



Financed by the European Commission - MEDA Programme

**Cooperation project on
the social integration of immigrants,
migration, and the movement of persons**



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***The EC External Migration Policy:
The Case of the MENA Countries***

CARIM

In November 1995, the European and Mediterranean Ministries of Foreign Affairs met in Barcelona in order to establish the basis of a new partnership, which is described in the Barcelona Declaration. The main goal is to transform the Mediterranean region in a peaceful and prosperous area, and to progressively establish a Euro-Mediterranean free-market zone. The Barcelona process includes three main sub-processes: a dialogue on political and security issues aiming to create stability and to promote democracy and human rights in the region; a dialogue on financial and economic cooperation intended to increase partners' welfare and to create a free-market zone; dialogue on social, cultural and human issues improving mutual understanding and strengthening civil society links.

The Valencia Ministerial Meeting in April 2002, went a step further by outlining a 'Regional cooperation programme in the field of justice, in combating drugs, organised crime and terrorism as well as cooperation in the treatment of issues relating to social integration of migrants, migration and movement of people' (referred to in the document as the JHA-Regional MEDA programme). This programme has been adopted by the European Commission on the 16/12/2002 (PE/2002/2521).

The 'Cooperation project on the social integration of immigrants, migration and the movement of persons' (EuroMed Migration) is a MEDA regional initiative launched by the European Commission (EuropeAid Cooperation Office) in February 2004 as part of the above programme. It aims at creating an instrument for observing, analysing and forecasting the migratory movements, their causes and their impact, in Europe and in the Mediterranean partners.

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The CARIM carries out the following activities:

- Mediterranean migration database
- Studies and research
- Training

Results of the above activities are made available for public consultation through the website of the project: www.carim.org

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**EURO-MEDITERRANEAN CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL
MIGRATION**

RESEARCH REPORT, CARIM-RR 2007/06

BADIA FIESOLANA, SAN DOMENICO DI FIESOLE (FI)

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Introduction

The EU policy towards the Mediterranean region is mainly governed by the global and comprehensive *Euro-Mediterranean Partnership* launched at the 1995 Barcelona Conference. This set up the Barcelona Process which aims to progressively establish a Euro-Mediterranean free-market zone through both bilateral and multilateral relations between the European Union and European national governments on the one hand, and the Mediterranean national governments on the other. This regional process involves three issues: a political dialogue on security, stability and the promotion of democracy and human rights; financial and economic cooperation in the perspective of a free-market zone; and a dialogue on social and cultural issues in order to strengthen human rights and relationships among the various civil societies involved.

In this paper, we do not aim at analyzing the EU external policy as such towards the ten Med-MENA countries (Algeria, Egypt, Jordan, Israel, Lebanon, Morocco, Palestine, Syria, Tunisia and Turkey). Instead, we seek to assess the South-North and South-South frames of cooperation in the field of migration—migration being the transversal issue at the cutting across the three above-mentioned issues.

Migration has become a strategic area since 2001, with the first budget lines on the topic. This was a response to the need for a comprehensive approach on migration. Migration has been introduced both through political dialogue with third countries and regions, but also through cooperation. As regards cooperation, the European Commission is addressing migration and asylum through various cooperation instruments. The Commission has in particular established the AENEAS program, which is a thematic program of cooperation with third countries aiming at supporting third countries efforts' in better managing migration flow.¹

Moreover, in the framework of the Barcelona Process, the European Union has conducted regional negotiations and has negotiated bilateral Association Agreements with the Med-MENA countries². So far, Syria is the only country that has no Association Agreement.³ The provisions of each Association Agreement vary, but they have certain aspects in common, such as political dialogue, respect for human rights and democracy, free trade area, state aids, economic cooperation, cooperation in social affairs and migration, and cultural cooperation. Turkey is a step ahead, since a customs union with the European Union entered into force on 1 January 1996, and since Turkey became a candidate country in 2001.

In 2004, the Barcelona Process was complemented by the European Neighborhood policy with a wider mandate than the Med-MENA countries, since it also encompasses Eastern European countries. It was developed in order to avoid new dividing lines between the enlarged Europe 25 and its neighbors, and in order to strengthen stability and security.⁴ The neighborhood policy has especially developed National Action Plans with country reports and recommendations.

1 However, in the context of rationalization and simplification of the current legislative framework, a new thematic program of cooperation with third countries on migration and asylum for 2007-2013 will replace the AENEAS program.

2 Note that we define the Med-MENA countries as the 10 countries that are studied in the context of the Consortium for Research on International Migration (CARIM). It encompasses the 3 Maghreb countries Algeria, Morocco and Tunisia; as well as Lebanon, Syria, Jordan, Egypt, Turkey, Israel and Palestine. Thus, it does not correspond to the World Bank's or European Union's definition of MENA countries.

3 However, the negotiations have been concluded in October 2004 and the Association Agreement should thus be enacted in the next few years.

4 It does not encompass Turkey. As a candidate country, Turkey is dealt with in the Enlargement directorate general rather than the external policy directorate of the European Commission.

Regarding its content, the external policy of migration mainly focuses on border control, the fight against illegal migration, cooperation against terrorism, and refugee protection with a specific emphasis on countries bordering the EU, such as Turkey and Morocco. This contrasts with the older cooperation and Association Agreements that merely contained a principle of equality of treatment at work and for social security. Thus, for some, the European Union has ‘externalized’ its own policy of migration.⁵

By externalization of the European Union, we understand the reproduction of the internal migration European policy at the external level, which implies burden-sharing of the European borders with bordering countries, and the set-up of migration management policies in the countries of origin, and especially illegal migration, following European interests. This implies a downgraded interest for development and cooperation for legal migration.

However, the Euro-centered perspective of migration as favored by the European Commission and the Council, i.e. the two major actors in the frame of EC migration law, contrasts with the approach chosen in the context of regional and bi-lateral dialogue between countries, as well as in the international context, as illustrated by the World Bank.

Thus, in those cases, rather than illegal migration and border control, the issues at stake include economic growth, reducing unemployment, and the social development of the Med-MENA countries. In addition, internal voices of the European Union, and in particular the Parliament and the European Court of Justice, have attempted to limit the Euro-centered perspective. Finally, the Med-MENA countries themselves have in general a very different agenda than illegal migration and border management.

Rather than an externalized policy of EC migration law, those dissenting voices aim to set up cooperation between sending and receiving countries, and attempt to find compromises suitable for all. Some countries, namely the Maghreb countries and Turkey have developed more cooperation with European countries and among themselves, compared to the East Mediterranean MENA countries.

However, in this domain, the two countries geographically closest to the European Union, namely Turkey and Morocco, have been lately largely influenced and pressured by the European Union, which has led to a shift in their own political agenda. In this sense, the countries nearest to the European Union in terms of EC interest and funding are not necessarily the most privileged countries in terms of migrants’ rights and development.

The method followed in this article is the following: We focus first on the Euro-centered external Migration Policy of the European Union (Section I). We shed light on the so-called ‘externalization’ of migration in Europe by reviewing the European Commission’s Communications, and the Association Agreements and ENP Action Plans.

We further show how externalization affects the regionalization of migration in the Med-MENA countries and how it differs from dialogues at the international and regional levels, as well as from the Med-MENA countries themselves (Section II).

5 See Rodier, C., 2006. Analysis of the external dimension of the EU’s asylum and immigration policies – summary and recommendations for the European Parliament, Brussels, DT\619330EN.doc, PE 374.366, Directorate General for external policies of the Union, Directorate B.

I. Reassessing the Euro-centered external Migration Policy of the European Union

Despite the diversity of roles and actors in Europe, EC law is based on two main actors, namely the Commission and the Council, since the European Parliament has no significant role in the migration area. It is only in the intergovernmental context that further actors come into action. Rather than adopting a comprehensive and balanced system of dialogue with Med-MENA countries, the EU tends instead to externalize the internal EC migration policy.⁶

In other words, it adopts a unilateral perspective centered on European interests, and thus on border and migration management.

We review first the shift to externalization in the Commission's Communications as first indicator (part A). Second, we analyze the Association Agreements and the Action Plans in the frame of the Barcelona Process and Neighborhood policy respectively, as conclusive argument (part B).⁷

A. The EC policy of migration: Shift to Externalization

Migration has recently acquired a strategic role in the external relations of the European Union. This has justified a shift from migration within external relations to the externalization of internal migration policy.

The concept of externalization has been first used in the concept of burden shifting for asylum with the proposal to build refugee camps outside the borders of Europe. Protesting against the March 2003 UK proposal, NGOs, dissenting European bodies, states and civil society had qualified this policy as an externalization of the European policy to shift the burden of refugees to third countries.⁸

The concept of externalization is now being generalized to a global European attitude in the migration and asylum area as a whole. Thus, externalization describes the exportation of European internal policies to other neighboring countries, and in particular the countries geographically closest in order to relieve the burden of undesired immigration in Europe.⁹

This encompasses in particular the burden sharing (or burden shifting) of the borders, control of illegal migration, and development of European standards in the area of asylum.

We review first the definition and complex relationship between EC/EU. We focus then on the shift to externalization.

1. Definition and Relation of EC/EU

After having defined the complex relation of EC/EU in the external migration context, we detail the domination of the Commission-Council couple in EC external migration policy.

6 It is worth noting that by incorporating the external dimension of immigration in the migration area, it has entered the European community area (the first pillar), thus shifting from the third pillar to the first, i.e. from EU to EC law.

7 We do not aim at doing a complete review of European discussions. We focus instead on the legislative and executive acts made by the European Community on the issue. Diverging European voices will be heard in the second part of this paper.

8 The European Parliament had voted against such proposal. For further details, see <http://www.nolager.org/more/display.php?id=3>.

9 See for more details Emmanuel Blanchard, 2006. Qu'est ce que l'externalisation? Journée d'études from the GISTI (French association supporting migrant workers), March the 20th 2006. http://lmsi.net/article.php3?id_article=569.

a. The complex relation of EC / EU

It is important to explain the dynamic of action within the EU. Since the Maastricht Treaty has transformed the European Communities into a European Union with a three-pillar structure, there are two main means of action within the European Union: either through cooperation between the member states (intergovernmental pillars) or through EC legislation (supranational pillar). The intergovernmental or cooperation pillars imply the maintaining of member states' sovereignty. Thus, there is no EC supreme law, but merely a negotiation between sovereign actors to take common actions or decisions. The second pillar deals with foreign and security policy, while the third deals with justice and home affairs.

The Barcelona Process developed the Euro-Mediterranean partnership within the framework of the second pillar. This implies decisions based on unanimity and ratification by all member states. However, with the Amsterdam Treaty (1999), the issue became more complicated, since, according to the EC Treaty as amended by the Nice Treaty, the mode of enacting Association Agreements with third countries depends on the substantive nature of the agreement.¹⁰ In other words, if the agreement is on economic matters, which is an EC matter, decisions will be made at the majority. Indeed, with the Amsterdam Treaty, migration has become an EC matter, shifting from the third to the first pillar. Thus, it should be a majority process with no need for all member states to individually ratify. However, some areas such as legal migration remain subject to unanimity. Moreover, a further complexity is that Association Agreements are of 'mixed' type, because there are both elements of the European Community pillar and of the second and third pillars (such as cultural cooperation). The Association Agreements must therefore be ratified by all national parliaments of the EU member states after the signature of the agreement.

We focus in this part on the EC perspective. Nevertheless, it is important to underline that the intergovernmental arena gives room for negotiations and discussions between member states individually and third countries, and between Europe and Med-MENA countries. We discuss this aspect of EU regionalization spreading beyond the EC *stricto sensu* in the second part.

b. Domination of the Commission and Council for the EC External Policy of migration

Because of the complexity of the EU-EC system, as explained earlier, there is a diversity of actors with diverging roles, depending on the frame of action. In the frame of EC law however, there is a clear domination of the Commission and the Council due to the specific position of migration as an EC competence.

In the EC pillar, i.e. the supranational pillar, the dominating actors normally are the Council, the Commission, the European Parliament and the European Court of Justice. However, migration is an exception to the general principle of co-decision between the Council and the Parliament on the proposal of the Commission.¹¹ Thus, from 1999 until 2004, the rule for the enactment of legislation in the migration and asylum area was the unanimity of the Council, no legislative power for the Parliament, and a shared power to propose legislation for the Commission. Moreover, the Court of Justice has a limited power of control. In other words, although it is an EC competence, migration and asylum continue to resemble the inter-governmental pillars in terms of procedure. Nevertheless, since

10 Article 300: 1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organizations, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it. In exercising the powers conferred upon it by this paragraph, the Council shall act by a qualified majority, except in the cases where the first subparagraph of paragraph 2 provides that the Council shall act unanimously.

11 This is particularly with the Amsterdam Treaty (entry into force in 1999) that the co-decision procedure was applied for most of EC competences.

May 2004, some of the migration areas have shifted to the rule of majority with co-decision. This is the case for illegal migration and asylum, since there was a consensus among states. Yet, legal migration remains at unanimity with no decision-making power for the Parliament.

In this context, the core actors have been the Council, representing member states, and the Commission that has indeed proposed all legislation. By contrast, the European Parliament and even the European Court of Justice have had a limited power. This situation explains the importance of the Commission's Communications and the Council's meetings and decisions. It also explains why we have mostly advisory recommendations made by the European Parliament and why the European Court of Justice has tried to spread its wings in this area from the angle of the four fundamental freedoms of European citizens.

The Council and the Commission function as a couple: the Commission proposes, the Council enacts and the Commission controls the application. This relation existed even before migration and asylum shifted to the first pillar. Thus, the European Council of Corfu (1994) explicitly gave mandate to the Commission and the Council of the European Union to settle a deeper partnership between the EU and the 15 members States on the one hand, and a range of States of the Mediterranean area and the Middle East on the other hand.

In other words, the Council-Commission couple in the area of external policy of migration has been effective and dominant for over ten years now. This gives little space for other actors in the frame of the EC policy. Nevertheless, this has not prevented other actors from playing important roles at the more global EU level, as we describe in the second part of this paper.

2. *From a Global Approach to a Shift to Externalization*

We display the shift to externalization through a review of the most significant Communications of the Commission in this area. Indeed, from its original comprehensive position (a), the Commission has shifted to externalization in its Communications (b).

a. The origins: Migration as a global challenge

Migration entered EC law with the Amsterdam Treaty (1999) and Association Agreements have since incorporated this dimension. However, if the different Communications and meetings¹² made former allusions to the external dimension of migration, it is in 2002 that the Commission recognized for the first time the importance of inserting migration issues in external relations with an autonomous Communication.¹³ The Commission stresses the existing discussions in this area with the Mediterranean countries, and recalls the importance of a comprehensive approach to migration in Europe. "Within the context of its current and future Association or Co-operation Agreements, the European Union will systematically put the migration-development nexus on the agenda of its political dialogue as well as introduce migration issues in its economic and social dialogue". The following should not only focus on illegal migration. It should also study the root causes of migration, management of migration, and the better integration of migrants. In other words, this Communication attempts to present a global and comprehensive picture of the challenge of migration.

12 Such as the Tampere summit or the 2001 Communication of the Commission on migration.

13 European Commission, 2002. Communication from the Commission to the Council and the European Parliament integrating migration issues in the European Unions's relations with third countries. Brussels, 3.12.2002, COM(2002) 703 final.

In the words of the Commission in 2003¹⁴, “the EU should aim to develop a zone of prosperity and a friendly neighborhood – a ‘ring of friends’ - with whom the EU enjoys close, peaceful and cooperative relations”. The long-term aim should be free movement, long-stay visa and integration of third countries from neighboring countries. Simultaneously, the EU should work in cooperation for a common management of migration flows, border transit, and the fight against terrorism.

In other words, from 1999 to 2003, migration was understood as a global challenge encompassing integration, free movement, the rights of migrants, the root causes of migration and illegal migration, as well as border management.

b. The shift to externalization

The Hague Program marks a partial shift from migration in external relations to an externalization of migration, focusing on the European interest in border management, illegal migration, and the development of efficient refugee systems. Thus, “the EU should aim at assisting third countries, in full partnership, using existing Community funds where appropriate, in their efforts to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, inform on legal channels for migration, resolve refugee situations by providing better access to durable solutions, build border-control capacity, enhance document security and tackle the problem of return”.¹⁵

The issue of legal migration, free movement, and integration is obviously less present, overcome by a managerial approach to migration. According to the five-years program in the context of the 10-years anniversary of the Barcelona Process¹⁶, the reason is that migration and social integration of migrants is a particularly sensitive issue. Nevertheless, it does not mean that this issue is forgotten. Thus, the Commission states that cooperation should be strengthened and the Euro-Mediterranean Social Affairs, and Justice and Home Affairs Ministers should meet, at the latest in 2007, to agree on a series of further actions to promote cooperation in these fields. In other words, while operational activities in the area of migration management seem to be more easily agreed on, the process seems slower and less steady regarding rights and integration. This differential dynamic is also present at the internal level of European migration law.

The specific focus on border management, illegal migration and efficient refugee systems is similarly preferred in the Commission’s 2005 Communication on the strategy of the external dimension of ‘freedom, security and justice’¹⁷. For the Commission, the main goals with the Mediterranean countries are to strengthen migration, border management, security, and make further progress on Readmission Agreements. In a more specific way, in the first follow-up to Hampton Court¹⁸, the Commission lists a specific issue that is at stake between Europe and Mediterranean

14 European Commission, 2003. Communication from the Commission to the Council and the European Parliament Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbors. Brussels, 11.3.2003, COM(2003) 104 final.

15 Presidency Conclusions, 2004. 14292/1/04 REV 1, Brussels 8 December 2004 Chap. 1.6.1.

16 European Commission, 2005. Communication from the Commission to the Council and the European Parliament Tenth Anniversary of the Euro-Mediterranean partnership: A work program to meet the challenges of the next five years. Brussels, 12.4.2005, COM(2005) 139 final.

17 European Commission, 2005. Communication from the Commission to the Council and the European Parliament, A strategy on the external dimension of the area of Freedom, Security and Justice. Brussels, 12.10.2005, COM(2005) 491 final. Regarding border management, asylum and migration, the following actions should be enhanced: Improve third countries’ capacities for migration management and refugee protection; support their operational border management capacity; enhance document security; prevent illegal migration; encourage synergies between migration and development; provide refugees with better access to durable solutions; and ensure the return of illegal migrants.

18 European Commission, 2005. Communication from the Commission to the Council and the European Parliament, Priority actions for responding to the challenges of migration: First follow-up to Hampton Court. Brussels, 30.11.2005,

countries: stopping the illegal migration across the Mediterranean Sea.¹⁹ However, it also lists for the first time the issue of legal migration and available skills. In other words, this extends the focus of mere border management, illegal migration and efficient asylum systems to legal labor migration, and in particular skilled workers. This extension is similarly repeated in the Commission's January 2006 Communication on the external dimension of migration²⁰. This does however not undermine European externalization, if labor migration is set up unilaterally under European terms exclusively.

Another commonality to these Communications is the focus on Maghreb countries and Turkey regarding the setting up of operational programs, as detrimental to Eastern Mediterranean countries. This reinforces the feeling that the main objective is to externalize European borders. The operational programs²¹ concern in particular FRONTEX (the border agency), liaison teams, the creation of 'rapid reaction teams', and the 'rapid border intervention team'.²² Up to 3% of the financial instruments could be allocated to migration in the Mediterranean region.²³

3. *Push factors of externalization and their consequences*

As we can extract from the Communications discussed above, the policy has shifted from a global approach coupling development and migration to, recently, a specific focus on illegal migration and border management.

The push factor for externalization is the need to externalize the migration policy for a more efficient internal migration policy. This represents in particular the limitation of the illegal migration risk and better border management. As among the member states themselves, this implies burden sharing (and burden shifting). Thus, the European Union is no longer the only one controlling the borders in order to limit illegal migration and let in only people who are authorized, since the neighboring countries would operate similar controls. This concerns in particular Morocco and Turkey in the MMed-MENA countries, since Turkey has a geographical border with the European Union, and since there is a Spanish enclave in Morocco. To illustrate, the operational programs tend to center mostly on Maghreb countries, and in particular Morocco, in order to better fight against illegal migration. This Euro-centered vision of the European immigration policy within its external relations also dominates the new Association Agreements, as well as the ENP National Action Plans.

(Contd.) _____

COM(2005) 621 final. Hampton Court was an informal summit held in October 2005 in the UK, where governments stressed, among other issues, the necessity of a co-coordinated action in order to fight against illegal migration and recognize the benefits of legal labor migration.

19 In order to reach this aim, border management measures with Mediterranean countries must be taken in order to reduce illegal migration, rapid reaction teams and further Immigration Liaison officers must be created. Finally, immigration in the Mediterranean region, as well as the law of the sea, must be tackled. Focuses are on the Mediterranean coastal patrols network, Morocco (Readmission Agreement) and Algeria (association and Readmission Agreements).

20 European Commission, 2006. Communication from the Commission to the Council and the European Parliament Thematic program for the cooperation with third countries in the areas of migration and asylum. Brussels, 25.01.2006, COM 2006(26). There are five major strands to the thematic program: foster the link migration/development, promote well-managed labor migration, fight illegal migration and facilitate readmission of illegal migrants, protect migrants, and promote asylum and international protection.

21 See the presentation of the Commission of its new program on external relations in June 2006, footnote 21.

22 Brussels, 19.7.2006, COM(2006) 401 final, 2006/0140 (COD), Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism (FRONTEX).

23 "In response to recent and ongoing illegal immigration in the Mediterranean region, the European Council of 15-16 December 2005 underlined the need for a global approach based on concrete actions and decided to allocate up to 3% of the relevant financial instruments to intensify financial assistance in areas concerning or related to migration" (15). COMMUNICATION FROM THE COMMISSION on Policy priorities in the fight against illegal immigration of third-country nationals, Brussels, 19.7.2006, COM(2006) 402 final.

Another push factor for externalization is to limit asylum seekers in the European Union by developing asylum and refugee laws in the transit countries. In addition, the enactment of compartmentalized classes of legal migration would reinforce externalization if exclusively decided by Europe.

The externalization of EC migration laws, which implies favoring European interests, aims to develop a global approach in the sense of linking internal migration policy to its external counterparts. Thus, this goes significantly away from a global approach in the classical understanding, which links development issues to migration in the Med-MENA countries.

B. The Association Agreements and the ENP Action Plans: Two Means to Implement a Euro-centered Policy of Migration

The Euro-med agreement, born from the Barcelona strategy in 1995, has led to the enactment of Association Agreements with the MENA countries. In addition, since 2004, the Euro-Med arena has been coupled with the European Neighborhood policy, encompassing MENA countries as well as Eastern European countries. Country Action Plans have been enacted on the basis of individual country reports.

While these many instruments, whether Association Agreements or European Neighborhood Plan, are similarly structured for all countries, the content differs on the basis of the geographical proximity of the country with Europe, its strategic dimension, and its partnership status with the European Union.

We discuss first the Association Agreements of the different countries before turning to the Action Plans in the frame of the Neighborhood policy.

1. The Association Agreements (AA)

According to articles 131-134 EC treaty, Europe may negotiate agreements in the field of economic cooperation on the proposal of the Commission. In addition, according to articles 177 to 181, Europe may cooperate with third countries in economic, financial and technical areas. According to article 300(2), an agreement may be concluded by the EC if there is a decision at the qualified majority voting on a proposal of the Commission, except if the matter covered requires unanimity. In this case, unanimity is required as well. In other words the Council dominates in the external arena. The European Parliament does not participate, except for voting the budget. In addition, all Association Agreements require the ratification of all parliaments of the member states, because some of these issues are second and third pillar areas.

The Euro-med agreement has led to the enactment of Association Agreements with the MENA countries. The following agreements have entered into force: Egypt (2004, signed in 2001), Israel (2000, signed in 1995), Morocco (2000, signed in 1996), Tunisia (1998, signed in 1995) and Turkey (1995, customs union). The Algerian agreement was signed in 2002 but it has not yet entered into force. The agreement with Lebanon is in process of ratification, and the interim agreement applies since 2003. There is an interim agreement with Palestine since 1997. Finally, while the negotiations of the Association Agreement with Syria terminated in October 2004, the signature process has not started. For this reason, we are unable to discuss it in-depth in the following discussions. These Association Agreements have replaced the old former cooperation agreements with countries like Morocco or Tunisia.

In addition, the Council has approved the mandate for the Commission to negotiate Readmission Agreements (art.63(3)(b)) with Morocco (September 2000), Algeria and Turkey (November 2002). Negotiations are ongoing in Turkey and Morocco and have not yet started with Algeria. There are readmission clauses in Association Agreements with Algeria, Egypt, Lebanon, and Syria. While they

are not agreements in themselves, they could however establish a framework for discussions, especially since the 2002 common policy on immigration and asylum plan includes a section on readmission and repatriation.²⁴

All Association Agreements are similarly organized, distinguishing between political provisions, the establishment of a free trade zone (free movement of goods, services and capital), cooperation, social and cultural cooperation, financial cooperation, and final provisions. Migration issues are present both in cooperation and in social and cultural cooperation²⁵. In the cooperation section, there are 2 sub-divisions that concern migration: ‘movement of persons: illegal migration’ and ‘justice and home affairs’. The social and cultural cooperation heading contains three relevant dimensions, namely non-discrimination between workers, social security and dialogue on social matters. We review first the sections under the cooperation heading, and then the sections under the social cooperation heading.

a. ‘Movement of persons: Illegal migration’ and ‘justice and home affairs’

Before starting, it is interesting to focus on the vocabulary used. Indeed, in this framework, the movement of persons is understood as only related to illegal migration, since there is no free movement recognized as such for Mediterranean countries’ nationals in Europe. This understanding also reveals the underlying objective to externalize migration policy, since Europe attempts to export its policy abroad.

Regarding illegal migration, the Algerian Association Agreement states that visa procedures should be simplified and accelerated in accordance with EC and national legislation (art.83). According to article 84, cooperation in the prevention, control of illegal migration, and Readmission Agreements should be improved.

No such principles exist in the Moroccan, Tunisian and Palestinian agreements. The reason for Palestine is that it is only a temporary agreement focusing on the most urgent issues in the current political context, but also because Palestine has only a limited competence on borders. As a result, there is no dimension on migration in the Action Plan.

By contrast, the reason why it does not exist for Morocco or Tunisia might seem awkward at first. Indeed, those aspects are extensively developed in the Action Plans in the context of the Neighborhood policy, as we explain later. One reason might be a temporal one. Indeed, these two agreements were signed in 1996 for Morocco and 1995 for Tunisia, i.e. at a time where externalization had not yet become predominant in the European strategy.

Regarding Israel (art.57), there is an obligation to define mutual interests for migration, increase the effectiveness of measures preventing illegal migration, but without a Readmission Agreement mentioned.

In the cases of Lebanon and Egypt (art.68-70), cooperation to prevent and control illegal migration, EC reciprocal Readmission Agreement, and bilateral agreements should be set up. There is no mention of the dimension of illegal migration for Jordan.²⁶

In the Justice and Home Affairs area, the Algerian Association Agreement states the aims of combating against racism and xenophobia and fighting against terrorism (art.88 and 90). The fight

24 Note also that in parallel to this, they are also bilateral Readmission Agreements that have been concluded or are in the process to be so.

25 See for an overall and comparative presentation: European Commission, 2004. The implementation guide of the Euro-Mediterranean Association Agreements. http://www.ec.europa.eu/comm/external_relations/euromed/asso_agree_guide_en.pdf

26 One reason might be the absence of a high number of illegal migrants of Jordan origin in Europe. It may also be the higher focus on refugees in Jordan.

against terrorism is also mentioned in the Egyptian Association Agreement (art.59). It is not mentioned in the Moroccan, Tunisian, Lebanese, Israeli, Palestinian or Jordanian Association Agreements. In other words, it is only mentioned in the most recent agreements, as a marker for the novelty of the issue of terrorism in the external policy. Thus, it is now mentioned in the Action Plans of all countries—Action Plans that are much more recent—in the frame of the Neighborhood policy.

b. Non-discrimination, social security and dialogue

In the field of non-discrimination between workers, there is a distinct difference between Maghreb countries and Eastern Med-MENA countries. Indeed, only the Algerian (art.52), Moroccan (art.64), and Tunisian (art.64) Association Agreements contain a principle of non-discrimination on the basis of nationality regarding working conditions, remuneration and dismissal. Thus, if the older Moroccan and Tunisian Association Agreements did not encompass any dimension on illegal migration, they already encompassed measures of non-discrimination and equal treatment, like the former Moroccan and Tunisian cooperation agreements from the 1970s.²⁷

There are no such rules for Egypt, Israel, Jordan, Lebanon or Palestine. Nevertheless, such evolution has been recommended in the Jordan case in the National Action Plan.

Similarly, equal treatment in the area of social security for workers and their family members is recognized for Maghreb countries (Art. 68-71 in Algeria, Art.65-68 for Tunisia and Morocco). A reciprocal non-discrimination principle to enjoy social security, to get family allowances and to transfer pensions or annuities to countries of origin is recognized. It applies to all legal workers (and their family members) and residents, but it does not prevent more favorable bilateral agreements.

The Israeli Association Agreement originally focuses on the transportable character of the social security regimes (art.64-66). This is understandable in the context of its law of return and its strong links with Europe. No specific issues on social benefits and social security regimes are developed in the Egyptian, Jordanian, Lebanese, and Palestinian cases. However, like in the former case of non-discrimination of workers, the Jordan Action Plan mentions these aspects. There is thus an obvious rapprochement between Europe and Jordan.

In other words, in the light of the Association Agreements, the nationals of Maghreb countries are better treated than nationals of Eastern Med-MENA countries in Europe.

In the domain of dialogue and cooperation on social matters, regular dialogue is encouraged with Israel (art.63), Egypt (art.64), and Lebanon (art.63). Talks should in addition be initiated for concluding bilateral agreements on working conditions and social security rights (art.62 Egypt AA).

There is a special emphasis on the need for dialogue focusing on the living conditions of migrant communities, legal and illegal migration, equal treatment and non-discrimination between nationals and migrants (art.64 Lebanese AA, art. 80-81 Jordan AA, art.69-70 Moroccan and Tunisian AA, art. 72-73 Algeria and art.63-64 Egyptian AA)²⁸. Migratory pressures should also be reduced through job creation and training, and returning migrants shall be reintegrated (art.82 Jordan AA, art.71 Moroccan and Tunisian AA, and art.65 Egypt).

There is no such aspect mentioned in the Association Agreement with Palestine. This shows the isolation of Palestine. This quasi-unanimity might also indicate that the gap between the Maghreb and Eastern MMed-MENA countries might decrease in the future.

27 However, this principle has been more strongly developed in the frame of the Turkish 1965 Association Agreements thanks to an extensive case-law of the European Court of Justice, as developed at the end of the second part.

28 These issues are not found under the same headings in all Association Agreements. Indeed, principles are found under the social cooperation dimension for Jordan, Egypt and North African countries, while they are ensconced with the economic cooperation for Lebanon.

2. *The ENP Action Plans*

The European Neighborhood Policy was first outlined in a 2003 Commission Communication. A more developed strategy paper was then published in May 2004.²⁹

In order to offer a privileged relationship to its partners, Europe has developed a key element: the ENP Action Plan mutually agreed between the European Union and each partner-country. The Commission first prepares country reports assessing the political and economic situation to assess when and how the relation can be deepened. The next stage is the ENP Action Plan proposed by the Commission and enacted by the Council. This Action Plan defines an agenda of reforms. “The incentives on offer, in return for progress on relevant reforms, are greater integration into European programs and networks, increased assistance and enhanced market access”.³⁰ The Commission will then publish periodic reports evaluating progress. From 2007 on, there will be a single instrument for funding both for candidate countries, such as Turkey, and for countries in the frame of the European Neighborhood policy. In the Commission’s words, for the area of migration, the aim is border and illegal migration management, legal migration management and implementation of migration plans for the Maghreb countries and Egypt for instance.³¹

There is no ENP Action Plan for Algeria and Syria, and, for Egypt, only the country report is available. The European neighborhood plans contrast with the Association Agreements, because it is not an instrumental convention requiring the signatures of all member states, the contracting state and the EC. It is an internal European procedure, and does thus only require a Council Decision, since the European parliament has no competence in this area.

Country reports are Commission working papers. They have thus no legal force.³²

All country reports review the following aspects: a description of migration patterns, existing migration and asylum laws, the organization of the police force and the issue of border management. The ENP decisions review the same aspects, recommending actions on the basis of the particular situations reported. In all cases, the Commission’s proposals are identical to the council’s final decision.

All country reports and ENP decisions are constructed in the same manner, dividing between political and economic issues and sub-dividing political issues between democracy and the rule of law, human rights and fundamental freedoms, foreign relations, regional and global stability (or territorial disputes), and Justice and Home Affairs. The Justice and Home Affairs section is significant and represents about 6-7% of the report (2-3 pages out of 30).

We review the different domestic country reports and Action Plans enacted, before concluding with a comparative overview. The country reports reflect the European understanding of what are the most important changes to be undertaken in terms of asylum and migration. They do not reflect the general policies and concerns of these states, as we emphasize in the second part of this paper.

a. *Egypt*

We must limit our discussion of Egypt, as so far we only have access to the country report.

29 Brussels, 12.5.2004, COM(2004) 373 final, COMMUNICATION FROM THE COMMISSION European Neighbourhood Policy STRATEGY PAPER.

30 See the European Neighbourhood policy presentation page on the internet.

31 European Commission, 2004. Communication from the Commission to the Council and the European Parliament, European Neighborhood Policy Strategy Paper, Brussels, 12.5.2004, COM(2004) 373 final.

32 However, they are public documents and accessible on the Internet.

As underlined by the 2005 country report, the Commission recalls that Egypt has become a country of origin and of transit for migration. Egypt has signed the 1951 Refugee Convention, there is an established police force and the Navy controls the Suez Canal (main issue for border management). In addition, as underlined by the CARIM country notes, while not particularly emphasized by the Commission country report, Egypt is characterized by a high number of asylum-seekers whose rights are very restricted, and is eager to maintain strong relations with its Diaspora abroad.³³

b. Israel

According to the 2004 Israel country report, the 1950 law of return as amended constitutes the main legislation on migration. This is not a standard migration law, since it is based on belonging to the Jewish community, or on parents' belonging. Israel has signed and ratified the 1950 Refugee Convention, and asylum-seekers mostly come from Africa. There are some difficulties with border control, and human trafficking has significantly increased.

According to the final Action Plan³⁴, one priority is to strengthen cooperation on migration-related issues (p.9). In particular, the council should make a decision to implement art.64 and 65 of the Association Agreement, i.e. the cooperation between social security regimes (par.2.3.3, p.18). Moreover, there should be an effective management of migration flows through exchange of information and dialogue regarding legal and illegal migration and migrants' integration, through analysis of migration flows (participation in the EUROMED network), and through the potential participation of Israel (as participant or observer) in the activities organized in the framework of the EU programs on migration issues. Exchange of information and best practices should also be set up in the field of asylum. Specific actions in the field of justice and home affairs should also be set up in order to combat terrorism, as well as to exchange of information and best practices regarding human trafficking.

c. Jordan

According to the Jordan country report³⁵, Jordan is both a country of origin and of destination for migrants. Jordan is not part of the 1951 UN convention, despite the important number of refugees (especially Palestinians) it hosts, but in 1998 they did sign a memorandum of understanding with the UNHCR regarding asylum. Visas are required for member states' nationals. The high number of foreign domestic workers is not covered by labor law and is under the jurisdiction of the police and immigration services. Moreover, the CARIM report recalls the specific treatment of Arab foreigners, and emphasizes the recent focus on the Jordan Diaspora abroad and the importance of maintaining strong links with it.³⁶

33 See for a general presentation Nassar, H., 2005. Migration, Transfers and Development in Egypt. Research report 2005/01. EUI/RSCAS. Available on the CARIM website.

34 European Commission, 2004. Commission recommendation: Proposal for a Council Decision on the position to be adopted by the Communities and their Member States within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-Israel Action Plan, Brussels, 9.12.2004, COM(2004) 790 final. http://ec.europa.eu/world/enp/pdf/action_plans/israel_com_proposal_enp_ap_2004_en.pdf and ENP final act http://ec.europa.eu/world/enp/pdf/action_plans/israel_enp_ap_final_en.pdf

35 European Commission, 2004. Commission Staff Working Paper, European Neighbourhood Policy, Country Report Jordan Brussels, 12.5.2004 SEC(2004) 564, http://ec.europa.eu/world/enp/pdf/country/jordan_enp_country_report_2004_en.pdf.

36 See Olwan, M.Y., 2006. The legal framework of International Migration in Jordan. Analytic and Synthetic Notes 2006/01. EUI/RSCAS, available on the CARIM website, legal module.

The Action Plan³⁷ states the following principles. Regarding the free movement of workers, reciprocal equality of treatment and non-discrimination of workers, as well as the coordination of social security systems should be ensured.

Regarding migration management, several aspects should be developed: dialogue on asylum, exchange on migration, and potential cooperation on transit migration. Cooperation for the visa system should be enhanced, and a potential facilitation of visa issuing studied. Border management should be efficient and regional cooperation reinforced. Finally, cooperation to combat terrorism in terms of financing, law enforcement and judiciary, should be strengthened.

d. Lebanon

In the case of Lebanon³⁸, there is no specific law regulating migration flows. Lebanon, traditionally a country of emigration, has also become a transit country. Like in Jordan, despite the high number of Palestinian refugees, Lebanon is not part of the 1951 Refugee Convention. However, the 2004 memorandum of understanding with the UNHCR has been signed. There are significant difficulties regarding border management in the South, and there is no national rule or plan against human trafficking. In addition, as stated by the CARIM reports, Lebanon has currently encountered modifications in migration after the withdrawal of Syria. Despite the absence of statistics on Syrian workers in Lebanon because of the absence of visa and residence permit requirements, the shortages in the labor market are mostly due to the significant decrease of Syrian workers. Moreover, the sensitive situation in the South of the country makes the situation unstable.³⁹

The Action Plan is fully detailed and long on the migration dimension. It reveals the importance of Lebanon for the European Union. However, it is mainly limited to the dimension of border management and illegal migration, while the issue of non-discrimination of workers is not even mentioned.

The following measures are proposed in the Action Plan⁴⁰ (pp.24-26): Dialogue on movement of persons, illegal migration, asylum, return and visas; the monitoring and analysis of migration (Euro-med and CARIM), and potential participation of Lebanon in relevant Community programs (AENEAS program). The EC and Lebanon should exchange information on legal migration (entry and stay, offers and skills available in Lebanon, employments in Europe, and integration) and illegal migration, as well as exchange on transit countries and with countries of origin. In addition, information on smuggling and the migration/development linkage (role of diasporas, facilitating remittances, impact of migration) should be ensured. Cooperation in terms of readmission should also be reinforced.

37 European Commission, 2004. Proposal for a Council Decision on the position to be adopted by the European Community and its Member States within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-Jordan Action Plan. Brussels, 9.12.2004 COM(2004) 796 final.

http://ec.europa.eu/world/enp/pdf/action_plans/jordan_com_proposal_enp_ap_2004_en.pdf

Final Action Plan http://ec.europa.eu/world/enp/pdf/action_plans/jordan_enp_ap_final_en.pdf

38 European Commission, 2005. Commission Staff Working Paper, European Neighborhood Policy, Country Report Lebanon COM(2005) 72 final Brussels, 2.3.2005 SEC(2005) 289/3: 2.5. Justice and Home Affairs (p.13).

39 See in particular the reports of Kiwan, available soon on the CARIM website: Kiwan, 2006. Le contexte socio-politique en 2005-2006, not yet published. And Kiwan, 2006. La migration de transit au Liban et le trafic des personnes 2006, not yet published.

40 Proposal for a COUNCIL DECISION on the position to be adopted by the European Community and its Member States within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-Lebanon Action Plan Brussels, 5.7.2006 COM(2006) 365 final http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0365en01.pdf

Furthermore, regarding asylum, the situation of Palestinians should be improved and a comprehensive system of asylum should be developed.

Short-stay visas should be facilitated, security of travel documents reinforced, and cooperation on the management of migratory flows improved. A strategy for an integrated system of border management, the improvement of administrative capacity at border checking, better surveillance, better education and training, regional cooperation for border crossing, and contacts with FRONTEX should be developed. Finally, the fight against trafficking in human beings and the fight against terrorism (financing, law enforcement and judiciary) should be reinforced.

e. Morocco

Among the Mediterranean countries, Morocco is second only to Turkey in terms of the strength of its links with Europe. The outcome of this relationship is visible in Moroccan legislation and specific European measures and funds for Morocco.

The country report⁴¹ states that the 2003 *Migration Act* has set up principles for migration management, but there is still no specific issue on visas, and border control should be reinforced. An EC Readmission Agreement is being processed. Morocco has ratified the 1951 Refugee Convention but progress remains to be made. As stated by Elmadmad, the 2003 Act is largely the result of European pressures that have had rather negative impacts on migrants' rights focusing on illegal migration, control and security.⁴²

Regarding the issue of movement of persons, the final Action Plan⁴³ states that art.64-67 of the Association agreement regarding non discrimination on the basis of nationality for working conditions, remuneration and dismissal, and social security for workers and family should be fully implemented. The Association council should also make a decision for the coordination of social security systems (art.65), like in the case of Israel.

Regarding asylum, legislation in accordance with UN instruments should be enacted and implemented. In order to ensure an effective management of migration flows, the exchange of information should continue through the working party, information campaigns on legal migration and exchange with countries of origin as a country of transit should be launched. Furthermore, synergies with the EUROMED migration research and observation project should be set up, and Morocco should be allowed to benefit from EU migration programs and supports. Those issues of migration management show the strong interlinkages between Morocco and the European Union.

Regarding the dimension of illegal migration, exchange of information, regional cooperation and EU action upstream towards countries of origin and transit should be set up. The EC Readmission Agreement should be balanced, and the dialogue on visas should be ensured. There is no specification here of a short-term visa, by contrast with the Lebanese Action Plan.

Similarly, the actions for border control are more precise than any other National Action Plan. Thus, the organizational and institutional capacity for border control and surveillance of entry and exit

41 European Commission, 2004. Commission Staff Working Paper, European Neighborhood Policy Country Report Morocco COM(2004)373 final Brussels, 12.5.2004 SEC(2004) 569 http://ec.europa.eu/world/enp/pdf/country/morocco_enp_country_report_2004_en.pdf

42 Elmadmad, K., 2004. La nouvelle loi Marocaine du 11 Novembre 2003. Analysis note 2004/01, EUI/RSCAS. Available on the CARIM website, legal module.

43 European Commission, 2004. Proposal for a Council Decision on the position to be adopted by the European Community and its Member States within the Association Council established by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, with regard to the adoption of a Recommendation on the implementation of the EU-Morocco Action Plan Brussels, 9.12.2004 COM(2004) 788 final http://ec.europa.eu/world/enp/pdf/action_plans/morocco_com_proposal_enp_ap_2004_en.pdf

areas should be strengthened, and regional cooperation reinforced. However, before all, the implementation of the four strands of the MEDA program for the management of border control should be accelerated.⁴⁴

Finally, instruments against organized crime should be ratified and counter-terrorism cooperation should be strengthened through training, judicial and law enforcement cooperation, or fight against financing of terrorism.

f. Palestine

In the 2004 country report⁴⁵, there is no reference to migration issues or Justice and Home Affairs in general, and there are no rules recognizing equal rights to Palestinians within the European Union. There is no reference to the extremely high number of refugees and the question of statelessness. There is only an issue of complying with international rules regarding terrorism. There is no mention either by the Commission of the absence of full sovereignty regarding border controls, entry, stay and nationality, because of the absence of a recognized state at the international level.⁴⁶

The proposed 2004 Council Decision and the final ENP do not mention more about migration⁴⁷.

g. Tunisia

Europe has a strongly growing interest for Tunisia as illustrated by the detailed Action Plans. The country report does also, by contrast with Morocco, insist on the importance of equality and human rights for their nationals, as well as the economic dimension, as a counterpart to border and migration management or readmission.

According to the country report⁴⁸, Tunisia is a country of emigration and transit to Europe, and is becoming country of immigration. One year after Morocco (2004), a law on migration has been enacted. However, although the Refugee Convention has been ratified, there is a legal void at the domestic level. The Tunisian authorities have stated a willingness to discuss an EC Readmission Agreement on the condition that this issue is addressed in discussions within the wider Association Agreement framework, as a corollary of discussions on socio-economic development.

The recommendations of the final Action Plan⁴⁹ are close to Morocco, although less advanced. Regarding the issue of the movement of persons, art.64 should be fully implemented (p.14), and in particular the clause on equal treatment irrespective of nationality as regards working conditions, remunerations and dismissals. The free movement within the EU should also be ensured, and the

44 The MEDA represents EURO 40 million for the period 2004-2006, and is divided in four strands: a) institutional support for strengthening the national strategy; b) support to staff training, c) equipment in priority geographical zones, d) awareness-raising among a target audience in the regions and social groups most affected.

45 European Commission, 2004. Commission staff working paper, European Neighborhood Policy, Country Report Palestinian Authority of the West Bank and Gaza Strip. {COM(2004)373 final} Brussels, 12.5.2004 SEC(2004) 565 http://ec.europa.eu/world/enp/pdf/country/pa_enp_country_report_2004_en.pdf

46 See Hanafi, S. 2006. Palestine: the social and political dimension of migration. EUI/RSCAS report, not yet published.

47 European Commission, 2004. Proposal for a Council Decision on the position to be adopted by the European Community within the Joint Committee established by the Interim Association Agreement on trade and cooperation with regard to the adoption of a Recommendation on the implementation of the EU-Palestinian Authority Action Plan. Brussels, 9.12.2004 COM(2004) 789 final http://ec.europa.eu/world/enp/pdf/action_plans/pa_com_proposal_enp_ap_2004_en.pdf

Final Action Plan: http://ec.europa.eu/world/enp/pdf/action_plans/pa_enp_ap_final_en.pdf

48 European Commission, 2004. Commission Staff Working Paper, European Neighborhood Policy Country Report Tunisia . {COM(2004)373 final}Brussels, 12.5.2004 SEC(2004) 570 http://ec.europa.eu/world/enp/pdf/country/tunisia_enp_country_report_2004_en.pdf 2.4 Justice and Home Affairs (pp.10-11).

49 Final Action Plan: http://ec.europa.eu/world/enp/pdf/action_plans/tunisia_enp_ap_final_en.pdf

conditions for reuniting families should be facilitated.⁵⁰ Moreover, the clause of non-discrimination in the area of social security should be fully implemented and the association council should adopt a decision implementing art.65 of the Association Agreement on the coordination of social security systems. The ad hoc dialogue in the working party on social security should also be ensured.

In the asylum and refugees area, legislation based on international principles and standards should be promoted. EU expertise should be available and administrative structures should be supported (43).

The effective management of migration flows should be ensured and promoted through different actions (44): active cooperation on legal migration and setting up of a legal expert group, discussion on the implementation of the common immigration policy, setting up of an observatory in synergy with EUROMED, potential cooperation with countries of origin and transit, potential participation of Tunisia in ARGO and AENEAS programs, and initiation of a dialogue on the Return and Readmission Agreement.

Parties should also exchange information on illegal migration, support the implementation of a coherent strategy to combat illegal migration, and build operational border surveillance and control units.

In addition, an open and constructive dialogue on visas should be established, the visa procedure simplified (46), and an effective, comprehensive border management system should be established through building capacity and more secure travel documents.

Regarding border management (47), information and experience should be exchanged; regional cooperation and a training strategy should be developed, and the administrative capacity of the Tunisian border police should be improved.

Furthermore, international instruments for combating organized crime should be ratified (48), and methods should be developed to combat trafficking (49), police cooperation (with CEPOL and EUROPOL) should continue, and judicial cooperation should be developed.

Finally, cooperation in combating terrorism should continue (9): Initiatives to strengthen cooperation should be implemented, relevant international conventions should be ratified, human rights shall be protected on combating terrorism, cooperation on non-proliferation of weapons of mass destruction should be reinforced, the political and security partnership of the Barcelona declaration shall be promoted, and risks-based customs control applied.

There are three interesting features in the Tunisian Action Plan: the 'terrorism' dimension, which is particularly developed; the emphasis on the equal treatment of Tunisian workers and their families; and the advanced and developed cooperation regarding migration and border management, (although one step behind Morocco in terms of EU funds).

Conclusion:

There are no Action Plans for Syria and Algeria, and only a country report has been issued so far for Egypt. In addition, Turkey is not part of the European Neighborhood policy, since it is a candidate country. What we can conclude from these Action Plans is that they are tightly linked to the Association Agreements and illustrate the specific relationships of a country with the European Union.

This reflects the European strategy towards externalization of its policy to the immediate neighbors, sharing the external border of the European Union, especially with the Mediterranean Sea (and the specific issue of illegal migration transiting across it).

50 Those dimensions are original and stress the willingness of Tunisia to negotiate on equal grounds.

However, as recalled by Battaini-Dragoni⁵¹, “a comprehensive migration policy is not the same as launching and/or promoting a migration program” (495). A comprehensive policy is a “balanced and coherent government response to all issues” (495) and is urgently needed for mutual understanding of specific interests. “At the moment, one might say that one side speaks the language of economic survival, the other, the language of law and order” (495). If there is no such balanced dialogue through a comprehensive migration policy, the risk is “remote policy”⁵², in other words a transfer of responsibility (or burden shifting) rather than burden sharing⁵³.

In such a context of externalization, that illustrates European interests against Med-MENA countries, to what extent can we identify a phenomenon of regionalization that would efficiently take into account the Med-MENA countries’ perspectives?

51 See Battaini-Dragoni, G., 2003. The Distinctive Role of the Council of Europe in Migration, Management: The Case of the Euro-Mediterranean Region. *European Journal of Migration and Law*, Vol. 4, pp. 491–497.

52 ‘Police à distance’ or ‘remote policy’ as extensively developed by Guild, E., and Bigot, D., in the special edition of *Cultures et conflits*, N.49, 1/2003.

53 Rodier, C., 2006. Analysis of the external dimension of the EU’s asylum and immigration policies – summary and recommendations for the European Parliament, Directorate-General for external Policies of the Union directorate B-Policy Department, DT\619330EN.doc, PE 374.366, p.14

II. Reassessing Migration: Europeanization v. Regionalization in balanced diversity

In this part, we concentrate on a broader perspective than the restrictive EC externalization policy, and analyze whether there is a potential for an alternative system that would be more development- and human rights-friendly, i.e. a model where the interests of all actors would be better balanced.

In the first section, we attempt to qualify the nature of the relations between the EU, as a place for cooperation, and Med-MENA countries, namely whether we should qualify it as regionalization or as selective Europeanization. In other words, we attempt to answer the question of whether the EU policy based on intergovernmental relations and cooperation, is less externalizing or Europeanizing, and more regionalizing with respect to actors' diversity, than the EC policy *stricto sensu*.

In the second section, we focus on the international and Med-MENA countries' understandings and conceptions of migration. Thus, although Med-MENA countries diverge in terms of policy, we argue that the majority of them have in common the coupling of migration with development and nationals' equal freedom of movement, a subject largely underscored by the EC policy. Those opinions, diverging from EC externalization, have been interestingly supported by international and minoritarian European bodies, which may suggest a positive signal for a future re-balancing in the relations.

A. Regionalization or Selective Europeanization?

The Euro-Mediterranean partnership dates back to the mid-70s with the cooperation agreements signed between the European Community and three Maghreb States. This bilateral framework constitutes today the main part of the Euro-Mediterranean partnership, evolving towards a multilateral dimension since 1995. However, a line has to be drawn between the political and legal dimension of this cooperation. 'Position commune' or 'position de principe' is clearly admitted politically speaking. Indeed, most of the Med-MENA countries are currently demonstrating their agreement with consultations and cooperation, either through bilateral or regional paths. By contrast, the legal dimension remains largely selective, depending on the countries and on the basis of European interests.

We argue in this section that despite a larger cooperation policy, the legal dimension remains driven by selective Europeanization. We review first the framework of the regionalized migration management, before analyzing the specific relations of some countries with Europe.

1. *The Framework of the regionalized migration management*

Beyond the bilateral dimension of each Med-MENA country with the European Union, the effectiveness of regionalization is sought through different frameworks: EU member states as individual actors, the Barcelona regional framework, the international and multilateral levels of cooperation, and other consultation processes. We review these different aspects successively.

a. EU Member States as individual actors of externalization

As stressed earlier, cooperation with third countries remains an inter-governmental matter, although agreements with third countries are part of the first pillar if they deal with a first pillar competence. As a result, member states conserve their supremacy and capacity of signing cooperation agreements with third countries on an individual basis.

Thus, France, Italy and Spain have undertaken actions on an individual basis with some Mediterranean partners, such as Morocco. More specifically, Spain has recently concluded an agreement with Morocco to better limit illegal migration. Similarly, Italy has made different moves with Maghreb countries, such as Tunisia, in order to limit migration and promote development. France

has also signed specific agreements with Algeria dating back from the independence, where Algerian workers and residents have a derogatory regime, slightly more favourable than the general migration regime.⁵⁴ Furthermore, France has made specific arrangements for Moroccan nationals, who migrated to France. France has signed multiple agreements with Tunisia concerning the movement of people, rights to stay and work, social security, and scientific and cultural cooperation. Tunisia has also signed agreements with Spain regarding social security, taxes, and judiciary, scientific, cultural and technical cooperation. It signed similar agreements with Italy, as well as a friendship treaty in 2004. Tunisia has indeed concluded some agreements with all EU-15 member states but Sweden and Ireland.⁵⁵

In addition, bi-lateral arrangements have been recently agreed on the readmission of migrants to their home countries. For instance, the UK has recently presented a proposal for such agreement with Morocco.⁵⁶

Thus, whether on the basis of migrants' rights, of migrants' return, or on the basis of stopping illegal migration and promoting development, countries have been generally active in terms of bilateral actions and agreements. This remains a major key for dialogue, cooperation and relations between Europe and Med-MENA countries. However, it has been strongly focusing on the areas analyzed early as characteristic of the Europeanization phenomenon.

b. The Barcelona regional framework

This has practically materialized through the Euro-Mediterranean committee for the Barcelona Process. This comity is composed of representatives of the EU and civil servants belonging to the Foreign Affairs Ministry. Those experts meet every trimester. It was in charge of the preparatory work for the meetings of the Ministers of Foreign Affairs of the involved States, defining a work plan and program according to the evolution of the process. It also prepares the European summits on this topic.

Since the first Conference in Barcelona (1995) and the second one in Malta (1997), the Ministers have met in Palermo (1998, informal meeting), Stuttgart (1999, third conference), Lisbon (2000, informal meeting), Marseille (2000, fourth conference) and Valence (2002, fifth conference).

The follow-up to the process is also ensured by sectorial ministerial meetings and ad hoc thematic conferences with delegates from the governments and members of civil society.

In addition, the MEDA financial program supports the realization⁵⁷ of cooperation, as well as the AENEAS program from 2007 on.

Like the individual member states' relations with Med-MENA countries, this does not necessarily benefit Med-MENA countries. However, it remains a major forum of discussion where voices can be heard, even if they may not be fully taken into account in the enactment of EC legislation.

c. International and Multi-lateral Levels of Cooperation

Recently, some international agencies have made significant efforts in promoting cooperation on migration issues. Thus, while at the international level it has largely been limited to the UNHCR and

54 See Kerdoun, A., 2005. Inventaire des institutions nationales et internationales opérant dans le domaine des migrations internationales en Algérie. Analysis note 2005/04, EUI/RSCAS, available on the CARIM website, legal module. See also the French legislation

55 See Bencheick, F., and Chekir, H. Présentation des principales dispositions juridiques tunisiennes relatives à la migration des personnes. CARIM-AS 2006/03.

56 Secretary of State for Foreign and Commonwealth Affairs, 2006. Agreement on the Circulation of Persons and Readmission between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Democratic Republic of Algeria presented to the Parliament. Crown Service, Algeria No1, 2006.

57 This said, it must be specified that Malta (before accessing to the EU) and Turkey benefit from a different financial tool (pre-accession).

the asylum seekers / refugees dimension, significant progress has been made in terms of international interest in migration related issues.

The UNHCR continues to play a significant role in terms of coordination of international cooperation for the protection of refugees and all related issues, but it has no mandate as such for migration.

In a labor migration oriented fashion, the International Labor Organization promotes and attempts to organize cooperation on the management of migration according to labor market needs through circular migration. It adopted different reports on the protection of migrant workers, and the ILO enacted conventions N.97 and N.143 on migrant workers.⁵⁸

The International Organization for Migration has greater power and influence over the migration policies and legislation of many countries of origin. It also promotes cooperation between origin and destination countries on the one hand, and between governmental and non-governmental stakeholders on the other hand.⁵⁹

Other actors have recently reinforced the international migration initiatives. Thus, the Global Commission on International Migration was launched in 2003 on the request of the General Secretary of the UN and delivered its detailed report in 2005.⁶⁰ Its objective was to place “international migration on the global agenda, by promoting a comprehensive debate among governments, international organizations, academia, civil society, the private sector, media and other actors on all aspects of migration and issues related to migration”.

Furthermore, a High-Level Dialogue on International Migration and Development was held in September 2006.⁶¹ The 14-15 September High-level Dialogue was the first Assembly meeting to focus directly on migration, with an emphasis on identifying ways to maximize the development benefits of migration and to minimize its negative impacts.

Another active body in the internationalization of migration is UNESCO, which has set up policies promoting migrants’ rights and integration, ameliorating migration policies of countries of origin and transit, and reinforcing Diaspora networks. The UNESCO vision is more migrant-based.⁶²

This shows the increased interest of the UN and more and more other countries in migration. Above the country level, Europe has increasingly participated in international initiatives.

The Organization for Security and Co-operation in Europe (OSCE)⁶³ has also recently taken up the issue by promoting shared experiences on migration and integration policies with its Mediterranean partners in the perspective of cooperation, and by reporting on labor migration in cooperation with the International Organization for Migration and the ILO.⁶⁴

58 However, only two Med-MENA countries have ratified Convention N.97, namely Algeria and Israel, and none has ratified the second convention.

59 See for more information the website of the IOM: www.iom.int

60 For a general presentation, see <http://www.gcim.org/en/>. For the 2005 report see <http://www.gcim.org/en/finalreport.html>

61 See <http://www.un.org/esa/population/hldmigration/>

62 For a general presentation, see http://portal.unesco.org/shs/en/ev.php-URL_ID=1228&URL_DO=DO_TOPIC&URL_SECTION=201.html

63 The OSCE is the world's largest regional security organization whose 56 participating States span the geographical area from Vancouver to Vladivostok.

64 OSCE, ILO, IOM, 2006. Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination.

http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/handbook/Cover_table%20of%20contents.pdf

The International Center for Migration Policy Development⁶⁵ has also launched a dialogue on Mediterranean transit migration. The purpose of the Center is to promote comprehensive and sustainable migration policies and to function as a service exchange mechanism for governments and organizations primarily on European migration issues. It has extended its research to Eastern countries, including non-EU members and the med-Mediterranean countries.

In other words, there is not European exclusivity in terms of increased interest in migration. It has rather been a move common in both countries of origin and of destination, and in the international arena.

By contrast, there is no systematic coordination between the Med-MENA countries as a whole. However, there is growing cooperation between individual Maghreb countries (Union of Arabic Maghreb)⁶⁶ and together with African countries. Such a multilateral approach is less distinct in the Eastern Med-MENA countries, although there are privileges for their nationals in terms of entry and stay. Thus, Syrian workers do not require a work permit in order to work in Lebanon. Similarly, Lebanese nationals or Palestinians residing in Lebanon do not require a residence permit and a work permit in order to work and reside in Syria, as long as they return to Lebanon at least once a year. Moreover, there are general exceptions to visa obligations for Arabic nationals. In other words, there are some agreements in terms of migration, although the Syrian withdrawal has significantly lowered the number of Syrian workers in Lebanon.⁶⁷

The lack of regional organized cooperation among the Med-MENA countries might be explained by their divergences and differences in understanding, as well as by particular European pressures exerted on specific countries, which we describe below.

d. Other Consultative Processes

Beyond the Barcelona Process promoting cooperation between Europe and Med-MENA countries, several key regional consultative processes have been launched.

First, the Western Mediterranean Dialogue Forum, also known as the 5+5 Dialogue, was initiated on 10 December 1990 in Rome. It is an instrument for informal political dialogue between 5 European countries (France, Italy, Spain, Portugal and Malta) and 5 Western Mediterranean countries (Tunisia, Morocco, Algeria, Libya, and Mauritania). It issues recommendations on the movement of persons and concerted cooperation in migratory flows management and co-development. Additionally, since the 2001 Lisbon ministers' meeting, annual conferences take place, to which the IOM participates. The country organizing the conference presides over the forum and is in charge of the follow up of the measures adopted during the conference.

The first 2002 Tunis conference discussed different issues of interest for the participants and adopted a declaration. According to this declaration, the following dimensions must be kept in mind: Reinforcement of regional consultancy processes; information exchange and analysis of migration trends; irregular migration and human beings trafficking; migration and co-development; migrants'

65 The International Center for Migration Policy Development is an inter-governmental organization based in Vienna. ICMPD was created in 1993 on the initiative of Switzerland and Austria. Bulgaria, Croatia, Czech Republic, Hungary, Poland, Portugal, Slovakia, Slovenia and Sweden have hence also become Member/Participating States of ICMPD. In total, more than 30 governments actively support ICMPD in various ways. It was granted partial diplomatic status in 1997, and full status in 2000.

66 The convention of the Union has been signed in 1989 in Marrakech. In this frame, the country members have agreed upon the creation of a free trade zone between Arabic countries in February 2004 in Rabat. See Bencheick, F., and Chekir, H., 2006. *Présentation des principales dispositions juridiques tunisiennes relative à la migration des personnes*. Analysis note 206/03. Available on the CARIM website. P.24.

67 See Kiwan, F., 2006. *Le contexte socio-politique en 2005-2006*. Research report EUI/RSCAS, not yet available on the CARIM website..

rights and obligations; integration process; movement of people and regular migration flow management; labor migration and vocational training; migration and health; and gender equality in the context of migration.⁶⁸

The second conference was held in 2003 in Rabat, and the third was held in Algiers in 2004. According to the final declaration of this latter, important progress has been made especially in terms of joint action between Europe and the Mediterranean countries.⁶⁹ The issue of strengthened cooperation in the areas of illegal migration, border control and the fight against terrorism was particularly highlighted, by contrast with 2002 but in line with the EC evolution. It also reiterated the need for sustained cooperation and solidarity between countries, especially in terms of exchange of information. Experts meetings should also regularly be held, campaigns on migration should be developed, research reinforced, vocational training projects and exchange of young professionals set up. If the 5+5 is significantly close to the Barcelona Process, international bodies such as the ILO, IOM, or ICMPD can make an important contribution. Thus, 5+5 is an open and international inter-governmental arena for discussion. However, it also reflects the externalization policy of the EU, although on a less systematic basis.

Secondly, a significant innovation has been the July 2006 Rabat conference initiating a reinforced and increasingly structured dialogue between Europe and the African countries. It encompasses the Maghreb countries but excludes the Eastern Mediterranean countries. This first conference was proposed by Spain and Morocco. It mainly aims to implement a plan based on Euro-African cooperation that mainly addresses the question of how to handle and prevent illegal immigration. In other words, although a significant move, the risk is to fully encompass it within the EC externalization policy. That is why Noll has for instance written that Africa sells out Europe.⁷⁰

In general terms, the aim of the conference was to establish a partnership between European and African countries on the issue of migration management and development. Countries of origin, of transit, and of destination should find concrete and pragmatic solutions to the issue at stake in a comprehensive manner, respecting fundamental rights and the necessary objective of development. The responsibility for migration management should also be shared. Consequently, a Europe-Africa conference should take place in Tripoli in Libya by the end of 2006. The annual sum of €2.5 billion (\$3.16 billion) offered to the African participants by the Europeans in Rabat is not trivial, but the question is whether this good initiative is sufficient and balanced.

These different levels and forms of cooperation raise the question of whether we should talk of regionalization, or more aptly Europeanization. Indeed, the special relations of some European countries or all European countries as a whole with the Maghreb countries and Africa do resemble more an imposed move from Europe in its own interest rather than a genuine dialogue between equals in the framework of regionalization between Europe and Med-Mediterranean countries. In addition, as we demonstrate in the next section, Morocco and Turkey are shining examples of Europeanization--not regionalization. Furthermore the selection of Med-MENA countries operated by the EU on the basis of European interests is a further element for such argument. Moreover, the differences between Med-MENA countries have so far prevented them from building a south-south regional area. However, international arenas are an example of a potential alternative model.

68 See http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/rcp/tunis_declaration_2002_en.pdf

69 See for a general presentation http://www.old.iom.int/en/know/dialogue5-5/algiers_en.shtml
http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/rcp/tunis_declaration_2002_en.pdf

70 See Noll, G., 2006. The Euro-African migration Conference: Africa sells out to Europe.
http://www.opendemocracy.net/people-migrationeurope/migration_conference_3738.jsp

2. *The specific relations of some countries with the EU: Policy shift under European Pressure*

If differences between Western and Eastern Med-MENA countries have existed from the outset, they have been further increased under European pressure or European influence, as clearly visible in Morocco and Turkey. We review these two aspects successively.

a. Significant differences in Med-MENA Countries' legislation

According to Fargues, Cassarino and Latrèche, a “distinction should be made between Western and Eastern Med-MENA countries, regarding [notably] how immigration and asylum have been dealt with”.⁷¹

All Maghreb countries, together with Turkey, i.e. the Western Mediterranean countries, share their fate as recently acknowledged countries of transit and as countries geographically closer to Europe, which explains the specific interest Europe holds for these countries. Indeed, many migrants from Sub-Saharan regions or from Eastern Mediterranean countries do transit through Maghreb countries before eventually reaching Europe, a phenomenon that is mostly due to more restrictive European policies. In other words, these countries share a common afflux of irregular migrants, whose aims are to reach Europe.

This strongly distinguishes Western from Eastern Mediterranean countries, which largely remain countries of emigration and countries of asylum. Indeed, Eastern Mediterranean countries face the same issue of in-coming Palestinian refugees and refugees from wars (e.g. the wars in Iraq), which is not the case of Maghreb countries. In other words, the main problem Eastern Mediterranean countries face is that of the refugees created by regional instabilities such as the Israel-Palestinian conflict or the Iraq wars—and not so much issues of irregular migration and transit migration. In addition, the instability in the region has led to a rise of unemployment and a decrease of development. In order to counter these negative effects, the Eastern Mediterranean countries should maybe establish a pan-Arab labor market and free trade zone.⁷² The agreements made between Lebanon and Syria regarding freedom of movement could for instance be extended to all Eastern Mediterranean countries. In other words, the absence of necessity of visa between Eastern Mediterranean countries, together with Gulf countries, could be taken a step forward.

Israel and Palestine are specific cases, since their migration and asylum policies are directly linked to the Israel-Palestine conflict. Despite the recent issue of illegal migration in Israel, migration policy there is generally speaking understood as the ‘law of return’, according to which the ‘return’ of Jewish people shall be promoted. New migrants receive training, financial support and assistance from other social programs. In addition, Israelis are not encouraged to leave.⁷³

Regarding Palestine, the main issue for Palestine is the refugees in the whole world as well as within Palestine itself. Palestine is not a sovereign state in the eyes of international law, which means that the government has no power to decide who enters and stays, except for Palestinian nationals and the occupied territories in a more limited way. In other words, there is neither a migration policy as such, nor a full border control. Despite the fact that the government has never encouraged emigration, it has recently acknowledged the situation of millions of Palestinian refugees and has developed a program to link the Palestinian Diaspora with Palestine. In addition, there are several organizations promoting the interests of Palestinian refugees or the right to return, such as BADIL. Palestinians have fewer rights than Israelis, since they are themselves mostly refugees. Nevertheless, the draft

71 See Fargues, P., Cassarino, J.P., Latrèche, A., 2005. Mediterranean migration: an overview. In Fargues, P. (ed.), *Mediterranean migration 2005 report*, 2005. 5-31, p.26.

72 See Fergany, N., 2001. Aspects of labor migration and unemployment in the Arab Region. World Bank's working paper.

73 See Strauss, S., 2006. Short overview of migration law in Israel. Analysis report EUI/RSCAS, not yet published on the CARIM website.

constitution of Palestine proposes for the first time a legal definition of citizenship, where the right of return is promoted and investment encouraged. However, in the common political context, progress towards an independent Palestinian state seems to remain distant.⁷⁴

As regards Western Med-MENA countries (Maghreb), Morocco provides the most comprehensive legislation, tackling also the social rights of legal migrants. Thus, the new Labor Code adopted in September 2003 includes a section on working conditions and recruitment of foreign workers. Morocco is also one of the rare countries to have ratified the UN International Convention on Migrant Workers (1990). These two elements were favorable to migrants' rights complying with international human rights principles. However, the 2003 Immigration Act has been largely criticized for its restrictiveness towards immigrants, the lack of rights for illegal migrants, and the absence of legal system for family reunification, which contradicts Moroccan international obligations.⁷⁵ By contrast, this legislation is largely in line with European standards externalizing the European policy to neighboring countries. In this case, the burden-shifting is latent.

Tunisia has enacted similar legislation reinforcing border controls (2004 Act), amending the 1975 Passport and Identity Documents Act. This symbolizes the shift towards a more restrictive approach to migration.⁷⁶ This has largely been considered as restrictive for migrants and in-line with European guidelines. Thus, Zakri⁷⁷ characterizes the European-Maghreb countries relationship (and in particular Tunisia) as based on security matters, and no longer on people's movements. Migration is no longer a phenomenon of cooperation but rather an area of permanent pressure, or even threat. He adds that the fundamental objective of Europe is to manage migratory flux through legal and securitarian mechanisms.

By contrast, countries like Algeria have not decided to enact such legislation, although it has become a country of transit, similar to Morocco and Tunisia. Indeed, Algeria now conceives of migration as a global and transnational phenomenon and no longer as a bilateral concern with former colonizers, or as a buffer zone to stop migrants. It focuses more on cultural dialogue and sharing wealth rather than reinforced control and border closing. In addition, immigration and emigration have been coupled through two main aspects: movement of people and human beings' exchanges. For the Algerian government, the European policy of border management is unfair, because it entirely shifts the burden to countries of origin. For this reason, Algeria has refused to fully cooperate. Nevertheless, like Morocco and Tunisia, Algeria has enacted bilateral agreements to protect its nationals abroad and has in this context strong connections with European states. In addition, Algeria has also passed a new act in 2003 on visas, and aims to control illegal transit migration.⁷⁸

In addition, Morocco, Algeria and Turkey have ratified the International Convention on Migrant Workers, while among the Eastern Mediterranean countries, only Egypt has done so.

If there are significant differences between the countries, it is important to underline the role of Europe in this division. Indeed, it seems that countries geographically the closest to Europe, and in

74 See Hanafi, S., 2006. Palestine: the social and political dimension of migration Research Report EUI/RSCAS, not yet published on the CARIM website. And Khalil, A., 2006. Legislating for Migration: The Anomalous Case of the Palestinian Authority. Analytical note 2006/11 EUI/RSCAS, not yet published on the CARIM website.

75 See Elmadmad, K., 2004. La nouvelle loi marocaine du 11 Novembre 2003 relative à l'entrée et au séjour au Maroc et à l'émigration et l'immigration irrégulières. RSCAS/EUI Analysis note 2004/01. Available on the CARIM website.

76 See Lahlou, M., 2005. Les migrations irrégulières entre le Maghreb et l'Union Européenne. RSCAS/EUI research report 2005/03. Available on the CARIM website. Pp.13-14

77 See Zekri, A., 2004. Les politiques migratoires, les institutions compétentes, et leur environnement en Tunisie. RSCAS/EUI Analysis note 2004/02. Available on the CARIM website, p.21.

78 See Lahlou, M., 2005. Les migrations irrégulières entre le Maghreb et l'Union Européenne. RSCAS/EUI research report 2005/03. Available on the CARIM website.

particular Morocco and Turkey have been significantly influenced and/or pressured by Europe to make strong changes in their understanding of migration and asylum.

b. European difference of treatment: Morocco and Turkey as special cases

The distribution of funds by the AENEA⁷⁹ reflects particularly well the privileged treatment of specific countries. In 2005, for instance, 2 million were directed to Turkey for asylum and the fight against illegal migration, and 3 million to North Africa for management of migration flows and asylum / refugee protection. No money was directed to Middle East.

In 2004, 5 out of 25 projects directly involved Morocco representing 7 million Euros⁸⁰, 4 projects grouped the 3 North African countries for 4.5 million⁸¹, 1 program was developed for Egypt for 500000 Euros (targeting refugees), and one general project for MENA countries representing 700000 Euros to maximize the benefits of international migration. In other words, there is no AENEA fund for Middle East countries (except Egypt), and the leading receiver of European funds is Morocco, followed by the three North African countries as a whole.

As illustrated in this fund program, two countries are particularly subject to European attention, namely Turkey and Morocco. Both have been influenced and often pressured to adopt specific legislation in line with European standards, which is not necessarily in favor of migrants. Thus, the 2003 Moroccan Immigration Act is largely restrictive, limiting migratory opportunities. Similarly, although Turkish workers and their families settled in Europe benefit from the strongest rights as recognized by the European Court of Justice, Turkey has also the most demanding agenda of reforms to comply with the objectives of the EU migration policy, which insists in particular on border management, illegal migration, asylum and migration management.

The Council adopted the first Accession Partnership with Turkey in March 2001, after Turkey had met the Copenhagen criteria. Since Turkey has obtained the status of candidate country, its obligations in terms of border and migration management, the fight against illegal migration, asylum and migration have significantly increased. Its status as candidate subject to political conditionality has become a European instrument for pressure.

In this context, the Commission indicates specific reforms and what kind of progress needs to be made. It then makes reports evaluating the evolution. On the basis of this evolution, the countries may at unanimity ultimately decide to admit Turkey as a member of the European Union.⁸²

Thus, according to the 2005 Progress Report⁸³, the following recommendations and evaluations have been made regarding migration. First, Turkey should continue to work towards creating a non-military professional corps of border guards. To reach this aim, the law on the protection and security of land borders should be revised. In this sense, the National Action Plan towards the implementation of Turkey's Integrated Border Management Strategy adopted in March 2006 is a positive sign. Turkey has also continued efforts at alignment with the EU positive and negative visa lists. However, there

79 See European Commission, 2006. Communication from the Commission to the European Parliament and the Council, Thematic program for the cooperation with third countries in the areas of migration and asylum, Annex, Brussels, 25.1.2006, COM(2006) 26 final.

80 The 5 projects were shared either with Spain, Mauritania, or Albania, and concerned returned migrants, minors in host countries, seasonal workers, responsible migration and regional cooperation with Sub-Saharan countries.

81 The projects aimed at civil society for migration management, reintegration of returning migrants, reinforcement of dialogue and technical cooperation with the EU.

82 The decision on the entry of a new country to the EU must be made by all members and ratified by their national parliaments (or by Referendum).

83 European Commission, 2005. Turkey 2005 Progress Report Brussels, 9 November 2005 SEC (2005) 1426 http://ec.europa.eu/comm/enlargement/report_2005/pdf/package/sec_1426_final_en_progress_report_tr.pdf . Chapter 24: Justice, freedom and security.

still is a discrepancy for six countries. According to the 2006 Progress report, no further progress has been made on the negative list, but some visa exemptions have been enacted following European requirements for the positive list. Turkey should continue alignment, and it would need to improve the capacity of its consular services to detect false documents. In addition, Turkey must stop the practice of delivering visa at the borders.

With regard to migration, a National Action Plan for alignment with the *acquis* on migration was adopted in March 2005 with a set timetable. It has been implemented. However, it does not provide details on deadlines for transposition of the *acquis* or improve administrative capacity, in particular the setting up a specialized body. Moreover, Turkey, which opened negotiations in May 2005 for a Readmission Agreement, has made only very slow progress. Thus, according to the 2006 report, Turkey's efforts need to be considerably increased.

A National Action Plan with a set timetable for alignment with the *acquis* on asylum was also adopted in March 2005. Certain measures, such as those on subsidiary protection, should be clarified. Moreover, the Commission states that the lifting of the geographical limitation of the 1951 Refugee Convention remains a key issue. Indeed, so far, only Europeans can apply for refugee status. Thus, all asylum seekers from the Middle East or Africa are bound to remain irregular migrants or to leave Turkey. Turkey announced that will change by 2012. Turkey applies the principle of non-refoulement. However, there still are reports on asylum seekers being prosecuted at the border, and deported, for illegal entry. If applications for asylum are handled with the UN High Commissioner for Refugees (UNHCR), progress remains to be made.

Similarly, the 2005 enlargement strategy paper⁸⁴ states that “overall, the Turkish legislation is partly in line with the *acquis*. Further progress is necessary in a number of areas such as adoption of a law on protection of personal data, adoption and implementation of the National Action Plan on Border Management, implementation of the National Action Plan on Migration and Asylum, lifting the geographic limitation to the Geneva Convention and developing inter-agency co-operation” (p.32).

According to the 2006 Council Decision⁸⁵, short-term and medium-term priorities shall be distinguished. On a short-term basis, Turkey should continue its efforts to implement the National Action Plan on Migration and Asylum, to combat illegal migration and to conclude urgently a Readmission Agreement with the EU. The National Action Plan on Border Management should also be adopted and implemented with borders de-mined and the establishment of professional border guards.

On a medium-term basis, Turkey should pursue the alignment on visa legislation and on asylum through the lifting of the geographical limitation to the Geneva Convention. It should also strengthen the system for hearing and determining applications for asylum, as well as make efforts to reinforce refugees' integration. It should continue to develop the capacity of the customs service. An independent supervisory authority should be created. Illegal migration should be prevented. Furthermore, Turkey should continue the alignment on the *acquis* and best practices, in line with the National Action Plan on border management, to prepare for full alignment with the Schengen *acquis*.

In other words, the efforts to be made in the migration area focus on illegal migration and border management, as well as the amelioration of the asylum system. It does not promote free movement of persons, and workers in particular, while these principles have been largely recognized for EU nationals who have moved to another country, although they are limited. Thus, the European

84 European Commission, 2005. Communication from the Commission to the European Parliament and the Council, enlargement strategy paper. {SEC(2005) 1433 } {SEC(2005) 1421 } {SEC(2005) 1422 } {SEC(2005) 1423 } {SEC(2005) 1424 } {SEC(2005) 1426 } {SEC(2005) 1428 } Brussels, 9.11.2005 COM (2005) 561 final http://ec.europa.eu/comm/enlargement/report_2005/pdf/package_v/com_561_final_en_strategy_paper.pdf.

85 European Council, 2006. Council Decision of 23 January 2006 on the principles, priorities and conditions contained in the Accession Partnership with Turkey (2006/35/EC) Official Journal of the European Union, 26/01/2006.

migration and asylum policy has been externalized to Turkey, but Turkey does not benefit from the standard European rules on European citizens in terms of free movement.

Because of this unilateral policy, and in the context of the negative attitudes of several member state countries (such as France and Germany) towards Turkey's admission into the European Union, Turkey increasingly doubts its interests in following such policy, especially if there is little genuine prospects for EU membership. Indeed, the "erosion of the EU's credibility with regard to Turkey's membership is undermining the process of convergence between the Turkish asylum regime and the Community acquis"⁸⁶. Consequently, Turkey seems reluctant to enact weighty legislation.

The November 2006 European Commission's Progress Report⁸⁷ seems to confirm this Turkish fear of no-accession and 'manipulation'. Indeed, this report heartily criticizes Turkey. It stresses for instance the lack of progress regarding its relation with Cyprus, and even considers the possibility of suspending the candidature of Turkey in order for this latter to comply with European rules.

As a result, fewer people believe that Turkey is being treated in a fair and equal way by the European Union, and there is growing distrust between Europe and Turkey. The reasoning is the following: Why should Turkey make costly efforts in terms of reformed border management, greater opening towards refugees, and stricter controls to limit illegal migration if there is a risk that they have to support the whole system alone, since there is no certainty that Turkey will one day become member of the European Union? The Turkey – Europe relations seems to have reached a stalemate.

This seems to suggest that the European attitude is more about Europeanization than about regionalization and balanced cooperation. However, this attitude is not necessarily entirely negative. Indeed, some countries, especially the Maghreb countries, and more particularly Morocco and Tunisia, comply with European demands and actively participate in order to be more credible in international negotiations. By contrast, as stated by Lahlou⁸⁸, Algeria is more reluctant and ambivalent to follow the European line in terms of illegal migration and border management, no matter what positive consequences could arise from such compliance. While most of the migrants entering Morocco do so from the Algerian border, Algeria has expressed no interest in participating in common border guarding with Europe. Thus, it has not reacted to the 2005 Spanish proposal to extend the field of competence of the surveillance system set up between Morocco and Spain.

As a conclusion, there is an undeniable European trend to Europeanize its immediate neighbors in order to better serve its own interests. Targeted countries are aware of this position, and have gone along with it in order to further their interests in other areas. Thus, Morocco and Turkey have agreed to play along with Europe in order to gain international respect, and the former to have access to the EU. However, while Turkey had enthusiastically began compliance with European expectations in order to become a member of the EU, which would ultimately serve Turkish interests, serious doubts have cast on this strategy. Thus, it seems that if Europe does not ensure Turkey's accession, the country may well renounce compliance with unilateral European demands, particularly in terms of migration and asylum. Europeanization is not free.

B. Regionalization coupling Immigration with comprehensive development and human rights

An alternative model to the European externalized perspective of migration would be equally based on the interests of the Med-MENA countries (1), directly linking development and human rights to

86 See Kirişci, K., 2006. Turkish Asylum Policy and Pre-accession: Convergence or Deadlock? CARIM paper, available on the website CARIM.org, pp.1-2

87 See European Commission, 2006. Turkey 2006 Progress Report. Brussels, November 2006 ...

88 See Lahlou, M., 2005. Les migrations irregulieres entre le Maghreb et l'Union Europeenne. RSCAS/EUI research report 2005/03. Available on the CARIM website. p.13-14

migration, as suggested by international bodies and some dissenting voices within the European Union itself (2).

1. *Common focus on development and legal migration for heterogeneous Med-MENA countries*

The Med-MENA countries do not constitute a homogeneous region. Thus, there are significant differences between Western and Eastern Mediterranean countries partially on the basis of European pressures as explained above. However, the majority of the MENA countries focus on their own development, increasing GDP, decreasing unemployment and improving their standards of living, as well as on the rights of and links with their nationals in other countries.

The focus of the Med-MENA countries is not on restricting illegal migration and controlling their borders, but rather on emigration and development. Indeed, they all have in common the willingness to further develop their countries in economic and social terms, and to count on emigration as a source of revenue and skills (remittances and skilled migration).

All countries have decided to reinforce their links with Diaspora abroad, where the links had been broken. These efforts have been very significant in countries like Egypt, Algeria, Jordan, Israel, Morocco, Tunisia and Turkey. In Lebanon and Palestine however, we see only attempts to raise awareness on this issue, rather than any formal policy of emigration. Significantly, in Egypt, an emigration website and platform have been set up for job seekers with the help of the IOM.

Similarly, remittances have a significantly increased importance in all these countries, and the opinion according to which efficient investments would make a significant contribution to development is largely shared. In general terms, there is an awareness of the utility of labor migration for development, although one common risk in all the countries is ‘brain drain’, i.e. the permanent emigration of the best brains, which could hamper development.

In addition, whether on the basis of asylum-seekers, irregular, or regular migrants, Med-MENA countries have become countries of immigration and thus need to tackle the issue and use at best immigration for continuous development.

However, in Morocco, Tunisia, and Turkey, the European influence is strong enough to largely limit their foci on development and regular migration.

Nevertheless, all in all, the commonalities between most of the Med-MENA countries could be efficiently developed and supported within the framework of a regional body, where the Med-MENA countries could set up coordinated policies. Thus, the Maghreb Arab Union could be extended to a Mediterranean Arab Union for instance, as distinct from the more general ArabUnion League.

2. *An alternative perspective supported by international and minoritarian European bodies*

A south-south regional body could moreover be efficiently supported by the international bodies and minority European bodies, which attempt to minimize externalization by promoting a more balanced approach of migration.

a. *The international perspective supporting the development – migration couple*

By opposition to the Euro-centered European attitude, all international bodies have significantly attempted to take better into consideration the needs of the countries from which migrants come. They have thus emphasized their interests and difficulties, which is a significantly different approach from Europe’s limited focus on illegal migration, border control and asylum. They have emphasized the necessity to couple development with migration, the necessity to protect migrants’ rights, and the necessity to develop labor migration policies.

There is a close relationship between migration and development in countries of origin. A proper management of this relationship would have significant benefits for countries of origin and their nationals. A connection between migration and development is increasingly being made in international fora, in Regional Consultative Processes, and in bilateral and multilateral agreements. This is for instance a feature of the Cairo Declaration on Population and Development, where its chapter 10 is devoted to migration, refugees, asylum-seekers, and displaced persons⁸⁹. This relationship is also present in the Cotonou Agreement, the World Bank's initiatives, the IMF's papers, as well as the ILO or the IOM.

Thus, the Handbook on Labor Migration emphasizes such relationships between development and migration, as well as the need for labor migration. Thus, although there are differences between countries of origin, they all face common issues, namely challenges in protecting workers from exploitation, challenges in optimizing benefits of organized labor migration, building institutional capacity and coordination, and increasing cooperation with destination countries in order to ensure a better development.⁹⁰ In other words, the ILO, the IOM and the OSCE underline several common issues: cooperation, efficiency, organized labor migration, and migrants' rights in order to reinforce development.

The Global Commission on International Migration and the UN high-level dialogue similarly emphasize the link between migration and development, migrants' rights, and the need for a coordinated labor migration. Moreover, despite their strong concern over illegal migration, the 2006 Rabat Action Plan or the 2002 5+5 Tunis declaration had also underlined those dimensions, which indicates a discrepancy between EU/EC policies and legislation, and European speeches or declarations.

In addition, the World Bank lobbies for higher temporary migration from MENA to European countries⁹¹, together with higher trade in the countries of origin in order to promote greater development of these countries. Indeed, liberalization of trade might on the short term have a negative influence on employment. Temporary migration like in the Gulf countries would enable people to come back and less important migration flux, especially in the context of a demographic and labor need in Europe. According to the 2005 working paper⁹², labor markets are complementary, restrictive migration policies imply increased illegal migration, and a more liberal European migration policy could help reforms in the MENA countries. In other words, a sustained restrictive policy against illegal migration externalized to Med-MENA countries would not tackle the root problem. The solution would indeed be to develop coordinated legal migration systems. The EU did advocate the necessity of creating harmonized legal migration systems. However, the member states seem to have difficulties agreeing on the methods and principles to be applied.

In addition, in response to an increasing demand from the Med-MENA countries for expertise and knowledge services, the World Bank Group, with technical and financial support from the city of Marseilles, has opened a technical office, the MENA Knowledge Networks Agency (KNA), in Marseilles, France. The objective of the KNA is to build capacity for knowledge sharing and learning in the MENA region. This is potentially an efficient way to promote economic and social development

89 This declaration was adopted by more than 180 States represented at the International Conference on Population and Development held in Cairo in September 1994. However, despite regular reference to the Cairo Program of Action in many fora since 1994, implementation of recommendations remains limited.

90 OSCE, ILO, IOM, 2006. Handbook on Establishing Effective Labor Migration Policies in Countries of Origin and Destination. pp.35-37.

http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/handbook/Cover_table%20of%20contents.pdf

91 See World Bank, 2003. Trade, Investment and Development in MENA : Engaging with the World. Available on the World Bank website.

92 See Nabli, M., 2005. EU/World Bank Migration and Skills Workshop, Brussels July 4-5, 2005. Available on the World Bank website.

on a long-term basis, by contrast with the European short-term policies. In addition, if the skills return to the countries in any way, and if the remittances are increasingly invested, the negative impact of labor migration on the labor markets of the countries of origin will be limited.⁹³

In a more limited manner but in the same line, a Tunisian-Italian pilot program was launched in 2002. While one of the pillars is concentrated on illegal migration, another pillar provides joint management of legal flows and co-development based on public aid compounded by private investments with a view to creating job opportunities on the spot.

Following the increased interest for the migration – development linkage, remittances have become increasingly subject to international scrutiny and study. Their positive effects on fighting against poverty have been acknowledged.⁹⁴ They have significant positive effects on development in the countries of origin according to Sayan's 2006 IMF working paper.⁹⁵

Beyond the importance of development and movement of people, international legal instruments, such as the ILO Conventions N.97 and N.143 or the International Convention on Migrant Workers have attempted to highlight the rights of migrant workers and their family members, recognizing migrants' vulnerability vis-à-vis the country of destination.⁹⁶ A further argument for migrants' rights is its impact on the social development of the countries of origin.⁹⁷

b. The role of internal European actors: The European Parliament and the ECJ

The Parliament, despite not having competence in this area, has tried to add a dissenting voice to the Commission-Council couple, insisting on the importance of development, balanced migration, and migrants' rights. Similarly, the ECJ has developed favorable measures for migrants by reading the old Association Agreements in light of the treatment of European citizens who have exercised their free movement in the European Union.

The European Parliament, and particularly its committee on civil liberties, has stressed the importance of developing a comprehensive approach to migration, as well as the need for rules in legal migration. In addition, the phenomenon of externalization has been particularly scrutinized by the European Parliament. Thus, a report on regionalization has recently been made on the European Parliament's request. This report strongly criticizes the instrumental EC policy and the risks of burden shifting and downgrading of migrants' rights.

While the Parliament has focused on the importance of a comprehensive approach to migration by linking migration with development, ensuring migrants' rights, and developing fair models of legal

93 See Secretary-General Report, 2006. World population monitoring, focusing on international migration and development. UN Economic and social Council, Commission on Population and Development, Thirty-ninth session, 3-7 April 2006, E/CN.9/2006/3.

94 See for instance, Adams, R.H., 2006. Migration, Remittances and development: the critical nexus in the Middle East and North Africa. UN/POP/EGM/2006/01, 18 April 2006, UN Experts Group Meeting on International migration and development in the Arab Region, Population Division Department of Economic and Social Affairs United Nations Secretariat Beirut, 15-17 May 2006.

95 Sayan, S., 2006. Business Cycles and Workers' Remittances: How Do Migrant Workers Respond to Cyclical Movements of GDP at Home? IMF Working Paper WP/06/52

96 See Lafarge for a comprehensive presentation of international migration law. Lafarge, F., 2005. Guide du droit international des migrations et du statut des étrangers et accès aux sources internet. Analysis Note 2005/12, EUI/RSCAS, Available on the CARIM website in the legal module.

97 See Protecting the rights of all migrant workers as a tool to enhance development, General Assembly, Sixty-first session, Item 54 (b) of the preliminary list, Globalization and interdependence: international migration and development, 3 Jul.06, A61/120: Information deficit on the linkage between migration and development, ensure the respect of migrants' rights for a better development.

migration, the European Court of Justice has made a significant contribution in one specific area, where it could potentially have significant powers, namely the area of migrants' rights.

Thus, on the basis of the older Association Agreements that were more favorable to migrants living in destination countries, the ECJ extended migrants' rights. It made similar moves by using the status of family members.

Thus, on the basis of the freedom of movement and services for a European citizen, the Court extended the European workers' rights to their family members, non-EU nationals, as deriving from primary European rights. According to the Singh case⁹⁸, a non-EU national, family member of a European citizen, who has exercised his freedom of movement, has the right to re-enter the country where the European national comes from, even if he is not authorized to do so by national legislation. Similarly, a non-EU national who is the spouse of a European citizen and exercising his freedom of services, thus even without residing in another member state, cannot be legally expelled on the basis of the freedom of services read in light of the right to family life.⁹⁹

The European Court of Justice has played an active role in promoting migrants' rights within the European Union, as a way to extend the EC competences in this domain largely controlled by member states.

Similarly, in the specific context of the Med-MENA countries, the ECJ has acknowledged migrants' rights, in particular in the case of Turkey, i.e. the most favorable old Association Agreement, but also in a more limited way to Morocco. As underlined earlier, the European Court of Justice has only limited competence in the area of migration, while it has full competence in the area of the European four fundamental freedoms.¹⁰⁰

The 1965 Association Agreement¹⁰¹ with Turkey has had dramatic effects on Turkish workers' rights in the European Union thanks to the ECJ interpretations.

First, the European Court of Justice (ECJ), in the face of reluctance from the German constitutional court, has developed several principles: first, the provisions regulating the rights of persons in the Association Agreement fall under the full competence of the EU.¹⁰² This does not belong to the member states' competence.

Secondly, provisions in the agreement or decisions of the Association Council, which are clear and perfect, have direct effect. Thus, Turkish nationals may bring their case before the Courts of the Member States on the basis of the decision, even if the legislator has not yet complied with its obligations under the association law. Moreover, since the Association Agreement is an integral part

98 ECJ, C-370/90, *The Queen / Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for the Home Department*, Rec.1992,p.I-4265.

99 ECJ, Case C-60/00, *Mary Carpenter v. secretary of state for home department*, 11 July 2002.

100 The four freedoms are the freedom of movement, services, capital and establishment. In those areas, the European Court of Justice can be consulted by any national court that has doubts about the interpretation of a European law. This interpretation given by the court must then be applied by all courts and other bodies. Superior national courts have the obligation to refer to the ECJ. By contrast, in the migration area, the possibilities to consult the ECJ are very limited and they in addition imply the existence of an EC act on this domain, which was until recently not the case.

101 The Agreement was concluded in 1963 and aimed at promoting the continuous and balanced strengthening of trade and economic relations between the EU and Turkey (Article 1) with a view towards potential membership. From the mid 1980s the EEC-Turkey Association Agreement and the Decisions of the Association Council 2/76, 1/80 and 3/80, became relevant for EC migration policy making. Since 1995, a customs union with free movement of goods has been developed. There have been no references to management of borders, migration management or illegal migration, because as we have seen earlier, this notion has been only recently developed in the context of the externalization of the European migration policy. By contrast, the old generation of Association Agreements was focusing on migrants' rights, especially in the Turkish case as interpreted by the European Court of Justice.

102 See Case C-192/89 *Sevince* [1990] ECR I-3461.

of EC law, it has supremacy over national legislation, and prevails in case of conflicting legislation, as any other EC law.

Articles 6 and 7 of Decision 1/80 in particular have direct effect.¹⁰³ Similarly, art.40 of the 1976 cooperation agreement with Morocco has direct effect (Par.34).¹⁰⁴ Art.41(1) of the Cooperation Agreement on Non-Discrimination Towards Social Security also has direct effect¹⁰⁵, like art.65(1) of the Association Agreement¹⁰⁶, since the wording is identical, and art.39 of the Algerian Cooperation Agreement¹⁰⁷.

Thirdly, the guarantees modeled upon the provisions of EC law have to be interpreted in principle in the same sense as they are interpreted in EC law. For instance, the qualification of worker, the family members who may enjoy family reunification, or the scope of discrimination have to be interpreted in an analogous manner as EC law. Thus, someone who is doing his military service is a worker.¹⁰⁸ Similarly, the concept of social security must be understood in an identical manner as understood in EC regulation 1408/71.¹⁰⁹

This principle of “parallel interpretation of association law with EC law” is derived from Article 12 of the Agreement which states that the parties “agree to be guided” by the EC-provisions on the free movement of workers when progressively establishing their freedom of movement.

Although there is no complete parallel interpretation, since the rights of non-nationals remain more limited than European nationals, it remains that Turkish workers have a right to the renewal of a work permit after one year employment if a job is available, even if the job is financed by public funds and intended to facilitate integration into working life.¹¹⁰ In addition, after four years of employment, they have full right to free employment.

The rights of a Turkish worker, who enjoys the right of free access to any paid employment of his choice, may only be limited on grounds of public policy, public security and public health (Article 14(1) of Decision No 1/80).¹¹¹

In addition, according to article 7, family members of Turkish workers have free access to employment after 5 years of residence. There are only two limitations to this principle for family members (including children): limitations justified on grounds of public policy, public security or public health (art.14), and, if they have left the territory for a significant length of time without legitimate reason.¹¹² Free access to employment is not limited to minor children.¹¹³ Furthermore, if one of the parents must have been resident in the host country for 3 years, it is not required that the parent

103 For Art.6: Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 26. For art.7(1): Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 28. For art.7(2): Case C-355/93 *Eroglu* [1994] ECR I-5113, paragraph 17, and *Akman*, paragraph 23. For art.7 for the right of the child: *Eroglu*, paragraphs 20 and 23, and *Akman*, paragraph 24.

104 ECJ, Case C-416/96, 1999, *Tour Eddline El-Yassini v. Secretary of State for the Home Department*.

105 ECJ, C-18/90, *Kziber*, 31/01/1991, Rec. p. I-199, par.15-23; ECJ, *Yousfi*, C-58/93, 20/04/1994, Rec. p. I-1353, par. 16-19; ECJ, *Hallouzi-Choho*, C-126/95, 3/10/1996, Rec. p. I-4807, par. 19 et 20.

106 ECJ, Order, C-336/05, 13/06/06, *Ameur Echouikh v Secrétaire d'État aux Anciens Combattants*, par.55.. *Hallouzi-Choho*, C-126/95, 3/10/1996, Rec. p. I-4807, par. 35.

107 ECJ, *Sürül*, C-262/96, 04/05/99, Rec. p. I-2685, par.66.

108 ECJ, C-248/96, 13/11/1997, *Grahame et Hollanders*, Rec. p. I-6407, par. 27-33.

109 ECJ, court order, 13/06/06, C-336/05 *Ameur Echouikh v. Secrétaire d'État aux Anciens Combattants*, par.50.

110 Case C-1/97, *Mehmet Birden v. Stadtgemeinde Bremen*, 26/11/1998.

111 See ECJ, Case C-383/03, *Ergül Dogan v Sicherheitsdirektion für das Bundesland Vorarlberg*, 07/07/2005.

112 Case C-329/97 *Ergat* [2000] ECR I-1487, paragraphs 45, 46 and 48; Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraphs 36 and 38; and Case C-373/03 *Aydinli* [2005] ECR I-0000, paragraph 27. Case C-502/04, *Ergün Torun v. Stadt Augsburg*, 16/02/2006, paragraph 25.

113 C-502/04, *Ergün Torun v. Stadt Augsburg*, 16/02/2006, paragraph 27.

in question should still work or be resident in the Member State in question at the time when his child wishes to gain access to the employment market there.¹¹⁴

According to article 3(1) Decision 3/80, discrimination on the basis of nationality applies to all fields covered by the decision (social rights, educational rights, and rights at work). This means that a Turkish national must be treated in the same way as nationals of the host member state. For instance, the family member who has legally been reunited with the Turkish worker shall obtain social security benefits under the same conditions as member states' nationals.¹¹⁵ However, the Turkish workers do not have in general the same rights and equality as European nationals.¹¹⁶

The Turkish Association Agreement has wider principles than the Moroccan or Tunisian agreements, which only recognize the principle of non-discrimination at work and regarding social security. Thus, the case law applied to Turkey cannot be fully extended to Morocco or Tunisia, since the articles on equality of treatment are more limited. As a result, a Moroccan who entered a member state for another purpose than work, cannot stay in the country on the basis that his work permit is valid for a longer period than his residence permit as stated in *El-Yassini* (par.49-61). However, article 65(1) of the Euro-Mediterranean agreement is to be interpreted as meaning that it precludes the host Member State from refusing to grant an armed services invalidity pension to a Moroccan national, who has served in that State's army and resides in its territory on the sole ground that the person concerned is of Moroccan nationality.¹¹⁷ In other words, the European Court of Justice has based its decision favoring migrants' rights on the basis of the general Euro-Mediterranean agreement, because it could not base it on the Moroccan Association Agreement directly. This shows to what extent the ECJ is ready to spread its wings and continue to support an alternative model to the one presented by the Commission – Council couple.

Conclusion:

The European external policy of migration has shifted towards an externalization of migration policy. Thus, while the bilateral agreements used to focus on the rights of Mediterranean migrants in Europe, and in particular Turkish workers and their families, the comprehensive external policy of migration, developed since 2002, has focused on illegal migration, border control, migration and asylum management and the fight against terrorism. In other words, the European Union attempts to serve its own interests in this new policy, rather than serving balanced interests. One illustration of this is that both the Association Agreements and the ENP Action Plans reveal the tighter connections and links of the European Union with Turkey, as a candidate country, and with Morocco. Both are to the targets of considerable attention and funds in order to attempt to stop migration in the transit countries. This Europeanized conception of external migration policy significantly contrasts with the Med-MENA countries' understandings and policies in terms of migration, which more significantly couples development with migration. It is also largely distinct from the perception of international bodies, such as the World Bank, and from dissenting voices in Europe itself, such as the European Parliament. Therefore, the external policy of migration resembles more an attempts at Europeanization of the countries geographically closest to Europe, with diverse regional approaches, rather than a global and homogenous regionalization of the matter. In order to limit such consequences in the future, it is important that Med-MENA countries develop efficient and united south-south regional frameworks in

114 See Case C-210/97, *Haydar Akman v Oberkreisdirektor des Rheinisch-Bergischen-Kreises*, 19/11/1998.

115 ECJ, Case C-262/96, *Sema Sürül and Bundesanstalt für Arbeit*, 04/05/99, paragraphs 97-98. See also ECJ, Case C-262/96, *Sema Sürül and Bundesanstalt für Arbeit*, 04/05/99, paragraph 103. Case C-373/02, *Sakir Öztürk v Pensionsversicherungsanstalt der Arbeiter*, 28/04/2004, paragraph 68.

116 However, European nationals who have moved to another member state do not either have full rights regarding entry, stay and access to the labor market.

117 C-336/05, order of the court, 13/06/2006, *Ameur Echouikh contre Secrétaire d'État aux Anciens Combattants*, par.60.

order to be able to discuss, in a stronger unified voice, with the European Union. Indeed, regionalization may only be achieved if there is some unity within the Med-MENA countries themselves, despite their diversity.