



## INSIGHT

# INSTRUMENTALIZATION OF MIGRANTS, SANCTIONS TACKLING HYBRID ATTACKS AND SCHENGEN REFORM IN THE SHADOWS OF THE PACT

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## AN UNSETTLING *DÉJÀ-VU*: THE MAY 2021 CEUTA EVENTS

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**ABSTRACT:** To properly understand the various factors that have been conducive to diplomatic tensions between Spain and Morocco, following the mass arrival of migrants crossing the border of the Ceuta enclave in May 2021, we need to move the debate beyond the recurrent reference to “blackmail”. The instrumentalization of migration for political and diplomatic purposes is not uncommon in the history of international relations. Nor is it new in the governance of migration. This *Insight* argues that the May 2021 events are symptomatic of a now consolidated *community of interests* between Morocco, on the one hand, and the EU and its Member States, on the other, that has gradually affected their relations, across various issue-areas, for better and for worse.

**KEYWORDS:** interdependence – instrumentalization – Morocco – Spain – reverse conditionalities – community of interests.

### I. THE BACKGROUND

For decades, repeated interactions on migration matters, in the framework of regional consultative processes (RCPs),<sup>1</sup> have contributed to consolidating bilateral and multilateral cooperation on the so-called joint management of international migration. Mobilizing decision-makers, stakeholders and practitioners from all countries of migration has been a key objective of these iterative consultations. RCPs have also been conducive to

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<sup>1</sup> C Thouez and F Channac, ‘Shaping International Migration Policy: The Role of Regional Consultative Processes’ (2006) *West European Politics* 370; R Hansen, ‘An Assessment of Principle Regional Consultative Processes on Migration’ (IOM Migration Research Series on Migration 38/2010).



two interrelated (and at times unintended) consequences. Firstly, the engagement of non-Western countries in migration talks has triggered a (re)construction of their own national interests and preferences.<sup>2</sup> Some of them became aware of their empowered position in the “fight against irregular migration” *vis-à-vis* the West, especially the EU and its Member States. Secondly, non-Western countries having a strategic position started to disclose and defend their own representation of what cooperation on migration governance entails, from their own point of view.

It is through this double articulation (*i.e.*, empowerment and disclosed representation) that regional consultations on migration governance have evolved since the mid-2000s. In other words, not only have non-Western countries opened communicative channels on migration and asylum with their Western/European counterparts in the framework of RCPs. They have also expressed their own visions as applied to migration governance while capitalising on their empowered position. True, their empowerment has resulted from the emergence of unprecedented patterns of interdependence in the field of migration and border controls. True, also, their empowerment has resulted into the skilful ability to defend their own preferences and contingencies, be they connected with migration matters or not.

## II. THE PRECEDENTS

In 2020, President Recep Tayyip Erdogan tried to push European governments into supporting Ankara's policy in Syria. When Syria's Idlib province was bombarded by Syrian and Russian forces, Turkey warned the EU that the March 2016 EU-Turkey deal would be in jeopardy if no additional financial support were provided by the EU. Other demands from Turkey included the creation of an EU-funded buffer zone in Syria aimed at securitizing the border with Turkey, as well as eased access to entry visas for Turkish nationals. More recently, as a retaliation against heightened tensions with the EU which imposed sanctions on the Belarusian regime (following fraudulent elections leading to the re-election of President Alexander Lukashenko), the latter threatened the EU that it would no longer prevent migrants from crossing the border with Lithuania where various dissidents and opposition leaders sought and found asylum. Examples abound.

Long before the EU, various Member States have experienced in their bilateral interactions with non-EU countries that the latter are prone to capitalize on crucial issue-areas (e.g., fight against international terrorism, intelligence cooperation, energy security, border controls, to name but a few) to defend their own interests and priorities in the field of migration governance. In other words, not only have some non-EU countries become empowered, but their capacity to use their own leverage on their European counterparts

<sup>2</sup> I draw on J Weldes, ‘Constructing National Interests’ (1996) *European Journal of International Relations* 275.

has also been a common practice, though subtly performed. The instrumentalization of migration for political and diplomatic purposes is not uncommon in the history of international relations, nor is it new in the governance of migration. There is a well-documented academic literature on this matter.<sup>3</sup>

Invariably, this empowerment generated uncertainties to which the EU and its Member States have been obliged to respond. Their responses converged towards the gradual flexibilization of their patterns of cooperation on migration governance with non-EU countries.<sup>4</sup> Actually, heightened uncertainties in their bilateral cooperation on migration governance explain the perceptible drive for informalization in migration governance, given its lower costs and also because it allowed “adjustment in the face of international uncertainty without dismantling cooperation”.<sup>5</sup> A modicum of cooperation, be it effective or not, had to be preserved at all costs.

### III. REVERSE CONDITIONALITIES

Third countries' empowerment resulted from the emergence of unprecedented patterns of interdependence in the field of migration and border controls. It also resulted into their skilful ability to defend their own preferences and contingencies, be they connected with migration matters or not. Ironically, those who claimed (and were expected) to act as socializers in the framework of recurrent regional consultative processes on migration and border controls – namely, those in Europe who were supposed to lead consultations, to provide guidelines and to transfer norms values and practices to so-called recipient non-EU countries – have turned out to be constrained by the expectations and reverse conditionalities of the latter.

<sup>3</sup> Among many others, see K Greenhill, *Weapons of Mass Migration: Forced Displacement, Coercion, and Foreign Policy* (Cornell University Press 2010); E Paoletti, *The Migration of Power and North-South Inequalities: The Case of Italy and Libya* (Palgrave Macmillan 2011); M Collyer, ‘Geopolitics as a Migration Governance Strategy: European Union Bilateral Relations with Southern Mediterranean Countries’ (2016) *Journal of Ethnic and Migration Studies* 606; P Cuttitta, ‘Non-governmental/Civil Society Organisations and the European Union-Externalisation of Migration Management in Tunisia and Egypt’ (2020) *Population, Space and Place* 1; M Lemberg-Pedersen, ‘Manufacturing Displacement. Externalization and Postcoloniality in European Migration Control’ (2019) *Global Affairs* 247; A İçduygu and DB Aksel, ‘Two-to-Tango in Migration Diplomacy: Negotiating Readmission Agreement between the EU and Turkey’ (2014) *European Journal of Migration and Law* 337; S Wolff, ‘The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey’ (2014) *European Journal of Migration and Law* 69; N El Qadim, *Le gouvernement asymétrique des migrations: Maroc/Union européenne* (Daloz 2015); G Tsourapas, ‘Labor Migrants as Political Leverage: Migration Interdependence and Coercion in the Mediterranean’ (2018) *International Studies Quarterly* 383; R Del Sarto, *Borderlands: Europe and the Mediterranean Middle East* (Oxford University Press 2021).

<sup>4</sup> JP Cassarino, ‘Informalising Readmission in the EU Neighbourhood’ (2007) *The International Spectator* 179.

<sup>5</sup> B Koremenos, ‘Contracting Around International Uncertainty’ (2005) *AmPolSciRev* 549, 561.

Reverse conditionalities result from a highly interconnected system of relations where international actors (be they state or non-state actors) are empowered enough: *i)* to produce and set the conditions of their responsiveness to cooperation; *ii)* to make such conditions possible and acceptable by other actors and *iii)* to reverse the flow of diffusion. Reverse conditionalities become so contingent that the other actors have no option but to accommodate them with a view to ensuring a modicum of cooperation. Consequently, they result from a process that shifts the focus away from the centre to the periphery. Manifestly, there is no stable point from which to analyse socialization in international systems, for both socializees and socializers may play interchangeable roles. Reverse conditionalities uncover a broader investigative area where “non-Western” diversities, practices and discourses can be unveiled and conceptualized by making our understanding and interpretations of international cooperation more “inclusive”.<sup>6</sup>

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Though understudied in academia, reverse conditionalities are perhaps as old as the externalization of migration controls. Empowerment of non-EU countries, reinforced interdependence, reciprocal patterns of socialization, and reverse conditionalities all intersect to delimit a complex international system where diffusion is far from being unidirectional.

These considerations are important to realise the various consequences stemming from the empowerment of strategic non-EU countries and from the implicit inclination of European countries to accommodate non-EU countries’ exigencies and claims. The massive border-crossing that took place in May 2021 at the Spanish enclave of Ceuta is no exception.

#### IV. CEUTA: BEYOND BLACKMAIL

To properly understand the various factors that have been conducive to diplomatic tensions between Spain and Morocco, following the mass arrival of migrants crossing the border of the Ceuta enclave in May 2021, we need to go beyond the recurrent reference to “blackmail”. This reference would be a poor guide to understanding what lies behind Morocco’s motivations and expectations with regard to the EU and its Member States (especially Spain and France).

<sup>6</sup> A Acharya and B Buzan, *The Making of Global International Relations: Origins and Evolution of IR at its Centenary* (Cambridge University Press 2019) 285, 295. See also Y Qin, ‘Introduction: The Global Turn in IR and non-Western IR Theory’ in Y Qin (ed.) *Globalizing IR Theory: Critical Engagement* (Routledge 2020) 1.

<sup>7</sup> For more details on the notions of reverse diffusion and reverse conditionalities, see JP Cassarino, ‘Informalising Readmission in the EU Neighbourhood’ cit. and also JP Cassarino, ‘Beyond the Criminalisation of Migration: A Non-western Perspective’ (2018) *International Journal of Migration and Border Studies* 397.

Given its strategic position, Morocco epitomises empowerment and reverse conditionalities. Any concession made to the EU, in the field of migration governance, has always been accompanied by a *do ut des* and by reverse conditionalities. For example, when Morocco signed in June 2013 a mobility partnership (MP) with the EU,<sup>8</sup> its decision was inseparable from the attempt to legitimize its *de facto* presence in Western Sahara. Morocco skilfully linked the negotiations of its MP with the prior conclusion in March 2012 of an exchange of letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products (henceforth Fisheries Partnership Agreement – FPA).

The FPA raised a lot of controversies in the EU, owing to its geographical scope covering the territory and waters off the coasts of Western Sahara. The Popular Front for the Liberation of Saguia el-Hamra and Río de Oro (henceforth the Polisario Front) brought a legal action to the Court of Justice of the European Union in November 2012, against the Council of the European Union for “breaching the right to self-determination of the Sahrawi people and [for] encouraging the policy of annexation followed by the Kingdom of Morocco”.<sup>9</sup>

It is important to highlight that the signature of the MP with Morocco preceded the final judgement of the CJEU regarding the FPA and its compliance with international law. These chronological developments are key to understand the pledges that were made by the EU to Morocco regarding the seamless implementation of the FPA, despite the legal action brought by the Polisario Front at the time. In February 2019, after years of legal disputes at the CJEU, the FPA entered into force<sup>10</sup> with the full support of the European External Action Service (EEAS), the European Commission and the approval of the European Parliament. Moreover, bilateral relations between Spain and Morocco were quickly reinvigorated, following the official visits of King Felipe VI and King Mohammed VI to Rabat and Madrid respectively, and the conclusion of eleven cross-sectoral bilateral agreements.<sup>11</sup>

<sup>8</sup> On mobility partnerships, see R Parkes ‘EU Mobility Partnerships: A Model for Policy Coordination?’ (2009) *European Journal of Migration and Law* 327; N Reslow, ‘The Role of Third Countries in EU Migration Policy: The Mobility Partnerships’ (2012) *European Journal of Migration and Law* 393.

<sup>9</sup> Case T-512/12 *Front Polisario v Council* ECLI:EU:T:2015:953 para. 2.

<sup>10</sup> This is not the place to delve into the technical and legal details of this controversial ruling by the CJEU. Suárez-Collado and Contini note that “the Court used a counterfactual legal analysis that did not take into account the practice of the agreement, but rather the theory on which it was based”, see Á Suárez-Collado and D Contini, ‘The European Court of Justice on the EU-Morocco Agricultural and Fisheries Agreements: An Analysis of the Legal Proceedings and Consequences for the Actors Involved’ (2021) *The Journal of North African Studies* 1.

<sup>11</sup> M González and F Peregil, ‘Felipe VI pide a Mohamed VI ir “más allá” en el control de la emigración’ (13 February 2019) *El País* [elpais.com](http://elpais.com).

## V. A COMMUNITY OF INTERESTS

To be sure, as Suárez-Collado and Contini remark, years of legal disputes opposing the Council of the European Union with the Polisario Front have “shed light on the European Union’s paradoxical position on the conflict in Western Sahara [where] economic and geopolitical interests prevail over the application of European and international law”.<sup>12</sup> Concomitantly, such legal and policy developments have also contributed to constructing a sort of community of interests between the Kingdom of Morocco and a number of European actors, including Spain, France, the Council, the Commission and the EEAS.

It is against this background that the massive border crossing, dated May 2021, between Morocco and the Spanish enclave of Ceuta, has to be understood. Reportedly facilitated by the Moroccan border police, thousands of migrants crossed the border. Morocco was accused of “blackmailing” Spain for having accepted the hospitalisation of the Polisario Front leader Brahim Ghali on its territory.

However, in the shadow of the Ceuta case lay another legal action brought by the Polisario Front against the entry into force of the abovementioned February 2019 FPA. Among many other pleas, the legal action was aimed at denouncing the aforementioned Council decision, related to the entry into force of the FPA. In the opinion of the applicant, the FPA “denies the existence of the Sahrawi people by using the expression ‘the people concerned’ [and] organises, without the consent of the Sahrawi people, the exploitation of its resources”. By early 2021, rumours were current that the judgement of the General Court would be in favour of the Polisario Front. Actually, on 29 September 2021, the General Court decided to annul Council Decision 2019/217 of 28 January 2019 on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco.<sup>13</sup> However, the annulment of Council Decision 2019/17 did not lead to the suspension of the FPA. Rather, the General Court ordered the effects of Council Decision (EU) 2019/217 to be maintained as long as the judgment of the Court of Justice on the appeal of the Council is delivered. To date, the case is in progress (and the February 2019 FPA is still effective) given the decision of the Council and the Commission to appeal the recent judgement of the General Court.

## VI. CONCLUSION

The FPA-Western Sahara legal saga is far from being over. There is no question that Morocco is adamant about showing to its European counterparts that it remains vigilant on this pending case. In the meantime, the community of interests analysed in this *Insight* has been unimpaired by the recent Ceuta events. Its effects are still significant. Actually,

<sup>12</sup> Suárez-Collado and Contini ‘The European Court of Justice on the EU-Morocco Agricultural and Fisheries Agreements’ cit. 16.

<sup>13</sup> Case T-279/19 *Polisario Front v Council* ECLI:EU:T:2021:639.

in March 2022, Spain decided to publicly endorse Morocco's plan to administer Western Sahara.<sup>14</sup> This decision was predictable considering the strength of the community of interests, on the one hand, and Spain's exposure to Morocco's reverse conditionalities, on the other.

What happened in Ceuta generates an unsettling sense of *déjà-vu* more than a surprise. Indeed, third countries' intentions to exert pressure on their European counterparts by using the migration variable are not uncommon in international relations. Rather, what today is unprecedented is the explicitness of their intentions to instrumentalize migration. Perhaps, explicitness is the only new element that characterizes the ability of non-EU countries to exert their own leverage in migration management matters with a view to shaping the behaviour of their European counterparts. This form of explicit reprisal against an EU Member State might set a precedent, provided the community of interests detailed above will continue to prevail.

<sup>14</sup> F Fuentes, 'El cambio de posición de España respecto al Sáhara provoca la reacción de Argelia' (20 March 2022) Euronews es.euronews.com.

