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Using Development Aid as a Leverage in the EU's External Relations: Challenges and Consequences

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ABSTRACT

This study interrogates the drive for leveraging development aid to address non-EU countries' cooperation on migration governance. It demonstrates that using development aid and financial conditionalities might turn out to be counterproductive, especially when considering that growing competition between traditional donors and emerging donors reduces the scope of governing migration through (conditional) funding. Moreover, patterns of interdependence are today so much embedded into a broader framework of strategic interactions that exerting pressure to bear on non-EU countries might have unintended consequences on the external action of the EU and its member states.

KEYWORDS

International cooperation; development aid; conditionalities; migration governance; Africa

Introduction

In December 2021, the European Council called “on the Commission and the High Representative, together with Member States to swiftly take action to ensure effective returns from the EU to countries of origin by using as leverage all relevant EU policies, instruments and tools, including development, trade and visas, to ensure the full implementation of existing readmission agreements and arrangements, as well as to conclude new ones” (European Council, 2021, p. 5).

Leveraging non-EU countries' cooperation on migration matters has been recurrently mentioned over the last twenty years. Since the September 2020 New Pact on Migration and Asylum, it has become significantly prominent in the EU's migration talks with non-EU countries, especially those located in Africa. Leveraging basically implies the power to influence the behavior of state and non-state actors and the capacity to reduce uncertainties in bargaining processes. International Relations scholarship has already addressed the resources, mechanisms and activities that contribute to reinforcing influence (see Cox & Jacobson, 1973; Friman, 2015, among others; Keck & Sikkink, 1999; Nye, 2004); the latter being at once relational and contextual. Long before the EU, various EU Member States tried to exert their own leverage on non-EU countries with a view to ensuring their cooperation on specific domains.

This study is not aimed at assessing whether using development and trade as leverage is compliant with the principles that orient EU development policy. The latter are enshrined in Article 21 of the Treaty on the European Union (TEU) which states that EU development policy supports economic, social and environmental development in developing countries, as well as democracy, the rule of law and human rights. Poverty eradication is also a primary aim of EU development policy as mentioned in Article 208 of the Treaty on the Functioning of the European Union (TFEU).

Rather, this study interrogates the drive for leveraging cooperation on the control of migration—especially when it comes to the readmission of irregular migrants and rejected asylum seekers—and its implications for the EU’s external action. Conditionalities have played a central role in the reinforced leverage-based policy of the European Commission.

The conceptual framework of this study draws upon key theories and insights from International Relations (IR), particularly regarding the dynamics of influence and interdependence. In examining the EU’s use of development aid as leverage in migration governance, the study situates itself within the broader IR discourse on influence and power in international cooperation. Moreover, this study expands on the reasons for which conditionalities have become the mainstay of the EU’s external action in the field of migration governance. Through this lens, the study engages with contemporary IR debates about the efficacy and ethics of influence in an international context marked by altered patterns of interdependence.

Having examined the reasons for which conditionalities constitute a central component of the EU’s external action, this study, first, aims to understand the challenges lying behind the attempt to use development aid as leverage with a view to exerting pressure on non-EU countries. It demonstrates that this type of leverage might lead to unintended consequences. Second, it shows that growing competition between traditional donors (namely, those who belong to the OECD Development Assistance Committee—DAC) and emerging donors may reduce the scope of governing migration through conditional funding. Thirdly, patterns of interdependence between EU and non-EU countries are *today* so much developed and cooperation on the control of migration (including readmission) is so much embedded into a broader framework of strategic interactions that exerting pressure to bear on non-EU countries might have detrimental effects on the external action of the EU and its member states.

The twofold dimension of EU conditionalities

Conditionalities¹ permeate EU policies. Since the 1999 entry into force of the Treaty of Amsterdam, they constitute a key feature of the EU’s external action including cooperation with non-EU countries. It could not be otherwise if one recognizes that the European Commission jumped on the bandwagon of the long train heading toward the reinforced management of international migration and border controls. In previous works (Cassarino, 2010; Cassarino, 2018), I explained how the member states of the EU had already acquired a consolidated experience in cooperating bilaterally with non-EU countries on migration-management matters, long before the entry into force of the Treaty of Amsterdam. The rationale for the EU’s supranational contribution could not be based on the mere replication of member states’ bilateral practices. Nor could it acquire any domestic legitimacy without adding value to what the member states were already doing. This is what the General Secretariat of the Council underlined, more than twenty years ago, when it stated that the action of the EU “should involve added value for member states in bilateral negotiations” (European Council, 2002, p. 3). At the time, the explicit claim from the General Secretariat of the Council pertained to EU-wide cooperation on readmission with non-EU countries—a central component of the EU’s external action. More generally, the claim of the General Secretariat of the Council was inspired by the principle of subsidiarity that regulates, in accordance with Art. 5 of the Treaty on the European Union (TEU), the action of the EU in areas which do not fall within its full competence. Cooperation on migration matters with non-EU countries belongs to these areas of competence shared between the EU and its member states. Owing to its scale and expected effects, the action undertaken at a supranational level is justified because it is deemed to be implemented more successfully; hence the reference to added value.

It could even be argued that the principle of subsidiarity, including the added-value criterion, has constantly codified the relations between the EU and its member states, as well as between supranationalism and intergovernmentalism.² Conditionalities quickly became the instruments on which the European Commission could capitalize with a view to showing member states

that its action could add value to what they were already doing in the field of migration and asylum. In a hybrid European system of migration governance, where supranational and inter-governmental prerogatives cohabit and, at times, collide, conditionalities have represented an expedient response to the recurrent criticisms of some EU member states regarding the capacity of the EU institutions to deal with irregular migration and asylum.

In sum, conditionalities have a twofold dimension. Internally, they legitimize and justify the action of the EU by providing an additional (if not more coercive) instrument at the disposal of member states. For the latter have usually relied on incentives, not conditionalities, in their interactions with non-EU countries. Externally, conditionalities are presented as a tool aimed at exerting more leverage on some non-EU countries and at reducing uncertainties.

The abovementioned twofold dimension is important to understand the frequent reliance of the European Commission on conditionalities, irrespective of their effectiveness, when cooperating with non-EU countries on the control of international migration. The 2019 revision of the Visa Code Regulation is a case in point. It introduced a conditionality between cooperation on readmission with non-EU countries and the issuance of visas to their nationals. Exerting pressure on non-EU countries in the field of readmission had already been discussed in EU policy circles long before the revision of the Common Visa Code (Cassarino & Marin, 2022, pp. 17–18). More than twenty years ago, when the European Commission introduced its Community Return Policy, visa concessions or the lifting of visa requirements was deemed by the European Commission as “a realistic option in exceptional cases only; in most cases it is not” (European Commission, 2002, p. 24). At the time, such exceptional cases referred to the Balkan countries which had a stake in their planned pre-accession process to the EU bloc. Conditionalities were indeed enabled within a broader tailor-made framework of cooperation. Beyond the exceptional Balkan case study, the European Commission recognized in its Impact Assessment accompanying the proposal for an amendment of the Common Visa Code that “better cooperation on readmission with reluctant third countries cannot be obtained through visa policy measures alone” (European Commission, 2018, p. 26). It also added that “there is no hard evidence on how visa leverage can translate into better cooperation of third countries on readmission” (European Commission, 2018, p. 31).

Yet, the text of 2019 revision of the Common Visa Code did legalize visa leverage to be exerted on non-EU countries when the latter are deemed uncooperative. Such a paradox can only be understood if we bear in mind the twofold dimension analyzed above.

Leveraging development aid and trade in a changing global context

Using development aid and trade as leverage has been in the European pipeline for many years (El Qadim, 2018, p. 112–115). Since the 2016 launch of the New Partnership Framework, leading to the adoption and conclusion of various “migration compacts”, leveraging third countries’ cooperation on migration management has been a central and recurrent goal in EU policy-making (European Commission, 2016). Various Council meetings repeatedly mentioned the need for “leverage, by using all relevant EU policies, instruments and tools, including development and trade” (see, for example, European Council, 2016, p. 2; European Council, 2017, p.2; European Council, 2018, p. 1) as well as “positive and negative incentives for improving cooperation on return and readmission” (Council of the European Union, 2016a, p. 2, 2016b, p. 2). More recently, in June 2021, the adoption of Regulation 2021/947 establishing the Neighborhood, Development and International Cooperation Instrument (NDICI) crystallized the leverage-based approach to migration of the Union, especially in its external relations with third countries. Their “effective cooperation” on migration matters constitutes a key element of the NDICI which is designed to:

Combine all appropriate tools and the *necessary leverage* [emphasis mine] through a flexible incitative approach with, as appropriate within this context, possible changes in allocation of funding related to migration in accordance with the programming principles of the Instrument [i.e., the NDICI]. It shall take into

account effective cooperation and implementation of Union agreements and dialogues on migration (Art. 8.10, Official Journal of the European Union, 2021, p. L209/23).

Within the NDICI lies the new European Fund for Sustainable Development Plus (EFSD+) whose operations will contribute to:

Promoting sustainable development, to addressing specific socio-economic root causes of irregular migration and root causes of forced displacement, and contributing to the sustainable reintegration of returned migrants in their countries of origin, as well as fostering the resilience of transit and host communities, with due regard to the strengthening of the rule of law, good governance and human rights (Annex V(f), Official Journal of the European Union, 2021, p. L209/77).

Which operations will be favored over which ones remains an open question. Beyond these considerations, the establishment of the NDICI shows that leveraging non-EU countries through funding constitutes an objective that might affect the Union's external action policies just like it might affect the behaviors of recipient countries. I identify three areas with major implications.

Firstly, potential cuts in external aid—or worse, aid withdrawals—may paradoxically feed into, if not aggravate, the root causes of irregular migration and forced displacement that the NDICI seeks to tackle. Cuts in foreign aid flows may affect stability in developing economies having policy implications that go well beyond the mere management of international migration. Moreover, the major change in the EU's approach to international development is that EU's development cooperation can no longer be viewed as a kind of altruistic act driven by the promotion of democratic transition, the rule of law, human rights observance, and social development in recipient countries; but, rather, as an instrument that promotes geopolitical self-interest and conditionalities. The latter being solidly anchored in the EU's security-driven migration policies (Hill et al., 2023).

Secondly, today, in a world of increased donor competition, non-EU countries may have access to alternative sources of funding to substitute for aid from traditional donors. It is a well-known fact that non-DAC countries, including the BRICS countries and especially China, have been at the forefront of such alternative sources. Strange et al. observe that such sources have “looser aid allocation and monitoring standards” (2017, p. 950). The authors' unique database³ of Chinese official finance “uncovered more than US\$73 billion in commitments of official Chinese financing flows to Africa that were previously unrecorded [...]. About US\$15 billion could be identified as being similar to Official Development Assistance (ODA) according to the OECD definition” (2017, p. 955). Understanding whether China's massive overseas investments in infrastructures (in the framework of the Belt and Road Initiative—BRI) and grant-giving activities are motivated by geopolitical objectives, interference in domestic affairs, humanitarian purposes, or even extractive activities goes beyond the scope of this article.⁴

What is, however, important is that the global development and donorship landscapes have changed dramatically over the last twenty years. New competitors have emerged having different motivations and expectations when lending money or investing in large infrastructures in developing economies, especially in Africa and the Middle East and North Africa (MENA) region (McBride et al., 2023). With reference to China, the Belt and Road Initiative cannot be limitedly viewed as a massive investment programme in the MENA region. China knows that its strategic economic interests in the region, especially in the oil, energy, and trade sectors, remain contingent on stability and on the need to take a major role in conflict resolution and diplomacy (Sidlo, 2020; Bourekba, 2023). Moreover, despite the opaqueness of its official finance, China's “engagement in the region is predominantly viewed in positive terms” (Sidlo, 2020) by political elites in the region. The recent visit of Tunisian President Kais Saied to Beijing in June 2024 and the explicit expectations expressed by the latter to turn Tunisia into a strategic partner for China constitute just one example.

In a similar vein, the planned expansion of the BRICS as well as the impressive number of countries from Africa, Asia, Latin America and the MENA region who recently knocked at the door of this intergovernmental organization, denote its growing economic traction and

political relevance and, arguably, the desire of various emerging economies to look for alternative sources of income (Hassan, 2023). When considering these unprecedented global challenges, having clear foreign policy and economic implications for the EU and its member states alike, one is entitled to wonder whether leveraging non-EU countries' reinforced cooperation on the control of migration through financing (Tsourdi et al., 2023) constitutes today a suitable response.

Thirdly, more than two decades of interactions on migration matters between EU and non-EU countries, in the framework of regional consultative processes, have been crucial to open communicative channels between state actors despite their contrasting interests and goals. However, regional consultative processes on migration governance have also been conducive to a mutual learning process whereby non-EU countries, especially North African countries, have become increasingly aware of the interstate rivalry within the EU on how migration and asylum should be managed. Such internal divisions generated, and still generate today, windows of opportunity on which some North African countries have capitalized in their bargaining. In a similar vein, resilient tensions between supranationalism and intergovernmentalism have left unimpaired bilateral patterns of cooperation on migration and border control with North African countries (Zardo & Loschi, 2020). The predominance of bilateralism certainly has the advantage to lubricate interactions in case of discord. However, it might heighten member states' exposure to the claims of some empowered and strategic non-EU countries prone to defend their own preferences and priorities, be they connected with migration matters or not. This crucial aspect is further developed in the next sections.

The consequences of interdependence

Cooperation on migration and asylum governance has been conducive to reinforced patterns of interdependence which expand well beyond the migration domain. This aspect is now well documented by various scholars across disciplines (Cassarino, 2007, 2018; Del Sarto, 2021; El Qadim, 2015; Greenhill, 2010; İçduygu & Aksel, 2014; Kaya, 2020; Natter, 2023; Paoletti, 2011; Tsourapas, 2018; Wolff, 2014; Zardo, 2020).

Studying interdependence is one thing. Analyzing the consequences of interdependence in global politics, as David Baldwin remarked (1980, p. 488), is another. Two (state or non-state) actors may decide to continue their cooperation despite its ineffectiveness or because there is no likely alternative. Interrupting the cooperation might bring more losses (both internationally and domestically) that leaders would prefer to avoid (Stein, 1992, p. 204). Loss avoidance, as analyzed by Janice Gross Stein (1992), is a useful concept to explain why cooperation continues regardless of whether or not it is conducive to the expected outcomes. The issues at stake justifying cooperation may be framed differently by the actors involved. It is also useful to understand that the intentions of the contracting parties may vary over time as they learn from each other or because of new (unpredicted) circumstances.

Cooperation with MENA countries on the readmission of irregular migrants and rejected asylum-seekers is a case in point. For example, cooperation on readmission has often been fraught with uncertainties not only because costs and benefits have been extremely asymmetric, but also because the ways the "problem" of readmission is framed have varied significantly (as illustrated in the next section). Mutual interests never stimulated MENA countries' responsiveness to bilateral cooperation on readmission. Rather, cooperation on readmission with MENA countries has occurred because it has been embedded into a broader framework of interactions that has codified and affected patterns of cooperation. MENA countries quickly realized that the strong emphasis put by European leaders on the fight against irregular migration and on the need to externalize their migration and asylum policies would potentially reinforce their own leverage on their European counterparts. There is no question that the abovementioned embeddedness of migration governance coupled with MENA countries' growing awareness of their empowered strategic position have jointly shaped the scope and intensity of the cooperation on

the management of international migration. As shown below, both awareness and embeddedness can be analytically treated as the consequences of interdependence in EU-MENA relations.

An additional consequence closely linked with these unprecedented developments lies in the manifestation of reverse conditionalities. Reverse conditionalities result from a highly interconnected system of relations where international actors (be they state or non-state actors) are empowered enough, first, to produce and set the conditions of their responsiveness to cooperation, second, to make such conditions possible and acceptable by other actors, and third, to reverse the flow of diffusion. Reverse conditionalities become so contingent that the other actors have no option but to accommodate them with a view to ensuring a modicum of cooperation (see Figure 1). Consequently, they result from a process that shifts the focus away from the center to the periphery. Reverse conditionalities uncover a broader investigative area where “non-Western” diversities, practices and discourses can be unveiled and conceptualized by making our understanding and interpretations of international cooperation more “inclusive” (Acharya & Buzan, 2019, p. 295; see also Qin, 2020, p. 5; Bilgin, 2018; Yudan, 2023, p. 157). In this connection, the drive for informalization (Adam et al., 2020; Cassarino, 2007, 2018; Slominski & Trauner, 2020) that has gained momentum, over the last twenty years, in the field of migration and asylum policies constitutes a good indicator of how the EU and its member states have, as it were, accommodated, if not internalized, the preferences of some strategic non-EU countries, especially those located in North Africa. Both the EU and its member states have realized that they have had no option but to recalibrate their cooperative patterns and framework of

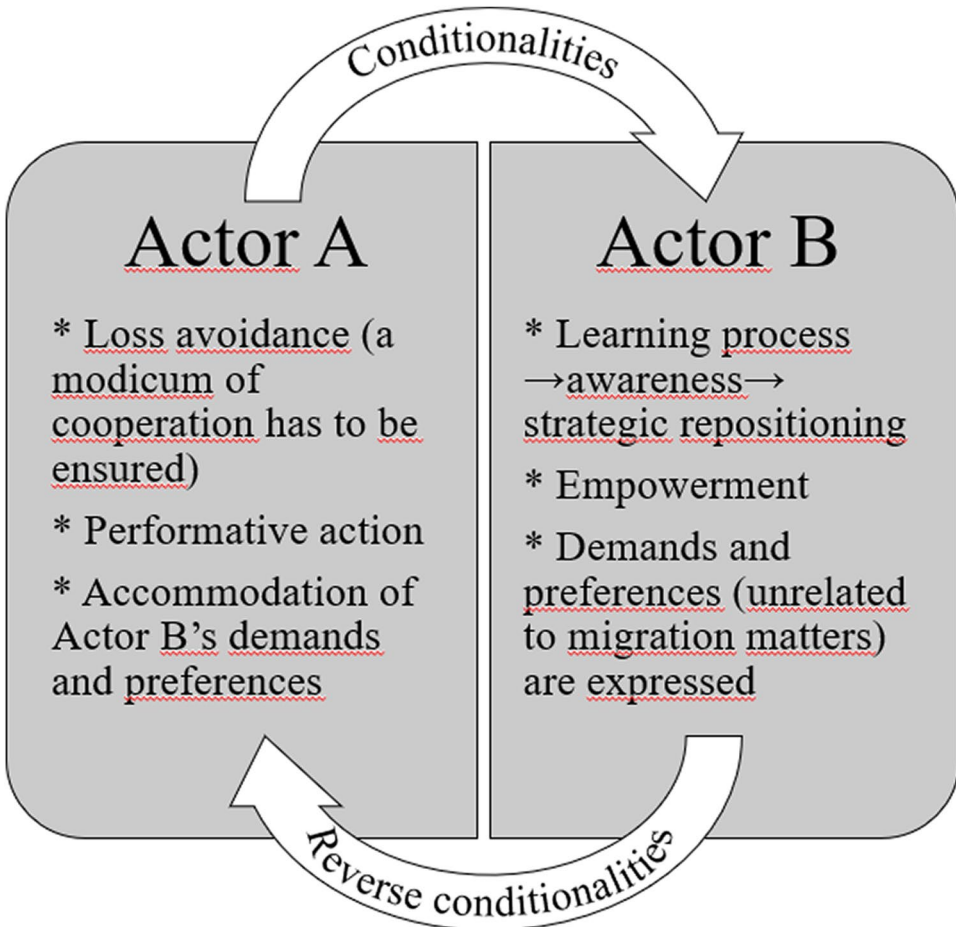


Figure 1. International cooperation and the making of reverse conditionalities.

interactions with the demands of some empowered non-EU countries with a view to ensuring a modicum of cooperation on the containment of irregular migration flows.

In sum, empowerment, altered interdependences, accommodation, and reverse conditionalities all intersect to delimit a complex international system where diffusion is far from being unidirectional. In this complex international system, informal patterns of cooperation have been normalized with a view to responding to heightened uncertainties. Concomitantly, they have been designed to address the empowerment of some MENA countries by accommodating their claims and preferences.

Reverse conditionalities constitute a useful concept to shed light on the exposure of a state or non-state actor (Actor A) to the collateral demands and conditions of another one (Actor B). This exposure is not the outcome of interdependence alone. Rather, it results from a learning process whereby Actor B realizes (or becomes aware of) her strategic and unparalleled position in the bilateral cooperation with Actor A. This is a key feature that neorealists would dismiss offhand given their focus on hegemonic power. However, one must admit that regional consultative processes and their inherent iteration have been the ideal platforms where this learning process has taken place. What needs to be achieved through the bilateral cooperation between Actors A and B turns out to be so paramount for Actor A that the latter will gradually accept to accommodate the exigencies of the former, at the cost of contradicting her values or principles.

Moreover, given its asymmetric costs and benefits, cooperation will be ensured thanks to incentives (be they material or immaterial) or thanks to soft conditionalities. For exerting pressure to bear on Actor B would be unrealistic, if not counterproductive given Actor B's strategic and empowered position. Often, irrespective of the full implementation of the cooperation, the stakes at play lie in acting, politically speaking. Indeed, just like a performative action, a modicum of cooperation needs to be achieved with a view to showing to Actor A's constituencies that something is being done to protect them from externalities. The entanglement of domestic and international politics reflects a two-level-games logic (Putnam, 1988) that adds much to this analysis.

Enhanced exposure

EU member states' exposure to reverse conditionalities has been legion, although its expression remained quite implicit until recently. For example, when North African countries were negotiating their respective Association Agreements with the European Union, during the mid-1990s, the former used their cooperation on migration and border controls as a leverage to obtain trade concessions and preferential tariff treatment from the latter (Del Sarto, 2021, p. 136). In 2003, as the European bloc was about to enlarge its territory toward the East ('wider Europe'), North African countries were expressing their public concerns about the stability of their relations with their European neighbors. In a public address, former President Zine El-Abidine Ben Ali was keen to recall that the security concerns of the EU regarding migration flows would never be adequately addressed without the preservation of a 'Euro-Mediterranean solidarity' (Réalités, 2003). Similarly, during the December 2003 Summit of the Heads of State and Government of the Western Mediterranean Basin (Dialogue 5+5, 2003), a common declaration was issued stressing "the importance of seeing the European Union accompany its enlargement process by similar supportive efforts toward the countries of the South-West Mediterranean" (Dialogue 5+5, 2003, p. 1). The same year, Morocco publicly warned that its involvement in the fight against irregular migration was contingent on the "great responsibility of the EU to support its development efforts" (Maroc Hebdo International, 2003, p. 11).

To be clear, such warnings are not conditionalities. Nor are they automatically conducive to reverse conditionalities as a form of leverage. Nonetheless, they denote the awareness on the part of North African leaders that their role in the containment of migration flows *en route* to Europe was becoming significant and meaningful. North African countries quickly understood that their proactive engagement in border and migration controls could be integrated into a broader

framework of cooperation where regime survival would be (re-)asserted, strategic alliances with European major powers would be built or (re-)configured to address new challenges, territorial integrity would be (re-)proclaimed to serve vital national interests. As shown in previous works (Cassarino, 2007 and 2018), under the tip of the iceberg lies an array of factors, often unrelated to migration matters, that account for the ways in which North African countries have selectively responded to European calls for reinforced cooperation on the governance of migration.

As the framework of cooperation was broadening, by clustering together highly different issues (Keohane, 1984, p. 244), migration governance ceased to be politically treated by North African countries as an end in itself. Thus, cooperation on migration governance started to be viewed as a means to achieve other goals. Once highly different issue-areas are clustered together, even the threat of non-cooperation or underperformance may carry with it great benefits in terms of bargaining, leverage and influence.

The use of flexible patterns of cooperation on migration governance (based on pacts, memoranda of understanding, administrative arrangements and exchanges of letters, to mention but a few) are symptomatic of the uncertainties with which the EU and its member states have been confronted over the last thirty years. Heightened uncertainties explain the perceptible drive for informalization in migration governance, given its lower transaction costs and because it allows “adjustment in the face of international uncertainty without dismantling cooperation” (Koremenos, 2005, p. 561; see also Lipson, 1991). A modicum of cooperation, be it effective or not, had to be preserved at all costs.

However, flexible patterns of cooperation are not only aimed at dealing with uncertainties. They may sometimes be the best option to accommodate the preferences and contingencies expressed by empowered non-EU countries. Invariably, this empowerment generated additional challenges to which the EU and its member states have been obliged to respond. Their responses converged toward the gradual normalization of an array of informal instruments that side-line democratic accountability, weaken human rights observance and deflect parliamentary scrutiny.

To date, patterns of interdependence have developed despite the contrasting interests and the asymmetric costs and benefits that have constantly characterized the so-called “joint management of international migration.” Again, the examples mentioned above show that informalization does not necessarily result from the need to make cooperation on migration governance more responsive to uncertainties. Rather, it may also result from the need to accommodate empowered third countries’ preferences and exigencies in a context marked by strong patterns of interdependence between EU and non-EU countries.

It is important to underline that reverse conditionalities relate to the instrumentalization of migration. However, the former cannot be equated with the latter. Reverse conditionalities result from a combination of processes including 1/an iterative learning process (whereby actors learn from each other), 2/the gradual clustering of highly diverse issue-areas (in order to stimulate cooperation), 3/an empowerment process (where an actor is in a position to capitalize on her strategic position) and 4/a necessary process of accommodation (which invariably crystallizes new power dynamics). Combined, such processes do not automatically lead to a “threat” with which a state actor will be confronted. Unlike instrumentalization where the threatening dimension is predominant, reverse conditionalities highlight the inclination of an actor to accommodate the preferences and exigencies of another actor to address loss avoidance.

Moreover, in the making of reverse conditionalities domestic and international affairs are closely entangled. In turn, this entanglement affects the options of the actors involved, as explained above.

The cooperation on migration control between Morocco, on the one hand, and Spain and the EU, on the other, is emblematic of the making of reverse conditionalities and of their broader implications for the EU’s external relations. Despite its overt opposition to the EU’s security-driven approach to migration, Morocco became proactive in the control of the EU’s external borders, especially as of 2004, when the first Zapatero government (2004–2008) set out to reinvigorate its relations with the Kingdom, after years of tensions under the former Aznar government.

The terrorist attacks in Casablanca (May 2003) and in Madrid (March 2004) arguably contributed to the reinvigorated relations between the neighboring countries in the fight against international terrorism and the reinforced control of border-crossings. Both policy areas were clustered together, in bilateral consultations, denoting the mutual interests shared by Morocco and Spain. However, Morocco's goals in the cooperation starkly differed from Spain's, as explained below.

From the mid-2000s up to the early 2010s, Morocco's reinforced cooperation on border controls and deportation with Spain alienated the country from its traditional sub-Saharan African partners, especially Senegal, Mali, Niger and Cote-d'Ivoire. Subsequently, the collapse of the regime of Muammar Gaddafi and the declining influence of Libya in sub-Saharan Africa opened a new window of opportunity. Morocco reactivated its "African strategy" (El Qadim, 2015) based on a form of soft power which incidentally turned out to be consonant with its desire to co-opt some sub-Saharan countries with a view to narrowing Algeria's African playground and to butressing the territorial claims of Morocco on Western Sahara (Cassarino, 2018).

By all accounts, Morocco realized that bolstering its credentials in the field of border controls would reinforce its strategic position vis-à-vis Spain and the EU. It also became aware that other prominent priorities (e.g., territorial integrity) could be clustered together with migration management matters. Clustering motivated Morocco to conclude in June 2013 a Mobility Partnership (MP)⁵ with the EU. More precisely, Morocco skillfully linked the negotiations of its MP with the prior conclusion in March 2012 of an exchange of letters with the European Union concerning reciprocal liberalization measures on agricultural products, processed agricultural products, fish and fishery products (henceforth Fisheries Partnership Agreement—FPA). At the time, the FPA raised a lot of controversies in the EU owing to its geographical scope covering the territory and waters off the coasts of Western Sahara. The Popular Front for the Liberation of Saguia el-Hamra and Río de Oro (henceforth Polisario Front) brought a legal action to the Court of Justice of the European Union (CJEU), in November 2012, against the Council of the European Union for "breaching the right to self-determination of the Sahrawi people and [for] encouraging the policy of annexation followed by the Kingdom of Morocco" (Official Journal of the European Union, 2013, p. C55/14).

It is important to highlight that the signature of the Mobility Partnership with Morocco preceded the judgment of the Court of Justice of the European Union regarding the FPA and its compliance with international law. These chronological developments speak volumes about the guarantees that were offered at the time to Morocco regarding the seamless implementation of the FPA despite the legal action brought by the Polisario Front. After years of legal disputes at the Court of Justice of the European Union, the FPA entered into force in February 2019⁶ with the full support of the European External Action Service, the European Commission, and the approval of European Parliament.

The Polisario Front reacted by bringing another legal action in June 2020 against the entry into force of the FPA. Among many other pleas, the applicant denounced that the FPA "denies the existence of the Sahrawi people by using the expression 'the people concerned' [and] organizes, without the consent of the Sahrawi people, the exploitation of its resources" (Official Journal of the European Union, 2020, p. C 279/48). By early 2021, there were rumors that the judgment of the General Court of the European Union would be in favor of the Polisario Front. Arguably, to express more explicitly its vigilance on the pending legal case, Morocco reportedly facilitated in May 2021 the massive border-crossing between its territory and the Spanish enclave of Ceuta (El País, 2021) when thousands of migrants irregularly crossed the border. The European Commission expressed its solidarity to Spain and the Commission vice-president, Margaritis Schinas, declared that no one "can intimidate or blackmail the European Union" (Kassam, 2021), alluding to Morocco.

To be sure, in compliance with the logic of two-level-games (Putnam, 1988), the May 2021 Ceuta events had repercussions which went well beyond the mere management of international migration and borders. Domestically, the Spanish government was confronted with a political crisis on which Spanish anti-immigrant political parties capitalized. Internationally, Morocco

successfully demonstrated that it had the power to exert its own leverage if its claims were not accommodated by EU leaders.

In September 2021, the General Court decided to annul Council Decision 2019/217 (Kassoti, 2021) dated 28 January 2019 on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco. However, the annulment of Council Decision 2019/17 did not lead to the suspension of the FPA, for “the annulment of the contested decision with immediate effect may have serious consequences for the European Union’s external action and call into question the legal certainty of the international commitments to which it has consented and which are binding on the institutions and the member states” (GCEU, 2021, para. 395). Meanwhile, the General Court ordered the effects of Council Decision (EU) 2019/217 to be maintained given the decision of Council and the Commission to appeal the judgment. It was in this context marked by heightened legal uncertainties and potential geopolitical implications that Spain opted in March 2022 to publicly endorse Morocco’s plan to administer Western Sahara (Fuentes, 2022) without any parliamentary debate at the *Cortes Generales*, namely the two houses of the Spanish parliament. This decision was arguably predictable given Spain’s exposure to Morocco’s reverse conditionalities and the necessity to accommodate Morocco’s claims and preferences.

The appeal of the Council and of the Commission was eventually rejected by the Advocate General of the Court of Justice in her opinion dated March 2024.⁷ Although her negative opinion did not imply the immediate annulment of the FPA, it constituted a key element in the final judgment of the Court delivered on 4 October 2024.

Conclusion

Has leveraging migration governance through development aid become a risky endeavour? This question is far from being fortuitous when realizing the dramatic changes that have occurred at a global level, as well as the altered interactions between the EU and its member states, on the one hand, and non-EU countries (especially those located in the direct neighborhood of the EU and in Africa), on the other hand. Enhanced exposure to non-EU countries’ reverse conditionalities is now commonplace and widely known to policy circles. A decade ago, their manifestation was implicit and often addressed through diplomatic channels. Today, the need to accommodate the explicit claims and preferences of some empowered non-EU countries, with a view to ensuring a modicum of cooperation on the containment of irregular migration flows, demonstrates that interrupting cooperation may bring more losses than recalibrating cooperative patterns and frameworks of interactions. As shown in this study, by relying on Janice Gross Stein’s concept of loss avoidance, these are the consequences of reinforced patterns of interdependence. They expand well beyond the migration remit. Such consequences cannot be dismissed offhand when it comes to “using as leverage all relevant EU policies, instruments and tools, including development, trade and visas, to ensure the full implementation of existing readmission agreements and arrangements” (European Council, 2021, p. 5). Rather, they need to be carefully taken into consideration.

Has leveraging migration governance through development aid come too late? This second question is relevant if we do not wallow in the self-congratulatory statements according to which the EU and its member states are the world’s leading development and humanitarian donors. As shown earlier, new competitors are emerging in a donorship landscape that has changed dramatically over the last twenty years. Moreover, there is growing awareness (whether well-founded or not) among non-EU countries located in the Mediterranean and in Africa that alternative sources of funding and investments exist elsewhere allowing potential aid shocks from traditional donors to be offset. Admittedly, together with this alternative global financial order lies an array of geopolitical challenges that cannot be ignored. Perhaps, never before has the need to properly assess the impact and manifold consequences of using development aid as leverage in the EU’s external relations been so necessary.

Notes

1. For the sake of clarity, conditionalities are defined in this study as specific requirements or obligations a country must meet to receive aid, loans, or any other support. By contrast, incentives are positive measures or rewards offered to encourage a country to act in a desired way *ex ante*. While incentives aim to motivate compliance through rewards, conditionalities impose obligations that must be fulfilled to access those rewards. Both are tools used to influence state behaviour, but they differ in how they shape the terms of engagement.
2. Intergovernmental cooperation “takes place when the policies actually followed by one government are regarded by its partners as facilitating realization of their own objectives, as the result of a process of policy coordination” (Keohane, 1984, pp. 51–52). In this perspective, intergovernmental cooperation occurs as a result of a policy coordination between sovereign states. The latter remain the principal actors in decision-making. Supranationalism refers to an integration process involving various states under the responsibility or control of an authority or body. The latter stands above states’ sovereign decision-making process. In this perspective, supranationalism implies a delegation of power to a supranational body. It also “involves some loss of national sovereignty” (Nugent, 2017, p. 436).
3. AidData (<https://www.aiddata.org/datasets>), which recently received the prestigious Best Dataset Award from the International Political Economy Society (IPES), offers a wealth of open-source information about Chinese official finance as well as underreported financial flows worldwide, from 2000 to 2017.
4. On these sensitive issues, and for a balanced and well-informed debate, see Dreher et al. (2022) as well as Oqubay and Yifu Lin (2019) and Esteban and Pérez (2017).
5. Mobility Partnerships are political declarations, namely non-binding agreements, proposed by the EU to non-EU countries. Mobility Partnerships condition the possibility of promoting the temporary entry and residence of legal labour migrants in Europe upon reinforced and effective cooperation on readmission (see Parkes, 2009 and Reslow, 2012).
6. This is not the place to delve into the technical and legal details of this controversial ruling by the CJEU. Ángela Suárez-Collado and Davide Contini note that “the Court used a counterfactual legal analysis that did not take into account the practice of the agreement, but rather the theory on which it was based” (Suárez-Collado & Contini, 2021, p. 1174).
7. See Opinion of the Advocate General Capeta delivered on 21 March 2024, Joined Cases C-778/21 P and C-798/21 P European Commission vs Front populaire pour la libération de la sagaia el-hamra et du rio de oro (Front Polisario), Council of the European Union (C-778/21 P) and Council of the European Union vs Front populaire pour la libération de la sagaia el-hamra et du rio de oro (Front Polisario) (C-798/21 P). <https://curia.europa.eu/juris/document/document.jsf?text=&docid=284121&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=4476393>.

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