico border.<sup>8</sup> Besides some historical examples, migration diplomacy gained relevance in

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<sup>5</sup> Idem

<sup>6</sup> Idem

<sup>7</sup> Idem

<sup>8</sup> Snodgrass, M. D. Deportation, Diplomacy, and Defiance: New Research on Mexican Migration. *Latin American Research Review*, 1-12.

the latest decades with the resurgence of populist movements and restrictive policies of cross-border mobility and migration management. As a matter of fact, the political relevance that the issue of migration evoked in the last decades resulted in an even more need to analyze the relationship between diplomacy and migration, the dynamics behind states' behaviors and thus ultimately the scope of migration diplomacy.

First of all, in order to analyze the scope of this phenomenon, it is necessary to define migration diplomacy and place it into a precise theoretical framework. According to Tsourapas, there are three main conditions to take into consideration in the definition of migration diplomacy. The first one refers to the field of investigation of migration diplomacy, namely the analysis of cross-border population mobility linked to state diplomatic aims. Even though globalization has diminished the role of sovereign states in the international system, shifting the focus also on international organizations and forums, according to Tsourapas, the state still represents the main actor in the regulation of cross-border population mobility and is likely to continue to be so, especially with the recent rise in populist nationalism and the renewed significance of borders.<sup>9</sup> Despite the ultimate monopoly of sovereign states over cross-border movements, several forum and international organizations have been put in place with the scope of enhancing cooperation and dialogue between states in the field of migration especially in the framework of the European Union and the United Nations. However, as Torpey has noted, sovereign states are still not inclined to lose the control over their national borders.<sup>10</sup> As a matter of fact, a key feature of modern nation-states, that continues to govern international relations, is the ultimate monopoly over national borders. This monopoly represents an essential aspect of the domestic, Westphalian sovereignty of states.<sup>11</sup> As a result of states' reluctance, migration still represents an issue in which, according to several scholars, national interests and thus a realistic approach of international relations persists. Unfortunately, this approach often entails a supremacy of geopolitical dynamics rather than the protection of the rights and lives of people involved in the migration process.

According to Tsourapas, the second condition restricts the field of interest of this concept. In fact, migration diplomacy does not include all migration policies of a state, but rather merely

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<sup>9</sup> Tsourapas, G. (2021). *Migration diplomacy in the Middle East and North Africa: Power, mobility, and the state*. Manchester University Press.

<sup>10</sup> Torpey, J. (1998). Coming and Going: On the State Monopolization of the Legitimate "Means of Movement." *Sociological Theory*, 16(3), 239–259. <http://www.jstor.org/stable/202182>

<sup>11</sup> Adamson, F. B. (2006). Crossing Borders: International Migration and National Security. *International Security*, 31(1), 165–199. <https://doi.org/10.1162/ISEC.2006.31.1.165>

the policies related to the foreign aspects of this phenomenon. Standard components of migration policy, such as visa issuance, border control, or a state's refugee and asylum policy, are not in and of themselves part of migration diplomacy.<sup>12</sup> Typically, US visa policy is not shaped by diplomatic priorities in the US; however, it has been used as a migration diplomacy tool during interstate bargaining processes, such as in the October 2017 dispute between Turkey and the US, when there was a tit-for-tat imposition of travel and visa restrictions. Migration diplomacy entails the use of negotiation techniques and thus refers to the employment of cross-border movements of people in the international relations between states. Migration diplomacy primarily involves interstate bargaining processes that include both the strategic use of migration flows as a mean to obtain other aims or the use of diplomatic methods to achieve goals related to migration. Finally, Tsourapas, highlights the necessity to manage cross-border mobility as an international issue. Being an international issue refers to every matter, including migration, that has a significant impact upon interstate relations. Even though, internal displacement represents most population movements, this issue falls upon the internal management system of sovereign states as well as the regulation of immigrants' citizenship status or access to rights, tariff rules determining which goods migrants are able to transport, diaspora politics, and the welfare of refugees. These aspects are relevant only insofar as they have an impact on interactions between states.<sup>13</sup>

Having defined and restricted the theoretical framework of this phenomenon, it is helpful to briefly present a concrete case in which migration diplomacy has been used. One of the most prominent examples of Migration Diplomacy is represented by the case of Turkey. Turkey represents a pivotal example of the use of migration as a bargaining tool. Through the agreement between Turkey and the European Union, signed in 2016, Erdogan realized the potential gains from migration flows. The President of Turkey succeeded in accelerating the process of EU membership application as well as receiving 6 billion euros in order to strengthen its external borders and accept the return of irregular migrants from Greece. Through this agreement, the European Union prevented the potential cross-border of refugees from Turkey to Greece and thus the arrival of migrants into the European Union borders. The issue of migration allowed Turkey to obtain an exceptional leverage in its relations with the EU. As a matter of fact, the threat to open the border with Greece and release migrants to the EU represents enormous

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<sup>12</sup> Adamson, F. B., & Tsourapas, G. (2019). Migration diplomacy in world politics. *International Studies Perspectives*, 20(2), 113-128

<sup>13</sup> Idem



power in the hands of Erdogan's Turkey. Erdogan has been able to use migration diplomacy to his advantage increasing Turkey's relevance in the Mediterranean region and its international negotiating power. The Eastern Mediterranean country's unique position and ability to control the flow of refugees and migrants into the European Union constitutes a key bargaining chip in Turkish migration diplomacy.<sup>14</sup>

Turkey's use of migration diplomacy, especially with regard to the 2016 agreement, has highlighted a new aspect of this phenomenon. Although scholars focused primarily on the migration dynamics and consequences of developed countries, namely receiving states, and their system of migration management, the development of cross-border mobility and the issues arising from this phenomenon shifted the center of attention from the Developed North to the Global South.<sup>15</sup> Through migration diplomacy, states from the Global South discovered an efficient bargaining tool that enables them to overcome the asymmetrical power relationship between developed countries and less developed states. In order to understand this asymmetry in international migration, it is first necessary to understand and analyze power in itself. As stated by Betts, power, in international relations, can be defined as a “compulsory power,” whereby a state gets another state to do something through a combination of inducements and incentives.<sup>16</sup> Generally, power relations are defined by economic or military capabilities. Therefore, stronger states are usually the ones that can rely on an economic or military advantage in relation to weaker states. Even though the dynamics in the international arena are determined by states' power, defined as the amount of military and economic capabilities, in the context of international migration, another characteristic shapes power's relation. In migration diplomacy, power is shaped by a structural relationship, namely the one based on whether a state is predominantly a migrant “receiving” state (immigration state) or a migrant “sending” state (emigration state).<sup>17</sup> Although this role categorization is not entirely exclusive, in the sense that no state is exclusively a receiving or a sending state, it however, has an impact in the definition of states' power relations. Receiving states, according to the Westphalian definition of sovereign states, retain the ultimate control over their borders and their

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<sup>14</sup> Maritato, C. (2021). Claiming for Moral Superiority while Bargaining with Mobility: Turkey-EU Migration Diplomacy in the post-2016 Euro-Mediterranean space.

<sup>15</sup> Marchand, K., Rayp, G., & Ruyssen, I. (2020). Conclusion: Migration in the Global South: Indications for the Global Compact?. In *Regional Integration and Migration Governance in the Global South* (pp. 261-266). Springer, Cham.

<sup>16</sup> Betts, A. (2011). The International Politics of Migration. *St Antony's International Review*, 6(2), 134–150.

<sup>17</sup> Idem

territories.<sup>18</sup> As a matter of fact, in the absence of an international institutional framework governing migration, receiving states, usually north developed countries, are entitled to determine their own immigration policies. Even though several attempts have been made in order to bind sovereign states and to overcome the management difficulties and the human rights violations deriving from the phenomenon of migration, ultimately states prefer to retain their control over national borders. On the other hand, sending and also transit states, besides not being able to prevent their citizens to emigrate, are in no favorable position to influence the decisions and policies of sending states. As a result of the distribution of power, based on the role performed in the international migration system, states within the Global South developed diplomatic strategies and negotiation techniques of migration flows management by engaging both in cooperative but also coercive migration diplomacy.<sup>19</sup> These dynamics resulted in a very different way of managing population movements: sending governments (typically from the South) favor institutionalized migratory cooperation, whereas receiving states (generally from the North) prefer to retain the status quo of sovereign state power.<sup>20</sup>

These dynamics also characterize the discussions and voting patterns on migration issues within the institutions of the United Nations, the EU, and other international institutions and treaties dealing with migration flows.

According to Tsourapas, states, as a result of the different distribution of power and the related interactions between them, engage in two different types of diplomacy. On one hand Tsourapas defines coercive migration diplomacy as:

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<sup>18</sup> According to the Westphalian definition, sovereign states are represented by territorial units with judicial independence and thus not subject to external authority. Even though in the international system, states are limited by the power and preferences of the other actors, sovereign states retain the ultimate control over their domestic authority structures. A direct consequence of this assumption is the principle of non-interference in internal affairs of other sovereign states. However, several scholars are suggesting a progressive erosion of sovereignty defined as the control over borders and territory. This erosion is the consequence of several pressures derived from globalization and the promotion of human rights. As a result of globalization and the technological changes occurred in the latest century, reducing the cost of communication and transport, interdependence sovereignty, namely the ability of states to control movement across their borders, is being challenged. States cannot regulate transborder movements of goods, capital, people, ideas, or disease vectors. Even though the right of controlling and managing borders is not challenged, globalization is, however, eroding the ability to concretely exercise this right. See: Krasner, S. D. (2001). Abiding sovereignty. *International political science review*, 22(3), 229-251.

<sup>19</sup> Tsourapas, G 2017, 'Migration diplomacy in the Global South: cooperation, coercion & issue linkage in Gaddafi's Libya', *Third World Quarterly*, vol. 38, no. 10, pp. 2367-2385. <https://doi.org/10.1080/01436597.2017.1350102>

<sup>20</sup> Idem

*“The threat or act by a state, or coalition of states, to affect either migration flows to/from a target state or its migrant stock as a punishment, unless the target state acquiesces to an articulated political or economic demand.”<sup>21</sup>*

The author compares coercive migration diplomacy as the use of positive sanctions in international relations.<sup>22</sup> A prominent example, as stated by the author, is the negotiation of the Jordan Compact in 2016. Through the conclusion of this Compact, Jordan was able to secure significant economic incentives from various international entities as a host state for thousands of Syrian refugees leaving their homeland since 2011. In exchange for these economic demands, Jordan has promised to continue sheltering and employing Syrian refugees within its borders.

On the other hand, cooperative migration diplomacy was defined as:

*“The promise or act by a state, or coalition of states, to affect either migration flows to/from a target state or its migrant stock as a reward, provided that the target state acquiesces to an articulated political or economic demand.”<sup>23</sup>*

This represents a reminiscent of the use of negative sanctions in international relations.<sup>24</sup> A prominent example is represented by the suspension of visa-free travel for Turkish citizens in Russia as a consequence of the shot down of a Russian Su-24M military aircraft by the Turkish authorities in 2015.

As stated before, historically the Global South migration diplomacy is conducted through strategies and policies falling inside the cooperative approach. However, as I will analyze throughout this dissertation, sending and transit states, especially in the latest decades, gained massive influence and power through the management of migration flows and the use of migration diplomacy as a bargaining tool.

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<sup>21</sup> Idem

<sup>22</sup> According to Baldwin, positive sanctions are defined as *actual or promised rewards to B*; whereas negative sanctions are defined as *actual or threatened punishments to B*. In order to distinguish punishments from rewards, it is necessary to establish B's threshold of expectations at the moment in which A's influence attempt begins. This threshold is defined in terms of B's expected future position relative to the things he values. Based on these dynamics, positive sanctions, then, are actual or promised improvements in B's value position relative of his baseline of expectations. Negative sanctions are actual or threatened deprivation relative to the same baseline. See: Baldwin, D. A. (1971). The power of positive sanctions. *World Politics*, 24(1), 19-38.

<sup>23</sup> Tsourapas, G 2017, 'Migration diplomacy in the Global South: cooperation, coercion & issue linkage in Gaddafi's Libya', *Third World Quarterly*, vol. 38, no. 10, pp. 2367-2385. <https://doi.org/10.1080/01436597.2017.1350102>

<sup>24</sup>Baldwin, D. A. (1971). The power of positive sanctions. *World Politics*, 24(1), 19-38

Unfortunately, these dynamics and relations based on national interests also shape the interactions within international organizations and institutions. Even though the ultimate scope of international arenas is enhancing cooperation between countries, it is evident that power and national interests continue to prevail. Especially in the field of migration, while geopolitical and economic interests remain at the top of political agendas, the protection of human rights fades into the background. The European Union represents a pivotal example in which the reluctance of national states prevents the creation of an international political framework able to manage migrations flows and all the consequences related to this phenomenon. Since the refugee's crisis of 2015, the European Union has addressed the migration phenomenon through an externalization approach followed by a rhetoric of securitization.<sup>25</sup> The weaponization of migrants and the efforts of the EU in preventing these people from entering its borders produced several policies and diplomatic dynamics addressed specifically to the countries of the Global South. The rising of populist discourses paired with a nonexistent solidarity among Member States of the European Union, prevented the formation of a cohesive response and the consolidation of a migration management architecture able to deal with this phenomenon. In fact, even though migration could represent a realistic opportunity to cope the demographic recession faced by the Global North and significant improvements in terms of labour force and economic growth, the liberal paradox continues to reinforce itself.<sup>26</sup> The concept of liberal paradox, theorized by Hollifield, helps explain this contradiction. The author argues that states' policymaking on migration is basically influenced and driven by this paradox: on one hand, the free flow of migrant labour is encouraged because migration is seen as an economic opportunity for receiving states; on the other hand, states wish at the same time to maintain control over their borders and thus maintain restrictive immigration policies for political and security purposes. As a result of this paradox, western democracies find themselves trapped in a continue balance between economic considerations, maintaining a competitive advantage through societies open to trade, investment and migration and the need to minimize political and security risks deriving from the free movement of people.<sup>27</sup>

This conceptualized contradiction reveals also the inherent factors driving migration. Geopolitical and economic factors play a significant role in the openness of countries' borders

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<sup>25</sup> Léonard, S., & Kaunert, C. (2021). Refugee flows and terrorism in the European Union: securitization through association. *International Politics*, 1-15.

<sup>26</sup> Hollifield, J. F., Martin, P. L., Orrenius, P. M., & Héran, F. (Eds.). (2022). *Controlling Immigration: A Comparative Perspective*. Stanford University Press.

<sup>27</sup> Idem

and to the detriment of human considerations and the respect of human rights. In particular, this analysis is based on the assumption that, unfortunately, human rights centric explanation cannot capture exhaustively the incentives behind migration policy decisions. Besides being essential in identifying the incentives driving migration policies in the Global North, geopolitical and economic factors also help us to understand policy decisions of non-western countries. Having carefully realized that migration diplomacy represents a powerful bargaining tool in order to gain relevance in the international arena and obtain concrete benefits, this thesis will analyze how interests shape migration policy of both the Global North and the Global South and how they are translated also at the international level. Therefore, the research questions behind this analysis are: how do the geopolitical interests of states represent the drivers of migration diplomacy? and how are these same dynamics then carried over to the level of the European Union?

## **1.2 Methodological framework: structure and objectives**

Having defined the theoretical framework of the concept of migration diplomacy, the chapters of this dissertation will be devoted to investigating how states use different types of diplomatic instruments in order to minimize the risks related to migration flows and at the same time maximize national and geopolitical interests using migrants as a bargain tool. Historically, states have been categorized between north developed countries, and south less developed ones. This categorization, however, risks to exacerbate the generalization around the different roles that states perform during the migration process. The categorization of states purely on a geographical basis, risks to hinder the possibility of investigating and analyze the specific roles of countries and their related policies around migration. Including all sending states into the geographical and generic categorization of Global South does not entirely capture the complicate net of interests and interactions occurring in international migration. As stated previously, states shape their respective policies based on the specific role performed, namely if they are sending, receiving or transit states. In reality, however, this differentiation is also forced and generic due to the fact that nowadays the migration process is not entirely straightforward and unidirectional. As stated by Tsourapas, states, in fact, can perform different roles at the same time.<sup>28</sup> Being a sending state does not exclude the possibility of being also a

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<sup>28</sup> Baser, B., & Ozturk, A. E. (2020). Positive and negative diaspora governance in context: From public diplomacy to transnational authoritarianism. *Middle East Critique*, 29(3), 319-334.

major transit state. However, for the purpose of this analysis, which is investigating how migration diplomacy is shaped based on the interests of states, I will highlight how the different roles of states are essential in the pursue and implementation of migration policies.

The first part of this thesis will be devoted to the analysis of states' geopolitical interests based on the previous categorization. Through the theoretical deconstruction of national interests of sending, receiving and transit states, I will highlight how migration policies are being shaped through a cost-benefit calculation exacerbated by a populist political discourse imbued with a securitization process that tends to represent migration as a weapon threatening the security and order of countries. The resemantization of the migration process is producing a type of migration diplomacy intrinsically focused on a bargaining approach based solely on geopolitical interests thus penalizing the human rights-oriented approach that international institutions are trying to defend. As a matter of fact, at the international level, initiatives dealing with the management of migration flows and the protection of human rights have been always hindered by the reluctance of states, especially developed ones. The populist rhetoric promoting a Westphalian sovereignty over national borders does not allow the creation of an international humanitarian response based on solidarity and shared responsibility in order to deal with this phenomenon. Migration policies are still being shaped primarily at the national level hindering a possible global approach focused on the protection and the safeguard of human rights. The second part of this dissertation will deal with a concrete analysis of migration policies through two different case studies. The first case study will analyze the interactions and the respective migration policies of Morocco and Spain. This case study is emblematic in order to investigate how Spain as a member of the EU is dealing with the management of migrants coming from Morocco and thus from one of the major migration routes, namely the Mediterranean. The study behind interactions between these two states will explain the redefinition of migration policies especially after the crisis of 2015. The territorial disputes between these two countries and the economic advantages derived from the exploitation of these territories translated into a complicated migration diplomacy. The second case study will deal with another major migration route namely the Eastern borders one. The current situation between Belarus and Poland is perceived as a security threat not only for the region but also for the entire European Union. This paragraph will especially deal with the respected countries' relationship, important domestic factors influencing the decision making behind migration and the geopolitical ambitions of Poland and Belarus. The interactions between these states, located at the borders of the European Union will particularly display the use of migration diplomacy as a bargaining

tool in order to pursue strategic interests. The dichotomy between sending, Morocco and Belarus, and receiving states, Spain and Poland, will highlight how interests play a huge role in the shaping of migration policies and the management of migration as a whole. Finally, having investigated the specific use of migration diplomacy as a bargaining tool in pursuance of national interests, I will proceed to analyze how this approach is also translated at the international level. The European Union, through an externalization approach is trying to prevent migrants from entering its borders. Several accords and concessions are being put in place in order to minimize the amount of migrants coming at the EU shores. This approach, however, is creating a system in which the relationship of power is increasingly shifting towards sending and transit states. In the latest years, sending states realized the potential gains deriving from migration and specifically from the EU's externalization of borders approach. The European Union frightened by a new possible migration crisis and by the security implications linked to it, is increasingly strengthening this mechanism of migration management. As a matter of fact, in an effort to prevent irregular migration into the EU borders, the European institutions are increasing funds to neighboring countries based on a strategy that has been adopted for several years and which aims to effectively protect the EU external borders by reinforcing management capacity and prevent unauthorized entries and irregular migration from the region. Even though in the short period this approach could have some advantages, this type of exchange between money and security for migration control helps also to encourage those players who are involved in causing people to flee. Furthermore, this mechanism provides a powerful geopolitical tool to countries that arbitrarily decide to engage in refugee injections to destabilize the precarious order of a political community where the discourse on migration has the potential to fragment and influence social and political groups. This collaboration with neighboring and transit nations has been supplemented by a set of actions aimed at fortifying the Fortress Europe and preventing migrants from reaching EU territories via legal and safe routes and seeking asylum in desired countries of destination. Moreover, following the Syrian refugee crisis of 2015-2016, a significant number of EU Member States participated in the building of physical obstacles that materially prohibited asylum applicants from entering the EU. Governments have engaged in unlawful pushbacks, subjecting asylum seekers to harsh and diverse types of violence perpetrated by police and border officials, with no process of responsibility established by communitarian agencies. The main shortcoming of the EU's management of asylum claims is that, despite a rooted political ambition to establish asylum as a communitarian competence and a legal harmonization allowed by the creation of a Common European Asylum System (CEAS) in terms of common procedures and reception conditions,

governance mechanisms still rely on Member States' arbitrary and discretionary willingness to adhere to international and communitarian standards. Furthermore, the Dublin system's path-dependency, which disregards solidarity and equitable responsibility-sharing, concentrates the burden for refugee management on the single state responsible for the presence of asylum seekers in the EU, which must deal with requests examination autonomously and without any possibility of resettlement quotas among the EU. This final chapter will also present an analysis of the New Pact on Migration and Asylum, a possible new European instrument for migration management.<sup>29</sup> Despite several attempts in the latest years to overcome the Dublin Regulation and introducing the principle of responsibility sharing based on human rights considerations, the reluctance of states based on geopolitical interests is preventing the realization of this new initiative. However, in the latest months, there have been some steps forwards and new discussions, within the European Commission, towards the concrete implementation of this new regulatory framework. The reached agreement over a solidarity declaration represents a first step in the gradual implementation of the New Pact on Migration and Asylum.<sup>30</sup> The aim of this dissertation is thus analyzing whether it is possible to introduce a supranational instrument based on a human rights approach that can regulate migration at a European level, leaving little room for the geopolitical interests of states. This initiative represents a concrete possibility to redefine migration diplomacy and finally introduce a concrete solution to the management of migrants based on the protection of human rights.

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<sup>29</sup> The New Pact on Migration and Asylum was launched by the European Commission in 2020. This new initiative is based on the principle of solidarity. However, the mechanism of solidarity presents both mandatory but also flexible characteristics. As a matter of fact, member states can choose either to relocate asylum seekers, either to sponsor return or to provide other types of help or funding and even external cooperation for migration management in countries of origin or of transit of migrants. See: De Bruycker, P. (2022, February). *The New Pact on Migration and Asylum: What it is not and what it could have been*. In *Reforming the Common European Asylum System* (pp. 33-42). Nomos Verlagsgesellschaft mbH & Co. KG.

<sup>30</sup> This Solidarity Declaration proposed by the French Presidency presents a voluntary solidarity mechanism aimed at supporting the Member States most affected by migration flows as well as other Members under pressure. See: *Representation in Cyprus*, (22 June 2022), *Migration and Asylum: Commission welcomes today's progress in the Council on the New Pact on Migration and Asylum*, European Commission press release.



## 2. MIGRATION POLICIES: HUMAN RIGHTS VS GEOPOLITICAL INTERESTS

As stated in the introduction, this first chapter will deal with the conceptualization of national states' interests based on a migration diplomacy framework. In order to identify interests and the related migration policies, the analysis will be structured upon the previously highlighted categorization of Tsourapas.

Based on the assumption that historically the dynamics in the international migration system are essentially shaped upon the asymmetrical power relationship between states, this paragraph will present a state's categorization according to their bargaining position in the international migration system. However, before specifically investigating states' interests according to their different roles performed, it is firstly necessary to understand the theoretical framework behind the asymmetrical power relationship.

Theoretically, the dynamics and interactions between countries are represented by several scholars through the Suasion game. As theorized by Betts, this game involves two types of actors defined by their different relative power. The game thus involves a stronger actor (B), usually north developed countries, and a weaker one (A), the Global South, each of them presenting different interests. Either a has a dominating strategy to cooperate (C) that B may exploit by defecting, or B has a dominant strategy to defect (D) that the other must cooperate to prevent a worse outcome.<sup>31</sup> In each situation, the weaker actor's preferred approach is cooperation, either because non-cooperation is impractical or because it would incur additional costs. However, the stronger actor has the option of refusing to cooperate, which is likely to be its preferred attitude.<sup>32</sup>

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<sup>31</sup> Betts, A. (2011). The International Politics of Migration. *St Antony's International Review*, 6(2), 134–150

<sup>32</sup> Idem

**Figure 1: Suasion Game**

|         |   | Actor B |      |
|---------|---|---------|------|
|         |   | C       | D    |
| Actor A | C | 4,2     | 3,4* |
|         | D | 2,2     | 1,1  |

Number left (right) of comma refers to A's (B's) preference ordering (1 = worst outcome; 4 = best outcome). \* = equilibrium.

**Source:** Betts, A. (2011). The International Politics of Migration. *St Antony's International Review*, 6(2), 134–150

As a result of the theoretical situations presented by the game, the only stable outcome is represented by an instance of non-reciprocal cooperation (CD). As a matter of fact, Suasion Games have a single equilibrium instance in which only one actor is satisfied while aggravating the situation of the other. The outcome of this game is thus ultimately in favor of the stronger actor (B). Given the unfavorable outcome of actor A, the weaker state's only alternative strategy will be the one of completely undermine cooperation leading to the situation represented by the outcome DD. This only option available to actor A, which in the short run is not ideal, if repeated over time, will eventually lead actor B to enhance its long-term bargaining power in a way that could lead to outcome CC namely reciprocal cooperation.<sup>33</sup>

The Suasion Game also explains the use of coercive and cooperative migration diplomacy. In fact, as stated previously, the Global South migration diplomacy is conducted through strategies and policies falling inside the cooperative approach. The Global South, representing the weaker actor in the Suasion Game, has a preferred approach that is represented by cooperation which is the only alternative available in order to gain some advantages or not incurring in additional

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<sup>33</sup> Idem

drawbacks.<sup>34</sup> The dynamics behind this game therefore dominates all the interactions and relations between sending, receiving and transit states given their different and asymmetrical power relationship.

Even though this theoretical framework helps us to understand how countries behave in the field of international migration, several scholars tried to overcome the problem of non-reciprocal cooperation by presenting a logic based on an issue-linkage mechanism.<sup>35</sup> By linking migration concerns to other issues or areas in which the dominant and stronger actor has some interests can produce incentives in cooperation. In the latest years, sending and transit states realized the power of issue-linkage by associating migration problems with issue-areas such as development, security, and the environment. Through issue-linkages negotiations, sending and transit states are trying to associate migration flows to other issues in which receiving states have an actual incentive to cooperate. The receiving state's perception of incentives in a specific linkage-area eventually can lead to formalized cooperation between states. If the interests of receiving nations are linked to what happens in sending states, it may provide a foundation for international collaboration based on mutual interests of states on both sides of the power imbalance. Contemporary economic and security needs are becoming increasingly complicated, outstripping the ability of individual Northern States to meet them individually. In this way, international interdependence has the capacity to modify the character of state power relations and transcend the sending/receiving state dichotomy. As a matter of fact, as stated by Betts, the Global South, thanks to international interdependence and the use of an issue-linkage logic, is becoming the "maker" of global migration governance.<sup>36</sup>

Based on this assumption, the subsequent three paragraphs will be devoted to the analysis of states' interests and their relative migration diplomacy framework.

The division of states based on the role performed in the migration system, namely on whether they are migration-receiving, migration-sending, or transit states will help to understand their main concerns with respect to immigration, emigration, or transit migration. It is necessary to reiterate that these are only ideal types and that the states in question can perform different roles

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<sup>34</sup> Tsourapas, G 2017, 'Migration diplomacy in the Global South: cooperation, coercion & issue linkage in Gaddafi's Libya', *Third World Quarterly*, vol. 38, no. 10, pp. 2367-2385. <https://doi.org/10.1080/01436597.2017.1350102>

<sup>35</sup> Lavenex, S., & Jurje, F. Issue-Linkage in International Migration Governance: Trade Agreements as Venues for "Market Power Europe"?

<sup>36</sup> Betts, A. (2010). Substantive issue-linkage and the politics of migration. In *Arguing global governance* (pp. 105-120). Routledge.

at the same time and thus be characterized simultaneously by interests and interactions falling into all three categories theorized by Tsourapas.

## 2.1 Sending States

According to the categorization promoted by Tsourapas, sending states represents a group of actors engaged primarily in the emigration dynamics of migration diplomacy.<sup>37</sup> States of origin, usually the Global South, are concerned predominantly with the outflow of people and thus migration policies that promote, tolerate, or prevent the cross-border movements of its own population towards transit or receiving states. Historically, scholars, examined migration diplomacy of sending states through the lenses of diaspora politics. Considered in past as the takers of international migration governance, sending states and thus the Global South were not perceived as essential in the study of migration diplomacy.<sup>38</sup> As a matter of fact, as stated by Tsourapas, diaspora politics primarily refers to an internal management issue of national states.<sup>39</sup> Issues such as remittances and labour market policies usually have an impact on internal affairs of countries. Promoting emigration in order to alleviate the labour market and indirectly take advantage of remittances from citizens abroad were historically presented as the only types of migration policies available in the hands of the Global South. Furthermore, sending states were usually defined as falling into the categorization of authoritarian states engaging in the political control of their population abroad and the expulsion of political dissidents from their territory.<sup>40</sup>

However, this phenomenon presents several characteristics and consequences that also fall upon the foreign policy domain and thus influence intra-states' behaviors and interactions. As a matter of fact, several scholars recognized the foreign policy aspects within the subfield of diaspora studies.<sup>41</sup> Gamlen introduced the concept of the 'emigration state' to describe:

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<sup>37</sup> Adamson, F. B., & Tsourapas, G. (2019). Migration diplomacy in world politics. *International Studies Perspectives*, 20(2), 113-128.

<sup>38</sup> Betts, A. (2011). The International Politics of Migration. *St Antony's International Review*, 6(2), 134–150

<sup>39</sup> Adamson, F. B., & Tsourapas, G. (2019). Migration diplomacy in world politics. *International Studies Perspectives*, 20(2), 113-128

<sup>40</sup> Tsourapas, G. (2020). Theorizing state-diaspora relations in the Middle East: Authoritarian emigration states in comparative perspective. *Mediterranean Politics*, 25(2), 135-159.

<sup>41</sup> A Diaspora is defined as a group of people that is constituted of individuals with a common origin who, however, reside in another country that does not represent their homeland. In order to be associated with a specific diaspora, these individuals have to be recognized and defined by others as being part of their home country's community. See: PLATTE-BURGHARDT, Hendrik, 2019. *Lobbyists Abroad? : Diaspora Influence on the Relations Between the Home and the Host Country* [Dissertation]. Konstanz: University of Konstanz

*“State institutions, practices, and mechanisms ‘protruding beyond their borders and impacting on a variety of extra-territorial groups’”.*<sup>42</sup>

Diaspora politics has been effectively used by sending states as a lobbying instrument having repercussions also on diplomatic relations and interactions with other actors.<sup>43</sup> A growing number of scholars analyzed the foreign policy relevance of diaspora politics along two different lines of investigation: on one hand a group of scholars focused on diasporas as the unit of analysis highlighting the foreign policy repercussions of this phenomenon for sending states; on the other hand, a second group employed sending countries as the main subject of analysis engaging in foreign policies aimed at employing their diaspora population as a lobbying instrument.<sup>44</sup> Many states are increasingly trying to obtain a political advantage using their diaspora as lobby groups in order to gain additional power in the international arena. In a globalized world where sphere of influences and power extends way beyond national borders, sending states recognized the potential incentives deriving by diaspora engagement policies. The formulation of these migration-related measures, not only to connect citizens living abroad but also populations that have some historical, linguistic, or cultural common background, are viewed as a potential source of revenue and investment both in an economic and political sense. Diaspora groups are in fact able to promote and support sending states’ interests abroad and facilitate bilateral relationships.<sup>45</sup> The use of diaspora with the aim of advancing national interests is seen as a post-modern form of traditional power politics and public diplomacy.<sup>46</sup> Examples of measures falling inside the broad diaspora engagement framework can include the set-up of special ministers or other forms of representation for overseas population.<sup>47</sup> Moreover, remittances are being treated as a form of foreign aid through which states can channel

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<sup>42</sup> Gamlen, A. (2008). Gamlen, A. 2008 The Emigration State and the Modern Geopolitical Imagination, *Political Geography*. *Political Geography*, 27, 840–856. <https://doi.org/10.1016/j.polgeo.2008.10.004>

<sup>43</sup> The field of Diaspora politics is intrinsically characterized by interests and power falling inside the domestic sphere of states but also influencing the international level. As a matter of fact, diaspora politics includes all the measures and policies having repercussions not only inside the home country but also expanding beyond borders reaching country of residence and even international organizations or third parties involved in the broader geopolitical context. See: Adamson, F. B. (2016). The Growing Importance of Diaspora Politics. *Current History*, 115(784), 291–297. <https://www.jstor.org/stable/48614196>

<sup>44</sup> Tsourapas, G. (2018). Authoritarian emigration states: Soft power and cross-border mobility in the Middle East. *International Political Science Review / Revue Internationale de Science Politique*, 39(3), 400–416. <https://www.jstor.org/stable/26956742>

<sup>45</sup> Adamson, F. B. (2016). The Growing Importance of Diaspora Politics. *Current History*, 115(784), 291–297. <https://www.jstor.org/stable/48614196>

<sup>46</sup> Idem

<sup>47</sup> Idem

transnational financial flows in ways that enhance their status as significant players in the arena of international economic development.<sup>48</sup> Even though diaspora has been always viewed as a predominantly national affair of countries, the mobilization of these groups represents a possible instrument of influence that has the potential of advancing geopolitical interests and increasing sending states' power in the international system. This newly conceptualized use of diaspora politics in foreign affairs is particularly evident in the economic sphere. Besides remittances, labour migration policies and agreements are often used by emigration states' governments with the aim of increasing their soft power diplomacy, strengthen bilateral and regional relations and acquire influence in the international system. The employment of highly skilled emigration for foreign policy purposes has been deeply examined in several empirical cases. A pivotal example is represented by Egypt. Labour migration policies have been deeply used by the Egyptian government as an interstate leverage in order to close diplomatic relations with influential actors in the international system.<sup>49</sup> During the 20<sup>th</sup> century, Egypt undergone two different waves of emigration diplomacy. The emigration of highly skilled workers, such as lawyers, teachers and other professionals was firstly promoted throughout the 1950s and 1960s mainly for political purposes and thus with the general aim of abroad activism for national interests. The second wave of emigration diplomacy was specifically directed to the oil-producing Arab countries. From 1970s onward, the emigration diplomacy of President Anwar Sadat turned into an attempt to re-establish ties with the Gulf countries in order to secure economic advantages.<sup>50</sup> Migration diplomacy of emigration states is thus mainly focused on increasing soft power, which is defined, according to Nye, as the power of "*getting others to want the outcomes you want*" therefore a form of asserting control and influence not through coercive actions but rather with more discrete and subtle techniques.<sup>51</sup> Besides soft power, Tsourapas stated also that the use of migration diplomacy through the emigration of highly skilled professionals is also employed by authoritarian states as an instrument of foreign policy to enhance cultural diplomacy and facilitate the dissemination of development aid. A prominent example of the use of emigration as an instrument of cultural diplomacy is represented by the policies enacted by the Soviet Union during the Cold War. The dispatchment of highly skilled

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<sup>48</sup> Tsourapas, G. (2018). Labor migrants as political leverage: Migration interdependence and coercion in the Mediterranean. *International Studies Quarterly*, 62(2), 383-395.

<sup>49</sup> Idem

<sup>50</sup> Tsourapas, G. (2021). *Migration diplomacy in the Middle East and North Africa: Power, mobility, and the state*. Manchester University Press

<sup>51</sup> Nye Jr, J. S. (2004). *Soft power: The means to success in world politics*. Public affairs.

Russian scientists and bureaucrats across the Eastern bloc was used not only as a form of development aid for these countries but also for spreading communist ideals abroad.

Besides diaspora politics used for foreign policy purposes, sending states are also engaging in another mechanism to achieve not only international cooperation on migrants and refugees but also to achieve unilaterally geopolitical interests. Leverage and issue-linkage mechanisms represents an integral part of emigration states' foreign policy on migration. Several studies suggested that sending states are increasingly employing leverage strategies and issue-linkage policies with the aim of obtaining power but mostly resources from receiving states that fear being overwhelmed by migrants or refugees.<sup>52</sup> The security threats and the management difficulties that receiving states, usually from the Global North, are perceiving, resulted in a securitization of the migration phenomenon that places sending states in a favorable position in terms of diplomacy and negotiation. As a matter of fact, sending states, aware of their advantage, have in fact begun to use migrants not only as a bargaining chip in bilateral and multilateral negotiation but also as actual weapons to be deployed. As demonstrated by Greenhill, deportation may be used by host-states to generate targeted migrant or refugee "crises" in liberal democracies of the Global North.<sup>53</sup> As theorized by Tsourapas, the increase of these leverage and issue-linkage techniques suggests the emergence of a new type of state, the refugee rentier state, in which elites implement measures to acquire benefits and resources from other states or non-state actors in return for keeping refugee groups within a country's boundaries.<sup>54</sup> Given the detrimental consequences of mass refugees inflows, South Countries are increasingly able to exploit migrants and refugees as nonmilitary instruments of state-level coercion.<sup>55</sup>

Coercion-driven migration or coercive engineered migration is defined by Greenhill as:

*“Those real or threatened cross-border population movements that are deliberately created or manipulated as instruments of deterrence or compellence in order to prevent or induce changes*

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<sup>52</sup> Demiryontar, B. (2021). Accession conditionality and migration diplomacy: Turkey's dual identity in migration policy negotiations with the EU. *European Politics and Society*, 22(1), 88-103.

<sup>53</sup> Greenhill, K.M. (2016). Migration as a Weapon in Theory and in Practice. *Military review*, 96, 23.

<sup>54</sup> Tsourapas, Gerasimos (2019) The Syrian Refugee Crisis and Foreign Policy Decision-Making in Jordan, Lebanon, and Turkey. *Journal of Global Security Studies*, doi: 10.1093/jogss/ogz016

<sup>55</sup> Idem

*in political behavior, or to extract political, military, and economic concessions from a target state or states.”*<sup>56</sup>

Greenhill identifies two different but not mutually excluding types of coercive engineered migration. The first one is based on the “capacity swamping” of sending states which focuses on manipulating the ability of targeted state to accept and accommodate a given group of migrants.<sup>57</sup> The other one, referred to as “political agitating” focuses on manipulating the willingness of targets to cope with a given number of migrants. Even though empirical evidence suggests that capacity swamping tends to pose greater dangers to targeted states, surprisingly, taking the path of political agitating leads to a higher possibility of coercive success.<sup>58</sup> Moreover, coercive attempts tend to take a different form depending on the targeted actor. Empirical analysis suggests that capacity swamping is mostly used towards the developing world and focuses on threats to tax or overwhelm a host state economic and management capacity necessary to cope with a huge influx of people.<sup>59</sup> Challengers argue that, in areas where ethnic tensions are already high and the extension of central government control is difficult even in the best of times, where essential resources are scarce, and consensus on the legitimacy of the political regime is shaky, a large influx can pose a real and persuasive threat. On the other hand, political agitating strategies reveal to be more effective in the Developed World. In pluralistic societies a large influx of people can produce division and fragmentation. Real and potential migration crises that necessitate an effective mobilization of resources, tend to divide communities into two mutually incompatible and frequently highly mobilized camps: pro-refugee/migrant and anti-refugee/migrant.<sup>60</sup> As a matter of fact, in pluralistic societies where

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<sup>56</sup> Greenhill refers to Coercive engineered migration as a “coercion by punishment” operation adopted by sending states. The aim is to create domestic conflict, public dissatisfaction within the target state in a way that leads the leadership of receiving states to grant concessions and benefits to the challenger. In such situations concede such demands represents the most reasonable action compared to bearing the political and economic costs of a possible resistance. See: Greenhill, K.M. (2016). Migration as a Weapon in Theory and in Practice. *Military review*, 96, 23.

<sup>57</sup> Greenhill, Kelly M.. Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy. Ithaca, NY: Cornell University Press, March 2010. 360.

<sup>58</sup> Greenhill, K.M. (2016). Migration as a Weapon in Theory and in Practice. *Military review*, 96, 23

<sup>59</sup> Greenhill, Kelly M.. Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy. Ithaca, NY: Cornell University Press, March 2010. 360.

The lack of management and integration capacity of host states can lead to several negative aspects both for societies of receiving states but also for migrants and refugees. On one hand, insufficient integration can lead to western societies’ fragmentation and reluctance towards migrants; on the other hand, it can lead also to undesirable radicalization of people belonging to immigrant communities feeling abandoned and dissatisfied. See: Estevens, J. (2018). Migration crisis in the EU: developing a framework for analysis of national security and defence strategies. *Comparative migration studies*, 6(1), 1-21.

<sup>60</sup> Greenhill, K.M. (2016). Migration as a Weapon in Theory and in Practice. *Military review*, 96, 23



different social and political interests coexist, an impending crisis may produce different and highly divisive responses.<sup>61</sup>

These types of coercion strategies, that include the threat of migration crisis, are often employed by relatively weaker states against a more powerful counterpart. Crisis generation is seen by weaker states and non-state actors as a necessary step in preparation of negotiations. Given that powerful counterparts are usually reluctant to negotiate, crisis generation threats offer a substantial bargaining power to sending states and a strategy that enables them to overcome the unwillingness to negotiate. As a result, creating a migration crisis can strengthen weak actors' credibility, raise the efficacy of their threats, and improve their coercive capacities in a variety of ways.<sup>62</sup> Migration crises may allow weak challengers to impose punishment on targets that is disproportionate to the costs of compliance under specific conditions. Although targets are understandably hesitant to concede before an event occurs, demands that were initially unacceptable may begin to appear admissible in comparison to the costs of managing sustained, large-scale outflows into the indefinite future, as the EU, like many others before it, is currently discovering.<sup>63</sup> The resort to migration crisis threats thus represents a strategy aimed at demanding concessions and advantages that would otherwise be beyond the reach of relatively weaker actors. The desired objectives behind these threats can be divided into three main categories: political, military, and economic goals. These objectives are non-mutually excluded in the sense that often challengers have tried to achieve simultaneously multiple and disparate objectives. In such contexts, where the possibility of a migration crisis is perceived as concrete, the stronger states find themselves trapped in a game specifically created by weaker players and whose only solution, according to a cost-based reasoning, is to accommodate the demands of sending states.

Issue-linkage negotiations are also employed at the supranational level. Geopolitical interests are increasingly influencing the decisions within international organizations and institutions. Although these institutions have as their ultimate goal the protection of people's human rights, the economic and political interests of individual states continue to influence and shape policies and measures also in international forums.

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<sup>61</sup> Idem

<sup>62</sup> Idem

<sup>63</sup> Mitchell, K., & Pratt, T. (2022). Migration-Based Hybrid Warfare on Europe's Externalized Borders: Case Studies on Morocco and Belarus in 2021.

## 2.2 Receiving States

Receiving states, usually countries from the Developed North, engage in dynamics concerning immigration and the management of inflows of people.<sup>64</sup> Historically considered as the makers of global migration governance, receiving states theoretically represent the stronger actors in the international migration system.<sup>65</sup> As a matter of fact, in the absence of a binding international institutional framework<sup>66</sup>, receiving states were usually able to determine their own immigration policies aimed at maintaining national sovereignty and their status quo. The asymmetrical power relation clearly in favor of Northern States allowed them to arbitrarily decide on the access of migrants to their territories. Historically the acceptance of migrants has been based mainly on economic interests. Highly skilled migrants represent the category most easily accepted by receiving countries focused on maximizing their economic security by trying to fill any gaps in their labour market.<sup>67</sup> As a matter of fact, migration policies of western democracies have become increasingly selective by prioritizing economically oriented admissions.<sup>68</sup> While policies affecting irregular migrants and, more lately, family members have frequently gotten more restrictive, the admission of highly skilled employees, students, and migrants from specific backgrounds have become progressively less restrictive. The motives and drivers of these dynamics can be explained using the liberal paradox of Hollifield. As stated previously, on one hand, the free flow of migrant labour is encouraged because migration is seen as an economic opportunity for receiving states; on the other hand, states wish at the same time to maintain control over their borders and thus maintain restrictive immigration policies for political and security purposes.<sup>69</sup> In fact, as a result of interdependence and globalization western democracies are obliged to maintain their societies open. Labour market

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<sup>64</sup> Adamson, F. B., & Tsourapas, G. (2019). Migration diplomacy in world politics. *International Studies Perspectives*, 20(2), 113-128.

<sup>65</sup> Betts, A. (2011). The International Politics of Migration. *St Antony's International Review*, 6(2), 134–150

<sup>66</sup> The current migration governance framework is characterized by fragmentation. Global migration governance is constituted by a patchwork of institutions with different characters, scopes, and objectives. The proliferation of this fragmented institutional framework is the result of the asymmetrical power relations that characterizes the international system. While weaker states are advocating towards a normatively binding multilateral governance, stronger states have constantly rejected the implementation of a binding multilateral architecture. Given the structural power imbalances underlying international migration politics, as well as the growing importance of actors such as non-governmental organizations, civil society associations, and even the private sector, fragmentation will continue to shape the governance behind migration. See: Kainz, L., & Betts, A. (2021). Power and proliferation: Explaining the fragmentation of global migration governance. *Migration Studies*, 9(1), 65-89.

<sup>67</sup> Manthei, G. (2021). The long-term growth impact of refugee migration in Europe: A case study. *Intereconomics*, 56(1), 50-58.

<sup>68</sup> Schultz, C., Lutz, P., & Simon, S. (2021). Explaining the immigration policy mix: Countries' relative openness to asylum and labour migration. *European Journal of Political Research*, 60(4), 763-784.

<sup>69</sup> Hollifield, J. F., Martin, P. L., Orrenius, P. M., & Héran, F. (Eds.). (2022). *Controlling Immigration: A Comparative Perspective*. Stanford University Press.

demand, very often the result of demographic issues, continues to represent the main driver of openness in developed societies. As a matter of fact, migration represents a potential solution in order to reverse the inevitable decrease in fertility that western democracies are currently facing.<sup>70</sup> As scientifically highlighted in various demographic studies, western societies are currently facing a sub-replacement fertility rate that is leading to less populous new generations compared to the older ones.<sup>71</sup> Even though migration has the potential to overcome this demographic decline, states continue to maintain restrictive immigration policies by exacerbating the desire to control their borders invoking security concerns and a general saturation of integration capacity. If managed effectively, with reception and integration programs based on a responsibility-sharing principle, migration towards developed countries could represent a concrete and effective solution to overcome the demographic decline and its consequences in both social and economic terms.

If on the one hand economic and demographic factors call for an intensification of migration, on the other hand political and security considerations reject its benefits, thus influencing receiving states' restrictive migration policies. The coexistence of restrictive and liberal policies represents the result of a governmentally based preventive approach.<sup>72</sup> The securitization-linked paradigm that characterizes migration governance of receiving countries presents a set of precautionary measures explicitly selected to reduce the adverse effects of migration. Prevention strategies are thus implemented in order to mitigate the perceived threats and risks deriving from migration flows. This approach is perceived by western societies as the most appropriate risk management method in order to minimize the downsides of migration which is treated as a mere cost-based problem. However, this precautionary approach characterized by preventive strategies and measures does not take into account the evident benefits of migration. The perceived anxiety and fear of migration represent the main foundations of this paradigm characterized by a top-down approach in which the securitization actor constructs the

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<sup>70</sup> Lutz, W., Amran, G., Bélanger, A., Conte, A., Gailey, N., Ghio, D., ... & Stonawski, M. (2019). Demographic scenarios for the EU: migration, population and education. Publications Office of the European Union.

<sup>71</sup> Especially in developed countries, where the continuous decline of the fertility rate, placed consistently below the replacement level, represents a serious concern, governments are currently facing several demographic challenges, namely demographic transitions and ageing population which in the long term could cause serious economic and social consequences. See: Peri, G., & Giovanni Peri is professor of economics and director of the Global Migration Center at the University of California. (n.d.). Can immigration solve the demographic dilemma? – IMF F&D. IMF. Retrieved February 3, 2023, from <https://www.imf.org/en/Publications/fandd/issues/2020/03/can-immigration-solve-the-demographic-dilemma-peri>

<sup>72</sup> Acik, A. C., Trott, P., & Cinar, E. (2022). Risk governance approach to migration: a viable alternative to precautionary management. *Journal of Risk Research*, 25(4), 468-487.

threat and proposes urgency and exceptionalism as a management tool for prevention and reduction of risk, wherein the primary responsibility is to provide security.<sup>73</sup>

The fear of migration crisis, threats concerning terrorism and criminality are preventing the formation of migration policies focused on acceptance and integration of migrants into receiving societies. High levels of immigration are not perceived as constituting a potential economic advantage and a necessary demographic measure but rather as merely a security threat affecting the integration capacity of host states. It is not certainly to be omitted the fact that overwhelming arrivals of migrants at host states' borders can pose several management difficulties and reallocation of resources that may lead to social, political and cultural unrest. As a matter of fact, immigration has the potential of dividing and fragmenting the population of host states.<sup>74</sup> Especially after the latest migration crisis, the population of western democracies fragmented into two different categories: pro-migration groups, usually driven by humanitarian considerations and convinced of the possible benefits of migration; and anti-migration groups, who sees migration as a mere economic cost emphasizing also the difficulties of migrant's integration due to irreconcilable cultural and identity differences. Migration has thus become an issue of social welfare, employment but also an issue of national and cultural identity. Due to this narrative based on security concerns, in the latest decades, the debate of receiving countries focused on introducing policies aimed at controlling and reducing international migration. In order to do that, host states established measures with an explicit focus on creating efficient border regimes, stricter asylum procedures and the reduction of illegal migration. Unfortunately, the economic and geopolitical interests of receiving countries continue to outweigh human rights factors in the overall migration governance framework. The rise of populist propaganda furtherly exacerbated this trend. The use of a security narrative in which cultural and identity differences play also a decisive role has produced a highly fragmented society.<sup>75</sup> Moreover, the rise of terrorist attacks in western democracies and more in general criminality further intensified the perceived threat posed by immigration considered the main cause leading to terrorism and religious extremist's attacks.<sup>76</sup> The fear of mass migration generated a new set of policies based on prevention and intervention strategies directed towards sending countries. The attention has thus shifted towards the circumstances

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<sup>73</sup> Idem

<sup>74</sup> Ceyhan, A., & Tsoukala, A. (2002). The Securitization of Migration in Western Societies: Ambivalent Discourses and Policies. *Alternatives*, 27(1\_suppl), 21–39. <https://doi.org/10.1177/03043754020270S103>

<sup>75</sup> Bergmann, J., Hackenesch, C., and Stockemer, D. (2021) Populist Radical Right Parties in Europe: What Impact Do they Have on Development Policy?. *JCMS: Journal of Common Market Studies*, 59: 37– 52.

<sup>76</sup> Helbling, M., & Meierrieks, D. (2022). Terrorism and migration: An overview. *British Journal of Political Science*, 52(2), 977-996.

that drive migrants to leave their country of origin and the root causes that leads them to embark in a difficult journey towards Northern States.

All these factors produced a migration governance framework focused on neighboring countries with the aim of preventing mass migration and thus addressing the root causes of this phenomenon.<sup>77</sup> However, this externalization approach paired with a restrictive border control further worsened the humanitarian situation of migrants. Several non-governmental organizations and humanitarian institutions highlighted how this approach does not actually prevent migrants from arriving in developed countries' territories, but rather further places migrants in dire humanitarian situations.<sup>78</sup> Migrants in fact find themselves in a situation of limbo, often unable to return to their countries of origin and at the same time unable to find a safe and dignified refuge in receiving countries. Developed countries, in fact, through the externalization of their borders are trying to keep migrants out of their territories by funding third countries. In return for large sums of money and various economic and political favors, many agreements and partnerships were implemented both bilaterally and at European level with the aim of preventing mass migration.<sup>79</sup> Most of the time, however, the result has not been the one of tackling the main causes leading to migration but rather to implement containment strategies which, although limiting the arrival of people on European territory, also have a potential risk in terms of both security and humanitarian concerns.<sup>80</sup> In the long run, this approach could lead to real crises, triggered by migrants' host countries. There have already been various threats, especially from countries such as Turkey and Libya, which, recognizing the possible benefits, have started to leverage migrants and even use them as diplomatic weapons against developed countries. As pointed out in the previous chapter, sending and transit states can count on a weapon that if effectively used can destabilize receiving countries and trigger real migration crises, which would then be even more difficult if not impossible to manage. It is therefore in the perceived interests of receiving countries to continue funding these states and to accommodate any requests, although being controversial and disadvantageous.

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<sup>77</sup> PICHON, E., 2021. The external dimension of the new pact on migration and asylum: A focus on prevention and readmission, EPRS: European Parliamentary Research Service. Retrieved from <https://policycommons.net/artifacts/1468984/the-external-dimension-of-the-new-pact-on-migration-and-asylum/2119883/> on 19 Dec 2022. CID: 20.500.12592/rzcffv.

<sup>78</sup> ALS, Solveig, CARRERA, Sergio, FEITH TAN, Nikolas, VEDSTED-HANSEN, Jens, Externalization and the UN global compact on refugees : unsafety as ripple effect, EUI RSC PP, 2022/12, Migration Policy Centre, [ASILE] - <http://hdl.handle.net/1814/75010>

<sup>79</sup> Lavenex, S., & Piper, N. (2021). Regions and global migration governance: perspectives 'from above', 'from below' and 'from beyond'. *Journal of Ethnic and Migration Studies*, 1-18.

<sup>80</sup> ALS, Solveig, CARRERA, Sergio, FEITH TAN, Nikolas, VEDSTED-HANSEN, Jens, Externalization and the UN global compact on refugees : unsafety as ripple effect, EUI RSC PP, 2022/12, Migration Policy Centre, [ASILE] - <http://hdl.handle.net/1814/75010>

National interests related to security and political factors continue to shape agreements and policies of migration governance. The lives and conditions of migrants, on the other hand, continue to go unnoticed. Through this narrative of helping neighboring countries, often exacerbated by populist propaganda, receiving states continue to promote this game in which migrants always represent the component to be sacrificed in order to preserve the status quo and consequentially win the migration diplomacy game. A prominent example of this approach is represented by the EU-Italian cooperation in Libya. The Italian government signed a Memorandum of Understanding (MoU) on Migration with the Libyan government in February 2017.<sup>81</sup> The MoU, which was renewed in November 2022, was part of a larger defensive strategy implemented by European countries, focused on a security approach to immigration. Rather than providing safety to migrants, it attempts to keep them out of EU's territory. Under this arrangement, Italy and the EU have been assisting the Libyan Coastguard in improving their maritime surveillance capabilities by providing financial and technical assistance. Italy has set aside €32.6 million for overseas operations to help the Libyan Coastguard since 2017, with an additional €10.5 million set out for 2021.<sup>82</sup> According to several non-governmental organizations, including Médecins Sans Frontières, this assistance comes at the price of migrants' and refugees' human rights, because almost everyone apprehended at sea by the Libyan Coastguard ends up in Libyan detention facilities.<sup>83</sup> The pact between Italy and Libya fosters the exploitation, extortion, and abuse system that traps migrants into a nightmare with no escape. In an attempt to reduce irregular migration, this agreement is financing a country with few unitary states institutions that exercise no substantive power which, on the other hand, is completely in the hands of smugglers and criminal organizations.<sup>84</sup> Although this agreement has somewhat decreased landings in the central Mediterranean, it brings with it several critical issues that the Northern States, however, prefer to overlook according to a purely cost-benefit reasoning. The cost of large-scale influxes of people is much higher than financing and granting political and economic favors to states responsible for containing migrants and refugees. Through migration diplomacy, the power games have reversed; if receiving countries used to represent the makers of migration governance, now sending and transit countries can exploit migrants to their advantage and thus reverse the balance of power that characterize the

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<sup>81</sup> Palm, E. (2020). Externalized migration governance and the limits of sovereignty: The case of partnership agreements between EU and Libya. *Theoria*, 86(1), 9-27.

<sup>82</sup> Medicines sans frontiers, (2022), Italy-Libya Agreement: Five years of EU-sponsored abuse in Libya and the Central Mediterranean

<sup>83</sup> Idem

<sup>84</sup> Al-Dayel, N., Anfinson, A., & Anfinson, G. (2021). Captivity, migration, and power in Libya. *Journal of Human Trafficking*, 1-19.

international system. In conclusion, therefore, it is in the national interests of receiving countries to mitigate possible threats posed by sending countries through diplomacy and cooperation. Agreements, alliances, and fundings are perceived as the most effective solution to manage the risk related to major influx of people. Although this perspective does not protect migrants at all, but rather condemns them to inhuman conditions, it continues to be the main approach used by host states trapped in these dynamics.

**2.3 Transit States**

Even though transit migration has existed for hundreds of years, it is only since the 1990s that transit states has come to be regarded as a separate category in the international migration discourse. Transit states represent third countries that are neither countries of origin nor destination but rather states through which migrants and asylum seekers try to proceed in order to reach the desired destination.<sup>85</sup> According to Kimball, these countries must comply to a specific set of characteristics in order to be qualified as such.<sup>86</sup>

**Table 1: Elements of the Transit State**

| <b>Factor</b>  | <b>Characteristic</b>   |
|----------------|---|
| Geography      | Must border a fully developed country   |
| Migration Flow | Must exhibit high emigration, low immigration, and transit migration  |
| Function       | Must serve as a primary staging ground for migrants to plan clandestine entrance to heavily guarded destination countries |
| State response | Must implement restrictive immigration policies and activities  |

**Source:** Kimball, A. (2017). *The Transit State: A Comparative Analysis of Mexican and Moroccan Immigration Policies*. UC San Diego: Center for Comparative Immigration Studies. Retrieved from <https://escholarship.org/uc/item/28v694n0>

<sup>85</sup> Missbach, A., & Phillips, M. (2020). Introduction, *Migration and Society*, 3(1), 19-33. Retrieved Dec 20, 2022, from <https://www.berghahnjournals.com/view/journals/migration-and-society/3/1/arms030103.xml>

<sup>86</sup> Kimball, A. (2017). *The Transit State: A Comparative Analysis of Mexican and Moroccan Immigration Policies*. UC San Diego: Center for Comparative Immigration Studies. Retrieved from <https://escholarship.org/uc/item/28v694n0>

The first characteristic concerns the geographical location of these states. To be defined as a transit state, a state must necessarily border a fully developed nation. The simultaneous intensification of migratory flows with the formulation of increasingly restrictive policies has turned these states into literal “gateways” and “bridges” between the first and third worlds.<sup>87</sup> It is precisely from their geographical location that these states have assumed importance and influence within the discourses on migration diplomacy. Being the link between the Develop North and the Global South, this third category presents simultaneously a combination of characteristics and interests from both receiving and sending countries.

The significant pressure exercised by Northern Countries and the necessity to maintain friendly diplomatic relations with powerful neighbors has been historically presented as the most important factor shaping migration diplomacy of transit states and the relative restrictive migration policies implemented in the latest decades. Transit states face a unique challenge in that migrants do not want to remain in the transit country, yet transit states must prevent people from reaching the border with the first world. The result of these dynamics is a migration governance framework specifically designated to exercise an effective control over borders and prevent migrants from crossing the frontier towards developed countries. As a matter of fact, another characteristic of this third category concerns the type of migration flows that occur in their territories. Transit states exhibit high migration, low immigration and transit migration.<sup>88</sup> However, in some cases, transit states have transformed themselves also into immigrant destination. The robust economic growth and development that these countries are currently experiencing represents a pull-factor for migrants.<sup>89</sup> In most cases, however, it is not the economic opportunities of these states that attracts individuals but rather the impossibility of crossing the border and continue their journey towards the desired destination. Transit states are thus becoming staging grounds for migrants unable to cross the border into western societies.<sup>90</sup> This impasse represents the main cause for the creation of alternative clandestine routes to destination countries often in the hands of criminal organizations.<sup>91</sup> As a result of all

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<sup>87</sup> Laube, L. (2021). Diplomatic Side-Effects of the EU’s Externalization of Border Control and the Emerging Role of “Transit States” in Migration Diplomacy. *Historical Social Research/Historische Sozialforschung*, 46(3), 78-105.

<sup>88</sup> Kimball, A. (2017). *The Transit State: A Comparative Analysis of Mexican and Moroccan Immigration Policies*. UC San Diego: Center for Comparative Immigration Studies. Retrieved from <https://escholarship.org/uc/item/28v694n0>

<sup>89</sup> Idem

<sup>90</sup> Missbach, A., & Phillips, M. (2020). Introduction, *Migration and Society*, 3(1), 19-33. Retrieved Dec 20, 2022, from <https://www.berghahnjournals.com/view/journals/migration-and-society/3/1/arms030103.xml>

<sup>91</sup> Lorenz, R., & Etzold, B. (2022). Journeys of Violence: Trajectories of (Im-) Mobility and Migrants’ Encounters with Violence in European Border Spaces. *Comparative Population Studies*, 47.



these dynamics, transit states find themselves in a complex scenario in which the absence of the necessary resources and expertise does not allow the formation of concrete policies aimed at eliminating transit migration and tackling clandestine flows. The migration diplomacy of transit states is thus based on strengthening the relations with receiving states. Through diplomatic pressure, economic promises and political favors, transit states are increasingly cooperating with western states in order to achieve the ultimate objective: tackling irregular migration and preventing the access of migrants into developed societies.

This common narrative based on the perception that transit states are easily influenced in the migration diplomacy framework risks, however, to reiterate the assumption through which these countries are presented as the weaker actors in the international migration system.<sup>92</sup> Even though this cooperation could be seen as the mere alternative for transit states, incapable of managing migration issues alone, evidence suggests that it is actually also a matter of advancing national geopolitical interests and ambitions. Especially in the recent period, the strategic alignment of transit states towards the Developed North and the consequential distancing from the Undeveloped South are part of a larger nation building process that has the aim to pursue greater regional integration and economic growth. This is because transit states are increasingly aware of their bargaining power that enables them to prioritize their political and economic interests. Transit states' governments are adopting the migration police role not because of some sort of coercion exercised by receiving states but rather to make gains in the areas of trade, regional integration, and to secure legal migration pathways and greater rights for their own emigrants.<sup>93</sup> This “weaker actor” theoretical narrative is persisting also in the conceptualization of financial and economic aid. Historically, theorists of migration have systematically conceptualized financial aid as a form of incentives that Northern States use to buy the compliance of the Global South. According to this narrative, transit and sending states have always been presented as the passive actors coerced through this form of monetary assistance.<sup>94</sup> However, post-colonial interpretation of migration diplomacy reformulated the position of Southern States by emphasizing how these new dynamics have actually shifted the needle of the scales in favor of sending and transit states. These latter, in fact, are increasingly advancing

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<sup>92</sup> Missbach, A., & Phillips, M. (2020). Introduction, *Migration and Society*, 3(1), 19-33. Retrieved Dec 20, 2022, from <https://www.berghahnjournals.com/view/journals/migration-and-society/3/1/arms030103.xml>

<sup>93</sup> Kimball, A. (2017). *The Transit State: A Comparative Analysis of Mexican and Moroccan Immigration Policies*. UC San Diego: Center for Comparative Immigration Studies. Retrieved from <https://escholarship.org/uc/item/28v694n0>

<sup>94</sup> Greenhill, Kelly M.. *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy*. Ithaca, NY: Cornell University Press, March 2010. 360.

their geopolitical priorities by transforming the presence of migrants in their territory as a weapon to obtain financial advantages from receiving countries. This phenomenon is especially evident in transit countries due to their geographical proximity with developed states.

Attracting aid is thus becoming one of the major priorities in migration diplomacy. Cooperation with developed countries is not merely the result of a lack of resources and expertise but rather of geopolitical and economic ambitions. In order to attract financial aid, transit states are currently adopting different strategies in their diplomatic relations with the Developed North. According to Lorena Gazzotti these strategies can be incorporated into three different categories of diplomatic techniques: facilitating, negotiating and obstruction.<sup>95</sup> Facilitation refers to the set of measures that involve an active collaboration and cooperation with Northern States or even international organizations.<sup>96</sup> This entails an intense implementation of measures and projects explicitly designed by receiving states. The role of transit states is therefore facilitating the implementation of such measures securing in return conspicuous financial aid. The willingness to facilitate policies of developed countries increases when transit states perceive real benefits both domestically and internationally. A prominent example is represented by the implementation of voluntary return projects. Assisted voluntary return and reintegration measures provides third-country nationals with the opportunity to return to their country of origin through individual projects, which includes pre-departure counselling, logistic and financial assistance for the journey, assistance to the social and economic reintegration in the country of origin.<sup>97</sup> These projects present several advantages, not only for receiving states which are able to minimize irregular migration but also for transit states. These benefits include the possibility of controlling the number of irregular migrants in the country; being seen as offering a “humane” alternative to deportation; and garnering the financial and political support of western partners. Regarding the second strategy, transit states use negotiation when they are trying to challenge and gain further advantages from the approach adopted by the Global North.<sup>98</sup> In the case of border policies projects, transit states usually negotiate in order to

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<sup>95</sup> Lorena Gazzotti, *Terrain of Contestation: Complicating the Role of Aid in Border Diplomacy between Europe and Morocco*, *International Political Sociology*, Volume 16, Issue 4, December 2022, olac021, <https://doi.org/10.1093/ips/olac021>

<sup>96</sup> *Idem*

<sup>97</sup> What is the Assisted Voluntary Return? *Dettaglio news*. (2021, October 8). [Integrazionemigranti.gov.it](https://integrazionemigranti.gov.it) Work and live in Italy, from <https://integrazionemigranti.gov.it/en-gb/Ricerca-news/Dettaglio-news/id/2021/What-is-The-Assisted-Voluntary-Return>

<sup>98</sup> Lorena Gazzotti, *Terrain of Contestation: Complicating the Role of Aid in Border Diplomacy between Europe and Morocco*, *International Political Sociology*, Volume 16, Issue 4, December 2022, olac021, <https://doi.org/10.1093/ips/olac021>

increase the allocation of financial aid aimed at supporting the border control operations extremely burdensome for the state's budget. Finally, obstruction constitute an alternative strategy aimed at delaying or completely obstructing the implementation of certain migration-related policies and measures.<sup>99</sup> Lack of cooperation and support for migration-related projects is common where the implementation of such policies comes at an unsustainable financial and political cost like alienating a country's diaspora or electorate, compromise the management of domestic security concerns, sabotaging other foreign policy aspirations, or placing a disproportionate amount of responsibilities over border control. Countries of origin and transit can choose to engage in proactive border control cooperation if it increases their international legitimacy, allows them to rebrand their image as an international power after a domestic reputational scandal, or allows them to accumulate other financial or diplomatic resources.<sup>100</sup> This geopolitical turn in migration diplomacy, however, produced several humanitarian drawbacks especially in transit countries. Several states, eager to exploit the advantages deriving from migration flows, began to consider migrants and refugees as a mere number to increase in order to acquire some sort of leverage in the negotiations with developed countries and benefit of all the economic and political concessions. Such a tendency is evident in the increase of reception centers and facilities, which in reality are more comparable to detention centers, that have been established in order to accommodate large influx of transit migrants.<sup>101</sup> Cooperation with the EU on border control is thus not always a sign of submission and blind acceptance of neocolonial imperatives, but rather a tool for economic, political, and social advantage.

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<sup>99</sup> Idem

<sup>100</sup> Benjelloun, S. (2021). Morocco's new migration policy: Between geostrategic interests and incomplete implementation. *The Journal of North African Studies*, 26(5), 875-892.

<sup>101</sup> Kimball, A. (2017). *The Transit State: A Comparative Analysis of Mexican and Moroccan Immigration Policies*. UC San Diego: Center for Comparative Immigration Studies. Retrieved from <https://escholarship.org/uc/item/28v694n0>

### **3. CRITICAL ANALYSIS OF EU MIGRATION GOVERNANCE THROUGH CASE STUDIES**

After highlighting the various interests behind the migration diplomacy of sending, receiving and transit states, this chapter will deal with a concrete analysis of the instrumentalization of migration flows in exchange for geopolitical benefits through case studies. This section of the dissertation will help explain how the various interests of states and the dynamics that plays in the international migration system are translated into concrete actions and measures in which migration flows are used as a pretext to achieve specific economic and geopolitical benefits. The two case studies that will be analyzed represent emblematic examples in which the national interests of individual states but also those of the European Union are prioritized through not only the use of different migration diplomacy strategies but also the direct use of migrants as a weapon that can be deploy in order to change the asymmetrical power relations of the international migration system. The use of migration flows through an issue-linkage approach and the use of migrants as a coercive strategy able to influence and destabilize the asymmetrical power balance represents one of the main strengths of sending and transit states vis-à-vis receiving countries.

The relevance of these two case studies, namely Morocco-Spain and Poland-Belarus, derives from several reasons. First, I will analyze the use of migration diplomacy in two different migration routes on the borders of Europe: the first one being the Western Mediterranean while the second one the Eastern European border route. Although dealing with different geographical areas, these two case studies will highlight particularly how the same theoretical dynamics of migration diplomacy play an essential role in the introduction and implementation of migration-related policies and actions in different economic, political, and cultural contexts. The interactions between these states, located at the frontiers of the European Union, will highlight the use of migration diplomacy as a negotiating tactic to promote and advance geostrategic goals. The contrast between sending, Morocco and Belarus, and receiving countries, Spain and Poland, will emphasize how interests play a significant role in the development of migration policies that characterize the overall migration management system. Furthermore, in both cases, I am going to look at the European Union's response to the various threats posed by these countries. Being Spain and Poland Member States of the EU, though this examination, I will see how the EU's externalization approach, although presenting some advantages in the short term, namely reducing the number of migrants entering into the European territory, in the long

run leaves the EU vulnerable to possible threats and actions coming from its neighboring countries aimed at destabilizing the EU's territory and take advantage of a rather disunited European Union on migration related issues. Aware of their fundamental role within the EU's externalization approach, these states, located on the fringes of European territory, have been able to use various techniques to escape European influence and coercion and thus advance their own national interests. Finally, although many international organizations condemn the various human rights violations and seek to promote a more humanitarian approach to migration, through this analysis I will underline how interests and power dynamics still dominate interactions between the various actors in the international migration management system preventing the formation of a unitary human-oriented approach at the European level.

### **3.1 Morocco – Spain**

Located only fourteen kilometers from the Spanish coast, Morocco represents a pivotal example of the use of migration diplomacy for geopolitical ambitions in its bilateral relationship with Spain but also with the European Union as a whole. The geographical location of Morocco, located at the gateway of Europe, plays a significant role in the shaping of its migration governance. Being at the same time a sending and a transit country resulted in a mixture of restrictive and permissive migration policies which have alternated over the years. Since the 1990s, due to economic decline and spread of civil wars in the African continent, Morocco began to deal with increasing transit migration flows of sub-Saharanans leaving their home countries.<sup>102</sup> The huge increase of migrants, hoping to achieve the European Union and thus crossing the border through Spain, transformed the role played by Morocco in the migration diplomacy framework. From being mainly a sending country, Morocco has turned into a transit country representing a strategic link between the African continent and developed countries.<sup>103</sup> The progressive increase in transit flows and the consequential concerns of the EU, resulted in a shift from promoting and encouraging emigration to implementing restrictive migration policies. As a matter of fact, from the 2000s, the Morocco's migration governance framework has been mainly focused in supporting Spain to help combat illegal migration, corruption, and drugs.<sup>104</sup> The enactment of a new immigration law in 2003 by King Mohammed VI has been

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<sup>102</sup> Kimball, A. (2017). *The Transit State: A Comparative Analysis of Mexican and Moroccan Immigration Policies*. UC San Diego: Center for Comparative Immigration Studies. Retrieved from <https://escholarship.org/uc/item/28v694n0>

<sup>103</sup> El Ghazouani, D. (2019). A growing destination for Sub-Saharan Africans, Morocco wrestles with immigrant integration. *migrationpolicy.org*, 1.

<sup>104</sup> McKenna, M. (2022). *The Use of Diplomatic Tension as Political Leverage in Morocco-EU Relations*.

the main emblem of this route towards a new approach to immigration which included stricter border control in order to tackle and reduce irregular migration<sup>105</sup>. In particular, this law reconceptualized the migration governance framework by introducing a nexus between migration and security. The introduction of a security narrative allowed Moroccan authorities to enact restrictive immigration policies specifically designed to combat transit migration. Besides granting the right of Moroccan authorities to “refuse, withdraw, or dismiss a foreigner from Morocco if the latter is not found to satisfy the legal conditions of residence” and determine that “all non-citizens had to provide evidence for “means of survival, the reasons for visiting Morocco, and the guarantees for the return”, this policy explicitly indicated undocumented entrance as a criminal offence with severe punishments to both migrants and smugglers.<sup>106</sup> From this moment onwards undocumented entry to Morocco resulted in a fine of three hundred and sixty Euros<sup>61</sup> and imprisonment for six months.<sup>107</sup> The Moroccan government explicitly treated migration as a security issue by placing emphasis on border control and internal enforcement not only through the implementation of Law 2003 but also through the creation of regional delegations, entrusted with the specific task of applying national strategies for combating illegal migration at the regional level, and local commissions, dedicated to the gathering and communicate information regarding migration to the central administration.<sup>108</sup> This newly emphasis on security is especially evident in the correlation of the phenomenon of migration to terrorism. Migrants have been increasingly associated with a possible danger for the internal and external security of the country.<sup>109</sup> It is important to note that Law 2003 does not discern between economic migrants and refugees or asylum seekers.<sup>110</sup> As stated previously, the criminalization of immigration resulted in a stricter and more effective control of borders falling under the jurisdiction of an ad hoc institution, namely, the Department of Migration and Border Control.<sup>111</sup> Through the deployment of military units performing

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<sup>105</sup> Lahlou, M. (2015). Morocco’s Experience of Migration as a Sending, Transit and Receiving Country. In L. Kamel (Ed.), *Changing Migration Patterns in the Mediterranean* (pp. 97–116). Istituto Affari Internazionali (IAI). <http://www.jstor.org/stable/resrep09850.10>

<sup>106</sup> Kimball, A. (2017). *The Transit State: A Comparative Analysis of Mexican and Moroccan Immigration Policies*. UC San Diego: Center for Comparative Immigration Studies. Retrieved from <https://escholarship.org/uc/item/28v694n0>

<sup>107</sup> Idem

<sup>108</sup> Idem

<sup>109</sup> Lahlou, M. (2015). Morocco’s Experience of Migration as a Sending, Transit and Receiving Country. In L. Kamel (Ed.), *Changing Migration Patterns in the Mediterranean* (pp. 97–116). Istituto Affari Internazionali (IAI). <http://www.jstor.org/stable/resrep09850.10>

<sup>110</sup> Kimball, A. (2017). *The Transit State: A Comparative Analysis of Mexican and Moroccan Immigration Policies*. UC San Diego: Center for Comparative Immigration Studies. Retrieved from <https://escholarship.org/uc/item/28v694n0>

<sup>111</sup> Idem

surveillance and field operations, and the construction of physical barriers, bunkers and fences, the Moroccan government implemented a migration governance framework focused on preventing irregular and transit migration. Besides border controls, the country also implemented a system of internal control through systematic raid in well-known migrants' area with the aim of tracking down possible criminal and smugglers organizations.<sup>112</sup> This security approach represents a surprising turn in the migration governance of Morocco. As a matter of fact, Morocco has historically been politically open to asylum seekers. Morocco's asylum policy was founded on Islamic law of asylum and followed the African tradition of welcoming strangers.<sup>113</sup> Refugees were regarded as "preferred foreigners," and their treatment was established into law in 1913.<sup>114</sup> A perfect example of this openness was the acceptance and ratification of almost every international refugee and human rights treaties, including the Refugee Convention and its 1967 Protocol.<sup>115</sup> The reasons behind the introduction of this security approach goes beyond the increase of transit migration but includes economic and geopolitical considerations. First of all, the efforts of the Moroccan government in reducing transit migration represented a strategic move towards the protection of its own citizens' emigration. Promoting emigration have always represented a strategic measure not only useful for easing the domestic labour market but also in order to take advantage of remittances and thus promoting local development.<sup>116</sup>

However, the restrictive migration framework shift of Morocco and the treatment of migration as a security issue coincided with the increase willingness of European countries to tackle irregular migration and prevent migrants from entering its borders. As a matter of fact, the measures implemented by the Moroccan government have been widely promoted and financed by both the EU and also unilaterally by single states, primarily Spain. Since 1990s, Spain have begun to tie its migration governance to the one of Morocco.<sup>117</sup> The intensification of migration flows crossing the border with Spain resulted in an attempt to intensify cooperation control between Spanish and Moroccan authorities through joint surveillance of sea and land borders. This bilateral relation constitutes an integral part of the overall border externalization approach

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<sup>112</sup> Idem

<sup>113</sup> Idem

<sup>114</sup> Idem

<sup>115</sup> UN Convention relating to the Status of Refugees, adopted 28 July 1951, entered into force 22 April 1954, Geneva, available at: <https://www.unhcr.org/1951-refugee-convention.html>

UN Protocol relating to the Status of Refugee, adopted 16 December 1966, entered into force 4 October 1967, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees>

<sup>116</sup> Kimball, A. (2017). *The Transit State: A Comparative Analysis of Mexican and Moroccan Immigration Policies*. UC San Diego: Center for Comparative Immigration Studies. Retrieved from <https://escholarship.org/uc/item/28v694n0>

<sup>117</sup> Idem

supported by the EU. As a matter of fact, in the following years the relations between Morocco, the EU, and its Member States have further intensified through the formalization of several agreements and bilateral accords having the principal objective the one of combating irregular migration and also facilitate the return of irregular migrants from European countries to the African continent.<sup>118</sup> However, this particular issue represents still a sensitive topic in the diplomatic relations between Spain and Morocco. Besides pretending a more efficient and stricter control of borders, the diplomatic negotiation of Spain has always been focused on the enforcement of a readmission agreement drafted in 1992.<sup>119</sup> This agreement consists in making African countries accept in their territory the return not only of their citizens but also of migrants from third countries who have transited and thus crossed the border in that specific state.<sup>120</sup> The enforcement of this agreement would mean the readmission in the Moroccan territory of all the Sub-Saharanans that have already crossed the border and have been arrested in European soil.<sup>121</sup> Even though Morocco agreed on the readmission of its own citizens it is still refusing the acceptance of migrants of other nationalities.<sup>122</sup> This particular aspect still represents a major source of tension between the two countries.

Furthermore, besides frictions on readmissions, the diplomatic relations between Spain and Morocco have not always been friendly for other significant reasons. One of the major causes is represented by the territorial disputes that are still jeopardizing the cooperation between these two countries and are causing diplomatic and military crisis. As a matter of fact, despite the Moroccan independence in 1956, Spain has continued to maintain its sovereignty over the six territories of Ceuta, Melilla, Vélez de la Gomera, Alhucemas, the Chafarinas Islands, and Perejil Island located along the Moroccan coast.<sup>123</sup>

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<sup>118</sup> Werenfels, A., 2018. Profiteers of Migration? - Authoritarian States in Africa and European Migration Management, SWP: Stiftung Wissenschaft und Politik. Retrieved from <https://policycommons.net/artifacts/3172970/profiteers-of-migration/3971400/> on 13 Jan 2023. CID: 20.500.12592/w4r4n8.

<sup>119</sup> Abderrahim, T. (2019). A tale of two agreements: EU migration cooperation with Morocco and Tunisia. European Institute of the Mediterranean.

<sup>120</sup> Abourabi, Y. (2022). Governing African Migration in Morocco: The Challenge of Positive Desecuritisation. International Development Policy| Revue internationale de politique de développement, (14).

<sup>121</sup> Idem

<sup>122</sup> Idem

<sup>123</sup> McKenna, M. (2022). The Use of Diplomatic Tension as Political Leverage in Morocco-EU Relations.



**Figure 2: Spanish Territories**



**Source:** Dubessy, F. (n.d.). Ceuta and Melilla, barometers of relations between Morocco and Spain. Econostrum. Retrieved February 13, 2023, from [https://en.econostrum.info/Ceuta-and-Melilla-barometers-of-relations-between-Morocco-and-Spain\\_a808.html](https://en.econostrum.info/Ceuta-and-Melilla-barometers-of-relations-between-Morocco-and-Spain_a808.html)

The Perejil Island crisis occurred in 2002 represents an emblematic case of suspension of friendly relations and an example of the use of migration as a leverage tool in diplomatic negotiations. The Perejil Island is an islet off the coast of Morocco whose sovereignty, however, was never established and therefore remaining a point of contestation between the two states.<sup>124</sup> Despite the almost non-existent economic interest of this little territory, it is, however, perceived as an important geostrategic point in the fight against drug trafficking, irregular migration and terrorism.<sup>125</sup> The motives behind the military operations of both countries, which resulted in a crisis that not only lasted 9 days but that persisted also overtime in the respective diplomatic relations, derive from a series of economic and political disagreements with Spain and the EU.<sup>126</sup> In particular, the crisis escalated for four major issues: frictions on the negotiation for the renewal of the Fisheries Agreement between the EU and Morocco in order to allow European fishing vessels to fish in Moroccan national waters<sup>127</sup>; problems with the

<sup>124</sup> Idem

<sup>125</sup> Idem

<sup>126</sup> Idem

<sup>127</sup> Frictions regarding the renewal of the fisheries agreement further deteriorated the relations between the EU and Morocco leading consequentially to the escalation of the Perejil crisis. The Spanish use of a strong and intimidating language during the negotiation of the agreement was perceived by Moroccan authorities as a real threat. Moreover, the Spanish military operations in the territory of Alhucemas on July 6th, 2002, furtherly exacerbated the perceived sentiments of fear and threat for the territorial sovereignty of Morocco. These were in fact actions

management of migratory flows and the fight against drug trafficking from Morocco into Europe through the Spanish territory<sup>128</sup>; friendly relations and overall support of the Spanish media and civil society towards the Sahrawi independence in Western Sahara; and opposition of Spain to the Baker I Plan<sup>129, 130</sup>

The Moroccan occupation of the island was immediately foiled through a Spanish counter-military operation called Romeo-Sierra.<sup>131</sup> However, it was thanks to the mediation of the United States that the crisis ended within a few days although diplomatic relations between Morocco and Spain were not restored until 2003.<sup>132</sup>

This military and diplomatic crisis is the perfect representation of using the fight against irregular migration as a leverage tool in order to push forward territorial claims and other economic and geopolitical interests. The Moroccan military occupation was in fact initiated by King Mohammed VI with the specific aim of advancing Morocco's interests related to territorial disputes, migration, and fisheries arrangements. In particular, this military occupation of the Perejil was an attempt to redirect international attention to Morocco's claim over the Western Sahara following the rejection of the Baker I Plan which specifically stated the autonomy of the Western Sahara as a territory of Morocco.<sup>133</sup> Even though the crisis did not meet the targets set by the Moroccan authorities, it, however, has not only reinvigorated nationalist sentiments at the domestic level regarding the territorial claims of Ceuta and Melilla but also internationally reinvigorated pro-Moroccan sentiments regarding its territorial unity and in particular its continuous struggle with the presence of Spain even after the post-colonial independence of Morocco.<sup>134</sup>

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prior to the crisis that somewhat influenced the triggering of the Moroccan military operation aimed at conquering the Perejil island. See. *Idem*

<sup>128</sup> The military occupation of the Perejil island was defined by the Moroccan government as an operation aimed at fighting illegal immigration, drug trafficking and smuggling activities. Defined as a simple surveillance operation in order to fight all these clandestine activities, the occupation of the island was thus used by the Moroccan regime as a pretext to invade the island and destabilizing the European territory. See: *Idem*

<sup>129</sup> After various failed initiatives, in 2000 a UN framework agreement proposing the autonomy of the Western Sahara as a territory of the state of Morocco, namely the Baker I Plan, was approved by the Moroccan government. The initiative presented by France at the EU Foreign Affairs Council, however, did not have the desired outcome due to the objection of Spain, at the time sympathetic to the Polisario Front. This rejection of the proposal represented one of the several frictions between Spain and Morocco that culminated with the Perejil crisis and the subsequent rejection of a second proposal, the Baker II Plan by Morocco. See also: SANSANWAL, K., & KAMATH, R. (2020). The Unspoken Conflict in Western Sahara. *World Affairs: The Journal of International Issues*, 24(2), 106–119. <https://www.jstor.org/stable/48629027>

<sup>130</sup> McKenna, M. (2022). The Use of Diplomatic Tension as Political Leverage in Morocco-EU Relations.

<sup>131</sup> *Idem*

<sup>132</sup> *Idem*

<sup>133</sup> SANSANWAL, K., & KAMATH, R. (2020). The Unspoken Conflict In Western Sahara. *World Affairs: The Journal of International Issues*, 24(2), 106–119. <https://www.jstor.org/stable/48629027>

<sup>134</sup> McKenna, M. (2022). The Use of Diplomatic Tension as Political Leverage in Morocco-EU Relations

**Figure 3: Western Sahara's Territorial Claim**



**Source:** The Economist Newspaper. (n.d.). Who should control western sahara? The Economist. Retrieved February 13, 2023, from <https://www.economist.com/the-economist-explains/2021/01/13/who-should-control-western-sahara>

The Perijil crisis represents a pivotal example in which Morocco acted as an autonomy political actor able to take action and design an issue-linkage strategy detached from the EU with the specific aim of advancing its own national interests. The tendency of several interpretations to define Morocco's migration diplomacy as a mere implementation of the EU externalization approach risks, in fact, to underestimate the capacity of this country to develop its own autonomous strategy which is not merely reduced to being the submissive pawn in the European game.<sup>135</sup> As a matter of fact, if on the one hand, through the practice of issue linkage, Morocco has managed to position itself as a good collaborator of the EU in order to negotiate increasingly important rewards by interweaving migration issues with economic and political issues; on the other hand, it has also managed to define a migration diplomacy independent from the one of the European Union focused on the advancement of its own geopolitical interests. The prime example of this autonomous capacity is represented by the introduction of a new migration

<sup>135</sup> Lorena Gazzotti, Terrain of Contestation: Complicating the Role of Aid in Border Diplomacy between Europe and Morocco, *International Political Sociology*, Volume 16, Issue 4, December 2022, olac021, <https://doi.org/10.1093/ips/olac021>

policy framework in 2013. If until now, Morocco's migration diplomacy went hand in hand with European objectives, since 2013 the migration diplomacy of Morocco focused on expanding its role in the African continent. The motives behind this new migration policy framework were the one of presenting the country as a continental power leading the political and economic cooperation of the Global South.<sup>136</sup> This newly ambition, however, proved to be extremely difficult due to the absence of Morocco from the African Union<sup>137</sup> and its perceived reputation as Europe's puppet. This perceived reputation was furtherly exacerbated by various incidents along the Moroccan border such as the 2005 Ceuta and Melilla crisis<sup>138</sup>. The killing of eleven migrants crossing the border by Moroccan border forces, the periodic deportation operations in cooperation with the EU and the conclusion of the Mobility Partnership on the 7<sup>th</sup> of June 2013 furtherly aligned the migration diplomacy of Morocco to the one of the European Union<sup>139</sup>. In order to overcome all these challenges, the Moroccan authorities introduced a migration policy liberalization characterized by a multidimensional approach focused on the promotion of human rights.<sup>140</sup> The security narrative was thus left aside to develop a new initiative based on regional cooperation, protection of migrants' rights and political dialogue between various actors including civil society and the private sector.<sup>141</sup> Various institutions and commissions were thus created with the aim of regularizing illegal foreigners and refugees, improving the legal institutional framework related to migration and developing a migration diplomatic cooperation both regionally and internationally. As a matter of fact, after launching three major regularization campaigns in 2014, 2016, 2017, Morocco was subsequently reintroduced in the African Union and thus into the international migration system.<sup>142</sup> However,

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<sup>136</sup> Benjelloun, S. (2021). Morocco's new migration policy: Between geostrategic interests and incomplete implementation. *The Journal of North African Studies*, 26(5), 875-892.

<sup>137</sup> In the eve of the launch of the new migration policy in 2013, Morocco was poorly integrated into the African community, mainly because of the conflict over Western Sahara. Indeed, Morocco left the Organisation of the African Union (AU) in 1984 after the AU's recognition of the Sahrawi Arab Democratic Republic (SADR). See also: Hasnaoui, Y. (2017). Morocco and the African Union: A New Chapter for Western Sahara Resolution? Arab Center for Research & Policy Studies. <http://www.jstor.org/stable/resrep12679>

<sup>138</sup> Irene Fernández-Molina & Miguel Hernando De Larramendi (2022) Migration diplomacy in a de facto destination country: Morocco's new intermestic migration policy and international socialization by/with the EU, *Mediterranean Politics*, 27:2, 212-235, DOI: 10.1080/13629395.2020.1758449

<sup>139</sup> Idem

<sup>140</sup> Aimé González, Elsa & Dominguez de Olazabal, Itxaso & Vega, Berta & iniguez de heredia, Marta & Gabrielli, Lorenzo & Toasijé, Antumi & Abizanda, Federico & Mzioudet, Houda & Aires, Gema & Mesa, Beatriz & Boampong, Joanna. (2021). *Africa Report 2021. Common Challenges for Africa and Europe under the Pandemic*.

<sup>141</sup> Yousra Abourabi, "Governing African Migration in Morocco: The Challenge of Positive Desecuritisation", *International Development Policy | Revue internationale de politique de développement* [Online], 14 | 2022, Online since 25 April 2022, connection on 13 January 2023. URL: <http://journals.openedition.org/poldev/4788>; DOI: <https://doi.org/10.4000/poldev.4788>

<sup>142</sup> Benjelloun, S. (2021). Morocco's new migration policy: Between geostrategic interests and incomplete implementation. *The Journal of North African Studies*, 26(5), 875-892.

despite the perceived human character behind this migration approach, the new migration policy was formulated from above with the intention of making it a soft power tool. By introducing this approach defined by Moroccan authorities as a responsible and supportive regional model for the management of migration flows, Morocco reinforced its domestic image as a liberal monarchy but also its international reputation as a responsible and reliable diplomatic partner.<sup>143</sup> At the international level, through the hosting of major international conferences and events on migration, Morocco succeeded in designing a careful migration strategy based on advancing its own interests but at the same time strengthening its image as a pioneer of a more human rights-oriented approach to migrants. The hosting of two global events in 2018, namely the Global Forum on Migration and Development<sup>144</sup> and the Intergovernmental Conference to adopt the Global Compact on Safe, Orderly and Regular Migration<sup>145</sup> organized under the auspices of the UN General Assembly represented an emblematic example of the migration diplomacy framework developed by Morocco. The openness of Morocco migration policy framework is thus driven by foreign policy interests and priorities such as regional integration and support, state building, foreign aid, economic development, recognition of territorial claims and trade issues related to the exploitation of the Western Sahara. In trying to achieve all these prerogatives, however, the migration diplomacy of Morocco risks to pursue very different interests that may sometimes even clash. The willingness to please both African and European states, through regularization campaigns and cooperation measures has not ceased pressure from the intransigent European Union to stop illegal migration. Indeed, although diplomatic relations continue to be generally friendly, there has been periodic crises over the years in which migration has been used as a leverage tool and a bargaining chip between Morocco and European states. One of the latest crises in which Morocco used migrants as a weapon is represented by the Ceuta incident border in 2021.<sup>146</sup> Located at the border of Morocco, Ceuta is one of the remaining Spanish enclaves whose sovereignty continue to be disputed between the two countries.<sup>147</sup> Despite the little international support for Morocco's

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<sup>143</sup> Idem

<sup>144</sup> The Eleventh Global Forum on Migration and Development 2018 Arab Regional Consultative Process on Migration and Refugee Affairs (ARCP) Position Paper, available at: <https://www.iom.int/eleventh-global-forum-migration-and-development-gfmd-2018>

<sup>145</sup> Global Compact on Safe, Orderly and Regular Migration, adopted on the 10 December 2018, Marrakesh, available at: <https://www.ohchr.org/en/migration/global-compact-safe-orderly-and-regular-migration-gcm>

<sup>146</sup> Ferrer-Gallardo, Xavier and Lorenzo Gabrielli. "The Ceuta Border Peripeteia: Tasting the Externalities of EU Border Externalization." *Journal of Borderlands Studies*: 1-11. <https://doi.org/10.1080/08865655.2022.2048680>

<sup>147</sup> Morocco has always considered Ceuta as part of the Moroccan territory despite being under Spanish jurisdiction and sovereignty since 1580. As a matter of fact, according to the Moroccan government the Spanish sovereignty of Ceuta represents a colonial interference against the Moroccan regime. See: McKenna, M. (2022). *The Use of Diplomatic Tension as Political Leverage in Morocco-EU Relations*.

sovereignty over the territory, Ceuta represents a border area extremely significant in the fight of irregular migration and smuggling operations. Furthermore, being a Spanish territory, Ceuta is also consequentially part of the Schengen Agreement.<sup>148</sup> The resulting huge movement of people such as Moroccan day laborers but also irregular migrants represented the primary reason that has influenced the EU to invest in the construction of a physical double fence barrier which with its 8km length encircles and protects the enclave.<sup>149</sup> Despite several efforts and huge investments from the EU and Spain, Ceuta still represents a geostrategic location in the hands of Morocco. The Ceuta incident of May 2021 represents a significant example of Morocco's capacity to make use of migration as a concrete weapon able to destabilize the European soil. Once again, the root of the diplomatic crisis between the two countries concerns the recognition of Western Sahara's territorial sovereignty. After the US recognition of Morocco's sovereignty over the territory of Western Sahara, Moroccan authorities began to pretend the same recognition from European states.<sup>150</sup> After the refusal of Germany and Spain, the diplomatic relations between Morocco and the EU began to deteriorate.<sup>151</sup> The frictions further exacerbated after the hospitalization in Spain of Brahim Ghali, the president of the Saharawi Polisario Front for COVID-19 treatment in April 2021.<sup>152</sup> The perceived friendly relation between Spain and the Saharawi independentists was the tip of the iceberg that started the crisis. As a result of a voluntary relaxation of the control mechanisms of the Moroccan security forces, on 17 May, 8,000 people managed to cross the border and enter into the Spanish enclave of Ceuta overwhelming the Spanish border.<sup>153</sup> Even though the incident was described by the Moroccan regime as a mere consequence of a general exhaustion of Moroccan security forces after the

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<sup>148</sup> The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, 14 June 1985, Schengen, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:239:0001:0473:EN:PDF>

<sup>149</sup> McKenna, M. (2022). The Use of Diplomatic Tension as Political Leverage in Morocco-EU Relations. After several episodes of extreme violence among the Ceuta's border, the Spanish government in the 1990s began to construct a border fence in order to fortify the enclaves of Ceuta and Melilla. The construction of this physical barrier represents the first European barrier constructed after the destruction of the Berlin Wall. See: Aris Escarcena, J. P. (2022). Ceuta: The Humanitarian and the Fortress Europe. *Antipode*, 54(1), 64-85.

<sup>150</sup> McKenna, M. (2022). The Use of Diplomatic Tension as Political Leverage in Morocco-EU Relations.

<sup>151</sup> *Idem*

<sup>152</sup> The Polisario Front derives from a group of Sahrawi students constituted in 1973 at the university of Morocco that tried to resist and fight against the Spanish rule in force at the time. The aim of these group of students was the one of gaining and proclaiming the independence of the Western Sahara from the Spanish colonisers. However, after the Spanish withdrawal from the territory in 1976 and the subsequent took over of Morocco and Mauritania, the Polisario Front, now unilaterally proclaimed as the Sahara Arab Democratic Republic, began to fight for its independence against the new conquerors, namely Morocco and Marituania. Even though the armed conflict ended in 1991 with a ceasefire signed between Morocco and the Polisario Front, negotiations to reach a final peace settlement for Western Sahara are still ongoing. See: Sansanwal, K., & Kamath, R. (2020). The Unspoken Conflict In Western Sahara. *World Affairs: The Journal of International Issues*, 24(2), 106-119.

<sup>153</sup> McKenna, M. (2022). The Use of Diplomatic Tension as Political Leverage in Morocco-EU Relations.

end of Ramadan<sup>154</sup>, the Spanish government condemned Morocco's use of migrants as a geopolitical tool. Loosening of tensions only occurred in March 2022 when Spain explicitly declared its support for Morocco's territorial claim in the Western Sahara.<sup>155</sup>

The above-mentioned cases and events highlighted how the drivers of migration diplomacy strategies of both Morocco and Spain are eventually all traceable to the advancement of geopolitical interests and priorities. Despite few measures which may have given a humanist approach appearance, at the end of the day they were all part of a larger strategy aimed at winning the international migration system game of power. The human rights violations still occurring at the border are the direct consequence of a migration governance framework unable to protect the lives of migrants and refugees. The report of Amnesty international released in December 2022 explicitly condemns Spanish and Moroccan authorities.<sup>156</sup> According to Amnesty International the suspects of continuous ill-treatment of migrants, the excessive use of force by border forces and the lack of medical assistance are just some of the reasons that led to the latest serious incident on the 24<sup>th</sup> of June 2022 in which 37 people died.<sup>157</sup> The unwillingness of the Spanish and Moroccan authorities to do justice and take responsibility for their actions makes it clear how much people's lives and their rights are not take into consideration compared to the geopolitical interests of the states in question.

### **3.2 Belarus – Poland**

Located at the extreme eastern border of the European continent, Belarus is a prime example of the use of migration as a diplomacy tool and in particular the use of migrants as a concrete weapon able to destabilize the Western world. Although migratory flows from the eastern route cannot be compared to the number of migrants coming from the Mediterranean, Belarus, in recent years, has begun to assume a significant role regarding transit migration.<sup>158</sup> Especially following the tightening of border controls in the Mediterranean routes, many migrants from middle eastern conflict zones such as Iraq, Afghanistan and Syria started to travel the eastern route in search of a way to enter the desired destination, namely the European Union. As a

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<sup>154</sup> Idem

<sup>155</sup> Idem

<sup>156</sup> Report Amnesty International, 13 December 2022, "They beat him in the head, to check if he was dead": Evidence of crimes under international law by Morocco and Spain at the Melilla border, Index Number: MDE 29/6249/2022, available at: <https://www.amnesty.org/en/documents/mde29/6249/2022/en/>

<sup>157</sup> Idem

<sup>158</sup> Ansa, The main migration routes to the European Union, 11 November 2021, Infomigrants, available at: <https://www.infomigrants.net/en/post/36391/the-main-migration-routes-to-the-european-union>

matter of fact, according to Frontex<sup>159</sup>, the Eastern European one is among the migration routes with the largest percentage increase in illegal crossing detected in recent years.<sup>160</sup> As a result of increased migration, Belarus has started to use migration to its advantage. Through a careful use of migration diplomacy and even the use of a coercive engineered migration strategy, Belarus began to pose a concrete threat both to its neighboring country Poland, but also to the entire European Union.<sup>161</sup>

Before analyzing the use of migration diplomacy by Belarus which started primarily in recent years, it is necessary to delve into the geopolitical and economic context of this country located on the eastern border of the European continent. Being one of the former Soviet Countries that declared independence after the dissolution of the USSR in 1991, Belarus still represents a very important satellite country over which Russia exerts massive influence.<sup>162</sup> Indeed, the geographical location of Belarus, bordering five countries, three of which EU former Members, gives Belarus the designation of buffer zone between the European Union and Russia. This pivotal geopolitical location has been one of the main interests of Russia which has systematically pushed for closer ties and control over this state.<sup>163</sup> If on one hand Belarus can count on a strong support from Russia, on the other hand the European Union has systematically condemned the political class in Belarus by introducing massive exclusionary policies.<sup>164</sup> In particular, the relations with the EU have begun to deteriorate since Lukashenko's election in 1994.<sup>165</sup> Being a strong supporter of the USSR, Lukashenko, has in fact systematically pushed towards a strong alignment with Russia provoking the implementation of economic sanctions by the European Union. As a matter of fact, after the ratification of the State of the Union Agreement in 1997, which envisaged close economic, political, and military cooperation with

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<sup>159</sup> Frontex constitutes an European Union agency created in order to perform tasks related to “the implementation of the European integrated border management, the effective functioning of border control at the external EU borders in coordination with the national authorities of EU Member States and Schengen associated countries responsible for border management, the internal security within the European Union and migration management, including an effective return policy, while safeguarding the free movement of persons within the Union and full respect for fundamental rights”. See: European border and Coast Guard Agency (Frontex). Migration and Home Affairs. (n.d.). Retrieved January 16, 2023, available at: [https://home-affairs.ec.europa.eu/pages/glossary/european-border-and-coast-guard-agency-frontex\\_en](https://home-affairs.ec.europa.eu/pages/glossary/european-border-and-coast-guard-agency-frontex_en)

<sup>160</sup> Migratory routes. Eastern Borders Route. (n.d.). Retrieved January 16, 2023, available at: <https://frontex.europa.eu/we-know/migratory-routes/eastern-borders-route/>

<sup>161</sup> Greenhill, Kelly M.. Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy. Ithaca, NY: Cornell University Press, March 2010. 360.

<sup>162</sup> ERDOĞAN, Z., & DORA, Z. K. Belarus-Poland Migration Crisis and Supra-National Political Concerns of the Extended Actors. *Güvenlik Bilimleri Dergisi*, 11(2), 417-440.

<sup>163</sup> Mitchell, K., & Pratt, T. (2022). Migration-Based Hybrid Warfare on Europe’s Externalized Borders: Case Studies on Morocco and Belarus in 2021.

<sup>164</sup> ERDOĞAN, Z., & DORA, Z. K. Belarus-Poland Migration Crisis and Supra-National Political Concerns of the Extended Actors. *Güvenlik Bilimleri Dergisi*, 11(2), 417-440.

<sup>165</sup> Berzins, V. (2022). Hybrid warfare: weaponized migration on the eastern border of the EU?. *The Interdisciplinary Journal of International Studies*, 12(1), 19-19.



Russia, and the ratification of the Treaty on the Establishment of the Union State of Belarus and Russia in 1999, which represented the initiation of various bilateral documents between the two countries, the EU began to adopt a stricter approach towards Belarus with the imposition of even more ingent political and economic sanctions.<sup>166</sup> The introduction of punishments by the EU and the consequent use of migration as a weapon by Lukashenko, has been the foundation of the respective relations between the two actors since 1996. While the EU imposed sanctions including the postponement of the Technical Assistance Program in 1996 the freezing of the partnership agreement and the visa ban in 1998, Belarus, on the other hand, began to respond through the use of strategic coercive engineered migration.<sup>167</sup> In an attempt to reverse the asymmetrical balance of power of the international migration system, Belarus began to use migrants as a weapon to destabilize the European territory threatening the release of migrants across the EU confining countries borders. Indeed since 2002, Belarus, through migration, has threatened the EU and NATO in order to interrupt the various rounds of economic sanctions imposed by these two actors.<sup>168</sup> In fact, besides the European Union, since 2004, also the United States has begun to implement penalties towards the Belarusian government.<sup>169</sup> However, while the United States normally sanctions major governmental institutions, the European Union often sanctions election fraud, human rights violations, and Belarusian officials.<sup>170</sup>

In such a context characterized by extremely difficult relations between the EU and Belarus, Lukashenko actually used the release of migrants as a weapon in a few significant incidents. The first one refers to the threat of releasing up to 50,000 migrants into the Polish territory in December of 2002 after the Czech Republic refused to invite Belarus to a NATO conference.<sup>171</sup> Although the attempt of the Belarusian dictator was not successful, it represented, however, a concrete threat to the EU. Thanks to the prompt response of the European Union which included the strengthening of its border through a massive funding to the Frontex agency and to the Belarusian regime, the attempt of Lukashenko did not materialize.<sup>172</sup> However, two years late, in 2004, Lukashenko used the same bargaining chip in order to gain additional funding aimed at strengthening the border with the EU and thus prevent migrants from crossing into the

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<sup>166</sup> ERDOĞAN, Z., & DORA, Z. K. Belarus-Poland Migration Crisis and Supra-National Political Concerns of the Extended Actors. *Güvenlik Bilimleri Dergisi*, 11(2), 417-440.

<sup>167</sup> *Idem*

<sup>168</sup> *Idem*

<sup>169</sup> *Idem*

<sup>170</sup> *Idem*

<sup>171</sup> Mitchell, K., & Pratt, T. (2022). Migration-Based Hybrid Warfare on Europe's Externalized Borders: Case Studies on Morocco and Belarus in 2021

<sup>172</sup> *Idem*

European soil.<sup>173</sup> This time around, however, the EU decided instead to invest 400 million euros to construct its own border defense and provide border security and control on its own thus escaping the coercion strategy of Belarus.<sup>174</sup> Up to this moment, Lukashenko's migration diplomacy has been based on the creation of threats with the aim of instilling fear in European countries in order to obtain concessions, especially economic ones, but without their actual concrete realization. However, the events occurred in 2021 represented a significant change of course in the migration diplomacy strategy of Lukashenko. The creation of an artificial migration crisis by Belarus represented the consequence of various events occurring since the election of Lukashenko. As a matter of fact, the already precarious relations with the EU further deteriorated in 2020 after the fraudulent reelection of Lukashenko for a sixth term in office.<sup>175</sup> Following several allegations of election fraud, irregularities and violations that allowed Lukashenko to win with the 80% of votes, the EU refused to recognize the election by supporting the various riots and protests erupted throughout the country and by imposing other sanctions to the Belarusian regime such as targets on exports and sanctions to individuals and businesses linked to the President.<sup>176</sup> Russia's support was obviously not lacking. Following the months-long protests, Russian President Putin expressly reiterated his support for Lukashenko and offered Russian assistance through the establishment of a collective defense security pact of former Soviet States.<sup>177</sup> Moreover, with the intention of putting an end to the protests, the president of Belarus implemented also an operation aimed at intercepting and arresting Belarusian dissident journalist Roman Protasevich.<sup>178</sup> The ambush on the journalist Protasevich was contrived through the interception by a fighter jet of the Belarusian Air Force of a Ryanair Flight 4978 from Athens to Vilnius, while in Belarusian air space.<sup>179</sup> The Ryanair flight was

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<sup>173</sup> Idem

<sup>174</sup> Idem

In June 2022, Poland concluded the construction of a 5.5 high border wall long 186 kilometers which overlaps almost half the total length of the border between Belarus and Poland. According to the Polish government the border fence is aimed at keeping migrants and asylum seekers out of the Polish territory and thus preventing them from entering the European Union. This physical barrier represents also a strong response against the use of migrants as a hybrid weapon employed by the Belarusian regime. See: MacGregor, M. (2022, January 25). Poland starts building wall to deter migrants. InfoMigrants. Retrieved January 16, 2023, from <https://www.infomigrants.net/en/post/38122/poland-starts-building-wall-to-deter-migrants>

<sup>175</sup> Mitchell, K., & Pratt, T. (2022). Migration-Based Hybrid Warfare on Europe's Externalized Borders: Case Studies on Morocco and Belarus in 2021

<sup>176</sup> Bekić, J. (2022). Coercive Engineered Migrations as a Tool of Hybrid Warfare: A Binary Comparison of Two Cases on the External EU Border. *Politička Misao*, 59(02), 141-169.

<sup>177</sup> Idem

<sup>178</sup> Berzins, V. (2022). Hybrid warfare: weaponized migration on the eastern border of the EU?. *The Interdisciplinary Journal of International Studies*, 12(1), 19-19.

<sup>179</sup> Idem

intercepted and forced to land in Minsk under the pretext of a bomb's threat on board.<sup>180</sup> This event triggered even more sanctions by the European Union targeting sensitive sectors of the Belarusian economy such as finance, telecoms, petroleum, and military items which, however, in turn triggered an even more extreme response from Lukashenko.<sup>181</sup> As a matter of fact, this time around, the Belarusian President no longer merely used migrants as a possible threat but rather used them as a real weapon against the EU. From this moment onwards the coercive migration diplomacy of Belarus transformed itself into a hybrid threat strategy aimed at targeting and destabilizing European States.<sup>182</sup> Belarus created an artificial migration crisis on the external borders of the EU by encouraging migrants from Middle Eastern zone of conflict to enter the European soil.<sup>183</sup> Given that the preferred route for these kinds of migrants is represented by the Mediterranean, it is explicitly obvious that the Belarusian regime played a key role in these huge injections of migrants into the eastern borders of the EU. The majority of migrants that crossed the border were Iraqi Kurds, but significant numbers were also from Iraqi Arabs, Syrians and Yemenis.<sup>184</sup> Besides facilitating the activities of smugglers, Frontex and national intelligence agencies of Lithuania and Poland discovered also a careful strategy implemented by the Belarusian government which included also the advertisement of cheap flights and holidays packages with visas and direct advise and guidelines on how and where to cross the border.<sup>185</sup> The plan of action of Belarus thus involved several actions: firstly the flying of migrants from Middle Eastern conflict zones into the Belarusian territory, secondly the accommodation of these people in state-owned hotels organized directly by the state-house bureau and then finally the escortage of these migrants across the Belarusian fenced border.<sup>186</sup> By deceiving these people and also by perpetuating severe human rights violations due to the proven mistreatment of migrants, Belarus has managed to inject an ingent amount of migrants into the European territory. A record of 8184 illegal border crossing was detected in 2021 as a consequence of the artificial migration crisis generated by Lukashenko. Moreover, it is especially significant to highlight that Istanbul represented one of the main transfer points in

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<sup>180</sup> Łubiński, P. (2022). Hybrid Warfare or Hybrid Threat–The Weaponization of Migration as an Example of the Use of Lawfare–Case Study of Poland.

<sup>181</sup> Mitchell, K., & Pratt, T. (2022). Migration-Based Hybrid Warfare on Europe's Externalized Borders: Case Studies on Morocco and Belarus in 2021

<sup>182</sup> Łubiński, P. (2022). Hybrid Warfare or Hybrid Threat–The Weaponization of Migration as an Example of the Use of Lawfare–Case Study of Poland.

<sup>183</sup> Фротвейт, М. (2022). International Migration as an Instrument of Hybrid Aggression. *Історико-політичні проблеми сучасного світу*, (45), 128-139.

<sup>184</sup> Mitchell, K., & Pratt, T. (2022). Migration-Based Hybrid Warfare on Europe's Externalized Borders: Case Studies on Morocco and Belarus in 2021

<sup>185</sup> Idem

<sup>186</sup> Idem

the overall strategy adopted by Belarus.<sup>187</sup> This is not surprising due to the by now well-known friendly relations between Lukashenko and Erdogan, whose migration diplomacy has always been based on the weaponization and securitization of migrants and refugees.<sup>188</sup>

**Figure 4: Belarusian Artificial Migration Crisis**



**Source:** Wikimedia Foundation. (2023, February 13). 2021–2022 Belarus–European union border crisis. Wikipedia. Retrieved February 13, 2023, from [https://en.wikipedia.org/wiki/2021%E2%80%932022\\_Belarus%E2%80%93European\\_Union\\_border\\_crisis](https://en.wikipedia.org/wiki/2021%E2%80%932022_Belarus%E2%80%93European_Union_border_crisis)

The neighboring European country mostly affected by this artificial migration crisis was Poland. Two main factors contributed to the choice of the border between Belarus and Poland. First of all, Poland, among the other European neighboring nations, is the one with the most turbulent relations with the EU, also as a result of different and often conflicting actions and interests behind the management of migration flows and additionally because the path towards the desired destination for migrants, namely Germany, is significantly shorter if passing through the Polish territory.<sup>189</sup> Behind the coercive migration diplomacy of Belarus and the use of migrants as a hybrid threat strategy lie several interests mainly linked to the desire to maintain

<sup>187</sup> Bekić, J. (2022). Coercive Engineered Migrations as a Tool of Hybrid Warfare: A Binary Comparison of Two Cases on the External EU Border. *Politička Misao*, 59(02), 141-169.  
<sup>188</sup> Idem  
<sup>189</sup> Idem

power of Lukashenko, considered the last dictator left on European soil. Through the injection of migrants, Belarus aspired to coerce the EU, but mainly Lithuania and Poland, to stop promoting and supporting the pro-democracy protests that were questioning and threatening the legitimacy of Lukashenko's election.<sup>190</sup> Another interest lying under the Belarusian artificial migration crisis relates to EU's economic and political sanctions.<sup>191</sup> Through the instauration of a migration crisis' fear able to destabilize the European Union territory, the Belarusian government hoped to force the EU to lift the various sanctions imposed since the August 2020 elections. Finally, the last objective of Lukashenko, suggested also by the Russian government supporting the operation, was the one of obtaining additional EU funding in order to strengthen the capacity of the Belarusian forces to stop illegal migration.<sup>192</sup>

Despite these desired goals, the overall migration diplomacy of Lukashenko and in particular the specific coercive operation were not particularly successful. The objective of destabilizing the European Union in order to gain additional funds and force the institution to lift the various sanctions against Belarus did not realize, primarily due to the immediate and effective European response to the threat and its capacity to absorb injections of migrants into its territory.<sup>193</sup> As a matter of fact, the European Union, mindful of the migration crisis in the Mediterranean in 2015-2016, was not frightened by much smaller numbers coming from the artificial migration crisis generated by Belarus.<sup>194</sup> Besides the limited numbers of migrants who crossed the border, neighboring countries such as Latvia, Lithuania and Poland, immediately put in place an effective response deploying thousands of border officials, soldiers and police officers in order to prevent the generated wave of migrants from Belarus. Another round of sanctions was also put in place by the European Union to condemn the unlawful operation of Lukashenko and its use of migration flows as a bargaining tool and a hybrid threat strategy to deploy. The reasons behind the effective response of the EU lies in the capacity of receiving states to absorb migrants. As stated by Tsourapas, receiving states can take advantage of their position in relation to sending states by implementing a variety of restrictive methods, such as tightening immigration regulations and forcefully removing migrants coming from sending states. The effectiveness of this approach will be determined by how sensitive the sending state is to the political and economic costs that arise as a result of the receiving nations' migration policy,

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<sup>190</sup> Idem

<sup>191</sup> Idem

<sup>192</sup> Idem

<sup>193</sup> Lid'ák, J., & Štefančík, R. (2022). MIGRATION DIPLOMACY AS A FOREIGN POLICY INSTRUMENT. Political Sciences/Politické Vedy, (2).

<sup>194</sup> Idem

specifically if it is unable to absorb them on its territory and cannot rely on the assistance of other host countries.<sup>195</sup> Although it did not have the desired results, Belarus' strategy achieved the objective of undermining the absorption capacity of EU countries and further eroding the already divergent opinions of European countries on the migration issue. As a matter of fact, among EU's countries, the issue of migration flows still represents a significant point of friction on which many states disagree. Specifically, European countries are divided into two opposing groups: on the one hand, those states that respect international obligations on migrants and refugees, and on the other hand, countries that want to decide for themselves on migration issues and thus implement restrictive policies aimed at maintaining border sovereignty.<sup>196</sup> Among this second category of states there is the Visegrád Group which besides Czech Republic, Hungary and Slovakia, it includes also the most targeted country of Belarusian migration diplomacy namely Poland. Although Poland has been a member of the European union since 2004, in recent years it has clashed with the European institutions not only on migration issues but also on the EU's common policy as well as the lack of recognition of the rights of sexual minorities and the abuse of power by the Polish judicial system.<sup>197</sup> The aim of Lukashenko was really the one of exacerbating these frictions in the relation between the EU and Poland. As a matter of fact, the response of Poland ultimately triggered an adverse reaction from the EU. In an attempt to prevent the overwhelming arrivals of migrants into the Polish society, the country responded through the introduction of a controversial law that allowed Polish authorities to expel migrants back to Belarus. The implementation of this law on 14 October 2021, generated a strong condemnation by the EU which considered the measure illegal and against international law protecting migrants and refugees. This legislation allowed border officials to immediately expel from Polish territory a person caught illegally crossing the border. This procedure involving illegal pushbacks represents a legislation explicitly designed against the right of asylum. According to international law, seeking asylum represents a fundamental human right. Therefore, migrants have the right to claim asylum and it is forbidden to send potential asylum-seekers back to where their lives or well-being might be in danger.<sup>198</sup> As highlighted by various organizations and institutions, the introduction of this national law completely undermined the

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<sup>195</sup> Tsourapas, G. (2018). Labor migrants as political leverage: Migration interdependence and coercion in the Mediterranean. *International Studies Quarterly*, 62(2), 383-395.

<sup>196</sup> *Idem*

<sup>197</sup> Lid'ák, J., & Štefančík, R. (2022). MIGRATION DIPLOMACY AS A FOREIGN POLICY INSTRUMENT. *Political Sciences/Politické Vedy*, (2).

<sup>198</sup> Guaranteeing the right to asylum. (n.d.). Retrieved January 17, 2023, from <https://www.europarl.europa.eu/about-parliament/en/democracy-and-human-rights/fundamental-rights-in-the-eu/guaranteeing-the-right-to-asylum>

international protection granted to migrants and refugees seeking asylum.<sup>199</sup> In addition to the detention and deportation of migrants seeking international protection, other abuses and human rights violations have occurred at the Polish-Belarus border by both respective border forces. Amnesty International and Human rights Watch reported several cases of violence, inhuman and degrading treatment and other forms of coercion and use of force against migrants including vulnerable groups such as families with children, elderly people, and people with health issues.<sup>200</sup> From the measures taken by Poland in the wake of the artificial migration crisis, often in open contrast with the EU's line of thinking, it is particularly clear that this country, too, adopts a migration diplomacy focused on the advancement of its own interests. An emblematic case is represented by the establishment of a cooperation approach with Turkey. After the border incident in 2021, the two countries signed a strategic partnership aimed at advancing cooperation in the field of trade, defense industry and irregular migration. The objective of tackling down irregular migration was thus used as a pretext to gain respective economic advantages for both countries. Being Turkey Poland's most important economic partner in the Middle East, through this partnership the two countries hoped to achieve greater cooperation both in geopolitical and economic matters.

After having highlighted the events that characterized the migration diplomacy of Belarus, aimed at destabilizing the European institutions in order to gain geopolitical benefits and power, and the strong response of Poland, focused on the advancement of its own objectives often in contrast with the EU, it is necessary also to underline how the externalization approach of the European Union which is primarily based on the role performed by third countries, leaves the institution vulnerable to enormous threats having the potential to undermine the already precarious EU's migration management system. Furthermore, this analysis has revealed how the externalization approach of the EU and the overall European mechanism on migration and asylum still tends to follow and prioritize the principle of discretionality, which instead of actually protecting the lives and rights of migrants and refugees, who are the first victims that should be protected from these power dynamics, promotes the maintenance of the status quo and the advancement of Member States' national interests.

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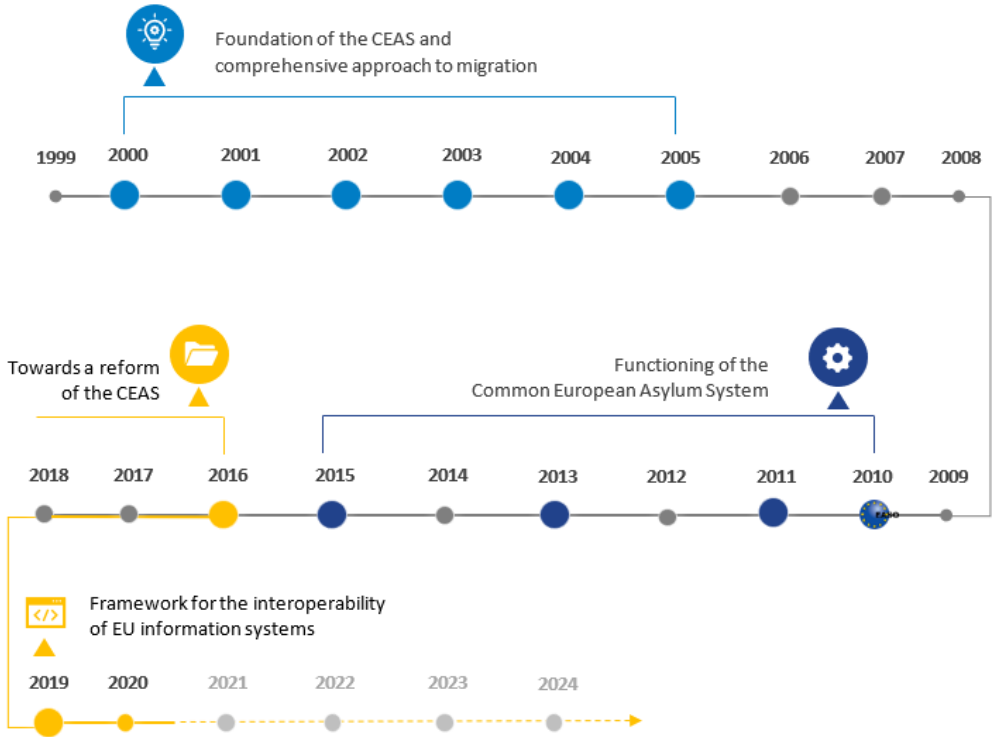
<sup>199</sup> Reuters, E. U. R. A. C. T. I. V. with A. F. P. and. (2021, October 15). Poland passes law allowing migrants to be pushed back at border. [www.euractiv.com](https://www.euractiv.com). Retrieved January 17, 2023, from <https://www.euractiv.com/section/justice-home-affairs/news/poland-passes-law-allowing-migrants-to-be-pushed-back-at-border/>

<sup>200</sup> Report Human rights Watch, November 2021, "Die Here or Go to Poland" Belarus' and Poland's Shared Responsibility for Border Abuses, Human Rights Watch, ISBN: 978-1-62313-952-0

#### 4. ANALYSIS ON THE NEW PACT ON MIGRATION AND ASYLUM: TOWARDS A EUROPEAN INSTRUMENT OF MIGRATION MANAGEMENT

As highlighted in the previous chapters, this analysis showed how interests and dynamics of power essentially shape the international migration management framework. Besides underlying the interests of national states in the overall international migration system, I briefly explained how the same dynamics can be translated also at the European level. As a matter of fact, the management of migration flows at the European level is similarly affected by the same dynamics and interests despite the attempts of the European institutions to concretely transform migration from a matter of intergovernmental competence to a shared competence having somehow a supranational dimension. Unfortunately, however, these attempts have been quite unsuccessful, and the European migration system continues to reiterate the status quo, namely, the reluctance of states to give up part of their sovereignty over borders for fear of no longer being able to advance their national interests and thus losing power in the international framework.

**Figure 5: Evolution of the Common European Asylum System**



**Source:** 2.1 the common European asylum system and current issues. European Union Agency for Asylum. (n.d.). Retrieved February 14, 2023, from <https://euaa.europa.eu/asylum-report-2020/21-common-european-asylum-system-and-current-issues>



The European legislation on migration and asylum derives from the establishment in 1999 of the Common European Asylum system that, besides incorporating primary law namely the Treaty on the functioning of the European Union<sup>201</sup>, the Treaty on the European Union<sup>202</sup> and the EU Charter on Fundamental Rights<sup>203</sup>, it involves also secondary law such as the EURODAC Regulation<sup>204</sup>, the Asylum Procedures Directive<sup>205</sup>, The Reception Conditions Directive<sup>206</sup>, The Qualification Directive<sup>207</sup>, The European Union Agency for Asylum<sup>208</sup> and the Dublin Regulation<sup>209</sup>. It is, in fact, from the 1990s that the European Union incorporated migration into the European legislation. First of all, in 1990, the Dublin Convention<sup>210</sup> was signed which established the criteria for determining the state responsible for examining an asylum application. Subsequently, in 1992, with the Maastricht Treaty, which came into force in November 1993, the migration issue began to acquire real relevance in treaty law. As a matter of fact, within the third pillar of the European Union's competencies, a common system on

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<sup>201</sup> Consolidated version of the Treaty on the Functioning of the European Union, 26 October 2012, Official Journal C 326/47, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

<sup>202</sup> Consolidated version of the Treaty on the European Union, 26 October 2012, Official Journal C 326/13, available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF)

<sup>203</sup> Charter of fundamental rights of the European Union, 7 December 2000, Official Journal of the European Union C326/391, available at: [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>204</sup> The EURODAC regulation is a document supporting the Dublin Regulation. It facilitates the determination of the state responsible for processing an asylum application. Moreover, it establishes an EU database in which the fingerprints of asylum seekers are collected with the aim to investigate and fight serious crimes. See: Common European asylum system. Migration and Home Affairs. (n.d.). Retrieved January 30, 2023, from [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en)

<sup>205</sup> The Asylum Procedures Directive provides a set of minimum standards and procedures for assessing an asylum application. See: Common European asylum system. Migration and Home Affairs. (n.d.). Retrieved January 30, 2023, from [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en)

<sup>206</sup> The Reception Conditions Directive sets minimum standards for the reception of asylum seekers in Member States of the EU including housing, food, health care access, education, employment and clothing. It ensures that all these common standards are thus provided in order to guarantee minimum standards of living in accordance with the EU Charter on Fundamental Rights. See: Common European asylum system. Migration and Home Affairs. (n.d.). Retrieved January 30, 2023, from [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en)

<sup>207</sup> The Qualification Directive represents a document that clarifies the grounds and circumstances in which international protection can be granted. See: Common European asylum system. Migration and Home Affairs. (n.d.). Retrieved January 30, 2023, from [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en)

<sup>208</sup> The European Union Agency for Asylum refers to an EU agency specifically created in order to support Member States in the implementation of the European Common Asylum System, and its related laws. It also provides training, operational and technical assistance for the issuance of international protection. See: Common European asylum system. Migration and Home Affairs. (n.d.). Retrieved January 30, 2023, from [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en)

<sup>209</sup> The Dublin Regulation and its main limits will be specifically analyzed in the following paragraph. See: Common European asylum system. Migration and Home Affairs. (n.d.). Retrieved January 30, 2023, from [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en)

<sup>210</sup> Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention, 5 June 1990, Official Journal of the European Union C254/01, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:1997:254:TOC>

immigration and asylum, based on cooperation and intergovernmental agreements, was established.<sup>211</sup> However, it was only with the Amsterdam Treaty of 1999 that migration became an integral part of the third pillar of the EU's competencies. Through this shift, the migration and asylum issue became a shared competence between the EU and Member States and thus acquiring also a supranational dimension.<sup>212</sup> However, despite the introduction of migration into the third pillar, the Amsterdam Treaty still conferred strong discretionality on migration issues upon Member States.<sup>213</sup> Particularly important is the first appearance of the denomination "Common European asylum system" at the Tampere Council in 1999.<sup>214</sup> Through the Tampere Program the EU wanted to create a Common European Asylum System (CEAS) based on the application of the Geneva Conventions<sup>215</sup>, the principle of non-refoulement<sup>216</sup> and the EU Charter on fundamental rights<sup>217</sup>. The implementation of the CEAS involved two distinct phases.<sup>218</sup> The first one, from 1999 to 2005, in which national states were only obliged to adopt minimum common requirements on migration and asylum and a second phase which envisaged a series of initiatives, such as the European Pact on Migration and Asylum of 2008, aimed at the adoption of a truly common framework intended to eliminate the discretionary power of Member States.<sup>219</sup>

It is noteworthy to highlight that one of the main pillars of the Common European Asylum System consisted in the implementation of an external action dimension aimed at managing

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<sup>211</sup> Tsourdi, E. L., & De Bruycker, P. (2022). The evolving EU asylum and migration law. In *Research Handbook on EU Migration and Asylum Law* (pp. 1-55). Edward Elgar Publishing.

<sup>212</sup> Idem

<sup>213</sup> Idem

<sup>214</sup> Hampshire, J. (2016). European migration governance since the Lisbon treaty: introduction to the special issue. *Journal of Ethnic and Migration Studies*, 42(4), 537-553.

<sup>215</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 12 August 1949, available at: <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, available at: <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>

Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, available at: <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>

Geneva Convention Relative to the Protection of Civilian Persons in Times of War, 12 August 1949, available at: <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>

<sup>216</sup> Office of the United Nations High Commissioner for human rights. (n.d.). Retrieved January 31, 2023, from <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

<sup>217</sup> Charter of fundamental rights of the European Union, 7 December 2000, Official Journal of the European Union C326/391, available at: [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>218</sup> First and second phases of CEAS and the 2016 reform proposals. European Union Agency for Asylum. Retrieved January 30, 2023, from <https://euaa.europa.eu/easo-asylum-report-2021/211-first-and-second-phases-ceas-and-2016-reform-proposals>

<sup>219</sup> Frasca, E. (2021). Il Nuovo Patto sulla migrazione e l'asilo tra evoluzioni, tendenze e contraddizioni del diritto dell'Unione europea. *Costituzionalismo. it*, 19.

migration flows with a focus on sending and transit countries' support.<sup>220</sup> The agreements with third countries were based on three fundamental principles - dialogue, cooperation and development - not only with regard to the economic and commercial sphere, but also with regard to the protection of human rights, the fight against illegal immigration, and the support and development of third countries.<sup>221</sup> The established system, however, presented a limit, namely, the requirement of unanimity in votes on migration and asylum matters.<sup>222</sup> The reluctance of Member States to give up part of their sovereignty and thus losing control over borders and the management of migration flows has in fact persisted over the years. In particular, this unwillingness has become even more pronounced following the escalation of terrorist attacks on European soil.<sup>223</sup> The European councils of Laeken in 2001, Seville in 2002 and Thessaloniki in 2003 were in fact affected by this climate of terror in which migration was progressively associated with security. This newly established nexus between security and migration had continued to persist in the various founding stages of the CEAS, including the final stage of legislative harmonization with the 2007 Lisbon Treaty.<sup>224</sup> Despite the overall harmonization of the Common European Asylum System and the updating and replacement of several provisions which led to the legislative framework, mentioned above, currently in force, the CEAS suffered from a lack of common implementation.<sup>225</sup> Moreover, the system proved to have several limitations to protect migrants and asylum seekers especially during states of emergency such as the migration crisis of 2015-2016.<sup>226</sup> The rising numbers of migrants coming at the EU shores highlighted how the system presented several shortcomings due to the lack of an appropriate institutional framework able to provide asylum and protect fundamental rights. The inadequacy of the CEAS has been partially limited through the introduction of emergency measures to derogate from the Dublin system in favor of some of the Member States most affected by the crisis, such as Greece and Italy.<sup>227</sup> Three key tools were introduced through the

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<sup>220</sup> Ohlsson, N. (2015). *Challenging the principle of solidarity in the Common European Asylum System* (Doctoral dissertation, Master Thesis, Lund: Lund University).

<sup>221</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

<sup>222</sup> Carta, M. C. (2021). Il “nuovo” Patto europeo sulla migrazione e l’asilo: recenti sviluppi in materia di solidarietà ed integrazione.

<sup>223</sup> Babayan, D. (2010). Balancing security and development in migration policy–EU mobility partnerships. *College of Europe Natolin Campus, Department of European.*

<sup>224</sup> Carta, M. C. (2021). Il “nuovo” Patto europeo sulla migrazione e l’asilo: recenti sviluppi in materia di solidarietà ed integrazione.

<sup>225</sup> Hadj-Abdou, L. (2021). From the migration crisis to the new pact on migration and asylum: the status quo problem.

<sup>226</sup> Idem

<sup>227</sup> Idem

2015 European Migration Agenda: hotspots<sup>228</sup> (crisis points) and two migrant management mechanisms: relocation<sup>229</sup> and resettlement<sup>230, 231</sup>. However, the lack of a legal basis of these emergency interventions and the wide discretion left in the hands of Member States have highlighted how the migration issue cannot be treated with ad hoc instruments aimed at limiting flows or supporting certain Member States in crisis. In particular, the still existing Dublin system, based on the criterion that asylum applications must be examined by the State of first entry, has shown its ineffectiveness, which is why, starting in 2016, a reform of this system began to be considered.<sup>232</sup> Although the reform proposals stagnated in 2018 mainly due to the rejection of the Visegrád group, a new initiative, the New Pact on Migration and Asylum, aimed at improving the current system and protecting migrants and refugees, was launched in 2020.<sup>233</sup> In the final analysis, therefore, we have seen how the CEAS is still currently based on the discretion of states which, in order to protect national interests, do not push towards a common path able to establish a structured and lasting system for managing migration flows and concretely protect the lives and rights of migrants and asylum seekers.

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<sup>228</sup> Hotspots are defined as crisis points where newly disembarked migrants are brought together for a pre-identification and rescue phase. After this first stage, migrants are subsequently divided into two groups, according to their assessment: on one hand, international protection seekers going directly to reception centers (Hubs) and on the other hand, economic migrants commonly subject to a refoulement order for illegal entry. The establishment of hotspots, however, gave rise to several issues concerning the absence of a clear legal definition and arbitrary detention and ill-treatment of migrants. See: Hotspots - asylum information database: European council on refugees and exiles. Asylum Information Database | European Council on Refugees and Exiles. Retrieved February 1, 2023, from <https://asylumineurope.org/reports/country/italy/asylum-procedure/access-procedure-and-registration/hotspots/>

<sup>229</sup> Relocation is a mechanism for the distribution among Member States of "persons with a clear need for international protection", whose legal basis is Articles 78 and 80 of the TFEU. Relocation represents a temporary and emergency measure that operates in derogation of the so-called Dublin Regulation according to several criteria of Member States such as total population, total GDP, average number of asylum applications, unemployment rate. See: Šabić, S. Š. (2017). The relocation of refugees in the European Union. *Friedrich Ebert Stiftung*.

<sup>230</sup> The resettlement measure, which is the subject of EU Recommendation No. 914 of 2015, refers to the transfer of individual refugees with a clear need for international protection, carried out at the request of the United Nations High Commissioner for Refugees, from a third country to a consenting Member State, with the aim of protecting them from refoulement and granting them the right of residence and all other rights similar to those granted to beneficiaries of international protection. Such resettlement is therefore on a voluntary basis. See: Commission Recommendation (EU) 2015/914 of 8 June 2015 on a European resettlement scheme, 8 June 2015, L148/32 Official Journal of the European Union

<sup>231</sup> Willermain, F. (2016). The European agenda on migration, one year on. The EU response to the crisis has produced some results, but will hardly pass another solidarity test. *IEMed Mediterranean Yearbook*, 2016, 133-140.

<sup>232</sup> Davis, K. (2020). The European Union's Dublin Regulation and the Migrant Crisis. *Wash. U. Global Stud. L. Rev.*, 19, 261.

<sup>233</sup> Nagy, B. (2017). Sharing the responsibility or shifting the focus? The responses of the EU and the Visegrád countries to the Post-2015 Arrival of Migrants and Refugees. *Global Turkey in Europe, Working Paper*, 17, 1-20

#### 4.1 Overcoming the Dublin Regulation and introducing the principle of responsibility-sharing

Regulation 604/2013<sup>234</sup>, the Dublin Regulation III, represents the cornerstone of the Common European Asylum System. It establishes the criteria and mechanisms for determining the Member State responsible for assessing an application for international protection submitted by a third-country national or a stateless person. It is the third regulation on the subject, following the 1990 Dublin Convention<sup>235</sup> and Dublin Regulation II<sup>236</sup>. The Regulation states that the application for protection presented in the territory of the State at the border or in transit zones will have to be examined by only one Member State, which will have the duty to inform the applicant and, in order to facilitate the procedure, will have to start an interview with the latter.<sup>237</sup> Compared to the previous Regulations, this document expands the hypotheses of protection, recognized also in border and transit zones; this last provision responds to the need to avoid refoulement without a specific assessment of the international protection need of these subjects. The principal objective of the Dublin Regulation III is thus the one of ensuring quick access to the asylum procedures and establishing a single and clearly determined Member State of the European Union responsible for the examination of the application. The determination of the Member State responsible is established through several criteria stated from art.8 to art.15 of the Regulation.<sup>238</sup> The criteria for establishing responsibility are, in hierarchical order: family considerations, recent possession of visa or residence permit in a Member State and whether the applicant has entered EU irregularly, or regularly.<sup>239</sup> However, in general, if the above-

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<sup>234</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, 26 June 2013, L180/31 Official Journal of the European Union, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604>

<sup>235</sup> Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention, 5 June 1990, Official Journal of the European Union C254/01, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:1997:254:TOC>

<sup>236</sup> Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 18 February 2003, L50/1 Official Journal of the European Union

<sup>237</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, 26 June 2013, L180/31 Official Journal of the European Union, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604>

<sup>238</sup> Idem

<sup>239</sup> Country responsible for asylum application (Dublin Regulation). Migration and Home Affairs. (n.d.). Retrieved January 31, 2023, from [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation\\_en#:~:text=The%20criteria%20for%20establishing%20responsibility,entered%20EU%20irregularly%2C%20or%20regularly.](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en#:~:text=The%20criteria%20for%20establishing%20responsibility,entered%20EU%20irregularly%2C%20or%20regularly.)

mentioned criteria are not applicable, art. 3 of the Regulation defines that the Member State responsible for examining an application for international protection is the one in which the asylum application was submitted.<sup>240</sup> Moreover, at the basis for determining the state responsible, the Dublin regulation explicitly refers to the spirit of solidarity and mutual trust between members which should represent the guiding principle of the procedure.<sup>241</sup> However, it is precisely the failure to apply the principle of solidarity between Member States that makes the Dublin regulation unsuitable for managing migration flows. In particular, the identification of the State of first arrival as the competent State has currently resulted in an overload of applications for European border countries, often equipped with deficient reception systems that encourage if not cause secondary movements. Furthermore, the solidarity operating between states, which should guide the Dublin system, seems in reality to be operating as a mere emergency criterion that is not implemented or feasible in the ordinary course of events.<sup>242</sup> Therefore, the biggest shortcoming of the Dublin regulation is represented by the failure to apply the principle of solidarity between Member States which should represent the underlying principle of the Common European Asylum System as a whole as stated also in art. 80 TFUE. As a matter of fact, this article explicitly establishes that all the EU's policies related to migration and asylum and their implementation "shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States".<sup>243</sup> Moreover, this principle, as stated previously, is reflected also in recitals 22 and 25 of the Dublin Regulation.<sup>244</sup>

Even though the solidarity principle appeared for the first time during the Tampere Council in 1999<sup>245</sup> and gained increase relevance throughout the subsequent documents on migration and

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<sup>240</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, 26 June 2013, L180/31 Official Journal of the European Union, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604>

<sup>241</sup> Idem

<sup>242</sup> Davis, K. (2020). The European Union's Dublin Regulation and the Migrant Crisis. *Wash. U. Global Stud. L. Rev.*, 19, 261.

<sup>243</sup> Consolidated version of the Treaty on the Functioning of the European Union, 26 October 2012, Official Journal C 326/47, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

<sup>243</sup> Consolidated version of the Treaty on the European Union, 26 October 2012, Official Journal C 326/13, available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF)

<sup>244</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, 26 June 2013, L180/31 Official Journal of the European Union, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604>

<sup>245</sup> Ohlsson, N. (2015). Challenging the principle of solidarity in the Common European Asylum System (Doctoral dissertation, Master Thesis, Lund: Lund University).

asylum, it is necessary to underline its emergency scope that has continued to characterize the historical and legal evolution of this principle.<sup>246</sup> In fact, the application of this principle takes place mainly in emergency situations in which unrelenting migratory pressure towards a state should initiate a process of solidarity between the various EU members.

To understand the reasons behind this lack of solidarity, it seems first necessary to clarify the meaning and scope of this principle, its relationship with the concept of shared responsibility, and whether it operates as optional and implementable only in emergency situations, or whether it has the value of a constitutional and supranational principle. The first fundamental issue to be analyzed is precisely the unclear definition of this principle enshrined in Art. 80 TFEU.<sup>247</sup> The latter, in fact, does not provide a clear definition of what is to be understood by solidarity, nor does it place obligations on EU Member States.<sup>248</sup> Despite the constitutional value of solidarity, however, the implementation of Article 80 TFEU appears to be optional. Instead of being a mandatory principle, solidarity has taken the form of a guiding principle subject to the discretion of Member States.<sup>249</sup> If on one hand, the voluntary character of solidarity could be seen as an element that does not stiffen the system and allows for great discretion on the part of states and the EU, capable of achieving the established results, on the other hand, the measures taken so far show the weaknesses and flaws of a system based on a flexible and therefore non-compulsory solidarity principle.<sup>250</sup>

Even though solidarity should represent the founding principle of the Common European Asylum System, its architecture and, in particular, its fundamental pillar, namely the Dublin Regulation, seem to go in the complete opposite direction. The “first entry rule” appears to be in open conflict with the principle of solidarity which, moreover, is intrinsically connected to other concepts: fairness and responsibility sharing.<sup>251</sup> While the first one entails that all asylum seekers must be able to apply and have access to the same procedures, the second one presupposes a sharing of responsibilities between Member States animated by the spirit of solidarity during three fundamental phases: the first aimed at the prevention and resolution of

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<sup>246</sup> Tsourdi, E. (2017). Solidarity at work? The prevalence of emergency-driven solidarity in the administrative governance of the Common European Asylum System. *Maastricht Journal of European and Comparative Law*, 24(5), 667-686.

<sup>247</sup> Idem

<sup>248</sup> Ohlsson, N. (2015). Challenging the principle of solidarity in the Common European Asylum System (Doctoral dissertation, Master Thesis, Lund: Lund University).

<sup>249</sup> Idem

<sup>250</sup> Carrera, S. (2021). Whose Pact? The Cognitive Dimensions of the EU Pact on Migration and Asylum. The EU Pact on Migration and Asylum in light of the United Nations Global Compact on Refugees, 1.

<sup>251</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

refugee crisis; the second concerned with the management of migratory flows and arrivals; the third, namely the post-arrival phase, concerned with the reception of asylum seekers.<sup>252</sup>

All three phases of migration management should be characterized by inter-state cooperation and by a system of relocation of funds and asylum seekers through the establishment of a shared protection apparatus having a stable and lasting character rather than being temporary and based on emergency. In practice, however, as a consequence of the wide discretion in the hands of states, the principle of solidarity has been translated into purely financial solidarity.<sup>253</sup> The Common European Asylum System and the lack of solidarity have highlighted how this system is still anchored on the defense of national interests rather than aimed at cooperation between Member States with the protection of fundamental rights as the ultimate objective. The emergency measures taken in the 2015-2016 migration crisis and in the various events listed in this analysis have underlined the reluctance of states to lose part of their sovereignty in order to establish a common asylum system capable of responding to the emergency situation that Europe is still experiencing. This situation is further exacerbated by the insurgent of populist movements promoting a securitization approach focused on the management of external frontier left in the hands of border states or even third countries.<sup>254</sup> The migration crisis revealed the inadequacy of the “first entry rule” and the consequent absence of responsibility sharing between Member States. As a matter of fact, the wide discretion provided by this system has led to several separate national systems that many times do not take into account the protection of human rights.<sup>255</sup> Even though security concerns cannot be neglected, they must, however, be balanced with the guarantee of fundamental rights through the implementation of the solidarity and responsibility-sharing principles as stated in art.80 of the TFUE.<sup>256</sup> In conclusion, therefore, the fundamental step to be taken is to recognize the constitutional value of the principle of solidarity by going beyond the purely emergency dimension of its current application. The necessary reform of the Common European Asylum System should be aimed at ensuring the internal security of states and of Europe, while at the same time guaranteeing solidarity and the protection of the fundamental rights of those most affected, namely asylum seekers. The current system centered on the externalization of borders does not guarantee an application of the

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<sup>252</sup> Idem

<sup>253</sup> Armstrong, A. B. (2019). You shall not pass: How the Dublin system fueled fortress Europe. *Chi. J. Int'l L.*, 20, 332.

<sup>254</sup> Mlambo, V. H. (2020). Externalization and Securitization as Policy Responses to African Migration to the European Union. *African Human Mobility Review*, 6(3).

<sup>255</sup> Frasca, E. (2021). Il Nuovo Patto sulla migrazione e l'asilo tra evoluzioni, tendenze e contraddizioni del diritto dell'Unione europea. *Costituzionalismo. it*, 19.

<sup>256</sup> Brown, J., & Dadu, S. (2018). Migrant rights in an age of international insecurity: Exploring the narratives of protection and security in European migration and refugee law.



principle of solidarity and responsibility sharing within the European area.<sup>257</sup> The most glaring consequence of the inadequacy of the asylum application assessment system is represented by the huge percentage of secondary movements of migrants from the country of first entry to other European states.<sup>258</sup> Unfortunately, however, as we shall see in the next section, the proposal for a New Pact on Migration and Asylum put forward in 2020<sup>259</sup>, seems also to reiterate the same dynamics and perspectives. In fact, the newly expected solidarity mechanism seems to envisage its implementation only as an ad hoc instrument to intervene in situations of 'search and rescue, pressure and crisis'.<sup>260</sup> In conclusion, although the European Union has set itself the goal of creating a solidarity-based mechanism able to overcome the inefficiency of the Dublin system and the lack of responsibility sharing, the new proposal seems to reiterate the same emergency character based on the prioritization of Member States' discretionality over the protection of fundamental rights.

#### **4.2 A European tool based on human rights considerations or geopolitical interests?**

After the failure of the proposals of the European Commission and Parliament in 2016, the reforms of the Common European Asylum System regained relevance in 2020 with the launch of the New Pact on Migration and Asylum. On 23 September 2020, the President Ursula von der Leyen presented a fundamental document representing the starting point for the definition of future European migration policies and the overcoming of the European system's shortcomings analyzed previously.<sup>261</sup> The aim of this new European document is thus the one of creating an instrument able to merge together the need for an efficient migration management system with a more humanitarian approach. In an attempt to opening the way to necessary reforms, this New Pact on Migration and Asylum focuses on three main pillars: border screening activities, the solidarity mechanism between Member States, and cooperation with third countries.<sup>262</sup> The objective of this paragraph is the one of assessing the efficacy of the

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<sup>257</sup> Cassarino, J. P., & Marin, L. (2022). The Pact on Migration and Asylum: Turning the European Territory into a Non-territory?. *European Journal of Migration and Law*, 24(1), 1-26.

<sup>258</sup> Thym, D. (2022). Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum.

<sup>259</sup> A fresh start on migration: Building confidence and striking a new balance between responsibility and solidarity. European Commission – Press Corner, 23 September 2020, Retrieved January 31, 2023, from [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1706](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1706)

<sup>260</sup> Idem

<sup>261</sup> Press statement by President von der Leyen on the New Pact on Migration and Asylum, European Commission – Press Corner, 23 September 2020 from: [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_20\\_1727](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1727)

<sup>262</sup> Carta, M. C. (2021). Il “nuovo” Patto europeo sulla migrazione e l’asilo: recenti sviluppi in materia di solidarietà ed integrazione.

reforms proposed and evaluating whether this document represents an adequate legislative instrument able to transform the Common European Asylum System into a truly efficient system based on solidarity and responsibility-sharing.

First of all, I will analyze the first main pillar of this reform project, namely the border screening activities aimed at establishing the status upon arrival. According to the New Pact, the proposed procedure of pre-entry screening applicable to all third-country nationals who cross the external border of the EU without authorisation, consists in identification activities, health and security checks, fingerprinting and registration in the Eurodac database.<sup>263</sup> This procedure represents the first phase of the status establishment and should open the way for two possible courses of action: either the accelerated procedure or the ordinary asylum procedure. The fast-tracking procedure is to be applied to cases of irregular entry at the borders or as a consequence of search and rescue operations at sea in the circumstances in which applicants come from third countries with a recognition rate of less than 20%, when they pose a threat to public order or national security, when they attempt to deceive the authorities, e.g. by providing false information or documents, and when they come from safe countries of origin or safe third countries.<sup>264</sup> In all other cases, authorities should proceed with the ordinary asylum procedure. Furthermore, should an application be rejected the document introduce an EU return border procedure.<sup>265</sup> Besides intending this mechanism as an instrument to fight unauthorized movements, as well as a clear signal to traffickers, the Commission underlined that the overall procedures should focus on the protection of human rights, in particular on ensuring that applicants receive an individual assessment of their application based on the respect of the principle of non-refoulement as well as provide a clear, simple and efficient procedure for Member States of the European Union.<sup>266</sup> The proposed procedure for evaluation asylum claims, however, presents several drawbacks. First of all, it appears to be extremely similar to the activities already carried out in hotspots.<sup>267</sup> Unfortunately, in fact, the lack of innovation concerning the criteria for the determination of the state responsible, will certainly result in even greater burdens for border or first entry states, where screening activities would be carried out. Furthermore, the assimilation to the crisis points procedure reposes the problems related to the allegation of

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<sup>263</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, European Commission, 23 September 2020 available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC\\_3&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF)

<sup>264</sup> Idem

<sup>265</sup> Idem

<sup>266</sup> Idem

<sup>267</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

lack of guarantees and protection of fundamental rights for those subjected to identification and detention.<sup>268</sup> Additionally, the two procedures seem to be based on two misconceptions: the first is that applications for protection can be assessed quickly and expeditiously, and the second is that most people arriving in Europe do not need protection.<sup>269</sup> Indeed, according to data reported by ECRE, most applications for international protection in the last three years have received a positive outcome in relatively short timeframes.<sup>270</sup> Furthermore, even though the right of individual assessment and the right of non-refoulement are formally guaranteed, these procedures created other exclusionary criteria based on nationality prejudices which clash with the need to carefully evaluate the situation of vulnerability that the subject in question is experiencing in that specific timeframe.<sup>271</sup> The purely existence of two separate asylum procedures inevitably results in an impairment of the right to asylum. Ultimately, therefore, this first pillar does not appear to introduce anything innovative but rather it reintroduces inadequate procedures already carried out in hotspots that besides being extremely onerous for first entry countries, do not guarantee the full exercise of the right of asylum.

The second pillar of the New Pact on Migration and Asylum is represented by the establishment of a common solidarity and shared-responsibility system based on art.80 TFUE aimed at overcoming the limits of the Dublin Regulation. The advanced system focuses on two mechanisms: relocation and return sponsorship.<sup>272</sup> Each Member State will have to participate in the relocation or return sponsorship mechanisms according to a distribution key defined 50% by GDP, and the other 50% by population.<sup>273</sup>

The novelty is represented by the introduction of the return sponsorship mechanism which, according to the document, should establish a system in which Member States are obliged to provide the necessary support to pressured states in order to repatriate those subjects that do not have the right to stay in the European territory.<sup>274</sup> The so-called sponsoring Member State will

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<sup>268</sup> Cassarino, J. P., & Marin, L. (2022). The Pact on Migration and Asylum: Turning the European Territory into a Non-territory?. *European Journal of Migration and Law*, 24(1), 1-26.

<sup>269</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

<sup>270</sup> ECRE analysis of asylum statistics in Europe. European Council on Refugees and Exiles (ECRE). (n.d.). Retrieved January 31, 2023, from <https://ecre.org/ecre-analysis-of-asylum-statistics-in-europe/>

<sup>271</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

<sup>272</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, European Commission, 23 September 2020 available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC\\_3&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF)

<sup>273</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

<sup>274</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, European

assume full responsibility in the event that the return is not carried out within eight months, resulting in the foreign national being transferred to the latter State once these deadlines have passed.<sup>275</sup> Unfortunately, this solidarity mechanism seems to apply only in emergency situations, i.e. when a state is subject to heavy migratory pressure, or in the case of search and rescue (SAR) operations.<sup>276</sup> As a matter of fact, the mechanism of return sponsorship still presents an emergency dimension and a flexible character. Indeed, although subject of a general obligation to intervene, states maintain the discretion to choose the type of solidarity mechanism to adopt, whether reallocation or return sponsorship. The positive and innovative element of this mechanism, namely the formal mandatory character, is therefore limited in its effective implementation due to the wide discretion left in the hands of Member States.<sup>277</sup> Once again, this flexible solidarity modality represents the result of pressure from several Member States, in particular, the Visegrád Group, eager to preserve its sovereignty over migration issues.<sup>278</sup> This flexible solidarity mechanism will eventually lead to very different burden-sharing responsibilities, such as contributing purely through monetary and financial support rather than reallocating asylum seekers in their territories.<sup>279</sup> Although the demand for solidarity and fair burden-sharing between states appears to be a founding element of this document, in fact, once again, we are faced with a mutilated implementation that risks to violate the right to asylum and other fundamental rights of asylum seekers.

Besides this rather weak mandatory solidarity mechanism, the second pillar of the New Pact on Migration and Asylum provides another instrument, namely Migration Preparedness and Crisis Blueprint system that should allow, in case of force majeure events, to flexibly respond through a “mode based on readiness and anticipation rather than a reactive one”.<sup>280</sup> This specific program, addressed to pressured states, involves two distinct phases: a monitoring phase and a

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Commission, 23 September 2020 available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC\\_3&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF)

<sup>275</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

<sup>276</sup> Idem

<sup>277</sup> De Bruycker, P. (2022, February). The New Pact on Migration and Asylum: What it is not and what it could have been. In *Reforming the Common European Asylum System* (pp. 33-42). Nomos Verlagsgesellschaft mbH & Co. KG.

<sup>278</sup> Hadj-Abdou, L. (2021). From the migration crisis to the new pact on migration and asylum: the status quo problem.

<sup>279</sup> Dimitriadi, A. (2020). Looking for a bridge over troubled waters: the forthcoming New Pact on Migration and Asylum. *ELIAMEP| Policy Brief*.

<sup>280</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, European Commission, 23 September 2020 available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC\\_3&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF)

crisis response phase.<sup>281</sup> The monitoring and preparedness phase involves the activation of a 24/7 active “network” aimed at exchanging information and supporting the state under pressure.<sup>282</sup> The second phase of crisis management and response is characterized by different actions, some concerning countries of origin and transit (voluntary repatriation and financial support), others referring to border states such as provide information and obtain support for the management of the emergency; finally, it is foreseen that with regard to the other Member States under pressure, the Union Civil Protection Mechanism<sup>283</sup> can be activated, upon their request, to provide the necessary assistance.<sup>284</sup> For these needs, it is recognized that it is possible, while respecting the rights of the applicants as well as the principle of non-refoulement, to derogate from the normal timeframe.

Through these first two pillars of the New Pact on Migration and Asylum, namely screening activities at borders and the mandatory mechanism of solidarity, the Commission explicitly wanted to introduce a newly established system aimed at abolishing the Dublin Regulation and overcome its limits. In reality, it appears to be a mere play on words: while it is true that it is proposed to abolish the Dublin regulation and replace it with a regulation on the management of asylum and immigration with a broader objective scope, the Dublin criteria continue to be implemented. Although embedded in a broader system, the criteria for determination, therefore, appears to be exactly the same.

The third pillar refers to one of the already central issues of the Common European Asylum System, namely cooperation with third countries.<sup>285</sup> In this New Pact on Migration and Asylum, a significant focus is thus maintained on the external activities of the EU. In this document, the external dimension of the European Asylum System is significantly incentivized on two levels: increasing partnerships with third countries and prevention of illegal immigration and the fight against traffickers.<sup>286</sup> Among the various forms of cooperation, the third pillar focuses on the

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<sup>281</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

<sup>282</sup> Idem

<sup>283</sup> The Union Civil Protection Mechanism is an instrument specifically designed to strengthen cooperation between the EU countries and 8 participating states on civil protection with the aim of improve prevention, preparedness, and response to disasters. If response capacities and capabilities of a member state are particularly overwhelmed, the latter can request assistance through this newly established mechanism. See: EU Civil Protection Mechanism. European Civil Protection and Humanitarian Aid Operations. (n.d.). Retrieved February 1, 2023, from [https://civil-protection-humanitarian-aid.ec.europa.eu/what/civil-protection/eu-civil-protection-mechanism\\_en](https://civil-protection-humanitarian-aid.ec.europa.eu/what/civil-protection/eu-civil-protection-mechanism_en)

<sup>284</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

<sup>285</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, European Commission, 23 September 2020 available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC\\_3&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF)

<sup>286</sup> Idem

necessity to increase relations and partnerships with those states located at the border of the European Union, such as the countries of North Africa or Western Balkan States, considered to be key third countries of transit or origin having a strategic geographical location.<sup>287</sup> The ultimate objective of third country cooperation is represented by the need to control and limit migration flows toward the European territory through the implementation of a border externalization approach. The instrument to achieve this aim is the one of establishing advantageous partnership with third countries, which in exchange for development assistance and support in migration management, agree to cooperate with the European Union to limit the arrival of migrants and refugees.<sup>288</sup> The New Pact on Migration and Asylum, thus, presents the characteristic of the externalization policies already implemented by the European Union, namely the dichotomy between economic and financial support in exchange of border control by third countries. In fact, the cooperation with third countries, involving return and readmission mechanisms, seems to reiterate the willingness of EU Member States to control and limit migration flows rather than providing international protection. As a matter of fact, the prescribed humanitarian dimension of this new instrument did not translate into concrete policies aimed at protecting asylum seekers. Furthermore, agreements with third countries actually involve support for repressive and unstable regimes where the protection of fundamental rights is not guaranteed.<sup>289</sup>

Despite the fact that the core of the entire policy document, in line with the past, is to promote a controlled management of migratory flows, also through a compression, never declared but in fact implemented, of the right to asylum, the New Pact contains a formal recognition of the importance of increasing legal pathways to Europe.<sup>290</sup> These paths, however, seen as functional to the fight against irregular immigration, are aimed to both stimulate solidarity between Member States and solidarity towards third countries. Specifically, reference is made to resettlement programs; support for European states wishing to set up forms of public or private partnership, or sponsorship; the full implementation of the visa code; as well as partnerships to attract talent, with a view, to support and incentive immigration for labour market reasons.<sup>291</sup>

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<sup>287</sup> Idem

<sup>288</sup> Hilpert, I. (2022). Fragile Buffer Zones. The Externalization Dynamism in the Field of Border Security and Possible Alternatives. *Zeitschrift für Migrationsforschung*, 2(1), 165-175.

<sup>289</sup> Mlambo, V. H. (2020). Externalization and Securitization as Policy Responses to African Migration to the European Union. *African Human Mobility Review*, 6(3).

<sup>290</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, European Commission, 23 September 2020 available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC\\_3&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF)

<sup>291</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

These indications, however, do not present the same force as the other objectives of the policy document. In fact, the lack of strength and vision of these operations translated into mere invitations and recommendations for Member States.<sup>292</sup> Moreover, although it does not represent a central issue of this specific analysis, it is also appropriate to also underline the limits of this new instrument with regard to search and rescue operations at sea. The proposal for a new regulation on asylum and migration management establishes a relocation mechanism following SAR operations, aimed at avoiding the use of ad hoc instruments, but does not seem to refer to the goal of port rotation, nor to the automatic disembarkation mechanism formulated at the Valletta meeting in 2019<sup>293</sup>.<sup>294</sup> This instrument, therefore, does not introduce anything innovative to deal with the humanitarian crisis resulting from search and rescue operations at sea. Despite the urgent need of a clear and efficient new normative framework of these operations aimed at avoiding institutional stalemates, the New Pact on Migration and Asylum is essentially based on regulations and prohibitions already in force at the international level, which, however, does not prevent the jeopardization of the right to international protection granted to persons rescued at sea.<sup>295</sup>

In conclusion, the analysis of the three central pillars of this New Pact on Migration and Asylum proposed in 2020, highlighted how the European institutions are still far from creating an effective common system able to merge together the objective of controlling and limiting illegal migration with a more humanitarian approach essential in order to protect the rights of migrants and refugees. This instrument in fact seems to be the result of a compromise between EU Member States aimed at safeguarding state sovereignty and border control. The implementation of the principle of solidarity and responsibility-sharing still seems to be constrained by the discretionality of states. The prescribed flexible responsibility that does not allow the creation of a truly efficient allocation of responsibilities system between Member States will not, therefore, result in a lightening of asylum applications on first entry countries. Furthermore, the emergency architecture involving ad hoc operations aimed at responding to situation of unrelated crisis is inadequate to deal with the ongoing phenomenon of migration that the EU is still experiencing. The lack of an efficient internal dimension for the management of migration

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<sup>292</sup> Idem

<sup>293</sup> Carrera, S., & Cortinovis, R. (2019). The Malta declaration on SAR and relocation: A predictable EU solidarity mechanism?. *CEPS Policy Insight*, (2019-14).

<sup>294</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

<sup>295</sup> Rescue at sea – A Guide to principles and practice as applied to refugees and migrants, January 2015, International Maritime Organization (IMO), the International Chamber of Shipping (ICS), and the Office of the United Nations High Commissioner for Refugees (UNHCR)

translated into the establishment of an externalization approach that significantly relies on third countries cooperation and activities to tackle irregular migration. This external dimension, however, as we seen in the previous chapters, leaves the EU vulnerable to possible threats and power games having the objective of achieving specific geopolitical benefits. In fact, this great reliance on external activities has shifted the balance of power in favor of transit or sending countries which thanks to the use of migration diplomacy or even the use of a coercive engineered migration strategy can count on a strong bargaining power.

### **4.3 Future perspectives: failure or success?**

Having analyzed the institutional framework of the Common European Asylum System and the proposals of the New Pact on Migration and Asylum of 2020, it seems particularly evident that the guiding objective of the EU migration policies is the one of managing migration flows and limiting applications for international protection. All the implemented instruments and the advanced adjustments are explicitly designed to fight irregular migration. Although it is legitimate for the Union and its Member States to implement policies aimed at managing and controlling the phenomenon, what seems to be missing is a balance between security requirements and the protection of fundamental rights. Little relevance has been given to the introduction of policies that guarantee or allow access to European territory, preferring the establishment of restrictive policies, which rather than limiting, increase the pressure on the entire asylum system. As a matter of fact, the European Union still seems to be extremely far from creating a mechanism able to guarantee the right balance between security, solidarity and protection of fundamental rights. The predominance of Member States' interests in the overall migration management system, that prioritize economic and geopolitical gains over fundamental rights, still represents the fundamental core behind the Common European Asylum System. Despite the great expectations of the New Pact on Migration and Asylum, the proposed reforms did not reach the desired results. Due to the lack of an efficient internal dimension which places border control in the hands of third states, the EU has made itself extremely vulnerable to the game of migration diplomacy. In fact, this excessive reliance on third countries has produced an unwanted political outcome, namely the one of weakening the European Union vis-à-vis third countries.

Given the overall failure of this document, the last paragraph of this analysis will highlight the necessity to strengthen already existing European instruments and will try to advance some possible adjustments in order to guarantee greater protection of asylum seekers through an



effective expansion of the right to asylum and at the same time safeguard internal security of the European Union. Therefore, it follows a list of possible instruments designed to promote legal, safe and secure access to the European territory.

The first essential instrument that the EU should increasingly implement is resettlement. Resettlement refers to the process through which a person in clear need of international protection is transferred to a willing member country where he or she will find permanent protection.<sup>296</sup> Although actions aimed at implementing resettlement programs have been carried out over the years, including in 2007 the establishment of the European Fund for Immigration and Asylum<sup>297</sup> and in 2009 the establishment of a joint EU resettlement program<sup>298</sup>, all these operations were conceived with a view to manage and limit migration flows rather than driven by humanitarian considerations. What is particularly problematic is that this instrument, rather than promoting legal access to Europe, is often framed as an instrument of migration flows control. Furthermore, the emergency character of subsequent ad hoc initiatives regarding resettlement such as the program implemented during the migration crisis of 2015-2016 aimed at reducing pressure on the most affected states, have shown a strong unevenness in their functioning.<sup>299</sup> In fact, being based on the voluntary adhesion, the participation of states in resettlement mechanisms has been varied and discretionary.<sup>300</sup> Even though the necessity to implement legal access routes to Europe is reaffirmed also in the New Pact of 2020, the key step, however, concerns the transition from ad hoc instruments with an emergency character to a stable resettlement program with a humanitarian purpose.<sup>301</sup> The evolution to a more humanitarian action should focus on solidarity operations having as a target sensitive area in need of humanitarian aid instead of choosing strategic countries of origin and transit of

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<sup>296</sup> United Nations High Commissioner for Refugees. (n.d.). Resettlement. UNHCR. Retrieved February 1, 2023, from <https://www.unhcr.org/resettlement.html#:~:text=Resettlement%20is%20the%20transfer%20of,of%20the%20the%20durable%20solutions.>

<sup>297</sup> Asylum, Migration and Integration Fund (2021-2027). Migration and Home Affairs. (n.d.). Retrieved February 1, 2023, from [https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2021-2027\\_en#:~:text=The%20Asylum%2C%20Migration%20and%20Integration,total%20of%20EUR%209.9%20billion.](https://home-affairs.ec.europa.eu/funding/asylum-migration-and-integration-funds/asylum-migration-and-integration-fund-2021-2027_en#:~:text=The%20Asylum%2C%20Migration%20and%20Integration,total%20of%20EUR%209.9%20billion.)

<sup>298</sup> Communication from the Commission to the European Parliament and the Council on the establishment of a Joint EU Resettlement Programme 2 September 2009, COM(2009) 447 final – Not published in the Official Journal, available at: <https://eur-lex.europa.eu/EN/legal-content/summary/joint-eu-resettlement-programme.html>

<sup>299</sup> Alter, N., & Zhang, R. (2022). European Migration Crisis: Policy Analysis of the Frontier Countries. *Int'l JL Ethics Tech.*, 17.

<sup>300</sup> De Boer, T., & Zieck, M. (2020). The legal abyss of discretion in the resettlement of refugees: Cherry-picking and the lack of due process in the EU. *International Journal of Refugee Law*, 32(1), 54-85

<sup>301</sup> Idem

migratory flows.<sup>302</sup> Ultimately, therefore, resettlement programs, and European migration policies in general will only be successful if they are implemented in a stable and lasting manner with humanitarian aid as the ultimate goal.

Another instrument for legal access to European territory that the members of the EU should increasingly implement is humanitarian admission, i.e. the program for transferring persons in need of international protection to a particular Member State.<sup>303</sup> It refers to programs, implemented autonomously by single Member States or through the support and activity of other international organizations or civil society's associations, address to specific subjects such as persons belonging to a certain nationality or vulnerable groups.<sup>304</sup> Given the need of international protection due to urgent circumstances, these humanitarian admissions allow these subjects to directly reach Europe. The role of the sponsoring state may vary depending on the activities carried out. In most cases, it is limited only to the reception phase following entry into the host country, however, sometimes it also covers the preceding phase in the state of departure thus including also a preparation phase and the travel towards the sponsoring state.<sup>305</sup> The most emblematic example of humanitarian admissions is represented by the establishment of humanitarian corridors which if properly implemented allow for a concrete balance between security needs and the protection of the fundamental rights of applicants.<sup>306</sup> These types of interventions, in fact, do not conceive humanitarian needs as merely instrumental or secondary in relation to management purposes, but balance the two fundamental objective in an exemplary manner: on one hand, the necessity of promoting solidarity and guarantee the protection of applicants, and on the other, the control and management of migration flows.

The third instrument that the European Union should promote is the granting of humanitarian visas in order to gain legal access to the European territory.<sup>307</sup> Currently the normative European framework, namely Regulation 810/2009<sup>308</sup> of the European Parliament and of the

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<sup>302</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

<sup>303</sup> United Nations High Commissioner for Refugees. (n.d.). Humanitarian pathways. UNHCR. Retrieved February 1, 2023, from <https://www.unhcr.org/humanitarian-pathways.html>

<sup>304</sup> Humanitarian admission programmes in Europe – Expanding complementary pathways of admission for persons in need of international protection, March 2018, European Resettlement Network, available at: <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/ERN%2Bscoping-paper-Humanitarian-Admission-Programmes-in-Europe.pdf>

<sup>305</sup> Idem

<sup>306</sup> Humanitarian corridors in Europe were first implemented following the humanitarian crisis in Syria in 2013. See: Ambrosini, M., & Schnyder von Wartensee, I. (2022). Actions speak louder than claims: humanitarian corridors, civil society and asylum policies. *Journal of Ethnic and Migration Studies*, 48(17), 3965-3984.

<sup>307</sup> United Nations High Commissioner for Refugees. (n.d.). Humanitarian pathways. UNHCR. Retrieved February 1, 2023, from <https://www.unhcr.org/humanitarian-pathways.html>

<sup>308</sup> Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), 13 July 2009, L243 Official Journal of the European Union

Council, provides specific circumstances in which the issuing of humanitarian visas is possible. In particular, Article 25 regulates the issuance of limited-territory visas (LTVs) for humanitarian reasons: these are short-term visas (90 days) that can be issued on grounds of national interest or of international obligations.<sup>309</sup> Such visas may be issued by the Member State on an exceptional basis, when it is deemed necessary to derogate from the entry conditions normally applicable to third-country nationals under the Schengen Borders Code<sup>310</sup>.<sup>311</sup> According to the provisions on the Community Code on Visas, it is evident a wide margin of discretion granted to states, as well as its derogatory and exceptional dimension. Article 25, in fact, does not clarify whether the issuance of humanitarian visas represents an obligation or a mere option for Member States of the EU.<sup>312</sup> However, recent case law seems to interpret the issuance of humanitarian visas as a mere optional action in the hands of EU members. The main limitation of the Common European Asylum System, namely the discretion of states, is thus also reiterated in this specific circumstance. Although there was a legislative proposal for a European humanitarian visa, submitted by the European Parliament to the Commission in 2018, it was soon abandoned by the Commission due to its political untenability.<sup>313</sup> Yet the hypothesis of a visa regulation of a supranational nature, not left to state discretion, would seem to be an important proposal for reforming the system, capable of guaranteeing both the protection of the right to asylum and the management of migratory flows. The absence of a unitary and compulsory discipline, in fact, is not only the result of a lack of harmonization in the field of migration policies, but it is also an expression of the unwillingness to create supranational obligations for states in this controversial policy field. The main shortcoming of the 2020 policy document is thus the one of failing to recognize legal access routes to Europe, whether resettlement, admission or humanitarian visas, as instruments for implementing a reform of the system. Transforming these operations into instruments having a compulsory character would not only guarantee the protection of migrants and refugees but could also represent a real tool for combating irregular immigration and organized crimes as well as reduce the European financial resources used to combat and control this type of mobility.

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<sup>309</sup> *Idem*

<sup>310</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), 9 March 2016, L77/1 Official Journal of the European Union

<sup>311</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

<sup>312</sup> *Idem*

<sup>313</sup> European Parliament. (n.d.). Proposal for a regulation on establishing a European Humanitarian Visa: Legislative train schedule. European Parliament. Retrieved February 1, 2023, from <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-proposal-for-a-regulation-on-establishing-a-european-humanitarian-visa>

Finally, it is also noteworthy to analyze another possible reform that the New Pact on Migration and Asylum did not take into consideration. The introduction of a free choice model, namely a model based on the free choice of the foreigner to choose the country in which submitting the asylum application, would conceivably overcome the country of first entry principle of the Dublin system.<sup>314</sup> On one hand, the promoters of this model consider the possibility of “free choice” as a principle that would allow a fair distribution of obligations and responsibilities between Member States and an effective guarantee of the right to asylum.<sup>315</sup> On the other hand, the opponents, regard the recognition of the applicant's free choice as a politically unfeasible solution that eventually would lead to an overload of application for richer countries.<sup>316</sup> In that regard, during the Expert Council of German foundation on Integration and Migration, a regulated free choice model was proposed.<sup>317</sup> According to this revised proposal, the asylum application should be assessed in the border country, where, following the recognition of international protection, the foreigner would be given the possibility to move to another state, provided certain conditions are met, such as, for example, a strong link to the labour market of the destination country.<sup>318</sup> In addition, in order to prevent an overload of application for richer states of the EU, it is proposed to establish the possibility of defining a waiting period, which would allow the Member State, to convince the applicant to remain in their own country.<sup>319</sup> In the final analysis, this proposal, besides being excessively limiting for the beneficiary of international protection, is practically difficult to implement for several reasons. The concrete scope of application of this model presupposes a system based on solidarity and division of responsibilities between states, including financial solidarity, as structural elements of the system. It is, therefore, a proposal that ideally resolves the system's critical issues but that is inapplicable from a political point of view.

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<sup>314</sup> Carta, R. (2021). La riforma del sistema comune di asilo europeo tra principio di solidarietà e rinascita dei nazionalismi.

<sup>315</sup> Immigration Countries: Germany in an International Comparison - 2015 Annual Report, 2015 Expert Council of German Foundation on Integration and Migration, available at: [https://www.stiftung-mercator.de/content/uploads/2020/12/SVR\\_Jahresgutachten2015\\_engl.pdf](https://www.stiftung-mercator.de/content/uploads/2020/12/SVR_Jahresgutachten2015_engl.pdf)

<sup>316</sup> Idem

<sup>317</sup> Idem

<sup>318</sup> Idem

<sup>319</sup> Thym, D. (2022, February). Secondary Movements: Improving Compliance and Building Trust among the Member States?. In *Reforming the Common European Asylum System* (pp. 129-148). Nomos Verlagsgesellschaft mbH & Co. KG.

## 5. CONCLUSION

This dissertation has shown how migration policies of states are essentially shaped by geopolitical and economic interests. Through the use of migration diplomacy, defined by Tsourapas as *states' use of diplomatic tools, processes, and procedures to manage cross-border population mobility, including both the strategic use of migration flows as a means to obtain other aims, and the use of diplomatic methods to achieve goals related to migration*<sup>320</sup>, countries recognized the potential gains of using migration flows as a bargaining tool. The reluctance of Member States to lose part of their Westphalian sovereignty in order to retain the status quo and advance their international power remains one of the major shortcomings of the international migration management system. The balance of power that characterize the international framework continue to have significant relevance in the relations and dynamics between states. However, even though historically the balance of power has always been in favor of developed countries, in recent decades, the Global South, through the use of migration as a bargaining tool and even the use of migrants as a weapon to deploy, have managed to reverse this asymmetrical distribution. The ultimate objective of national states, therefore, is the one of advancing interests and retaining power also through migration. With the rise of migration flows and all the consequences related to this phenomenon, the Global South began to use migration diplomacy to their advantage leaving the Developed North and also the European Union vulnerable to possible threats.

Based on the assumption that historically the dynamics in the international migration system are essentially shaped upon the asymmetrical power relationship between states, Tsourapas formulated a categorization according to the role performed by states in the international migration framework, namely whether a state is predominantly a migrant “receiving” state (immigration state) or a migrant “sending” state (emigration state) or a “transit state”. Through the analysis of these ideal types, in chapter I we have seen how interests of states differs based on the specific role performed. If on one hand sending and transit states engage in migration diplomacy activities in order to gain incentives and benefits in exchange of border control operations, on the other hand receiving states, in an attempt to prevent migrants from crossing their borders, introduced an externalization approach consisting of agreements with third parties, financial support and political favors with the aim of safeguarding their internal security

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<sup>320</sup> Adamson, F. B., & Tsourapas, G. (2019). Migration diplomacy in world politics. *International Studies Perspectives*, 20(2), 113-128

and retain their status quo. As a matter of fact, sending and transit states, through various techniques concerning issue-linkage negotiations and even the use of coercive engineered migration strategies are specifically trying to obtain benefits in the three most strategic spheres of the international framework, namely the military, economic and political ones. Receiving states, given the detrimental consequences of max influx of people, are increasingly implementing restrictive migration policies aimed at reducing the risks of migration crisis, terrorism, and criminal activities. This securitization-linked paradigm, exacerbated by the rise of populist movements prevents the formation of migration policies based on acceptance and integration of migrants into their territories and societies. Despite the need to maintain societies and thus borders open due to the increased interdependence and globalization of the world, sending states are preventing migrants from entering their territories as a consequence of security concerns. Even though migration could represent a possible solution for the demographic decline and the related labour market shortages that the Developed North is currently experiencing, the liberal paradox of Hollifield continue to persist.

These dynamics are specifically evident in the category of transit states that due to their strategic geopolitical location are simultaneously characterized by both transit migration and emigration. Transit states, in fact, represents a pivotal example of the use of migration diplomacy. By cooperating with north developed countries but at the same time advancing a separated migration diplomacy aimed at achieving regional integration and economic growth, transit states can count on a strategic position in the international migration framework. Ultimately, although historically receiving states, i.e. the Northern Countries, were considered as the makers of the international migration governance, post post-colonial interpretation of migration diplomacy reformulated the position of Southern States by emphasizing how these new dynamics have actually shifted the needle of the scales in favor of sending and transit states. Unfortunately, however, the current international migration governance focused on the advancement of national interests does not take into consideration the real actors of the migration process, namely migrants. The prioritization of national interests has in fact led to an inadequate system that does not guarantee the protection and respect of people's fundamental rights.

The case studies highlighted in chapter II represent the emblematic examples showing the intricate network of relations between states performing different roles. In particular, the dichotomy between sending states, namely Morocco and Belarus, and receiving ones, Spain and Poland, displayed concretely how the different interests of individual states but also those

of the European Union are prioritized through not only the use of migration diplomacy strategies but also the direct use of migrants as a weapon that can be deployed in order to change the asymmetrical power relations of the international migration system. As a matter of fact, being located at the frontier of the European Union territory, Morocco and Belarus play an extremely relevant role in the EU's externalization approach of migration. This huge reliance on third countries, however, is jeopardizing the position of the European Union vis-à-vis these sending countries. Morocco and Belarus, in fact, aware of their fundamental role, are not only using migrants as a diplomatic tool in order to gain political and economic concessions but are also creating artificial incidents and migration crisis in order to destabilize the European soil and advance their national interests. If on one hand, as displayed by the Perejil Island crisis, the migration issue is used as a pretext to advance geopolitical interests, such as gaining recognition over Morocco's Western Sahara territorial claims; on the other hand, the Ceuta border incident as well as the Belarus border incident showed how migration flows is used as concrete attempts to inject migrants into the European border with the specific aim of destabilizing and instilling fear. The aim is thus the one of furtherly undermine the response and integration capacity of EU Member States, in these cases Spain and Poland, and take advantage of a rather disunited European Union on migration related issues. Furthermore, this diplomatic power game, which simultaneously includes threats and incentives, has shown how it is extremely necessary to adopt a humanitarian approach within the international migration governance framework. Migrants, who are very often detained in detention centers in humiliating and terrible conditions, are unfortunately only considered as the main pawns to be exploited within these power dynamics.

The analysis conducted in Chapter III highlighted how the same dynamics between national states are also translated into the European Union level. Even though migration became an integral part of the third pillar of EU's competencies with the Amsterdam Treaty in 1999, the established Common European Asylum System is once again constrained by the enormous discretion of single Member States. In fact, despite the transformation of migration into a shared competence of the European Union, the geopolitical and economic interests of states continue to represent the main drivers behind the system currently in force. The Dublin Regulation at the core of the CEAS represents one of the main demonstrations of these dynamics. The failure to reform and overcome the first entry principle which does not allow a distribution of responsibilities based on the principle of solidarity represents a direct consequence of the unwillingness of countries to lose part of their Westphalian sovereignty. Therefore, the creation

of a solidarity system able to protect migrants and guarantee the correct implementation of the right of asylum still represents a distant perspective. Moreover, the European response of the 2015-2016 migration crisis revealed that the introduction of ad hoc emergency measures does not represent an effective approach able to manage large influx of people coming into the EU's territory. Not even the reform proposals of the New Pact on Migration and Asylum of 2020 seem to bring any innovative element capable of adequately reforming the system. Although this new document reiterates the importance of solidarity between Member States, in practice it only envisages a mutilated form of this principle. Indeed, the New Pact's proposal of a flexible solidarity does not constitute an adequate reform to prevent an overload of asylum applications for first-entry countries. In addition, the 2020 Pact also pays a special attention to the external dimension of the European migration management. However, this great reliance on the externalization approach involving cooperation with third countries to combat irregular migration, leaves the EU particularly vulnerable to possible power games and threats of sending and transit states. This weakening of the EU vis-à-vis neighboring countries paired with an inefficient internal dimension represents the Achilles heel of the Common European Asylum System. Ultimately, the main objective of the European Union should be the creation of a solidarity-based asylum system that provides a fair redistribution of responsibilities between Member States. This system, instead of having as its ultimate aim the control and limitation of migration flows, should be based on the promotion of legal routes for accessing the European territory. Increasing legal routes through resettlement programs, humanitarian admissions and the granting of humanitarian visas would represent one of the most appropriate ways to guarantee the right to asylum and effectively respect the fundamental rights of migrants and refugees.



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## 7. EXECUTIVE SUMMARY

Migration represents a phenomenon that has characterized world politics for centuries. However, it is especially after the migration crisis occurred in 2015/2016 that the migration issue gained massive international relevance. This unprecedented crisis that primarily affected the European territory, redefined the concept of migration taking the issue at the top of political agendas both at the national and international level. If historically the focus on migration has been primarily on the domestic consequences of this phenomenon, in recent years, the cross-border mobility management of people has become a fundamental aspect of foreign policy and diplomacy of national states. In particular, political actors began to recognize the potential gains of migration used as a bargaining tool in diplomatic relations in order to pursue geopolitical interests and national power. As a matter of fact, according to a realistic approach of the international relations, states, regardless of their position in the migration system, namely the extent to which they are migration-sending, migration-receiving, or transit states, are constantly trying to consolidate, maintain or improve their relevance in the international system through the systematic securitization of the migration phenomenon. This newly conceptualized foreign aspect of migration flows was defined by several scholars as Migration Diplomacy. In particular, Tsourapas described the concept of Migration Diplomacy as:

*“states’ use of diplomatic tools, processes, and procedures to manage cross-border population mobility, including both the strategic use of migration flows as a means to obtain other aims, and the use of diplomatic methods to achieve goals related to migration.”*<sup>321</sup>

The nature of migration that transcends national borders paired with an increase in migration flows produced, in recent decades, an intricate net of activities and interactions not only between national states but also with other institutions such as international and non-governmental organizations. These interstate activities and dynamics between political actors produced the concept at the base of this research paper, namely Migration Diplomacy. Indeed, the aim of this dissertation is the one of analyzing how national states, through the instrumentalization of migration flows are trying to increasingly advance geopolitical and economic interests and how these same dynamics also shape the interactions within international organizations and institutions, in particular the European Union.

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<sup>321</sup> Adamson, F. B., & Tsourapas, G. (2019). Migration diplomacy in world politics. *International Studies Perspectives*, 20(2), 113-128

After briefly explained the theoretical framework of migration diplomacy, its scope and objective in the introduction of this thesis, I focused my analysis on the categorization of states based on the role performed in the international migration management system. This categorization formulated by Tsourapas is particularly significant in order to investigate the specific interests behind the migration policies of sending, receiving and transit states and how their respective role is essential in the pursue and implementation of different migration policies. In particular, the first Chapter begins with a digression dealing with the asymmetrical power relationship that characterized the international framework and the dynamics between the Global South and Developed States.

Through the Suasion game, Betts highlights how the asymmetrical power relations between receiving and sending states is theoretically clearly in favor of the stronger actor namely the Developed North. As a matter of fact, historically the Global South was considered as the “taker” of the international migration system whose only available option was the one of implementing migration policies specifically formulated by developed countries. In recent years, however, we have witnessed a reversal of this situation of subordination precisely in favour of the Global South. Through migration diplomacy and various techniques such as issue-linkage and leverage strategies, sending and transit countries have overturned the balance of power to their advantage. These states, in fact, have been able to use migration flows to implement independent migration diplomacy in order to gain geopolitical advantages and international power. By connecting migration with relevant issues such as development, security, and the environment, the Global South is pressuring receiving states to cooperate and conclude advantageous agreements. Furthermore, sending states, are increasingly using migrants not only as a bargaining chip in bilateral and multilateral negotiation but also as actual weapons to be deployed. Pivoting on the receiving countries' fear of a possible migration crisis that translated in a securitization of the migration phenomenon, sending states are increasingly adopting coercive engineered migration strategies which are defined by Greenhill as:

*“Those real or threatened cross-border population movements that are deliberately created or manipulated as instruments of deterrence or compellence in order to prevent or induce changes in political behavior, or to extract political, military, and economic concessions from a target state or state”*<sup>322</sup>

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<sup>322</sup> Greenhill, K.M. (2016). Migration as a Weapon in Theory and in Practice. *Military review*, 96, 23.

The use of migration crisis threats thus represents a tactic aimed at obtaining concessions and benefits that would otherwise be out of reach for comparatively weaker entities. Through the instrumentalization of migration flows, sending states are trying to acquire concessions and benefits in all the most important spheres of the international framework, namely the political, military, and economic ones. The rise of these leverage, issue-linkage, and coercive techniques, according to Tsourapas, suggests the emergence of a new type of state, the refugee rentier state, in which elites implement measures to obtain benefits and resources from other states or non-state actors in exchange for keeping refugee groups within a country's borders. In such circumstances characterized by the use of migration as a bargaining tool and as a real threat, stronger governments find themselves stuck in a game designed by weaker players and whose only alternative, according to cost-based logic, is the one of meeting the requests of sending states. If sending and transit states engage in migration diplomacy activities in order to gain incentives and benefits in exchange for border control operations, receiving states have introduced an externalization approach, based on internal security considerations, involving agreements with third parties, financial support, and political favors in order to safeguard and maintain their status quo.

As underlined by Hollifield's liberal paradox, receiving governments' migration policies are in reality contradictory. Despite the necessity to keep societies and hence borders open as the world's interconnectedness and globalization develops, some governments are preventing migrants from entering their territory due to security concerns. Despite the fact that migration may provide a feasible solution to the Developed North's population decline and concomitant labour market needs, the liberal conundrum of Hollifield persists. This securitization-linked paradigm, worsened by the growth of populist propaganda, hampers the development of migration policies based on the acceptance and integration of migrants into their respective territories and cultures. All these factors produced a migration governance framework focused on neighboring countries with the aim of preventing mass migration and thus addressing the root causes of this phenomenon. However, this externalization approach paired with restrictive border control policies, besides further worsening the humanitarian situation of migrants, is also leaving receiving countries vulnerable to possible threats coming from sending states.

In the long term, this method may result in actual crises provoked by host nations of migrants. Sending and transit governments, in fact, can rely on a weapon that, if deployed correctly, might destabilize receiving countries and provoke concrete migratory crises that will be much more difficult, if not impossible to manage. It is thus in the receiving nations' perceived interests to

continue funding these governments and to meet any requests. If on one hand, national security and political considerations continue to drive migration governance agreements and policies of the Developed North, migrants' life and rights, on the other hand, continue to go overlooked. Ultimately, therefore, it is in the national interests of receiving nations, stuck in this circle of power dynamics, to use diplomacy and cooperation to offset any dangers posed by sending countries. Agreements, alliances, and monetary concessions are seen as the most effective way to handle the danger associated with a large inflow of migrants. Although this viewpoint does not safeguard migrants at all, but rather condemns them to inhumane conditions, it remains the primary method utilized by receiving countries caught up in these dynamics especially after the migratory crisis of 2015/2016. Finally, this chapter highlighted how these dynamics of power are particularly visible in transit nations characterized by both transit migration and emigration flows. As a matter of fact, transit states are a key illustration of how migratory diplomacy may be used. Transit nations can benefit from a strategic geopolitical position in the international migration framework that enables them to increasingly engage with developed countries while also pursuing a distinct migration diplomacy focused on the promotion of regional integration and economic progress. Ultimately, the post-colonial view of migratory diplomacy redefined Southern Nations' positions by underlining how these new dynamics have actually altered the balance of power in favor of sending and transit states.

The case studies featured in the second Chapter are symbolic instances of the extensive network of relationships between states and their interests based on the role performed in the international migration management system. The dichotomy between sending, namely Morocco and Belarus, and receiving states, Spain and Poland, demonstrated concretely how the different interests of individual states, as well as those of the European Union, are prioritized through not only migration diplomacy strategies, but also the direct use of migrants as a weapon that can be deployed in order to change the asymmetrical power relations of the international migration system. As a matter of fact, thanks to their geographical location at the European Union's borders, Morocco and Belarus play a critical role in the EU's externalization strategy of migration management. In an attempt to prevent migrants from coming to its territory, single Member States and the European Union institution have begun to fund neighboring countries in exchange of border controls and sea operations.

Although Morocco's migration diplomacy has almost always been aligned with that of Spain and the European Union, there have been significant cases in which the Moroccan authorities have been able to use migration flows to their own advantage by distancing themselves from

the power game exercised by the European Union. Although Morocco has for many years, thanks to EU funding, implemented a system of internal and external control through the deployment of military units performing surveillance and field operations, the construction of physical barriers, bunkers and fences and the carry out of systematic raids in well-known migrants' area, several frictions concerning Fisheries Agreements, management of irregular migration, and territorial disputes have led Morocco to embark on an autonomous strategy to advance its interests both nationally and internationally. Besides a series of regularization campaigns aimed at obtaining the approval of African states in order to advance its ambition to become a regional power and a military operation in the Perejil Island in order to redirect international attention to its Western Sahara territorial claim, Morocco also used migrants as a direct tool in order to destabilize the European territory. Through the injection of 8000 migrants into the Spanish enclave of Ceuta in 2021, Morocco tried to furtherly pressure the European Union and in particular Spain, given the presumed friendly relations with Brahim Ghali, the president of the Saharawi Polisario Front, on recognizing the Moroccan sovereignty over the Western Sahara. This time around, therefore, migrants were used as a real weapon to deploy in order to advance geopolitical interests, economic priorities and international recognition.

The case of Belarus represents an even more evident example of the use of migrants as a leverage tool and a coercive strategy. Belarus, in fact, represents a threat not only for its neighboring countries, in particular Poland, but also for the entire European Union.

Since the election of Lukashenko as President, the relationship between Belarus and the European Union has begun to deteriorate. As a matter of fact, as a consequence of the increasing influence of Russia in the overall Belarusian political framework and the fraudulent activities of Lukashenko aimed at keeping the power, the EU and also the United States have introduced several political and economic sanctions in order to stop the antidemocratic regime of Lukashenko. The President of Belarus began to use migrants as a weapon to destabilize European territory, threatening the release of migrants across the EU borders in an attempt to shift the uneven balance of power in the international migration system. However, the events occurred in 2021 constituted a fundamental shift in Lukashenko's migratory diplomacy policy. Belarus's creation of an artificial migration crisis was the result of several events that occurred since Lukashenko's reelection for a sixth term in office in 2020. After various pro-democratic riots and protests that erupted throughout the country and another round of sanctions by the European Union, Lukashenko's coercive migration diplomacy transformed itself into a hybrid threat strategy aimed at targeting and destabilizing European States. Through a sophisticated strategy, Belarus not only facilitated the activities of smugglers but also put in place a plan of

action involving several measures such as the flying of migrants from Middle Eastern conflict zones into the Belarusian territory through the advertisement of cheap flights and holidays packages with visas, the accommodation of these people in state-owned hotels organized directly by the state-house bureau and then finally the escortage of these migrants across the Belarusian fenced border.

Behind Belarus' coercive migration diplomacy and the use of migrants as a hybrid threat tactic lie various goals, the most important of which is Lukashenko's ambition to retain power. Belarus hoped to persuade the EU, particularly Lithuania and Poland, to stop advocating and supporting pro-democracy movements that questioned and threatened the legitimacy of Lukashenko's election. Moreover, through the creation of the Belarusian artificial migration crisis, Belarus wanted to convince the EU to lift the economic and political sanctions imposed since August 2020. Despite these desired outcomes, Lukashenko's general migratory diplomacy, and specifically the coercive operation, were not particularly effective. The goal of destabilizing the European Union in order to gain additional funds and force the institution to lift the various sanctions against Belarus did not come to fruition due to the European Union's immediate and effective response to the threat, as well as its capacity to absorb injections of migrants into its territory. Although it did not provide the expected objectives, Belarus' plan succeeded in damaging EU Members' absorption ability and further degrading European countries' already polarized views on migration. Indeed, among EU Member States, the topic of migratory flows still remains a source of contention for many, particularly the Visegrád nations, which include, in addition to the Czech Republic, Hungary, and Slovakia, the most targeted country of the Belarusian migration diplomacy namely Poland. As a matter of fact, the already complicate relation between Poland and the EU furtherly exacerbated as a result of the introduction of a controversial law that allowed polish authorities to expel migrants back to Belarus as a response to the artificial crisis. This act empowered border officials to deport from the Polish territory anyone found illegally crossing the border. Furthermore, this approach, which the EU has strongly condemned, involved unlawful pushbacks which represent an express violation of the right to asylum.

After having highlighted the events that characterized the migration diplomacy of Morocco and Belarus and the response of single Member States and the EU as a whole, it is vital to emphasize how the European Union's externalization strategy, which is largely dependent on the role played by third countries, exposes the institution to tremendous challenges that have the ability to weaken the already unstable EU migration management system. Furthermore, this analysis has revealed how the EU's externalization approach and the overall European mechanism on

migration and asylum continue to follow and prioritize the principle of discretionality, which, rather than actually protecting the lives and rights of migrants and refugees, who are the first victims of these power dynamics, promotes the status quo and the advancement of Member States' national interests.

It is precisely a critical analysis of the Common European and Asylum System that characterizes the last Chapter of this research paper. Besides an historical excursus on the development of the current European System, I highlighted how the CEAS proved to have several limitations and shortcomings related to the management of large influx of people coming at the EU borders. Even though the system should be founded on the principle of solidarity, it is precisely the main pillar of the CEAS, the Dublin Regulation, that instead of promoting solidarity between member states and providing for a fair distribution of responsibilities, it continues to promote an emergency approach based on member states' discretionality. As a matter of fact, the "first entry rule" appears to be in open conflict with the principle of solidarity that should guide the entire system. This peculiar aspect has exposed how the CEAS is still based on the preservation of national interests rather than collaboration between Member States. Indeed, the system's broad discretion, that provides for a solidarity mechanism only in emergency situations, has resulted in a number of independent national systems, many of which do not take human rights protection into account. Furthermore, besides a lack of an efficient internal mechanism of migration management based on burden sharing, the Common European Asylum System hugely focuses on the external dimension of migration flows management. This externalization approach, however, as I highlighted previously, leaves the EU especially vulnerable to possible threats coming from third countries. These countries, in fact, responsible of border control activities, can rely on a huge weapon that if concretely deployed has the possible effect to destabilize the entire European territory.

Not even the New Pact on Migration and Asylum proposed in 2020, which should represent an essential first step towards the creation of a solidarity mechanism, presents initiatives and adjustments able to overcome the shortcomings of the CEAS. Besides the reiteration of the importance of third countries external activities, this new document does not provide a common path able to establish a structured and lasting system for managing migration flows and concretely protect the lives and rights of migrants and asylum seekers. The two proposed instruments namely reallocation and return sponsorship are in fact subject to a mutilated solidarity mechanism that is limited in its effective implementation due to the wide discretion left in the hands of member states. Once again, this flexible solidarity model represents the



consequence of constant pressure from some Member States, most notably the Visegrád Group, eager to maintain national sovereignty over migratory issues. This flexible solidarity mechanism will eventually result in quite diverse burden-sharing duties, such as contributing solely through monetary and financial assistance rather than relocating asylum seekers in member states' territories. Although the need for solidarity and equitable burden-sharing among states appears to be a basic feature of the New Pact on Migration and Asylum, we are once again confronted with a disfigured implementation that risks violating asylum seekers' right to asylum and other fundamental rights. In conclusion, given the limitation of the New Pact on Migration and Asylum, in the latest paragraph of this dissertation I highlighted some possible initiatives that if concretely promoted could lead to the creation of a solidarity-based asylum system that provides a fair redistribution of responsibilities between Member States. Increasing legal routes through resettlement programs, humanitarian admissions and the granting of humanitarian visas would represent one of the most appropriate ways to strengthen the Common European Asylum System, guarantee the right to asylum and effectively respect the fundamental rights of migrants and refugees.