

EURO-TUNISIAN EXTERNALIZATION: CONSIDERATIONS ONE YEAR ON THE 2023 MEMORANDUM

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ABSTRACT: *In July 2023, Tunisia and the European Union signed a memorandum to strengthen cooperation between the parties and relaunch a very important political and institutional dialogue. Among the points of the agreement was also migration, given the EU's interest in monitoring a country with a high number of landings at that time. The EU sought to externalize the borders by promising Tunis economic support in exchange for stricter control over departures from the North African country's coast. One year on, the numbers are encouraging, with a considerable drop in the first six months of 2024. Despite these figures, there is still the problem of the lack of a Tunisian policy to control and manage incoming migrants arriving in Tunisia, and management of these human flows based only on repression could be a problem for the North African country in the long run and for the EU in terms of consistency with its values and principles. Tunisia is not new to scenarios of xenophobia and violence against the immigrant population on its territory.*

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1. INTRODUCTION

Tunisia has been an important territory for the attention and interests of the European Union since the beginning and subsequent evolution of the Arab Spring. Especially after 2011, also because of the fear that the North African state could fall into a dangerous and irreversible spiral of political and social instability, the Union's external action towards Tunis has grown significantly (Sbailò, 2023).

In particular, in March 2011, the European Commission and the High Representative published a joint statement on the "Partnership for Democracy and Shared Prosperity in the Southern Mediterranean". In May of that year, a new document entitled "A New Response to a Changing Neighbourhood" was published. This initiative was an opportunity to relaunch the political and geopolitical dimension of the Union. In fact, in addition to their own security and migration interests in the Mediterranean basin, the

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countries of the area also expected a greater presence from Brussels. This was the framework despite the difficulty of having a political dialogue and cooperation due to the forms of government of these states and the following problems concerning civil society and human rights (Teti, 2019).

This last act provided for a European commitment to support the aspirations of North African citizens for change, presenting this commitment as an obligation arising from European legal and political experience in this area. The commitments made later with Tunis have tried to deal with the exodus of thousands of people leaving from North Africa (Tunisia and Libya in particular were attended) with final destinations mainly in Malta and Italy, the two European countries geographically closest and easily accessible. Later, in 2014, the Parties have signed a mobility partnership with the aim of facilitating the movement of persons within the territories of the EU and Tunisia and promoting joint and responsible management of migratory flows, simplifying the procedures for issuing visas. Thanks to this agreement, the EU also decided to support the Tunisian authorities in refugees and asylum seekers protection and, generally, the best way to tackle the challenges of the Mediterranean. This new political-diplomatic commitment, supported also by the new institutional course of Tunisia after the presidency of Ben Ali, urged Brussels to support partner countries in strengthening democracy and the protection of human rights. The European Union pretended effective reforms and political initiatives for migrants and the sea border monitoring.

Concerning diplomatic relations with Tunisia, we recall the adoption of the document "Consolidating the EU-Tunisia privileged partnership: strategic priorities for the period 2018-2020". Through the review of the "European Neighbourhood Policy", this agreement provided for a mutual commitment to strengthen security cooperation over the years, counter-terrorism, migration, and mobility. We also read that anchoring to the EU is a strategy chosen by Tunisia, whose democratization of the political system is of strategic interest to Brussels as well. The agreement, on the following pages, provided for coordinated management of migration, including the implementation of a national migration strategy in Tunisia and ensuring good governance of legal migration by coordinating with EU Member States to better integrate migrants in the host countries. Concerning security and terrorism, the EU has obtained a commitment from Tunisia to implement its own comprehensive and multisectoral strategy to combat terrorism and violent national extremism in the end, among the various objectives listed, support the implementation of the national border security strategy. The points highlighted here show how, in institutional dialogue with the same state (in this case Tunisia), the EU has profoundly changed the way it achieves its objectives, thanks to an increase by its Member States' commitment to this policy (Johansson-Nogués and Rivera Escartin, 2020).

Concerning the Memorandum of Understanding of July 2023, we must start with the presence of five pillars that define the structure of the agreement. These are macroeconomic stability, trade and investment, green energy transition, people-to-people relations, and migration. The agreement also provides for cooperation in identifying and addressing what are known as common international challenges. On migration, the two sides expressed their intention to develop a holistic approach. Both agree on the link between migration and development which allows to highlight the benefits of the migratory phenomenon in terms of social growth and rapprochement among peoples. Such a vision could be the key to finding a solution to the root causes of irregular migration in

Tunisia. In this regard, the Parties undertake to promote sustainable development in the poorest and most affected areas of migration, supporting the empowerment and employability of people belonging to the most vulnerable groups through support for vocational training, employment, and private initiative. On irregular migration, the text of the Memorandum mentions the fact that Tunisia intends to guard its borders by guaranteeing respect for human rights and ensuring an effective fight against the criminal networks of migrants and human traffickers.

These objectives require, as provided for in the enhanced operational partnership against migrant smuggling and trafficking, effective border management, and the development of a system for the identification and repatriation (to their countries of origin) of irregular migrants already present in Tunisia. Another point of the agreement is related to the euro-Tunisian synergy in coordinating rescue operations at sea. In particular, the European Union shall endeavor to provide adequate additional financial support for further improving the management of the national borders of Tunisia. Furthermore, mutual cooperation is also present in the return and readmission from the EU of irregular Tunisian citizens (respecting international standards and human dignity) and the reintegration of these into the Tunisian socio-economic dimension. Alongside the fight against illegal migration, both sides have taken on the task of fostering channels for legal migration by promoting seasonal employment opportunities, and the adoption of appropriate measures to facilitate the granting of visas and thereby reduce delays, costs, and administrative procedures. A final very important aspect that marks a significant paradigm shift from what has been seen in previous agreements with Tunisia is the specification of an undertaking that the European Union is hired. The EU will also support and facilitate the implementation of the Memorandum in bilateral agreements involving member states on return and readmission.

The importance of having an agreement that acts as a communication channel with Tunis is very important for the EU, especially for the migratory and socio-political hub that represents the North African country. One of the major European fears is that Tunisia, in case of economic and institutional drift, has a negative driving effect on the other countries of the MENA area as happened after the Arab Spring of 2011 (Ben Ahmed, 2023).

In this respect, the economic situation of the North African state remains very worrying. Tunisia's public debt has risen to very high levels, reaching almost 90% of GDP in 2022, with the need for financing to keep the spending level.

Credit rating agencies have downgraded the country which is struggling to balance its budget. The last downgrade occurred in June when Fitch lowered Tunisia's rating to CCC-. As a result, access to international financial markets has been virtually blocked, given the prohibitive interest rates (over 20%) that this sovereign rating would imply. While the current account deficit has been reduced and foreign currency liquidity has improved in recent months due to an increase in tourism revenues and remittances from work in a foreign country, The servicing of external debt will continue to be extremely demanding. With \$2.6 billion in expected redemptions for 2024 (including a February-maturity euro bond, equivalent to \$900 million) It is not yet clear how the government will be able to secure sufficient funds to meet these liabilities. The 2024 draft budget includes loans from Algeria and Saudi Arabia, as well as other external sources that are still unknown.

Despite these financial difficulties, Tunisia has not yet signed an agreement with the IMF. In October 2022, Tunisia and the IMF agreed on the terms of a 48-month US\$1.9 billion loan to stabilize the economy but the president refused the deal, fearing social unrest due to the cut in subsidies and the reduction of the wage bill in the public sector. The International Monetary Fund Council postponed the agreement, and Tunisia has since been adamant in rejecting what has been called "foreign diktats" of the IMF and Western states (Fuerderer, 2023).

Europeans - particularly Italy - have put pressure on the IMF to reopen negotiations and offered incentives to convince Saied to accept a agreement revised, despite the internal divisions on how to treat Tunisia. They are exerting this pressure mainly because the economic fallout of a debt default could further increase the number of people - both nationals and migrants from Africa sub-Saharan - that would leave Tunisia.

The management of the North African area, and with it that of the Sub-Saharan area, as mentioned above, responds to a precise geopolitical interest. Russia, international player opponent of the EU, could exploit these areas to achieve its strategic objectives in the energy sector with these countries needing 93 billion of investments and that of cereals, the Maghreb countries together account for 67% of world demand (Costola, 2023).

Due to its geographical proximity to Tunisia, Italy could be one of the main destinations for migrants. The Italian government has therefore repeatedly expressed its concern about the economic situation in Tunis, refraining from any criticism of the increasingly authoritarian turn of the country and violent attacks against sub-Saharan migrants. The EU has offered incentives to Tunisia to accept an agreement with the IMF. After Giorgia Meloni and then the President of the European Commission, Ursula von der Leyen, and the Dutch Prime Minister, Mark Rutte, visited Tunis in June, have disclosed EUR 900 million of macro-financial assistance conditional on an agreement with the IMF and EUR 105 million for joint cooperation on border management and anti-fraud measuresSmuggling to reduce irregular migration to Europe. Despite the sweeteners offered by the EU, the likelihood of a revision of the agreement between Tunisia and the IMF has decreased. In August, Saied dismissed the head of government, Najla Bouden, who had been directly involved in negotiations with the IMF and replaced her with a more docile official, Ahmed Hanachi. Since then, Tunisia has not submitted a revised proposal to the IMF. In October, the president strengthened his position by firing the economy minister Samir Saied after he had said that an agreement with the IMF would send a message the European Union is also a major source of concern for foreign creditors in Tunisia. The latter also refused part of the funds offered by the EU.

On the migratory level, Tunis has become increasingly a centre of numerous and difficult to manage human flows. The government's failure to develop a coherent and realistic approach to migration has led to a particularly destabilising effect. Bureaucratic obstacles and the absence of legal protections, together with xenophobic and conspiracy narratives, threaten to trigger periodic violence and human rights violations. Thus, the vulnerability of migrants in Tunisia is aggravated. Moreover, the increase in the migratory economy has led to a process of commercialisation of irregular departures linked to Europe. Corruption, rising demand and economic deterioration allow for the strengthening and rooting of a professional immigration industry. A regional development strategy addressing the economic and climate crises would be needed and urgently needed to effectively tackle the link between migration and organised crime (Chamek, 2021).

The above represents the intricate political and geopolitical scenario in which the Euro-Tunisian dialogue has taken place and is being renewed, and which justifies the high level of EU interest in the North African country and the MENA area (Limam and Del Sarto, 2015). The evidence of this dialogue demonstrates, from a chronological point of view, its depth and variety.

The importance of Africa and the interconnection of many factors such as migration, political and social balances were important also in past international initiatives. In particular, the African migration situation saw a collaboration between the European Union, the African Union, and the United Nations. Although it was born from the critical migration issue of Libya, this agreement was also based on the need to work on maintaining a certain architecture of peace and stability in the African continent as prevention (Morillo, 2019).

Here, however, we will focus specifically on the migration aspect of this international relationship. In particular, we intend to analyze whether and how, one year after the signing of the aforementioned Memorandum, there are benefits for the EU in terms of a decrease in arrivals and, secondly, to see what political legislative strategy Tunis has implemented to respond positively to this commitment. Above all, it becomes important to understand whether the situation regarding the protection and guarantee of human rights has changed. The purpose of this reasoning is to try to understand whether and how the logic underlying the institution of externalization can be a positive solution for a Union that cares for and pursues an immediate political interest such as migration (common and of individual member states) and another prospective one such as North African stability.

2. TUNISIA: MIGRATORY SITUATION AND THE NATIONAL AND EU LEGISLATIVE INTERWEAVING

The social-migratory context in Tunisia has already been the subject of attention at continental and international levels even before the Memorandum. In February 2023, a particular increase in the migratory flow from sub-Saharan countries led to an institutional crisis between Tunis and the African Union Commission. In particular, Saied defined the arrival of these migrants as an organized plan to carry out an ethnic and cultural substitution in his country (Camoin, 2023). The AU replied that these words are contrary to the principles and values of the organization. The AU has, over the years, been committed to international agreements promoting regional and sub-regional labor mobility, migration in Africa, and a solution to issues such as brain drain, brain waste, and the risks to safe migration (Pact for the employment of young people and women in Africa 2013). The AU's social and political projects seek to use migration as a means of development. This will be done through the promotion of low-cost transfers and human capital transfers. In addition, the UA aims to improve the mobility of the African population as a method to induce brain gain.

The UN were important in the Tunisian area from the migration point of view. Historically, the UNHCR has been present in Tunisia since 1957 when Algerian refugees escaped from the war against France in their territory. In this regard, the UN Committee on the Elimination of Racial Discrimination (CERD) has repeatedly urged the main Tunisian authorities and officials to distance themselves from the racist and hateful drift which is present and rampant in the country, as demonstrated by the arbitrary detention

incident in the Ouardia center, where some migrants were detained for more than 18 months.

The alarm on "reception" and treatment of these subjects was also launched following the worrying statements made by President Saïed. The latter called the migrants arriving from the sub-Saharan region "a plan to change the demographic composition of Tunisia" to make them "another state, no longer belonging to the Arab and Islamic world", also seen the Christian creed professed beyond the Sahara. Through the monitoring of the site "Middle East Eye", for years engaged in the study of cultural and civil debate in the Middle East, it is striking that the above-mentioned statements are not new in Tunisian civil society. In fact, as shown by some testimonials on different social platforms, Tunisians have often justified the lynchings against migrants and foreigners that took place in March 2023 both in Tunis and Sfax, where there were real raids and assaults.

Following a social climate of this kind and the attitude of national institutions, about three hundred migrants from West Africa (mostly Malians and Ivorians) in March, were forced to leave Tunisia on repatriation flights. Besides having had a response from the civilian population, we can say that President Saïed's speech does not encounter obstacles of a legal-constitutional nature. In fact, Tunisia, which in the 21st century has seen the drafting and adoption of two constitutional texts (the first in 2014 and the second in 2022), has not adopted specific provisions for the arrival and management of migrants (Cassarini, 2020).

From the legislative point of view, there is legislation in Tunisia that has been devoted to certain aspects, albeit limited ones, of the legal status of foreigners since the late 1960s. The laws 1968-7 (concerning the status of aliens in Tunisia) and 1975-40 (concerning passports and other travel documents), still in force today, contain a weak discipline, defined as light (Ben Achour, 2019), about the level of penalties for illegal entry and stay offenses and its uncertain application. In addition to the rules (Art. 9-17) regulating regular entry and stay in the territory, which was reformed in a restrictive key first with a series of government decrees and then with the 2004 law, the 1968 law provides for the possibility for the competent authorities to detain and expel foreigners who represent a threat to public security. That can take place in the absence of judicial review (Article 18). The other point is the offense of irregular exit from the territory of Tunisia, which stipulates that this crime may be committed by both foreigners (art. 23 l. 1968-7) and Tunisian citizens (Art. 35 l. 1975-40). This last rule anticipated a social and legal transformation that would be seen in the decades to come. In fact, in the early 2000s, the political priority of the North African countries was to show themselves reliable partners of the European countries in the fight against irregular trans-Mediterranean migrations. To do this, the legislation has made the legal value of the key concept of "transit migration". This notion presupposes that the entry and residence of foreigners (mainly sub-Saharan Africans) in the territory of the Maghreb countries are necessarily followed by the exit from the country to Europe, to be penalized. Subsequently, the 1975 law was amended in a restrictive sense by Law 2004-6. There has been a tightening of the regulations on the entry and residence of foreigners by a securitarian conception of immigration centered on the use of prison sentences and fines for irregular presence on the territory and for aiding and abetting irregular immigration and emigration. Through a very broad notion and interpretation of the latter case, even lawyers and doctors who come into contact with foreigners without residence permits are targeted.

According to the current regulations, entry visas and residence cards are of two types: ordinary (art. 13-17) and temporary (art. 9-12). These ones are issued to foreigners who do not intend to settle in Tunisia permanently or to persons whose ordinary residence visa is refused by the competent authorities. The temporary residence permit entitles you to stay on Tunisian territory for a period that varies according to the reasons for which it was issued, and that can not go on for a year anyway. The ordinary visa and residence card shall be granted to foreigners resident in Tunisia who have held a temporary residence permit for at least five years, to foreign women married to Tunisians, to foreigners with Tunisian children, and to those foreigners who have rendered "appreciable services" for Tunisia. In this case, the card is valid for two years and is renewable.

The immigration discipline resulting from these laws, which were also modified for some specific profiles after 2004, is therefore characterized by a decided recourse to the criminal sanctioning apparatus and a broad discretionary power in favor of the administrative authority. This directionality is present for the authorization of entry and residence and also for administrative detention and expulsion, with a compression of the constitutional freedoms recognized also for foreigners.

Although migration flows have increased significantly in recent years, particularly since 2011, Tunisia has not been aware of the fact that This is reflected in the legal regulation of its nature as a territory as a stable destination for migratory flows. In the wake of the political changes in 2011, the transitional government had begun to redefine the body of immigration law, easing the grip on illegally staying migrants (according to the regulations of the 2004 Law) and by establishing, in 2012, the *Secrétariat d'Etat aux Migrations et aux Tunisiens à l'étranger* (SEMTE) at the Ministry of Social Affairs. This body, which is responsible for drawing up the new Tunisian policy on migration and asylum (Stratégie Nationale Migratoire-SNM), was not able to achieve its goals in the hectic post-revolutionary phase.

In the absence of significant legislative developments, there has been a dramatic increase in anti-terrorism rhetoric over recent years, with the immigrants and the xenophobic and racist hate speech against blacks present in Tunisia by the same President of the Republic Saïed, in the context of a political degeneration-Institutional marked by an "identity charge" that passes, as already written before, also for the "rejection of the foreigner" (Geisser, 2023).

The absence of a law to protect the right to asylum is another serious breach of the constitutional order in Tunisia, in which the obligation to adopt legislation on the subject is provided for by Article 26 of the 2014 Constitution (Article 32 of the 2022 Constitution) and the international commitments undertaken by the State. Currently, the granting of refugee status is carried out directly by the Office of the United Nations High Commissioner for Refugees (UNHCR) in a situation of dramatic shortage of human resources and infrastructure. The "refugee certificate" issued by the UNHCR, and valid for one year, is not equivalent to a real residence permit, effective, for example, for access to work, with the result that asylum seekers and refugees are essentially "tolerated" in Tunisian law, and not properly authorized to reside in the light of a certain legal status.

The Tunisian authorities have failed to develop a comprehensive strategy for managing and curbing the influx of migrants from sub-Saharan Africa. There has been a constant reference to inconsistent policies, repressive measures, and short-term tactics inspired by the need to ensure security. For this reason, these policies have mainly focused on the mass

expulsion of migrants and asylum seekers to rural or remote border regions. In addition, a thriving migration economy, characterized by agile smuggling networks of people trying to make a living in a country plagued by systemic economic and climate crises, has taken hold in Tunisia. This migratory economy has shown a great capacity to meet the increasingly diverse demand and adapt to the constraints generated by law enforcement. As such, Tunisia's transition to a transit hub demonstrates the extent to which migration has evolved into an entrenched issue, reflecting structural challenges within the country, its vulnerability to regional instability, and the wider dynamics of geopolitical destabilization.

Externalization is a migration management strategy that has been in use for decades. In particular, as regards the Mediterranean area, European countries have opted for a governance model focused on the active involvement of countries of origin and transit in activities combating irregular departures and readmission of migrants rejected or expelled because they do not have a residence permit. This operation can be interpreted, in many ways, as the natural continuation of the process of communitarization of immigration and asylum in the European Union (Vitiello, 2017). The adoption of this political paradigm has not been painless from the perspective of relations between European states and those on the southern shore of the Mediterranean Sea. Trans-Mediterranean migrations, for centuries a constant in the history of the countries bordering this sea, now play a strategic and controversial role in international relations. Migrations from Africa to Europe are no longer seen in the same way: formerly as a factor of economic complementarity and virtuous interdependence (particularly in the 1950s and 1960s), today these migratory flows are perceived as an economic and political 'problem', a source of latent tensions and open contrasts. North African transit countries, in our specific case Tunisia, are being asked to exercise wide-ranging control and surveillance over people leaving the Maghreb for Europe, the foreign population residing within their territories, and migrants arriving from sub-Saharan Africa (Boubakri, 2016). All this is in the light of a 'presumption of transit' such that trans-Saharan migrations are automatically drawn into the (political and legal) sphere of trans-Mediterranean migrations.

The externalization and delocalization policies of European border control, often implemented through non-binding instruments rather than international agreements (Fernando-Gonzalo, 2023), have seen the use of a variety of instruments such as readmission agreements, police cooperation agreements, construction of detention centers for irregular migrants, and strengthening of the regulatory discipline and operational capacity, expulsions. European countries offer different types of compensation and incentives to obtain the necessary cooperation from transit countries (which has brought political and economic issues for non-European states). Examples include direct financial aid, financial contributions to the purchase of border control equipment or supplies free of charge; financing for the construction of detention centers or for the expulsion of foreigners illegally staying in transit countries (or already rejected in these countries by European ones), training courses for border police officers and agents of transit countries, economic aid in the framework of development cooperation, entry visas and fees (in the context of the planning of migration flows by European countries) reserved (Shachar, 2020).

Within this articulated framework, it is significant to understand how the reform of legislation and practices concerning the management of migratory flows and the legal

status of foreigners in countries of origin and transit has undergone changes as a reflection of the security policies of destination countries. In fact, as we have seen, in the early 2000s, Tunisia adopted legislation to regulate immigration with a clearly restrictive approach that reflected the political priorities of European countries as well more generally, the securitarian turn imposed globally after the attacks of 9th September 2001 (Lahlou, 2011).

Although in Tunisia, the 2004 law cannot be considered an exercise of mere regulatory mimicry, this undoubtedly suffers from the influence of a repressive model consolidated in Europe and, more significantly given the historical ties with France, in this same country. The legislative innovations resulting from these repressive measures are visible in the extension and tightening of penalties, both criminal and administrative, against the illegal entry and residence of foreigners on the territory, which, even where already provided for, have been strengthened; the establishment of waiting zones in ports and airports and the construction of administrative detention centers for migrants in an irregular situation; criminalization of the facilitation of illegal immigration. Despite this influence, the "European model" has not been fully accepted (Cherti and Collier, 2015). It is possible to note the absence of the part concerning the guarantees of fundamental rights of migrants affected by measures of refusal, detention, and expulsion. In the legislation of European countries, on the other hand, about these guarantees, there has been, over the years, the important role and intervention of the Constitutional Courts or Councils in reaffirming respect for constitutional legality. This is all the more important when we consider that in Tunisia, the Constitutional Court has remained blocked even after the political parenthesis following the Arab Spring for lack of a political agreement. Regulatory developments in Tunisia's immigration policies and laws in the following decade seem less immediately attributable to the impact of European border externalization policies. In these, internal political factors, motivations for geopolitical repositioning, and strategies of economic and trade cooperation with third countries appear to be prevalent.

3. THE EFFECT OF POLITICAL REGIME AND STATE FORM

Over the years, Tunisian legislation has not only been in contact with the political currents that have accompanied EU legislation to the point of being affected by them. The North African country has seen the adoption of three different constitutional texts (in order 1959, 2014, and 2022) that have given and maintained, formally, the semi-presidential form. In fact, the first and especially the last one transformed Tunisia into a hyper-presidential Republic in concrete terms.

Despite the presence of evident political lines and will, as seen in the Constitution, immigration laws are characterized by paradoxes. Indeed, in Tunisia the continuity of restrictive migration policies was not questioned even during the democratic transition following the Arab Spring (Natter, 2022) and the adoption of a Constitution, the 2014 one, which balanced the weight of executive power (in relations between the President and Prime Minister) and that between executive and legislative power (*vis-à-vis* the Parliament).

This paradox is identified by the consideration that in a liberal-democratic state, policies on immigration and the condition of foreigners are liberal, while the restrictive approach to personal rights, characteristic of autocracies, translates into a repressive orientation on migration (Hollifield, 1992).

In the context of Tunisia's autocratic political experiences with the Bourguiba and Ben Ali presidencies, marked by the absence of real countervailing powers, the disorganized, and in some ways contradictory, immigration policy was mainly explainable by a twofold interpretation. The first concerned relations with countries linked by historical, political, and cultural ties and the desire for internal self-legitimization. The adoption of the 2004 law was, all in all, linear in the context of the autocratic regime, as it could also be read as a useful tool to strengthen control and repression of civil society in the context of that security turn that linked the sanctioning apparatus on immigration to measures to counter terrorist activities, transnational organized crime, and human trafficking. The migration issue was considered strictly the responsibility of the executive (and, in particular, of the President) and the security forces, in the absence of a political process of contestation, reflection, and elaboration that could also involve Parliament and civil society actors.

The paradox came after 2011. In the immediacy of the 'Jasmine Revolution', in fact, immigration had acquired a new centrality at a civil and social level, also and above all the massive influx of people fleeing neighboring Libya and seeking refuge in the south of the country. With the constitutional transition, however, the strengthening of the democratic-representative circuit resulted in greater conditioning of the political legitimacy of decisions (including on migration) to the will of the electoral body and a greater weight of internal factors such as public opinion and civil society activism. This democratization of political processes, however, did not translate into the adoption of more open legislation towards migrant foreigners. Security concerns continued to dominate; changes, although introduced, remained informal or limited to individual profiles of the status of specific migrant groups; the functioning of the state bureaucracy and the influence of diplomatic priorities in the formulation of national policies remained largely impervious to the transformation of the political regime and the form of state.

The economic crisis, political instability (Ayari, 2020), and the terrorist emergency that hit the country since 2013 have relegated the migration issue to the margins of political debate and legislative reform; in the years since there have only been government interventions of a restrictive and securitarian nature. These were based on the idea of Tunisia as a country not of immigration, but at most of transit, and the reform projects, both on the asylum front and on the governance of immigration, ran aground without reaching Parliament (Kriaa, 2014).

Natter's analysis, already mentioned, explains the reasons for this continuity with the past. In particular, it focuses on the environmental difficulties of proceeding with legislative reforms and, argues that cultural dynamics themselves, political and social triggered by the Revolution and supported by the new Constitution in terms of the centrality of the protection of fundamental rights and, In particular, the freedom of expression of thought, have "freed" expressions of xenophobia and racism. These two sentiments, already existing in Tunisian society, had not been strategically neutralized during the autocratic regime. The Tunisian leadership would therefore have tried to neutralize the conflicts and political polarization that arose around these issues to preserve the democratic transition.

The autocratic degeneration of recent years has not disproved the automatic link between political regime (and form of state) and migration policies. Indeed, on the one hand, the repeated display of a nationalist and populist political orientation by President Saïed, innervated by a racist discourse and practices of blatant violations of migrants'

human rights (starting with the massive use of expulsions, even collective ones) cannot automatically be associated with an autocratic regime, insofar as it constitutes a *“dynamique mortifère qui traverse aussi bien nos “vieilles démocraties” d'Europe occidentale et d'Amérique du Nord que les nouvelles démocraties comme la Tunisie”* (Geisser, 2023). On the other hand, there is a discontinuity in the immigration policies implemented in the context of the pre-2011 autocratic regime, characterized, as we have seen, by an absence of politicization of the migration issue and by the regime's desire to make Tunisia a country of immigration for African workers and students (Natter, 2023).

4. CONSEQUENCES OF THE MEMORANDUM: MIGRANTS AND HUMAN RIGHTS

One year after the signing of this agreement, it is necessary to understand what results have been achieved. This assessment, however, will follow two particular directions. The first, with a compliance nature, related to verification of the number of migrants leaving from Tunisia and of Tunisian origin departing to reach Europe. The second, however, is the aim of investigating more thoroughly whether and how far is guaranteed respect for human rights for the present immigrants who continue to arrive in Tunisia.

About human rights, it is necessary to make a premise. The European Ombudsman, Emili O'Reilly, in September 2023, launched a strategic initiative in which it asked the Commission to carry out a human rights impact assessment before signing the MoU and whether it would undertake a review periodic review of the human rights impact of actions undertaken during its implementation, and if it had defined criteria for the suspension of funding in case human rights were not respected, since according to art. 29, Section 1. a) of Regulation 2021/947, Union funding under the “Neighbourhood Instrument” shall not support actions or measures which may lead to human rights violations in partner countries (Strategic initiative SI/5/2023/MHZ).

This is not the first such initiative for the EU. Before the Memorandum with Tunisia, there was, in 2016, the 'dialogue with Turkey', and also on that occasion, there was a question about having a guarantee on the protection of human rights. On that occasion, the Ombudswoman observed that, regardless of the legal nature of the agreement, its implementation must take place "in a manner consistent with the principles and values set out in the Treaties and the Charter", since "neither its political nature nor indeed the title 'Agreement' or 'Statement', in any way diminish the responsibility of the Commission to ensure that its actions comply with the EU's fundamental rights commitments". The principle of good administration, in fact, presupposes respect for human rights, so an instrument that involves violations of human rights cannot comply with the principle of good administration.

Therefore, the human rights impact assessment tool identifies the sources of risks and the human rights impacts on the affected stakeholders at each stage of the project's life. Its role is preventive in the first place because when negative impacts are identified, either the negotiated provisions need to be modified or mitigating measures have to be decided upon before the agreement is entered into. Human rights protection, among other things, is a component of the rule of law, at least in its substantive declination, as repeatedly affirmed by the Court of Justice. In an organization based on the rule of law such as the EU (Carta, 2022), it seems to be a duty to take all necessary measures to prevent human rights

violations, including where they may, albeit indirectly, be favored by funds disbursed in the implementation of commitments entered into by the Union through non-binding agreements.

The opposite position was taken by Commissioner Várhelyi. He, in fact, put forward a different impact assessment that would be superfluous in the case of the MoU with Tunisia. He stated that "the respect for human rights and democratic principles is at the heart of EU's partnerships with all third countries, including with Tunisia" (Parliamentary question, answer given by Mr Várhelyi on behalf of the European Commission, 20 September 2023) as would also be the case in the association agreement concluded with the latter.

The association agreement in question (EU-Tunisia) contains only brief passages on migration, exclusively in the chapter on dialogue in the social field. In this sense, Article 69 states that the regular dialogue established between the parties in the social sector must cover, among other things, illegal immigration and the conditions of return of persons whose situation is irregular about the legislation on residence and establishment of the host country. Furthermore, Article 71 stipulates that again to strengthen cooperation in the social field, actions, and programs shall be established on any subject of interest to them, among which actions aimed at reducing migratory pressure, in particular through the creation of jobs and the development of training in areas of emigration, shall be a priority. These provisions, however, do not seem sufficient to provide human rights coverage for the MoU, which remains an initiative outside the association agreement. Among other things, the rules of the association agreement dedicated to the protection of human rights are not suitable to meet the needs behind impact assessments, as they have very general wording and do not establish satisfactory forms of control and monitoring. Instead, the objective of impact assessments is the study of preventive solutions to prevent funds granted to third countries from being used to adopt measures that go against the fundamental freedoms of individuals, as well as to devise possible mechanisms to remedy any such situations (Battaglia, 2023).

The internal debate in the EU is even more important when it comes to data on migration flows and migrants' nationality about the Central Mediterranean routes in 2023.

In 2023, some 212,100 attempts by migrants and refugees to cross the central Mediterranean from Algeria, Libya, and Tunisia to Europe were reported. This number represents a significant increase (52%) compared to the attempts recorded in 2022 and is the highest number since 2017. Among those who attempted to leave in 2023, 71% (151,500 people) were landed in Europe, while 29% (60,600 people) were intercepted or rescued and landed in North Africa (21% in Tunisia, 8% in Libya).

In 2023, Italy recorded a significant increase in arrivals by sea from Tunisia, surpassing those from Libya. In addition, there was a significant increase in departures from January to September by Tunisian and West and Central African nationals. While non-Tunisians accounted for only 43% of arrivals by sea to Italy from Tunisia in 2022, they accounted for 82% in 2023. The main nationalities arriving in Italy in 2023 were those from Guinea, Tunisia, Ivory Coast, Bangladesh, Egypt, the Syrian Arab Republic, Burkina Faso, Pakistan, Mali, and Sudan. Guineans, Tunisians, Ivorians, Burkinabè, Malians, and Sudanese left mainly from Tunisia, while the citizens of Bangladesh, Egyptians, Syrians, and Pakistanis left mainly from Libya (IOM and UNHCR, *Migrant and Refugee Movements through the Central Mediterranean Sea in 2023*).

In 2023, some 140,000 migrants and refugees attempted to cross the sea from Tunisia to Europe, an increase of 138% compared to 2022. Among those who tried the journey, 42,240 (30%) people were rescued or intercepted and landed in Tunisia, while 97,667 (70%) arrived in Italy. In particular, the second week of September (11-18) they recorded the highest number of arrivals from Tunisia to Lampedusa in a single week in 2023, with about 11,698 people arriving in 278 landings.

As of 2022, non-Tunisians made up the majority (85%) of all people who landed in Tunisia in 2023. Most arrivals from Tunisia to Italy were Guineans, and Tunisians, followed by Ivorians, Burkinabés, Malians, Sudanese, Cameroonians, Gambians, and Beninese. This is a change from the years before 2022 when Tunisian citizens were the main nationality of arrivals by sea in Italy.

Reports indicate that citizens of EHA and WCA countries departing from Tunisia often have little alternative but to board iron ('poor quality') boats for their sea journey (Global Initiative against Transnational Organized Crime (GI-TOC), Tunisia: Increased Fragility Fuels Migration Surge, July 2023). These boats are relatively simple to build, requiring only readily available basic materials and minimal equipment. On the contrary, Tunisian citizens leaving Tunisia generally travel in wooden or rubber fishing boats, which are generally perceived as safer and more navigable than iron boats.

The US State Department, in its dossier on Tunisia in 2023, reported that hundreds of sub-Saharan migrants, including at least six asylum seekers, were transported and deported along the country's borders with Libya and Algeria (2023 Country Reports on Human Rights Practices: Tunisia). Here, these people had limited access to food and water. Particularly at the Libyan border, Human Rights Watch reported that some people had died from color-blindness (Human Rights Watch, World Report 2024: Tunisia).

Alongside assessing migrants' human rights, the outsourcing agreement deserves to be examined from the point of view of the decrease in the number of incoming migrants. Of course, it is not possible to compare the data for 2023 with those for 2024, which have not yet been defined. Therefore, time projections on these will follow.

As seen above, the Central Mediterranean route has been crossed in large numbers by Tunisians and people from sub-Saharan Africa. In particular, as the statistics collected by the IOM show, the number of Tunisians who left in 2023 reached 17,972. From the Subsaharian area, the main nationalities in terms of starting were Senegal (23,430), Guinea (22,841), and Côte d'Ivoire (18,968). In the first seven months of 2024, there are more encouraging numbers if taken and calculated on average than the next five months that complete 2024. A calculation of average cannot be enough and does not represent a stable element with which to work in this sector. But at the same time, even if we consider these premises, we could consider certain numbers as the result of a concrete and effective international effort. The Tunisians start 3,304; from sub-Saharan Africa, instead, of Guinea (3,054), and Senegal (4,286). In addition, the list of ten nationalities most affected by migration flows in 2024 does not include Côte d'Ivoire, as it was in 2023, but includes Mali (9,276) (IOM UN Migration. Global data service displacement tracking matrix).

According to the International Organisation for Migration, an increasing number of migrants in Tunisia have chosen to return to their countries of origin in recent months, due to growing anti-migrant sentiment and European pressure to curb immigration. Between 1st January and 25th June 2024, IOM facilitated the voluntary repatriation of some 3,500 people from Tunisia to their country of origin.

The IOM's "voluntary humanitarian repatriation program", which provides free repatriation flights to migrants and helps them reintegrate into their countries of origin, has seen a 200 percent increase in sign-ups compared to the same period in 2023. Migrants, who travelled to Tunisia in the hope of reaching Europe, are mainly returning to Gambia, Burkina Faso, and Guinea.

5. CONCLUSION

What has been seen so far places the question of the Memorandum and its results under particular attention, on that line which separates the political and geopolitical interest (in this circumstance both are well present and visible) respect for and observance of human rights.

The latter is also particularly affected by the need for policy and legislative coherence with EU legislation. The 2023 agreement is part of the EU's external action and is provided for in Article 3.5 of the TEU. In particular, in its relations with the rest of the world, the Union affirms and promotes its values and interests by contributing to the protection of its citizens. It contributes to peace, security, sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights, in particular the rights of children, the strict observance and development of international law, in particular respect for the principles of the Charter of the United Nations.

For these reasons, the EU cannot lose its focus on respect for human rights. The geopolitical interest within Tunisia and the North African area cannot be negotiable with certain values and principles.

Building a specific dialogue with other international players individually and in sensitive areas could be important for the EU's interests, also through these non-conventional international instruments such as the memorandum. However, the Tunisian case can be a starting point for improving the negotiating and dialogue structure with other countries. Pursuing consistency with its principles and values could also strengthen the EU's position as a single geopolitical actor at the international level.

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