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Introduction to the Special Issue Asylum for Containment: The Contradictions of European External Asylum Policy

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During the past decade, and in particular since 2015, the EU has sought to improve the asylum systems in third countries. The logic behind this is that, if third countries have functioning asylum systems, there is less reason for refugees to seek asylum in Europe. Additionally, asylum seekers could be returned to third countries that can be labelled as safe.¹ This special issue brings together analyses of these European efforts in third countries. As the articles in this special issue show, there are certainly successes. Legislation and capacity building in countries as diverse as Turkey, Serbia, and Niger has brought about real improvements. Additionally, the Facility for Refugees in Turkey has contributed substantially to supporting especially Syrian refugees in Turkey, as well as host communities. In Tunisia, the EU has contributed financially to refugee status

¹ Ayoub Tinni, Bachirou et al, *Asylum for Containment. EU arrangements with Niger, Serbia, Tunisia and Turkey*, Brussels: Centre for European Policy Studies, 2023, 15–18. This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870787. The articles concerning Serbia, Tunisia and Turkey are based on research funded through the same agreement.

determination by UNHCR. At the same time, there are spectacular failures, exemplified by the chaos at the Turkish-Greek land border in February 2020 (see Ovacik et al. in this issue), the sudden movement of Moroccan nationals to Ceuta and Melilla in May 2021,² the rejection of migration cooperation by Tunisia in October 2023,³ and the revocation of EU inspired human smuggling legislation in Niger in November 2023.⁴

In looking more closely at European interventions in asylum law and practice in third countries, the articles brought together here take an unusual approach because they problematise the Eurocentric approach taken in much academic work which is funded by European sources and carried out by European researchers. The situatedness of research in Europe can easily lead to methodological nationalism in the sense that it is simply assumed that Europe is an important factor in these countries. It may be overlooked that third countries have long-standing migration and asylum policies and practices with which European policies interact; their law and policy do not start with a blank page. In addition, European research is characterised by an extractivist methodology, in which European researchers do a field trip, return home with the data, and do the analysis in their home institutions. While the research at the basis of some of the articles in this special issue was funded by the EU, conscious efforts were made to maximise the influence of the third country researchers, in fact, the need for decentring or decolonising migration research has been widely voiced by other scholars as well.⁵

2 Kassam, Ashifa, 'More than 6,000 migrants reach Spain's north African enclave Ceuta', *Guardian* 18 May 2021, <https://www.theguardian.com/world/2021/may/17/record-1000-migrants-reach-spains-north-african-enclave-ceuta-in-a-day>.

3 Ben Hamadi, Monia, 'En Tunisie, le président Kaï Saïed se rebelle contre la politique migratoire européenne', *Le Monde* 3 October 2023, [https://www.lemonde.fr/afrique/article/2023/10/03/en-tunisie-le-president-kais-saied-se-rebelle-contre-la-politique-migratoire-europeenne_6192258_3212.html#xtor=AL-32280270-\[mail\]-\[ios\]](https://www.lemonde.fr/afrique/article/2023/10/03/en-tunisie-le-president-kais-saied-se-rebelle-contre-la-politique-migratoire-europeenne_6192258_3212.html#xtor=AL-32280270-[mail]-[ios]).

4 Bobin, Frédéric & Morgane Le Cam, 'Le Niger défie l'Europe sur la question migratoire', *Le Monde* 29 November 2023, https://www.lemonde.fr/afrique/article/2023/11/28/le-niger-defie-l-europe-sur-la-question-migratoire_6202814_3212.html.

5 Mayblin, Lucy & Joe Turner (2021) *Migration Studies and Colonialism*, Cambridge: Polity Press; McNally, R. and Rahim, N. (2020) *How global is the Journal of Refugee Studies?*, LERRN: The Local Engagement Refugee Research Network, online: <https://carleton.ca/lerrn/2020/how-global-is-the-journal-of-refugee-studies/>; Spijkerboer, Thomas (2021), 'The geopolitics of knowledge production in international migration law', in Catherine Dauvergne (ed), *Research Handbook on the Law and Politics of Migration*, Cheltenham/Northampton: Edward Elgar 2021, 172–188; Vargas-Silva, C. (2019) *Does the gap in migration research between high-income countries and the rest of the world matter?*, Centre on Migration, Policy and Society,

The articles brought together here show that external European migration policies do not succeed in reaching their stated aim. The number of migrants and refugees reaching Europe in an irregular manner is not under control, and returning rejected asylum seekers to countries of origin and transit remains problematic. In addition, some third countries openly or covertly refuse to implement European policies. Turkey has suspended the return of migrants and refugees from the Greek islands on the basis of the EU-Turkey statement of March 2016. The promised resettlement of Syrian refugees towards Europe occurs merely to a homeopathic extent (about 1% of the Syrian refugee population in Turkey). As a consequence, Turkey still hosts more than 4 million refugees on its territory, a substantial part of whom are hosted in the earthquake disaster zone (see the article of Ovacık, Ulusoy and Ineli-Ciger in this issue). Tunisia has refused so far to adopt the asylum legislation which was drafted with active assistance of the EU because the authorities fear becoming an external European hotspot. For the same reason, Tunisia consistently refuses to accept the readmission of third country nationals (see the article of Sha'ath and Raach in this issue). Serbia has accepted the EU asylum and migration *acquis* as a whole as part of the process of accession to the EU. However, its policy makers find it unreasonable to expect Serbia to assume responsibility for migrants and refugees who transit its territory from southern EU Member States (Greece, Bulgaria) on their way to northern Europe. Djurovic observes in this issue that Serbia's failure to effectively implement the legislation and policies, with the consequence that Serbia cannot be considered as a safe third country according to the European Court of Human Rights, can be seen as a normative response to the unreasonable effect of the EU *acquis* for Serbia. As El-Sayed notes, in Egypt there have been legislative reforms in the field of migrant smuggling, which Egypt introduced as part of its broader policy to get European support for its regime. However, in practice, the situation of migrants and refugees on its territory has not improved. The EU is prepared to overlook this fact as long as irregular migration from Egypt remains low. Morocco's asylum and migration policy cannot be understood as a function of European externalisation. At least as important is Morocco's strategic reorientation towards Africa, which comes with a less restrictive and securitised discourse than the EU would like (see Benjelloun's contribution to this issue). Niger's recent reversal of its EU-friendly migration policy is not only related to the coup d'état of July 2023 and its potential alignment with Russia.

online: <https://www.compas.ox.ac.uk/2019/does-the-gap-in-migration-research-between-high-income-countries-and-the-rest-of-the-world-matter/>;

The migration laws and policies introduced at the behest of the EU were considered problematic since their inception because it was observed to result in the hotspotisation of Niger (and especially the city of Agadez), while there were also constitutional concerns about Nigerien sovereignty and the compatibility of these laws and policies with regional free movement law.⁶

Understanding these failures is possible only through the lens of third countries, as the EU perspective on this remains limited. Third countries learn from each other's experiences; Tunisia's hesitation to implement an Asylum Act can be related to Turkey's experience after adopting EU inspired legislation in 2013. Concerns about becoming a hotspot are an important reason for third countries to refrain from going along with EU policy objectives. In terms of domestic politics, implementing European policy desiderata is not seen as legitimate; third countries with authoritarian regimes are more likely to cooperate with the EU than well-functioning democracies. Serbia has learnt from EU Member State Greece that it can prevent becoming a safe third country if the asylum legislation it adopted as part of EU accession is not implemented. Turkey has long justified its choice to maintain its geographical limitation to the Refugee Convention with a similar concern. Egypt's willingness to cooperate with the EU's migration and asylum policy is one of its strategies to make itself crucial to its western allies, who then turn a blind eye to Egypt's treatment of refugees/migrants and citizens. These developments can be better understood if it is not assumed *a priori* that the EU is the dominant factor shaping the migration policies of these countries. In Morocco, a dominant factor is foreign policy considerations related to Africa, its interest in joining the ECOWAS free movement zone, and reinforcing its regional power. These resulted in a move (imperfect as it may be) away from an EU-inspired, security-orientated migration policy towards a more open migration policy with increased emphasis on respect for human rights. As demonstrated in the examples of Egypt and Morocco, human rights do not appear to be a concern in their own right of the EU or third countries, but may become relevant in relation to other policy objectives. As for Egypt, more important than the influence of the EU, for a long time the driving strategy has been to inflate refugee statistics and emphasise compliance with international refugee law, while at the same time implementing this with what El Sayed calls in this issue the three no's (no responsibility, no cost, no integration). For Turkey, management of asylum flows has been linked with broader

6 Ayouba Tinni, Bachirou, Abdoulaye Hamadou, Thomas Spijkerboer: *Rapport de pays Niger*, Brussels: Centre for European Policy Studies, 2022; Hamadou, Abdoulaye, « La gestion des flux migratoires au Niger entre engagements et contraintes », *Revue des droits de l'homme*, 14 | 2018.

foreign policy concerns such as its position as a regional power in the Middle East.⁷ In the end, for third countries cooperation with the EU on migration issues forms part of their geopolitical positioning, with keen awareness that implementing EU migration priorities in itself goes against state interest. The EU seeks to “buy” third country cooperation with the containment of migrants and refugees in non-European countries through policy fields other than migration and asylum (EU accession, socio-economic and financial support).

Another lens through which third-country approaches to EU migration cooperation can be understood is the global South ‘migration state’ typology developed by Adamson & Tsourapas in response to James Hollifield’s notion of the migration state, which, as Adamson & Tsourapas show, is modelled on states in the global North (see Benjelloun’s article).⁸ It is fruitful to read the articles in this special issue against this conceptual backdrop. Adamson & Tsourapas propose three categories that are appropriate for states in the global South. The category of the *nationalising* migration state describes global South states that focus on creating a (ethically, religiously, or otherwise) homogeneous population through migration policy. This can be observed in population exchange, expulsion and ethnic “return” practices of Turkey and Serbia in the course of nation-state building, and in their responses to the arrival of different categories of asylum seekers and refugees. The second category, that of the *developmental* migration state, refers to states that consider labour migration and remittances as an economic development strategy. This is relevant in countries from which there is considerable labour migration to the EU such as Turkey, Tunisia, and Morocco. As the article by Sha’ath and Raach shows, this plays a role in Tunisian state attitudes toward readmission of its nationals. The third category is the *neoliberal* migration state, where migration and hosting capacities of the state are treated as a commodity that can be utilised to enhance state revenue and power. This is something we see in all articles in this special issue. An illustration is Tunisia’s wait-and-see approach coupled with funding through the European Neighbourhood Instrument and the EU Trust Fund for Africa, as well as demands for facilitated movement to the EU for Tunisian nationals. However, our research also shows that some third countries are more interested in political leverage rather than in financial gain, as exemplified by the Turkish government’s insistence that EU funding

7 Ayouba Tinni, Bachirou et al, *Asylum for Containment. EU arrangements with Niger, Serbia, Tunisia and Turkey*, Brussels: Centre for European Policy Studies, 2023, 17.

8 Adamson, Fiona B. and Gerasimos Tsourapas: The Migration State in the Global South: Nationalizing, Developmental, and Neoliberal Models of Migration Management, *International Migration Review* 2020, 54(3) 853–882; Hollifield, James F., ‘The Emerging Migration State’, *International Migration Review* 2004, 38(3): 885–912.

compensates only a part (although a substantial one) of Turkish spending on hosting Syrian refugees.⁹ Similarly, El-Sayed's analysis in this special issue reveals that financial gain is not the main priority for Egypt in its migration cooperation with the EU. The reconceptualisation of the migration state which Adamson & Tsourapas suggest is clearly useful, but the contributions in this special issue show that it should pay more attention to the geopolitical and normative perspectives of states in the global South. Within the constraints of the asymmetrical relations between the EU and its Member States on the one hand and third countries on the other hand, third countries bring into play interests that may be unrelated to those of the EU (such as free movement in Africa), while they also contest on normative grounds the idea that it is reasonable that they are willing to host the refugees and asylum seekers which Europe is not prepared to receive.¹⁰

Building on the analyses of the articles in this special issue on the EU migration cooperation with Serbia, Tunisia, Morocco, Egypt, and Turkey, our overall conclusions are two-fold. First, enhancing asylum systems in third countries is more likely to be successful if it is not framed as part of the EU externalisation agenda. In that sense, EU policy is caught in its own ambiguities. Third countries are aware that EU support to their asylum capacity is part of a larger policy of containment of refugees in these countries, seeking to prevent their onwards movement towards Europe. As this is not seen as legitimate, their cooperation with the EU fluctuates according to factors that are partly unrelated to European external asylum policy (such as national elections, changes in foreign policy, regional developments like the disintegration of Libya after the 2011 NATO intervention). From the perspective of refugee protection, the increased pressure on asylum systems of third countries through EU externalisation policies undermines efforts to improve these systems through support by the same EU. Raising asylum standards in third countries comes across as an honourable endeavour; however, the underlying motivation and the policy context for such improvement make it problematic and hinder cooperation schemes.

The recent migration deals with Tunisia, Mauritania, and Egypt illustrate that Europe thinks that cooperation means imposing its migration policy on third countries by exploiting asymmetrical power relations. Our second

9 According to Turkish Presidency Annual Programs, the humanitarian aid provided to Syrians in Turkey was 7.2 billion USD in 2019, 6.7 billion USD in 2018, 5.85 billion USD in 2016, 1.6 billion USD in 2014 and 1.57 billion USD in 2013 (Turkish Presidency Annual Programs are available at <https://www.sbb.gov.tr/yillik-programlar/>).

10 Comp. El Qadim, Nora, 'Postcolonial challenges to migration control: French-Moroccan cooperation practices on forced returns', *Security Dialogue* 45(2014), 242–261.

conclusion is that the continuing failure of this approach to migration cooperation with third countries can only be remedied through sincere attempts to understand third country perspectives. However, the Eurocentrism in migration research both in terms of substance and methodology hinders such insight. Eurocentric research methodologies create Eurocentric results that fail to make sense of factors that are not about Europe. Even though much of the research presented here took place in an EU dominated context, it also shows that a methodology which is not Eurocentric or which at least engages with the geopolitical positioning of researchers and research questions is crucial for efforts to move beyond the current stalemate.