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Decolonizing Migration and Development:

Readmission Clauses in Development and Cooperation Agreements

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ABSTRACT

Measures of migration governance are often included in branches of international law not traditionally understood as “Migration law”, such as Development and Cooperation Agreements. The focus of this analysis is the inclusion of “readmission clauses” within these agreements, which aim at facilitating the return of people (often from ‘developing countries’) who are residing in a country (often a ‘developed state’) irregularly.

This practice reflects two dominant approaches of opposed policy options: addressing the root causes of irregular migration through development aid, or maximizing the developmental benefits of migration. These facets of the Migration and Development Nexus (M&D) ultimately aim to control migration.

This dissertation explores the (mis)use of development aid as a conditionality to address the readmission of migrants adopted in the Cotonou and Samoa Cooperation Agreements alongside other bilateral agreements on development aid and assistance – including those that Italy and France have signed with third countries.

Adopting a critical post-colonial approach, I investigate the reasons why African, Caribbean, and Pacific (ACP) states agree on these readmission clauses within the context of Cooperation and Development Agreements. I highlight in my analysis how the fact that development aid has been provided only insofar as developing countries agree to collaborate with the EU in curbing migration reveals the neo-colonial legacies embedded in Development and Cooperation Agreements, and more broadly mainstream approaches to the Migration and Development Nexus.

Keywords: Migration, Development, Readmission Clauses, Decolonization, Colonialism, European Union.

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ABBREVIATIONS

ACP - African, Caribbean, and Pacific Countries

BLA - Bilateral Labour Agreements

CICID - French Inter-ministerial Committee on International Cooperation and Development

CPA - Cotonou Partnership Agreement

DCA - Development and Cooperation Agreement

EDF - European Development Fund

EEC - European Economic Community

ENI - European Neighbourhood Instrument

ENP - European Neighbourhood Policy

ENPI - European Neighbourhood Policy Instrument

EPA - Economic Partnership Agreements

EUTF - European Union Emergency Trust Fund to prevent illegal migration from Africa

GCM - Global Compact for Safe, Orderly, and Regular Migration

GNI - Gross National Income

IMRF - International Migration Review Forum

IOM - International Organization for Migration

IPPMD - Interrelation between Public Policies, Migration and Development

JMDI - Joint Migration and Development Initiative

MCOF - Migration Crisis Operational Framework

MiGOF - Migration Governance Framework

NDICI - Neighbourhood, Development, and International Cooperation Instrument

NYD - New York Declaration

OACP - Organization of African, Caribbean and Pacific States

ODA - Official Development Assistance

OECD - Organization for Economic Co-operation and Development

PCA - Partnership Cooperation Agreements

PTA - Preferential Trade Agreements

SDG - Sustainable Development Goals

STABEX - Système de Stabilisation des Recettes d'Exportation

TFEU - Treaty on the Functioning of the European Union

UNDESA - United Nations Department for Economic and Social Affairs

UNDP - United Nations Development Programme

UNFPA - United Nations Population Fund

UNGA - United Nations General Assembly

WTO - World Trade Organization

Introduction

*Nobody's free until everybody's free.*¹

This famous maxim was first spoken in the context of the Civil Rights Movement in the United States in 1964, during the fight against racial segregation. The power of these words still resonates in the analysis of contemporary inequalities related to the unfair and unequal treatment of migrants and the neo-colonial legacies that still dominate the world today. Beginning from the second part of the 20th century onwards, development started to be seen as a significant variable impacting migration, and vice versa. Since then, there has been an increasing tendency to link migration with development policies. Taking on the name of the 'Migration and Development Nexus,' this concept has been the object of interest for an extensive and yet non-exhaustive body of literature where two main streams have emerged: the 'root causes' approach, and the 'win-win' approach.

On the one hand, the 'root causes' approach has been prevailing for the longest time and assumes that migration will diminish through the implementation of development aid and assistance to the 'countries of origin.' In practice, evidence has demonstrated that more development, at least in the short term, leads to higher rates of migration.² On the other hand, the 'win-win' approach starts to emerge in the early 2000s and in particular through the promotion of the International Organization for Migration (IOM) and the World Bank, among other international institutions. This approach rests on a more liberal account of the impact that migration can have on development: that migration, *if well managed*, can be *beneficial for all*.³

Both these approaches have been the backbone of several multilateral negotiations in different fora.⁴ Similarly, the body of law on migration has started to increasingly account for

¹ Fannie Lou Hamer, 'Nobody's free until everybody's free' (Speech, Civil Rights Rally, Mississippi, 1964). See also: Kay Mills, *This Little Light of Mine: The Life of Fannie Lou Hamer* (University Press of Kentucky 2007).

² Lama Kabbanji, 'Rethinking Migration and Development as a Hegemonic Project' in Emma Carmel, Katharina Lenner and Regine Paul (eds), *Handbook on the Governance and Politics of Migration* (Edward Elgar Publishing 2022) 6 <<https://china.elgaronline.com/view/edcoll/9781788117227/9781788117227.00012.xml>> accessed 5 June 2024; Hein de Haas, *How Migration Really Works* (Penguin 2023) 79; Hein de Haas, 'Migration and Development: A Theoretical Perspective' (2010) 44 *The International Migration Review* 227, p. 44; Michael A Clemens, 'Does Development Reduce Migration?' in Robert EB Lucas (ed), *International Handbook on Migration and Economic Development* (Edward Elgar Publishing 2014). <<https://china.elgaronline.com/view/edcoll/9781782548065/9781782548065.00010.xml>> accessed 26 May 2024.

³ World Bank, *World Development Report 2023: Migrants, Refugees, and Societies* (The World Bank 2023), p. 32, <<http://elibrary.worldbank.org/doi/book/10.1596/978-1-4648-1941-4>> accessed 26 May 2024.

⁴ For Instance, the 1994 UN International Conference on Population and Development, but in more recent time especially the 2013 Declaration and the 2016 New York Declaration which led to the adoption in 2018 of the Global Compact for Safe and Orderly Migration. Vincent Chetail, *International Migration Law* (First edition, Oxford University Press UK 2019), p. 282.

development factors in migration policies and plans such as remittances in countries of origin and labor market gaps in the countries of destination.

Looking at the other member of the equation, i.e. development, reveals that migration has been included as a vital component of the contractual relationship. One common way to include migration is, namely, by including a readmission clause in the agreement. This, however, imposes on third countries a *conditionality* on the way in which economic relationships are established.⁵ This conditionality in turn, raises questions about the nature of the contractual relationship that is established through the multilateral and bilateral agreements concerning Partnership, Development and Cooperation. This uncertainty sparks one, perhaps obvious, question:

Why do states agree on that conditionality?

While at first glance one could immediately think of the *travaux préparatoires*, or context-based observations and considerations on the way in which states come to agree on a Cooperation agreement, the research carried out in the present dissertation rather showcases that the question opens the possibility to look at the present while considering history. In history, a rather strong chain of colonial and asymmetrical power relations seems to dominate the *raison d'être* of these agreements. The point of departure to study this dynamic in concrete has been the European Union, whose increasingly restrictive laws on migration are often under intense public scrutiny. These, in turn, have shown the shortcomings of the European attempt to safeguard the 'Fortress Europe.'⁶ However, the approach to migration in the Partnership, Trade, and Cooperation agreements is less frequently studied.

⁵ Sandra Lavenex, 'From Something to "Offer in Return" to Something to "Withdraw": Retracing Trade Conditionality in EU Readmission Policy' (*EU Immigration and Asylum Law and Policy*, 5 September 2023) <<https://eumigrationlawblog.eu/from-something-to-offer-in-return-to-something-to-withdraw-retracing-trade-conditionality-in-eu-readmission-policy/>> accessed 30 May 2024.

⁶ See for instance: Benjamin Ward, 'Think Fortress Europe Is the Answer to Migration? Get Real'; 'The Human Cost of Fortress Europe. Human Rights Violations against Migrants and Refugees at Europe's Borders' (Amnesty International 2014) EUR 05/001/2014 English pp. 13–14; Alessandro Algostino, 'Delocalizzazione Della Tortura e "Tortura Di Stato" Tra Accordi Di Riammissione, Esternalizzazione Delle Frontiere e Chiusura Dei Porti' in Fabio Perocco (ed), *Tortura e migrazioni | Torture and Migration*, vol 5 (Edizioni Ca' Foscari 2019), p. 96 <<https://edizionicafoscari.unive.it/libri/978-88-6969-359-5/>> accessed 10 June 2024; Rabi Ouenniche and Zineb Saaid, 'Tortura e Violenze Contro Gli Immigrati in Marocco' in Fabio Perocco (ed), *Tortura e migrazioni | Torture and Migration*, vol 5 (Edizioni Ca' Foscari 2019) 290 <<https://edizionicafoscari.unive.it/libri/978-88-6969-359-5/>> accessed 10 June 2024; Raphael Shilhav, 'Beyond "Fortress Europe": Principles for a Humane EU Migration Policy' (Oxfam 2017) 7 <<http://hdl.handle.net/10546/620347>> accessed 8 May 2024; Jan Kühnemund, '3. The Transnational Social Space of "Borderland Schengen"', p. 3. *The Transnational Social Space of "Borderland Schengen"* (transcript Verlag 2018), p. 73 <<https://www.degruyter.com/document/doi/10.1515/9783839442081-003/html?lang=en>> accessed 11 June 2024; Heinrich Neisser, 'European Migration Policy' in Belachew Gebrewold (ed), *Africa and Fortress Europe* (Routledge 2008) 140; Matthew Carr, *Fortress Europe: Inside the War against Immigration* (Updated paperback edition, Hurst & Company 2015) pp. 17–18, and, pp. 141–142.

The recently adopted Samoa Agreement,⁷ together with its immediate predecessor, the Cotonou Agreement,⁸ is likely the agreement *par excellence* on Cooperation and Development, concluded with 79 African, Caribbean, and Pacific (ACP) countries. In its latest version, it laid the ground for the materialization of its provisions through bilateral agreements concluded by individual states. The objectives of this study are, in particular, the ones concluded by Italy and France with third countries.

As the lens of observation for this analysis has been the idea that the present relationships cannot be understood without the contextualization of the past, it is important to note that both the Cotonou and the Samoa Agreements result from the initial Treaty of Rome. This treaty is older than the European Union as such and was established in the 50s when the decolonization process in many areas across the world had not commenced yet. As the thesis aims to reveal, the decolonization process was never completely finished, and its legacies are evident in the present-day dynamics of the Migration and Development Nexus.

Readmission Clauses are the utmost evidence of the uneven dynamics in the Development and Cooperation agreements signed in Cotonou and in Samoa and the consequent bilateral agreements signed between individual states (i.e. Partnership Agreements, Development Aid and Assistance Agreements, and Cooperation agreements). The obligation of readmission is a customary rule of international law. Yet, the EU and its member states questionably include this obligation on ACP states as a *sine qua non* to provide development assistance and cooperation. If the scope of these agreements is truly that of providing development assistance, it is surely uncanny that these include obligations to collaborate on migration governance.

The last part of the thesis problematizes this dynamic established by the agreements, by closing the circle and linking it back to the Migration and Development Nexus approaches. Inequalities continue to shape the relationship between EU and third countries, which were colonies in the past. This happens at least in two ways: through a 'win-win' approach and a 'root causes' approach to the Migration and Development Nexus.

On the one hand, the 'win-win' approach is endorsed insofar as the latest agreements also focus on remittances and on migration as a winning component for all. However,

⁷ Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part, signed in Samoa in November 2023, available at: https://eur-lex.europa.eu/eli/agree_internation/2023/2862/oj.

⁸ Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States, of the Other Part (Cotonou Agreement), 23 June 2000, OJ 2000 L 317.

agreements ultimately place responsibility for development on migrants.⁹ While the main contribution to development in countries of origin is through remittances, they are ‘privately-owned’.¹⁰ The idea that this is a goal itself for the development of ‘countries of origin’ seems problematic. The agreements do not offer, for instance, debt relief measures. The promise that this type of migration management is going to bring development to all distracts from the real causes of uneven development: ‘power struggles, unequal relations between countries and capitalist causes of uneven economic development.’¹¹ Considering these observations, the dominant migration management narrative can be seen as a neo-colonial project that seeks to normalize the imposition of specific governance forms in these countries.¹²

On the other hand, the readmission clauses showcase the still incredibly present ‘root causes’ approach. However, where the evidence and data have demonstrated that more development corresponds, at least in the short term, to more immigration, can we believe that states are unaware of this? And if they are not, what is the real scope of the Development and Cooperation agreements? When considering the readmission clauses, this seems to be exactly the conditionality. In other words, the scope of Samoa, Cotonou before, and all the bilateral agreements on development aid and assistance seems to be precisely the obligation for states to cooperate to curb migration ‘from the source’. Develop-*ing* countries become Development-*al* states, to ultimately keep the ‘developing subjects’ in the ‘underdeveloped world.’

The three chapters of this thesis aim to analyze the provisions which obligate contracting parties to readmit their own nationals illegally present in a third country, i.e. readmission clauses, embedded in the Development and Cooperation Agreements. This strategy allows developed countries to provide for development cooperation only upon readmission conditionality. This, in turn, underscores the profound colonial legacies that dominate, still, these agreements. The First Chapter provides for an overview of the theories around the migration and development nexus. The Second Chapter presents the historical evolution of the EU-ACP agreements, and the details of the Cotonou Agreement and the recently adopted Samoa Agreement. This will serve as a basis for the in-depth analysis of the readmission clauses and their post-colonial implications in the Third Chapter.

⁹ Kabbanji, see note 2 above, p. 1.

¹⁰ Vincent Chetail, ‘Paradigm and Paradox of the Migration-Development Nexus: The New Border for North- South Dialogue’, p. 206 <<https://papers.ssrn.com/abstract=1641210>> accessed 24 May 2024.

¹¹ Kabbanji, see note 2 above, p. 7.

¹² *Ibid.*

Methodology

The present research aims to provide a comprehensive analysis of the Migration and Development Nexus, uncovering the neo-colonial legacies and asymmetries that persist in contemporary international agreements and national policies. The study examines the most prominent organizations dealing with the Migration and Development Nexus, including the Organization for Economic Co-operation and Development (OECD), the United Nations Development Programme (UNDP), the International Organization for Migration (IOM), and the World Bank. These organizations are selected due to their significant influence and historical role in promoting the 'win-win' approach to the Migration and Development Nexus. The IOM and the World Bank, in particular, were pioneers in advocating for this perspective, making them critical to understanding the evolution and impact of this approach.

The Samoa Agreement and the context of the Cotonou Agreement, along with their predecessors, are chosen for in-depth analysis. These agreements are the most comprehensive international frameworks addressing development and cooperation. The latest version of the Samoa Agreement, in force as of April 11th, 2024, provides a detailed materialization of the Migration and Development Nexus. This study also considers the European Union's use of migration conditionality in various agreements, including partnership and cooperation agreements, preferential trade agreements, bilateral labor agreements, and development aid and assistance agreements. The Samoa Agreement is particularly scrutinized to understand how readmission clauses are embedded in a multi-country framework.

To illustrate the inclusion of readmission clauses, the thesis includes the case studies of Italy and France. These countries are selected because of their historical involvement in Development Cooperation Agreements since the Treaty of Rome and their current status as prominent recipients of immigrants in the EU. The comparison highlights differing approaches: France incorporates readmission clauses in its bilateral agreements, reflecting a 'win-win' approach, while Italy's commitment to readmission and return is expressed through framework agreements like the Mattei Plan for Africa and the Africa Fund, which emphasize a 'root causes' approach to migration. Finally, the study employs a post-colonial lens to critically analyze the agreements and policies. This perspective is essential for understanding the present dynamics in light of historical legacies. The post-colonial approach highlights the power imbalances and hegemonic influences embedded in these agreements. This lens is chosen for its ability to reveal the underlying perception that something is amiss in the uneven outcomes of these agreements, identifying the root causes in historical power structures and advocating for their

dismantling.

Chapter 1: The Migration and Development Nexus

Migration matters for at least three impacts it has on society: the contribution to the global economy, the significance of migration for development, and the linkages between migration and security.¹³ This idea, and therefore the Migration and Development Nexus, is at the heart of the two main *conflicting*¹⁴ policy approaches to migration.¹⁵ The first one addresses the root causes of migration through development aid and assistance;¹⁶ and the second one which leverages on migration as a tool to foster development in countries of origin, transit, and destination.¹⁷ The latter has been especially promoted by international institutions.¹⁸

The ‘root causes’ approach or ‘stay-at-home’ policy has been the driving force for migration policies, particularly in the European Union since the 1990s.¹⁹ At first, the approach was endorsed by other UN international institutions as well. However, as will be explored later, in 1994 the UN International Conference on Population and Development came up with the Cairo Declaration which endorses a middle ground position between the two approaches.²⁰ Empirical evidence over the past 30 years shows that the ‘root causes’ approach is a migration control tool rather than a real development contribution for sending countries.²¹ On the other hand, the approach that views migration as a tool to foster development has been endorsed

¹³ Anne T Gallagher, *Migration, Human Rights, and Development: A Global Anthology* (International Debate Education Association 2013), p. 26.

¹⁴ This idea was analyzed for the first time by Vincent Chetail in: Chetail, ‘Paradigm and Paradox of the Migration-Development Nexus’, see note 10 above, p. 186.

¹⁵ This perspective argues that migration stems from a lack of development. It proposes that boosting aid and development programs could discourage or lessen migration *ibid.*, p. 187; See also: Vincent Chetail, ‘Migration and Development’ in Marie De Somer, Jean-Louis De Brouwer and Philippe De Bruycker (eds), *Tampere 2.0: Towards a new European consensus on migration* (European Policy Center 2019), p. 41; Chetail, *International Migration Law*, see note 4 above, p. 310–317.

¹⁶ Chetail, ‘Migration and Development’, see note 15 above, p. 41.

¹⁷ *Ibid.*

¹⁸ The International Organization for Migration: International Organization for Migration (IOM), ‘Migration Integration Development: Bolster Inclusion to Foster Development’ (International Organization for Migration Coordination Office for the Mediterranean 2019) <<https://publications.iom.int/books/migration-integration-development-bolster-inclusion-foster-development>> accessed 1 May 2024; ‘IOM Institutional Strategy on Migration and Sustainable Development’ <<https://publications.iom.int/books/iom-institutional-strategy-migration-and-sustainable-development>> accessed 1 May 2024; the World Bank: World Bank, see also note 3 above; the United Nations Development Program ‘Promoting Development Approaches to Migration and Displacement’ (United Nations Development Programme 2019); On IOM, UNDP and others: Ninna Nyberg Sørensen and others (eds), *The Migration-Development Nexus* (United Nations ; International Organization for Migration 2003); On the World Bank and Interamerican Development Bank Nina Glick Schiller and Thomas Faist (eds), *Migration, Development, and Transnationalization: A Critical Stance* (Reprinted, Berghahn Books 2012), p. 149.

¹⁹ Chetail, ‘Paradigm and Paradox of the Migration-Development Nexus’, see note 10 above, p. 187.

²⁰ *Ibid.*, at p. 189.

²¹ *Ibid.*, at p. 192.

in the past years mainly by international institutions and organizations. This view values a more ‘collaborative approach.’ Yet, it still encapsulates in its premises the idea that development strategies are the solution to curb migration.²² Many International Organizations have been promoting this approach. This analysis focuses on four organizations which have promoted a liberal approach: the World Bank, the IOM, the OECD, and the UNDP. Far from embracing one position over the other one, the literature review of the first chapter seeks to highlight the limits of both approaches.

Based on the economic principle that asserts that a raise in income within developing nations corresponds to lower emigration rates, policymakers engaged in the domains of international development and trade diplomacy trying to address the root causes of migration.²³ Evidence has proven that this assumption which sees migration and development as ‘negatively and linearly correlated processes’²⁴ is fundamentally absent of empirical evidence and aid and trade policy with this scope have ‘no significant effect on reducing people’s propensity to migrate.’²⁵ This chapter examines the theoretical landscape of migration, tracing the historical evolution of theories of migration. It then analyzes two prominent approaches: the ‘root causes’ and the ‘win-win’ approach. Following this, the chapter explores how international institutions incorporate the ‘win-win’ approach into their migration policies. Finally, it concludes by examining how the migration and development nexus is reflected within different typologies of bilateral agreements.

A. Historical Evolution of Theories of Migration

Looking at the evolution of theories of migration, two major and opposing trends underlie the analytical approach of migration and development studies. Up until recently, they were mostly studied as two separate fields: the vicious circle and the virtuous circle.²⁶ In essence, the vicious circle associates migration with negative effects on development, whereas the virtuous circle emphasizes the possible positive effects of migration. The latter stresses the positive role of migration on development in countries of origin and in receiving countries. In countries of origin, development would be encouraged through the exchange of remittances, while in countries of destination by filling labor market gaps. Migrants are seen as ‘potential subjects

²² *Ibid.*, at p. 200.

²³ Clemens, see note 2 above, p. 1.

²⁴ Hein de Haas, ‘Turning the Tide? Why “Development Instead of Migration” Policies Are Bound to Fail’, p. 16.

²⁵ *Ibid.*, at p. 17.

²⁶ Schiller and Faist, see note 18 above, p. 148.

of regional and local development.¹²⁷ In the last century, these two trends have been alternatively more or less popular among scholars. Nowadays, the second approach seems to be prevailing, even if in practice policies seem to have a less liberal account of fostering migration, and instead try to curb it.

Starting in the 1950s and 1960s, this era was dominated by a '*developmentalist* optimism,¹²⁸ where migration was seen largely as a beneficial force that could transfer skills and capital from developed to developing regions, thus fostering economic growth in both the migrants' countries of origin and their destinations.¹²⁹ The following decade (1970s-1980s) saw a shift towards a more critical view, influenced by neo-Marxist theories. These scholars argued that migration contributed to underdevelopment in 'migrants sending societies,'¹³⁰ due to brain drain and the dependency of developing countries on developed countries.¹³¹ Empirical studies on migration and development in Mexico¹³² focused on the - negative - role of remittances sent by Migrants located in the US. The negative impact was evidenced by social differentiation, land price inflation, and accumulation of wealth in the hands of a few.¹³³ The 1990s saw renewed optimism in that empirical research supports the complex and sometimes beneficial impacts of migration on development.¹³⁴ This period emphasized the role of remittances and the potential for migration to contribute to development through capital and knowledge transfer.¹³⁵ In particular, these studies¹³⁶ analyzed the - positive - role of remittances in financing productive investments and social infrastructures.¹³⁷

The beginning of the new century saw a more nuanced understanding that integrates previous perspectives. It acknowledges the heterogeneous impacts of migration, which can vary greatly depending on numerous factors such as the policies of destination countries, the

¹²⁷ *Ibid.*, at p. 149.

¹²⁸ de Haas, 'Migration and Development', see note 2 above, p. 227.

¹²⁹ *Ibid.*, at pp. 230–231.

¹³⁰ This is what is supported by the so-called "migratory cumulative causation theory. In neo-Marxist words, migration reinforces inequalities because migrants - who tend to be already employed, and more entrepreneurial, send remittances to families that are already relatively better off. *Ibid.*, at pp. 235-240.

¹³¹ de Haas, 'Migration and Development,' see note 2 above, p. 238.

¹³² Richard Mines, *Developing a Community Tradition of Migration to the United States: A Field Study in Rural Zacatecas, Mexico, and California Settlement Areas* (Program in United States-Mexican Studies, University of California, San Diego 1981); James Stuart and Michael Kearney, *Causes and Effects of Agricultural Labor Migration from the Mixteca of Oaxaca to California* (Program in US-Mexican Studies, University of California, San Diego 1981).

¹³³ Schiller and Faist, see note 18 above, p. 150.

¹³⁴ de Haas, 'Migration and Development', see note 2 above, p. 242.

¹³⁵ *Ibid.*

¹³⁶ Jorge Durand, *Más allá de la línea: patrones migratorios entre México y Estados Unidos* (Consejo Nacional para la Cultura y las Artes 1994); Jorge Durand, Emilio A Parrado and Douglas S Massey, 'Migradollars and Development: A Reconsideration of the Mexican Case' (1996) 30 *International Migration Review*, p. 423; Douglas S Massey and Emilio A Parrado, 'International Migration and Business Formation in Mexico' (1998) 79 *Social Science Quarterly* 1.

¹³⁷ Schiller and Faist, see note 18 above, p. 151.

nature of the migration, and specific local conditions in origin countries.³⁸ This framework - also called 'transnationalism' - focuses on the sustained ties migrants maintain across borders, including economic, social, and political connections, and highlights the dual engagement of migrants with both their countries of origin and of residence.³⁹ This positive association has been analyzed from two perspectives: the first focuses on the economy of migration, or the economy of services generated in the countries of origin by the transnational practices of migrants such as phone calls, tourism, and the nostalgia industry to name a few.⁴⁰ The second approach focuses on the contribution of migrant organizations to local and regional development processes.⁴¹

This academic approach to the Migration and Development Nexus is broadly maintained throughout the last 20 years and is conceptualized by de Haas as an 'Aspirations and Capabilities Framework.' This conceptualization integrates economic and social theories to explain migration and underscores how development impacts people's abilities (capabilities) and desires (aspirations) to migrate, influenced by economic conditions like remittances, which alter economic opportunities and constraints.⁴² Indeed, he argues that development 'expands people's access to material resources, social networks, and knowledge,'⁴³ and in fact, access to financial resources and education increases the willingness of individuals to emigrate.⁴⁴ Strikingly, this conceptualization clashes with the trend in policy and migration governance to tackle migration at its roots and in fact, de Haas highlights how restrictive measures can paradoxically increase unauthorized migration by limiting legal pathways, thus demonstrating the complex interaction between policy, economic conditions, and social factors in migration dynamics.

B. Different Stances: Root Causes and Win-Win Approaches

While International Institutions increasingly recognize migration as a tool for development,

³⁸ de Haas, 'Migration and Development', see note 2 above, pp. 248–249.

³⁹ Hein de Haas, 'A Theory of Migration: The Aspirations-Capabilities Framework' (2021) 9 *Comparative Migration Studies* 8, 16–17; Schiller and Faist, see note 18 above, pp. 151–152.

⁴⁰ Manuel Orozco, 'Worker Remittances in an International Scope' (2010) IDB Publications <<https://publications.iadb.org/en/publication/10960/worker-remittances-international-scope>> accessed 12 May 2024.

⁴¹ Raúl Delgado Wise, Humberto Márquez Covarrubias and Héctor Rodríguez Ramírez, 'Organizaciones transnacionales de migrantes y desarrollo regional en Zacatecas'; Schiller and Faist, see note 18 above, p. 152.

⁴² de Haas, 'A Theory of Migration', see note 39 above, pp. 16–17.

⁴³ Hein de Haas, Stephen Castles and Mark J Miller, *The Age of Migration: International Population Movements in the Modern World* (2020), p. 42.

⁴⁴ *Ibid.*

uncertainty remains on how to achieve this. The shift in state commitment from the 2013 Declaration to the more ambitious 2016 New York Declaration (NYD) preceding the 2018 Global Compact for Safe, Orderly, and Regular Migration (GCM) exemplifies this very challenge. In general, many states put into practice policies aimed at addressing the root causes of migration and invest in development plans in the ‘country of origin’ hoping that this will curb the migration flows. Despite the non-binding nature of the 2013 Declaration and the 2016 NYD, the extensive rounds of negotiations showcase the momentum in creating a solid infrastructure addressing migration governance.⁴⁵ Moreover, the NYD stresses the need to promote international cooperation on border control and management, emphasizing the element of ‘protection of the security of states.’⁴⁶ This securitized approach at the institutional level was also reflected in the framing of state policies directed at development aid and migration management. However, many scholars in the past 30 years have strongly opposed the efficacy and the legitimacy of this theory.⁴⁷

i. Root Causes Approach

The root causes approach relies on the assumption that eradicating poverty, creating jobs, and fostering economic development in impoverished nations will address the primary motivations behind emigration. Additionally, it is assumed that providing sufficient humanitarian assistance to refugees in their countries of origin or in nearby nations prevents the necessity for further displacement. Essentially, this approach claims that it is more advantageous to support migrants within their own countries, or nearby than to manage the challenges of irregular migration in Europe.⁴⁸ In other words, this theory assumes that ‘development in poor countries will reduce migration,’ and therefore many receiving countries use ‘development aid and trade as tools to diminish migration pressure.’⁴⁹ The fundamental premise of this approach is that the primary drivers of emigration include insufficient development opportunities in developing

⁴⁵ Clemens, see note 2 above, p. 2.

⁴⁶ UN General Assembly, New York Declaration for Refugees and Migrants : resolution / adopted by the General Assembly, A/RES/71/1, 3 October 2016, <https://www.refworld.org/legal/resolution/unga/2016/en/112142>, accessed 28 May 2024.

⁴⁷ Vincent Chetail, ‘The Politics of Soft Law: Progress and Pitfall of the Global Compact for Safe, Orderly, and Regular Migration’ (2023), p. 5 *Frontiers in Human Dynamics* 1243774; Chetail, *International Migration Law*, see note 4 above; Sandra Lavenex and Rahel Kunz, ‘The Migration–Development Nexus in EU External Relations’ [2008] *European Integration* <<https://www.tandfonline.com/doi/abs/10.1080/07036330802142152>> accessed 11 May 2024; Hein de Haas, ‘The Migration and Development Pendulum: A Critical View on Research and Policy’ (2012) 50 *International Migration* 8; de Haas, see note 2 above; Susan Fratzke Salant Brian, ‘Moving Beyond “Root Causes”: The Complicated Relationship between Development and Migration’ (*migrationpolicy.org*, 9 January 2018) <<https://www.migrationpolicy.org/research/moving-beyond-root-causes-complicated-relationship-between-development-and-migration>> accessed 1 May 2024.

⁴⁸ Patryk Kugiel and others, ‘Can Aid Solve the Root Causes of Migration? A Framework for Future Research on the Development-Migration Nexus’, p. 2.

⁴⁹ De Haas, see note 2 above, p. 78.

countries, often leading to violent conflicts and human rights abuses associated with weak governance. These conditions are viewed as the main factors compelling individuals to flee their homes.⁵⁰

Development and aid programs to address these issues might seem a successful and long-term solution to stop migration.⁵¹ Still, evidence has shown that a misunderstanding of the causes of migration underlies the whole argument:⁵² economic development leads, at least in the short run, to more migration. Moreover, the root causes approach fundamentally overlooks the fact that while poverty underpins much of the migration waves,⁵³ international migrants often originate from countries or specific regions experiencing significant changes in global networks of trade, information, and production.⁵⁴ Indeed, in addressing the ‘root causes’ of migration, development assistance has emerged as a strategic approach to mitigating migration by enhancing economic and social conditions in origin countries.⁵⁵ This strategy has become particularly prominent in policy dialogues, suggesting that improving economic opportunities and basic services reduces the incentive to migrate. For instance, employment creation programs often target vulnerable demographics, such as women and youth, to curb economic-driven migration. Additionally, interventions frequently extend to enhancing local-level services like healthcare and education, thereby making the option to remain in one's country more attractive.⁵⁶

This theory has been applied in a range of fashions by various countries globally. In the case of the US in 1993, President Clinton took a more liberal perspective on migration, arguing that trade liberalization would generate economic growth and reduce migration from Mexico. On the other end of the spectrum, Denmark took a more prominently control-oriented approach, describing aid in the ‘third world’ as a critical gatekeeper for the ‘specter of mass immigration.’⁵⁷ The latter approach is also endorsed at the EU level: in 2005, the European Commission José Manuel Barroso’s declaration that the problem of immigration can only be addressed effectively through an ambitious and coordinated development cooperation generated concerns among scholars.⁵⁸ A few years ago, the then president of the EU Jean- Claude Juncker reiterated the same idea at the launch of the European Union

⁵⁰ Sørensen and others, see note 18 above, p. 290.

⁵¹ De Haas, see note 2 above, p. 78.

⁵² *Ibid.*, at p. 79.

⁵³ Sørensen and others, see note 18 above, p. 290.

⁵⁴ *Ibid.*

⁵⁵ Michael A Clemens and Hannah M Postel, ‘Deterring Emigration with Foreign Aid: An Overview of Evidence from Low-Income Countries’ (2018) 44 *Population and Development Review* pp. 667-668.

⁵⁶ *Ibid.*, at pp. 668–669.

⁵⁷ De Haas, see note 2 above, p. 78.

⁵⁸ Clemens, see note 2 above, p. 2.

Emergency Trust Fund to prevent illegal migration from Africa (EUTF). The EUTF inaugurated the collaboration with African countries to address the root causes of illegal migration and ‘promoting economic and equal opportunities, security, and development.’⁵⁹

This same narrative is also shared by the governments and authorities of the so-called origin countries.⁶⁰ Government efforts also encompass governance improvements and conflict prevention intended to create a more stable local environment that discourages forced migration. Specific interventions include vocational training, food security enhancement, and rule of law initiatives. However, the scope and impact of these programs can sometimes be vague, described under broad terms such as ‘resilience building’ or migration management. A notable example of such broad-spectrum intervention is the EU Trust Fund for Africa, which directs substantial funds towards reducing migration through multifaceted development programs aimed at addressing the direct and indirect drivers of migration from Africa and the Middle East.⁶¹

ii. Win-Win approach: Migration as a Tool for Development

During the 20th century, the root causes approach was the prevalent approach to the migration and development nexus. The potential impact of migration on development was generally negatively accounted for, highlighting possible consequences such as brain drain and the overall depletion of human capital.⁶² Today, most researchers and, above all, international institutions underlie the positive impacts thereof. This shift in the focus of academia draws from the idea that migrants can be considered development subjects, and can therefore be included in the development projects of both countries of destination and of origin, through the so-called economy of remittances.⁶³

Essentially, this approach asserts that migrants contribute to the economic development and poverty reduction in their countries of origin in several key ways: through remittances, by engaging in diaspora activities that promote development, by transferring technology and skills upon their return, and by influencing trade dynamics between their home and host countries.⁶⁴ Additionally, they provide non-financial benefits such as social, cultural, and political exchanges. A notable statistic underscores the significance of these contributions: in 2021,

⁵⁹ De Haas, see note 2 above, pp. 78–79.

⁶⁰ *Ibid.*

⁶¹ Clemens and Postel, see note 55 above, p. 669.

⁶² Kugiel and others, see note 48 above, p. 5.

⁶³ World Bank, see note 3 above, p. 128.

⁶⁴ Kugiel and others, see note 48 above, p. 5; Kabbanji, see note 2 above, p. 4.

remittances to low- and middle-income countries were expected to total US\$605 billion. Moreover, for the second time since 2019, remittances exceeded foreign direct investment, and total Official Development Assistance (ODA) flows to low and middle-income countries.⁶⁵ Migration is acknowledged internationally for its extensive benefits not only to migrants and their families but also to both their countries of origin and destination because of at least three mechanisms that are generated by international migration: Remittances, Diaspora Engagement, and Return Migration, or Entrepreneurship.⁶⁶ While migrants play essential roles in filling labor market gaps serving as healthcare professionals, construction workers, and caregivers, which are vital to supporting both the health systems and economic infrastructure,⁶⁷ the role of remittances in the development of countries of origin is stressed by the majority of the literature on the topic. The focus on migration as a development factor was notably enhanced a decade ago by the World Bank's initiatives to measure remittance volumes. Globally, the total remittance flows surged to US\$831 billion by the end of 2022, marking a substantial increase from earlier years. A large portion of these remittances, about US\$647 billion, was sent to developing countries, highlighting the crucial role they play in supporting economies in these regions.⁶⁸ Moreover, over the past ten years remittances continue to outpace international development aid by a significant margin, maintaining their position as a vital source of financial support for many households.⁶⁹ Indeed, remittances bolster the balance of payments in their home countries, facilitating the acquisition of crucial imports, access to capital markets, and reduced interest rates on sovereign debt.⁷⁰ In sum, they help alleviate poverty, improve health outcomes, and support education and housing improvements in recipient countries. This is also reflected in the Sustainable Development Goals (especially

⁶⁵ World Bank, see note 3 above, p. 128.

⁶⁶ Sørensen and others, see note 18 above, pp. 20–28; International Organization for Migration (IOM), see note 18 above, pp. 35–45.

⁶⁷ Marie McAuliffe and others, 'Chapter 3: Migration and Migrants: Regional Dimensions and Developments' in Marie McAuliffe and Linda Adhiambo Oucho (eds), *World Migration Report 2024* (International Organization for Migration IOM 2024), p. 3; Celine Bauloz and others, 'Chapter 6: Gender and Migration: Trends, Gaps and Urgent Action' in Marie McAuliffe and Linda Adhiambo Oucho (eds), *World Migration Report 2024* (International Organization for Migration IOM 2024); See also: Internationale Arbeitsorganisation and Internationale Arbeitsorganisation (eds), *ILO Global Estimates on International Migrant Workers: Results and Methodology* (Third edition, ILO 2021) 24–25; OECD and International Labour Organization, *How Immigrants Contribute to Developing Countries' Economies* (OECD 2018), pp. 77–102 <https://www.oecd-ilibrary.org/development/how-immigrants-contribute-to-developing-countries-economies_9789264288737-en> accessed 28 May 2024; Peter D Sutherland, 'Migration Is Development: How Migration Matters to the Post-2015 Debate' (2013) 2 *Migration and Development* pp. 151-152.

⁶⁸ Marie McAuliffe and others, 'Chapter 2: Migration and Migrants: A Global Overview' in Marie McAuliffe and Linda Adhiambo Oucho (eds), *World Migration Report 2024* (International Organization for Migration IOM 2024), p. 36; 'Remittances Grow 5% in 2022, Despite Global Headwinds' <<https://www.worldbank.org/en/news/press-release/2022/11/30/remittances-grow-5-percent-2022>> accessed 28 May 2024.

⁶⁹ Remittances Grow 5% in 2022, Despite Global Headwinds', see note 68 above, and Sutherland, see note 67 above, p. 152.

⁷⁰ Sutherland, see note 67 above, p. 152.

target 10.7)⁷¹ of the new Agenda 2030, adopted in 2015, and underlined in the GCM signed by 164 countries in late 2018.⁷²

As said, this idea is widely promoted even by the current Secretary General Antonio Guterres and his predecessors in this position, who promoted the different high-level dialogues and the debate among states to start building an international infrastructure that reflects the scope of cooperation and collaboration. However, and notwithstanding the attractiveness this approach to the Migration and Development Nexus can be, it is often addressed in an oversimplistic way as well. Indeed, as many scholars underlined,⁷³ the main scope of the policies adopted, especially at the national level, is that of curbing migration. While the main - and, as argued, unsuccessful - approach to achieving that goal is the 'root causes' approach, the idea of using migrants as a tool for development also seems somewhat wrong. Many have warned against the risk of taking too optimistic stances on the role of migration in enhancing growth and seeing migrants as agents of development.⁷⁴ This stance on the nexus lacks a critique of the concept of development itself. It advocates for the positive effects of migration on development without questioning what development actually means. As Bakewell argues, the persistent *sedentary bias* embedded in this approach rests on the underlying assumption that the ultimate aim of development is to enable people to remain in their 'home' regions.⁷⁵

C. The Migration and Development Nexus in International Institutions

While the 'root causes' approach is mainly present in national laws and policies, the position of international organizations in general tends to encourage states to endorse the 'win-win' approach. As said, the latter approach can in principle bring positive effects, such as cooperation among states and solidarity. However, similarly to the 'root causes' one, the risks embedded in this approach are not to be overlooked. This is based on the fact that migration can bring development both to countries of destination through the 'labor force' integrated into the job market, and to countries of origin, mainly through remittances. Moreover, this

⁷¹ SDG 10.7 "To facilitate orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies". 'SDG10: Reduce Inequalities' (*United Nations : Office on Drugs and Crime*) <http://www.unodc.org/unodc/en/about-unodc/sustainable-development-goals/sdg10_-reduce-inequalities.html> accessed 10 June 2024.

⁷² Kugiel and others, see note 48 above, p. 5.

⁷³ Chetail, *International Migration Law*, see note 4 above; Haas, see note 2 above; Clemens and Postel, see note 55 above.

⁷⁴ Ronald Skeldon, 'International Migration as a Tool in Development Policy: A Passing Phase?' (2008) 34 *Population and Development Review* 1; de Haas, 'The Migration and Development Pendulum', see note 47 above.

⁷⁵ Oliver Bakewell, "Keeping Them in Their Place": The Ambivalent Relationship between Development and Migration in Africa' (2008) 29 *Third World Quarterly*, pp. 1341-1342.

approach is based on the idea that 1) there has to be a 'match motive framework'⁷⁶ that matches high-skilled and low-skilled migrants with the needs of the country of destination; and 2) the scheme must be adapted in such a way as to differentiate between refugees and economic migrants.⁷⁷

However, this model should be taken for what it is: a model. It is naïve to believe that in real life the categorization of people that migrate 'ticks the boxes' in such a way that is easy to distinguish among categories. Indeed, a refugee can also be an economic migrant simultaneously or at different moments of the migration path. Indeed, the 'motives' - or 'root causes' - of migration are usually the result of a complex interplay of causes, aspirations, and motives, challenging the conventional dichotomy,⁷⁸ and resulting in an overlapping of the migrant statuses.⁷⁹ At the same time, even the 'match-motive framework' poses significant issues because it does not account for the 'real functioning' of migration.⁸⁰ In that regard, while no formal legal definition of a migrant exists, most experts agree on the definition proposed by the IOM: 'a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.'⁸¹ However, migration studies have historically been constrained by a *compartmentalized approach* based on a simplistic and binary opposition between forced and voluntary migration, reflecting the priorities and policies of destination states.⁸² Interdisciplinary sociological, anthropological, and political science research have highlighted the shortcomings of this binary legal distinction between refugees and migrant workers.⁸³

⁷⁶ World Bank, see note 3 above, p. 21–33.

⁷⁷ *Ibid.*, at pp. 28–30.

⁷⁸ *Ibid.*

⁷⁹ Chetail, *International Migration Law*, see note 4 above, p. 8.

⁸⁰ Katie Kuschminder and Khalid Koser, 'Understanding Irregular Migrants' Decision Making Factors in Transit' (2016) Working Paper <<https://cadmus.eui.eu/handle/1814/45464>> accessed 28 May 2024; de Haas, see note 2 above; Chetail, *International Migration Law*, see note 4 above, pp. 8–9.

⁸¹ 'Who Is a Migrant?' (*International Organization for Migration*) <<https://www.iom.int/who-migrant-0>> accessed 28 May 2024.

⁸² Chetail, *International Migration Law* (n 4) 8; The 'Binary' has also implications on the (i)legality of stay. As Tyme argues, " (il)legality simultaneously and can change over time: people entering lawfully with a Schengen visa do not have labour market access and can engage, therefore, in 'illegal work' Daniel Thym, 'Irregular Presence and Return' in Daniel Thym, *European Migration Law* (1st edn, Oxford University Press Oxford 2023), pp. 506–507 <<https://academic.oup.com/book/46560/chapter/407969950>> accessed 31 May 2024.

⁸³ See for instance: Rebecca Hamlin and Hamlin, 'Chapter 1. The Migrant/Refugee Binary', *Crossing. How We Label and React to People on the Move* (Stanford University Press 2021), pp. 10–12 <<https://www.degruyter.com/document/doi/10.1515/9781503627888-002/html>> accessed 13 June 2024; Lamis Abdelaaty and Rebecca Hamlin, 'Introduction: The Politics of the Migrant/Refugee Binary' (2022) 20 *Journal of Immigrant & Refugee Studies*, pp. 233–234; Rebecca Hamlin, 'Migrants'? 'Refugees'? Terminology Is Contested, Powerful, and Evolving' [2022] *migrationpolicy.org* <<https://www.migrationpolicy.org/article/terminology-migrants-refugees-illegal-undocumented-evolving>> accessed 13 June 2024; Georgina Ramsay, 'Time and the Other in Crisis: How Anthropology Makes Its Displaced Object' (2020) 20 *Anthropological Theory*, pp. 385–389; Zvezda Vankova, 'Refugees as Migrant Workers after the Global Compacts? Can Labour Migration Serve as a Complementary Pathway for People in Need of Protection into Sweden and Germany?' (2022) 11 *Laws* 88, p. 20; Chetail, *International Migration Law* (n 4) 8; Heaven Crawley and Dimitris Skleparis, 'Refugees, Migrants, Neither,

This issue is further exacerbated by the uneven ratification of international instruments. While the Refugee Convention⁸⁴ and the conventions addressing the "criminal aspects"⁸⁵ of international migration have been widely ratified, the UN Convention on Migrant Workers⁸⁶ has only been ratified by 90 states.⁸⁷ In light of this clarification, international migration law should not be sidetracked by the fictitious categorization of migrants. Instead, it should benefit from a comprehensive examination of legal categories and a contextualization with respect to the wider normative landscape.⁸⁸ Additionally, International Treaties and Conventions should be read through an integrated approach. Depending on the relevant instrument, a migrant person can be 'categorized' through different lenses, but that does not mean that the categories are mutually exclusive: one can be a migrant worker, an asylum seeker, and a trafficked person at the same time.⁸⁹ From an institutional perspective, global governance on migration has also seen different phases and cycles and sees its culmination nowadays with the triumph of soft law instruments,⁹⁰ and in particular of the GCM, adopted in 2018 through a UNGA resolution (A/RES/73/195).⁹¹ In the last 25 years, International Organizations and Institutions have contributed to the debate with the shaping of international infrastructure behind the Migration and Development Nexus.

Thirty years ago, global migration governance started an intense period of experimentation marked by the International Conference on Population and Development organized by the United Nations Population Fund (UNFPA) and the UN Department for Economic and Social Affairs (UNDESA) in Cairo.⁹² This 'first cycle' sees an attempt to promote a 'balanced and consensual approach' between 1994 and 2005,⁹³ with the view of reconciling

Both: Categorical Fetishism and the Politics of Bounding in Europe's "Migration Crisis" (2018) 44 *Journal of Ethnic and Migration Studies*, p. 48.

⁸⁴ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

⁸⁵ Protocol against the Smuggling of Migrants by Land, Sea, and Air (adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507 (Smuggling Protocol); Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 (Trafficking Protocol).

⁸⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3 (ICRMW).

⁸⁷ Chetail, *International Migration Law*, see note 4 above, p. 167.

⁸⁸ *Ibid.*, at p. 9.

⁸⁹ *Ibid.*, at p. 168.

⁹⁰ *Ibid.*, at p. 300; See also Paula García Andrade, 'EU Cooperation with Third Countries within the New Pact on Migration and Asylum: New Instruments for a "Change of Paradigm"?' in Daniel Thym and Odysseus Academic Network (eds), *Reforming the Common European Asylum System* (Nomos Verlagsgesellschaft mbH & Co KG 2022) <<https://www.nomos-elibrary.de/index.php?doi=10.5771/9783748931164-223>> accessed 30 April 2024; See Also Joost Pauwelyn, 'Is It International Law Or Not, And Does It Even Matter'.

⁹¹ UN General Assembly, Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195, 19 December 2019, <https://www.refworld.org/legal/resolution/unga/2019/en/147186> [accessed 08 May 2024].

⁹² Chetail, *International Migration Law*, see note 4 above, p. 300.

⁹³ *Ibid.*

diverging interests between countries of origin and of destination, and Global North vs. Global South views.⁹⁴ The UN Program of Action, emerging from the Cairo Conference, serves as a foundational document that articulates a holistic framework for understanding the Migration and Development Nexus. This document, notable for its broad yet somewhat vague terminology, has facilitated a unified approach among nations on multiple fronts.⁹⁵ Key areas of focus include streamlining the process of remittance transfers, ensuring the temporary migration upholds the human rights of migrants and tackling issues such as racial discrimination and integration policies. Moreover, the document addresses the challenges of human trafficking and enforces the principle of non-refoulement, among other concerns. This comprehensive blueprint has significantly shaped international cooperation on migration and development.⁹⁶

Between 2006 and 2015, a second cycle witnessed a stronger engagement of UN institutions in approaching the migration and development nexus,⁹⁷ which culminated in a new turn in 2016 through the adoption of the NYD for refugees and migrants, and the subsequent adoption of the UN Global Compacts.⁹⁸ If the twenty years of ‘first experimentation’ were characterized by tergiversation and lack of any institutional strong stance at the UN level, since 2006 the issue of international migration started to be included in the broader and less divisive auspices of the ‘development agenda.’⁹⁹ The publication of the report on Migration and Development in 2006 by the UN Secretary-General inaugurated a new era marked by inter-state cooperation with a renovated focus on the Migration and Development Nexus.¹⁰⁰ Moreover, several institutional changes solidified 2006 as the turning point of migration global governance, including the creation of a UN Special Representative on migration, the creation of the Global Migration Group to enhance inter-agency cooperation, and the strong involvement of the General Assembly as a forum for inter-state cooperation.¹⁰¹ Regarding the latter, between 2006 and 2015 it organized two High-Level Dialogues on International Migration and development: the outcome of the first one in 2006 was the creation of a Global Forum on Migration Development, and the second, in 2013, resulted in the very first declaration in migration and development.

The 2006 Global Forum on Migration and Development inevitably laid the ground for

⁹⁴ *Ibid.*, at p. 301.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*, at p. 310.

⁹⁸ *Ibid.*, at p. 300.

⁹⁹ *Ibid.*, at p. 310.

¹⁰⁰ *Ibid.*, at pp. 310–311.

¹⁰¹ *Ibid.*, at p. 310.

the global understanding of the nexus between the two. It was understood as a forum in which states could debate the positive aspects - and reduce the negative impacts - of international migration on development. The second High-Level Dialogue convened in 2013, facing the same model of round-table discussions as the one adopted in 2006.¹⁰² However, the 2013 dialogue saw the adoption of an additional declaration: for the first time since 1985, the adoption signals a convergence in the commitment of states to work together on Migration, Development, and Human Rights. Since the 2013 forum, there have been no more High-Level Dialogues. However, two significant events regarding the evolution of migration governance have marked the last 10 years: the 2016 UN Summit for Refugees and Migrants, which led to the adoption of the NYD, and the adoption in 2018 of the GCM.¹⁰³ Additionally, in May 2022, the General Assembly organized the first follow-up International Migration Review Forum (IMRF) on the GCM, further emphasizing the continued global commitment to addressing migration issues.¹⁰⁴

While the declaration adopted in 2013 did not mention the traditional 'root causes' approach and instead focused on the possibility for states to work on migration as a tool for development,¹⁰⁵ the NYD's focus is much more 'control oriented'¹⁰⁶ and sees somehow a *retrofront* on the way in which 'countries of destination' express their intention to collaborate with the 'countries of origin' or 'countries of passage.'

It is important to note that the 2013 declaration anticipated the 'further mainstreaming of migration' included in the 2030 Sustainable Development Goals (SDGs). Indeed, through the 2015 Addis Ababa Action Agenda and the 2030 Agenda for Sustainable Development,¹⁰⁷ recognition was given to the significant role migrants play in sustainable development, both in their countries of origin and destination. The SDGs highlight the importance of protecting the rights of migrant workers, especially women (target 8.8), implementing well-managed migration policies (target 10.7), and reducing the costs of remittance transfers (target 10.c).¹⁰⁸

¹⁰² The four roundtable discussions gravitated around four aspects: 1) the effects of migration on development, 2) measures for the protection of human rights of migrants, 3) the multidimensional aspects of international migration and development, including remittance, and 4) the building of partnerships and capacity building at institutional level. *Ibid.*, at p. 312.

¹⁰³ UNGA Res 195 (19 December 2018) UN Doc A/RES/73/195, see note 91 above.

¹⁰⁴ 'International Migration Review Forum (IMRF)' (OHCHR, May 2022) <<https://www.ohchr.org/en/migration/international-migration-review-forum-imrf>> accessed 28 May 2024.

¹⁰⁵ Chetail, *International Migration Law*, see note 4 above, p. 313.

¹⁰⁶ *Ibid.*, at p. 325.

¹⁰⁷ UN General Assembly, *Transforming our world : the 2030 Agenda for Sustainable Development*, A/RES/70/1, 21 October 2015, <https://www.refworld.org/legal/resolution/unga/2015/en/111816>, accessed 12 May 2024.

¹⁰⁸ OECD, *Interrelations between Public Policies, Migration and Development* (OECD 2017) p . 22 <https://www.oecd-ilibrary.org/development/interrelations-between-public-policies-migration-and/development_9789264265615-en> accessed 6 May 2024.

The next subsections will present the Migration and Development Nexus as approached by four international institutions - the World Bank, the IOM, the UNDP, and the OECD - to provide a panorama of the views at the international governmental level.

i. World Bank

The World Bank has promoted a liberal ('win-win') approach to the Migration and Development Nexus, recognizing migration as instrumental for development since the 2000s, insisting in particular on the virtues of remittances.¹⁰⁹ A key moment in this shift was the publication of the 'Global Economic Prospects 2006: Economic Implications of Remittances and Migration' report.¹¹⁰ This report highlighted the significant role of remittances in development and underscored the importance of optimizing migration for economic growth in both origin and destination countries.¹¹¹

The 2023 World Bank Report on Migration presented a comprehensive examination of migration's impacts on global dynamics, positing migration as both a challenge and a catalyst for growth and collective prosperity. The report introduced a 'match-motive framework' to analyze the trade-offs associated with migration, proposing that through effective management, migration can significantly enhance global development.¹¹² The World Bank delineated migration's complex effects on origin and destination countries, identifying it as a crucial element in the integration of origin countries into global networks, bolstering international trade, and promoting knowledge transfers that enhance productivity in these countries.¹¹³ The report emphasized the role of skilled migrants in transferring critical knowledge and innovation back to their home countries, thus contributing to industrial development. Additionally, it noted the active participation of diaspora communities in shaping economic policies in their countries of origin.¹¹⁴ Highlighting the financial implications of migration, the World Bank points to the economic benefits derived from migrants' remittances, which provide a stable source of income that supports investments in health, education, housing, and entrepreneurship in origin countries. It argues for the implementation of policies that encourage diaspora engagement and enhance the investment climate, which in turn would lead to improved business environments and

¹⁰⁹ World Bank, *Global Development Finance 2003 Vol 1 & 2 (Complete Print Edition): Striving for Stability in Development Finance* (The World Bank 2003) <<http://elibrary.worldbank.org/doi/book/10.1596/0-8213-5429-9>> accessed 26 May 2024.

¹¹⁰ Dilip K Ratha (ed), *Economic Implications of Remittances and Migration* (World Bank 2006).

¹¹¹ See also: *ibid.*, at pp. 25–41.

¹¹² World Bank, see note 3 above, p. 21.

¹¹³ See also: *ibid.*, at pp. 43–61.

¹¹⁴ *Ibid.*, at p. 105.

robust economic development.¹¹⁵

Overall, the World Bank advocates for recognizing migration as a powerful driver of development, capable of yielding significant economic and social benefits. However, it also calls for meticulous policy management to optimize these benefits and counter potential adverse effects, such as the brain drain phenomenon in ‘developing countries.’ This nuanced perspective underscores the need for a balanced approach to migration. In general, it endorses a perspective whereby the burden of development is shifted at least partially on individual migrants, who become a tool for development.¹¹⁶

ii. IOM

The IOM, while sharing some common platforms with other UN agencies through the UN Migration Network, adopts a nuanced stance on the Migration and Development Nexus. Like the World Bank, since the 2000s the IOM has a liberal interpretation of the nexus, which aims to maximize the potential of migration to achieve sustainable development outcomes. It recognizes that well-managed migration can serve as both a strategy and an outcome of development.¹¹⁷ In 2000, the IOM published the inaugural World Migration Report. This report was the first of a series where the IOM started promoting migration's development benefits. The organization highlighted how migration benefits countries of origin through remittances, which support local economies and improve livelihoods.¹¹⁸ Simultaneously, it emphasized the positive impact on destination countries, where migrants contribute significantly to the national economy by filling labor shortages and fostering economic growth.¹¹⁹

In its 2019 report, the IOM elucidated its comprehensive approach: by highlighting how the personal intentions of migrants can lead to different outcomes, it showed that development can be pursued through remittances, diaspora engagement, and return/entrepreneurship.¹²⁰ Migration dynamics are shaped by an array of structural factors that influence both the aspirations and outcomes of migrants. These factors include sectoral policies such as labor market regulations, rural or urban development strategies, and educational reforms, alongside broader societal trends like nationalism or xenophobia. For instance, changes in agricultural policies can drive rural-to-urban migration, whereas a lack of urban job opportunities might

¹¹⁵ See also: *ibid.*, at pp. 277–311.

¹¹⁶ Kabbanji, see note 2 above, p. 1.

¹¹⁷ IOM Institutional Strategy on Migration and Sustainable Development’, see note 18 above, p. 15.

¹¹⁸ International Organization for Migration, *World Migration Report 2000* (Susan F Martin ed, Internat Organization for Migration 2000), pp. 30–34.

¹¹⁹ See also: *ibid.*, at pp. 22–30.

¹²⁰ International Organization for Migration (IOM), see note 18 above, p. 46.

push individuals to seek employment abroad.¹²¹ Additionally, enhancements in educational access often inspire migration by opening up prospects for better opportunities in other regions.¹²² Similarly, the 2024 Report underscored how migration continues to be a significant driver of human development. Again, it focused on the value of remittances¹²³ and discussed the ongoing challenges and the need for a comprehensive, multi-stakeholder approach to effectively manage migration on a global scale.¹²⁴

Globally, significant phenomena such as climate change, international diplomacy, and the existence of bilateral or multilateral agreements critically shape migration patterns. An example of this intersection between migration and development is the creation of the Schengen area, which has significantly altered mobility patterns across Europe, facilitating economic growth and integration by enabling free movement across member states.¹²⁵ The IOM aligns its operations with its mandate to promote beneficial links between migration and economic, social, and cultural development. This commitment is part of a broader strategy to support the SDGs in collaboration with member states and United Nations stakeholders. IOM integrates its efforts with major multilateral development agendas, including the Addis Ababa Action Plan, the Paris Climate Change Agreement, and the GCM.¹²⁶ Informed by the Migration Governance Framework (MiGOF) and the Migration Crisis Operational Framework (MCOF), IOM's strategies are guided by a rights-based perspective that enhances the Humanitarian-Development-Peace Nexus.¹²⁷ IOM addresses pressing migration trends like increased transnationalism, demographic shifts, and rapid urbanization, focusing on gender roles and demographic structures to ensure that migration continues to contribute positively to sustainable development outcomes worldwide.¹²⁸

iii. OECD

The OECD engages extensively in exploring the nexus between migration and development. Through its project 'Interrelations between Public Policies, Migration and Development (IPPM)' in collaboration with the EU Thematic Programme on Migration and Asylum, the

¹²¹ *Ibid.*, at p. 48.

¹²² *Ibid.*

¹²³ Marie McAuliffe and Linda Adhiambo Oucho (eds), *World Migration Report 2024* (International Organization for Migration IOM 2024), p. 5.

¹²⁴ Andrea Milan, Amanda Bisong and Paddy Siyanga Knudsen, 'Chapter 8: Towards a Global Governance of Migration? From the 2005 Global Commission on International Migration to the 2022 International Migration Review Forum and Beyond' in Marie McAuliffe and Linda Adhiambo Oucho (eds), *World Migration Report 2024* (International Organization for Migration IOM 2024).

¹²⁵ International Organization for Migration (IOM), see note 18 above, p. 48.

¹²⁶ IOM Institutional Strategy on Migration and Sustainable Development', see note 18 above, pp. 19–20.

¹²⁷ *Ibid.*, at p. 19.

¹²⁸ See also: *ibid.*, at pp. 19–29.

OECD has sought to unpack the complex interplay between migration and key policy sectors including the labor market, agriculture, education, investment and financial services, and social protection and health.¹²⁹ This project, studying ten developing countries (Armenia, Burkina Faso, Cambodia, Costa Rica, Côte d'Ivoire, the Dominican Republic, Georgia, Haiti, Morocco, and the Philippines), aims to provide empirical evidence to challenge negative perceptions about immigrants and highlight their potential contributions to development.¹³⁰ The OECD findings suggest that immigrants, who are typically young and motivated, fill crucial gaps in labor demand without burdening host country finances significantly. However, they face considerable challenges, such as lower education levels and limited access to social protection, which can stifle their economic integration and contribution. The OECD also points out that immigrants' economic contributions are enhanced by regularizing their status in host countries, which correlates with higher investment rates by immigrant households.¹³¹ This suggests that understanding and facilitating regularization procedures could be beneficial for both immigrants and host societies.

iv. UNDP

The UNDP shares common platforms with the IOM and views the Migration and Development Nexus through a comprehensive lens, influenced by its integral role in the UN Migration Network. The scope of the Network is to cooperate among various UN entities in order to enhance migration management in accordance with international norms, focusing on sharing knowledge, best practices, and resources.¹³² The UNDP approaches the nexus through both a co-development lens, and especially a 'root cause' perspective with an emphasis on long-term solutions.¹³³ Its strategy includes addressing the root causes of migration by tackling underlying economic and social drivers and promoting sustainable development in origin countries. Additionally, UNDP advocates for integrating migration into national and regional development plans and supports resilience-based development programs.¹³⁴ This dual approach underscores the UNDP's commitment to leveraging migration as a tool for development, focusing on enhancing the developmental impacts of migration through improved integration into development strategies and frameworks. Finally, at a global level, UNDP facilitates cooperation, knowledge exchange, and learning on migration integration.

¹²⁹ OECD, *Interrelations between Public Policies, Migration and Development*, see note 108 above, p. 22.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*, at pp. 274–275.

¹³² 'Promoting Development Approaches to Migration and Displacement,' see note 18 above, p. 8.

¹³³ *Ibid.*, at pp. 9–10.

¹³⁴ *Ibid.*, at pp. 8–9.

Through initiatives like the Joint Migration and Development Initiative (JMDI), UNDP, and its partners develop resources such as the 'My JMDI Toolbox,' offering best practices and training materials for managing migration at the local level. Additionally, collaborative efforts between UNDP and IOM have resulted in the creation of a joint White Paper on Mainstreaming Migration into Local Development Planning, aiding local and regional authorities in addressing migration and displacement challenges effectively.¹³⁵

D. Overview of the Migration and Development Nexus in Bilateral Agreements

The Migration and Development Nexus has been tackled at the institutional level and by international organizations. However, migration is, in practice, a matter where states and only states have the last word, in terms of how to organize the internal policies and laws, and bilateral and multilateral agreements. Moreover, states have the exclusive sovereignty of their territories, meaning that they are the only ones that decide who can enter and exit the territory that falls under their jurisdiction. Similarly, the European Union has also engaged in migration policies with the idea of preserving and 'protecting' its boundaries.

Both at the national and European levels however, the protection of the borders and migration control has not been solely imposed through agreements and laws that are *strictu sensu* migration ones. Instead, they have implemented at different levels and nuances the Migration and Development Nexus' policy approaches. Some European Union countries, in particular, Spain, Italy, and France - which are the object of the analysis of the second chapter - have put into practice some 'country specific policies and agreements of co-development.'¹³⁶ These increasingly include components related to migration, such as measures to prevent the 'root causes' of migration and to establish legal pathways.¹³⁷ Notwithstanding some attempts of the EU to include the Migration and Development nexus from a more liberal point of view, a review of relevant policy documents indicates a significant persistence of the original policy framework and the components of the EU's external migration policy. Despite shifts in rhetoric, the primary emphasis of recent initiatives continues to be on immigration control. Proposals for development-related measures not only remain vague but are also non-binding and discretionary.¹³⁸ In theory, this type of policy aims to achieve seven key goals: 1) enhance productive endeavors through remittances; 2) provide education to migrants and facilitate their return to their home regions; 3) engage migrants in collaborative development projects; 4) offer

¹³⁵ *Ibid.*, 5.

¹³⁶ Schiller and Faist, see note 18 above, p. 152–153.

¹³⁷ Daniel Thym, 'International Cooperation with Third States' in Daniel Thym (ed), *European Migration Law* (Oxford University Press 2023), pp. 570 <<https://doi.org/10.1093/oso/9780192894274.003.0019>> accessed 1 May 2024.

¹³⁸ Lavenex and Kunz, see note 47 above, p. 452.

educational and preparatory support to potential migrants in their home areas; 5) establish connections between home communities in the South and those who have migrated to the North; 6) encourage collaboration among national governments, local civic and business groups, educational institutions, cultural centers, and migrants; 7) improve the living and working environments of migrants.¹³⁹

From a superficial assessment, the co-development policy appears to blend both approaches that will be presented in the next subsections: migration as a tool for development and the root causes approach. However, in practice, 'co-development' has been used as a supra governmental policy to control immigration flow.¹⁴⁰ This has been perpetrated through different types of agreements: not only purely 'Migration Agreements' such as the 2020¹⁴¹ New Pact of Migration and Asylum,¹⁴² but also 1) Development and Cooperation Agreements (DCAs), i.e. aid and assistance programs, which have the explicit scope of curb migration and do not in practice affect development in the countries of origin positively.¹⁴³ The same can be found in 2) Partnership and Cooperation Agreements (PCAs), 3) Bilateral Labour Agreements (BLAs), and 4) Partnership Trade Agreements (PTAs), which include the Migration and Development Nexus, namely through the inclusion of readmission clauses.

i. Development and Cooperation Agreements (DCAs): Development Aid and Assistance Programs

Indeed, while agreements combining visa liberalization and readmission exemplify trade-offs specific to migration, broader package deals may be founded on financial, economic, or political advantages spanning various sectors.¹⁴⁴ However, there are instances where the EU seeks cooperation without offering commensurate benefits, particularly if visa-free access is not viable and third-party states already enjoy privileged trade relations and substantial development aid.¹⁴⁵ To increase leverage in such scenarios, interior ministries sometimes propose a straightforward approach: if third-party states fail to cooperate, reciprocity will cease as well. Advocates name such proposals 'conditionality,' while critics refer to them as

¹³⁹ Schiller and Faist, see note 18 above, p. 153.

¹⁴⁰ *Ibid.*

¹⁴¹ European Commission, 'Communication on a New Pact on Migration and Asylum' COM(2020) 609 of 23 September 2020.

¹⁴² The New Pact stresses the use of development cooperation to address the traditional "root-causes" of migration, whereby "assistance will be targeted as needed to those countries with a significant migration dimension". Andrade, see note 90 above, p. 226.

¹⁴³ Schiller and Faist, see note 18 above, p. 153.

¹⁴⁴ Thym, 'International Cooperation with Third States', see note 137 above, p. 582.

¹⁴⁵ *Ibid.*, at p. 584.

'sanctions' or 'less for less.'¹⁴⁶

Since 2005, the EU has been adopting the policy technique that joins development aid and migration policies.¹⁴⁷ Following the highly contested forceful prevention of immigrant entry in Ceuta and Melilla, EU member states proposed that migration control should be closely aligned with development aid, viewed as a significant incentive that the EU could offer to countries of origin and transit. This alignment often resulted in conditions being set for receiving aid, leading to recipient frustration and poor compliance.¹⁴⁸ During the 2015/2016 migration crisis, this approach was intensified with the establishment of the EUTF for Africa in November 2015. The EUTF aims to tackle the 'root causes' of instability and irregular migration by improving migration management, providing 4.9 billion Euros for 251 projects across 26 African countries. These projects focus on enhancing economic opportunities, strengthening community resilience, and promoting better governance to prevent forced and irregular migration.¹⁴⁹ Moreover, the EU has employed a responsibility-sharing strategy, exemplified by the EU-Jordan and EU-Lebanon Compacts, where the protection of refugees in neighboring countries is exchanged for financial support. For instance, the EU-Jordan Compact included loans, grants, and trade agreements in return for education and employment access for Syrian refugees. Despite its innovative approach, the compact faced challenges, such as the issuance of work permits in undesirable sectors for Syrian refugees, leading to many unclaimed permits and a preference for better-paying informal jobs.¹⁵⁰

Under the same auspices of merging development aid into migration control, the EU adopted in 2021 the Regulation (EU) 2021/947 establishing the Neighbourhood, Development and International Cooperation Instrument (NDICI).¹⁵¹ The NDICI is aimed at fostering the effective implementation of EU agreements and dialogues on migration with third countries while supporting migration management and governance.¹⁵²

¹⁴⁶ *Ibid.*

¹⁴⁷ See more at: Stephan Dünwald, 'On Migration and Security: Europe Managing Migration from Sub-Saharan Africa' [2011] *Cadernos de Estudios Africanos*, p. 103.

¹⁴⁸ Arne Niemann and Natascha Zaun, 'Introduction: EU External Migration Policy and EU Migration Governance: Introduction' (2023) 49 *Journal of Ethnic and Migration Studies* 2965, pp. 2969–2970.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009 (OJ 2021 L 209/1).

¹⁵² Andrade, see note 90 above, p. 228.

ii. Partnership and Cooperation Agreements (PCAs)

Partnership and Cooperation Agreements represent another tool of Cooperation for the European Union. In accordance with what was established in the Treaty on the Functioning of the European Union (TFEU):

[t]he Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.¹⁵³

These agreements aim at establishing a *bilateral* relationship between the EU and third countries, setting legally binding measures. Through PCAs, the EU aims to support the democratic and economic development of a country,¹⁵⁴ and they are often part of the European Neighbourhood Policy.¹⁵⁵ PCAs normally have a validity of ten years, after which they can be renewed and amended if necessary.

Despite being tailored to specific bilateral objectives, European Union Association Agreements share a common framework. This framework emphasizes core principles such as respect for democracy, international law, human rights, and a market economy.¹⁵⁶ Additionally, these agreements establish a multi-tiered dialogue structure encompassing ministerial, parliamentary, and civil service levels, fostering cooperation on issues of mutual concern. Furthermore, the agreements prioritize strengthening the rule of law and institutions, *managing migration*,¹⁵⁷ and combating transnational crime. Economic cooperation is a cornerstone, with provisions for most-favored-nation treatment, free transit of goods, and the elimination of quantitative restrictions. The agreements also establish parameters for trade, investment, intellectual property protection, and sectoral cooperation, aiming for gradual alignment with EU norms and international standards. Finally, energy, cultural, and financial cooperation are included within the agreements' purview.¹⁵⁸ Some prominent examples of PCAs are the

¹⁵³ Art. 216, Title V, Conference of the Representatives of the Governments of the Member States, Consolidated version of the Treaty on the Functioning of the European Union, 2008/C 115/01, European Union, 13 December 2007, <https://www.refworld.org/legal/agreements/eu/2007/en/97880>, accessed 28 May 2024.

¹⁵⁴ 'Partnership and Cooperation Agreement (PCA) – EU Monitor' <<https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vh7gkuhng0wh>> accessed 22 May 2024.

¹⁵⁵ 'Partnership and Cooperation Agreements (PCAs): Russia, the Southern Caucasus and Central Asia | EUR-Lex' <<https://eur-lex.europa.eu/EN/legal-content/summary/partnership-and-cooperation-agreements-pcas-russia-the-southern-caucasus-and-central-asia.html>> accessed 22 May 2024.

¹⁵⁶ *Ibid.*

¹⁵⁷ Emphasis added.

¹⁵⁸ 'Partnership and Cooperation Agreements (PCAs): Russia, the Southern Caucasus and Central Asia | EUR-Lex', see note 155 above; Erwin Metera, 'Partnership and Cooperation Agreements and the European Union's Energy Security in the Context of Central Asia' (2022) *Przegląd Europejski* <<https://przegladeuropejski.com.pl/resources/html/article/details?id=229481>> accessed 22 May 2024.

agreements with Russia,¹⁵⁹ Ukraine,¹⁶⁰ Indonesia,¹⁶¹ Kazakhstan,¹⁶² and China.¹⁶³ Lastly, PCAs are particularly relevant for the present analysis because they often include readmission and migration management cooperation clauses.¹⁶⁴ Therefore, as the other instruments analyzed in the present section, the PCAs are part of a set of strategies for the development of EU external action on migration, ‘mirroring a previous similar evolution at the national level.’¹⁶⁵

iii. Bilateral Labor Agreements (BLAs) and Preferential Trade Agreements (PTAs)

Bilateral Labor Agreements (BLAs), and Preferential Trade Agreements (PTAs), address different aspects of the migration-development nexus.¹⁶⁶ BLAs primarily focus on the management of labor migration. These agreements establish detailed frameworks for the temporary movement of workers, addressing their rights, employment conditions, and social protection.¹⁶⁷ By setting out specific commitments on job types, wage standards, and the recognition of qualifications, BLAs aim to ensure that labor migration is beneficial for both sending and receiving countries and contributes positively to developmental goals.¹⁶⁸ PTAs incorporate broader migration provisions that go beyond facilitating labor mobility.¹⁶⁹ They increasingly include measures for migration control and the protection of migrant rights, reflecting a strategic use of trade agreements to manage migration flows comprehensively.¹⁷⁰ PTAs link migration with trade incentives, offering developing countries access to larger markets in exchange for cooperation on migration issues.¹⁷¹ This linkage not only contributes to regulating migration but also integrates it into broader economic and development

¹⁵⁹ Agreement on Partnership and Cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, 28.11.1997.

¹⁶⁰ Agreement on Partnership and Cooperation establishing a partnership between the European Union, of one part, and Ukraine, of the other part, 27 February 1998. IP/98/198.

¹⁶¹ Partnership and Cooperation Agreement (EU-Indonesia) November 11, 2009.

¹⁶² Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part, 2016. See also: Z Ye Mukasheva and DK Akhmedyanova, ‘Evolution of the Bilateral Partnership between European Union and Kazakhstan: Results from the Content Analysis of Partnership and Cooperation Agreement and Enhanced Partnership and Cooperation Agreement’ (2023) 102 Вестник КазНУ. Серия международные отношения и международное право 4.

¹⁶³ Lingliang Zeng, ‘A Preliminary Perspective of Negotiations of EU–China PCA: A New Bottle Carrying Old Wine or New Wine or Both?’ (2009) 15 European Law Journal 121.

¹⁶⁴ Paula Andrade Garcia and Ivan Martin, ‘EU Cooperation with Third Countries in the Field of Migration’ (European Parliament 2015) DOCUMENT REQUESTED BY THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS 86.

¹⁶⁵ *Ibid.*, at p. 84.

¹⁶⁶ Sandra Lavenex, Philipp Lutz and Paula Hoffmeyer-Zlotnik, ‘Migration Governance through Trade Agreements: Insights from the MITA Dataset’ (2024) 19 The Review of International Organizations, pp. 147 and 152.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*, at pp. 152–153.

¹⁷¹ *Ibid.*, at p. 152.

strategies, demonstrating the use of trade agreements as tools for holistic migration governance.¹⁷²

Chapter 2. Cooperation and Development Agreements in the European Union: focus study on France and Italy

Chapter two is dedicated to taking a closer look at the Migration and Development Nexus in the Development and Cooperation strategies of the European Union, namely in its neighborhood policies and in the recently signed Samoa Agreement. With this scope in mind, an overview of the EU's historic strategy on development towards the former colonies of its member states, and towards the 'ACP Countries' today will be provided, starting from the Treaty of Rome, to the Cotonou Agreement which was updated in 2023 and entered officially in force in April 2024.¹⁷³ Moreover, a closer look at the Development Strategy and Aid and assistance specifically in France and Italy will be provided. These two countries' strategies have also been marked by a 'root causes' approach in providing development assistance to third countries, in different ways. On the one hand, Italy has embedded this approach in the framework agreements and treaties but has not mentioned migration governance in the bilateral agreements it signed with third countries. On the other hand, France has embedded the 'conditionality' of migration and return in most of its agreements with third countries, as well as in its development plans. Moreover, these two countries are of particular interest because both have maintained strong ties with their former colonies in terms of development assistance, with the conditionality of cooperation in restricting migration.¹⁷⁴ Italy is also a 'Southern European Country' and, for this reason, the migration governance is particularly central in the agenda of external affairs.

The Migration and Development Nexus in the European Union (EU) underscores the complex interplay between migration and development within the context of the EU's cooperation development agreements. This nexus explores how migration dynamics can both shape and be shaped by development policies, with an emphasis on harnessing migration for

¹⁷² *Ibid.*, at p. 156.

¹⁷³ On April 10th, 2024 the MEP endorsed the Samoa Agreement, With 448 votes in favour, 31 against, and 131 abstentions. The Agreement officially entered into force as of this date. European Parliament, 'Samoa Agreement (' Post-Cotonou ') between the EU and the Organisation of African, Caribbean and Pacific States (OACPS) | Legislative Train Schedule' (*European Parliament*) <[https://www.europarl.europa.eu/legislative-train/theme-development-deve/file-signature-of-the-new-eu-acp-agreement-\(%E2%80%98post-cotonou-%E2%80%98\)>](https://www.europarl.europa.eu/legislative-train/theme-development-deve/file-signature-of-the-new-eu-acp-agreement-(%E2%80%98post-cotonou-%E2%80%98)>) accessed 9 June 2024.

¹⁷⁴ Interestingly, none of them mentions or acknowledges the colonial past in their official development plans and strategies.

developmental outcomes. Bearing in mind the description provided in the first chapter of the ‘root causes’ approach and ‘migration as a tool for development,’ the EU adopts the former one within its ‘Development Cooperation Agreements.’ Indeed, the ‘root causes’ approach to curbing migration is also part of the EU Objective of ‘mainstream[ing] migration issues into development cooperation.’ Moreover, European countries including but not limited to France and Italy incorporate this approach in concluding bilateral agreements with third countries, ‘which foresee the use of aid funding in return for cooperation on migration control.’¹⁷⁵

The EU operationalizes its cooperation development agreements through two primary mechanisms: Neighbourhood Policies and the Samoa Agreement.¹⁷⁶ Neighbourhood policies are designed to foster close relations with proximate countries, aiming to establish stability, promote economic growth, and effectively manage migration flows. Simultaneously, the Cotonou Agreement, which governs the EU’s relations with African, Caribbean, and Pacific (ACP) countries, integrates migration and development as pivotal elements of its strategic framework.¹⁷⁷ The first three sections of this chapter delve into the historical development of these EU’s two primary mechanisms for implementing cooperation and development agreements. The final section shifts focus to case studies of Italy and France, analyzing the bilateral development agreements they establish with third ‘countries of interest.’

A. The European Union’s Neighbourhood Policies

The European Economic Community (EEC) initiated *cooperation agreements* with non-member Mediterranean countries in the 1960s, culminating in 1978 with the implementation of agreements with the Arab Republic of Egypt, the People’s Democratic Republic of Algeria, the Kingdom of Morocco, and the Republic of Tunisia. These agreements aimed to *foster development* through initiatives in trade and social sectors, thereby strengthening bilateral and regional cooperation.¹⁷⁸ The agreements encompassed economic, financial, and technical cooperation, as well as trade and labor relations. Central to this partnership was the establishment of *preferential trade relations*, which included reducing import duties and facilitating the *mobility* of workers and industries between Europe and the partner countries,

¹⁷⁵ Daria Davitti and Annamaria La Chimia, ‘A Lesser Evil? The European Agenda on Migration and the Use of Aid Funding for Migration Control’ (2017) 10 *The Irish Yearbook of International Law* 3.

¹⁷⁶ Lavenex and Kunz, see note 47 above, pp. 442–443.

¹⁷⁷ *Ibid.*

¹⁷⁸ Rym Ayadi and Sara Ronco, ‘The EU-Africa Partnership and Development Aid - Assessing the EU’s Actorness and Effectiveness in Development Policy’ (Center for European Policy Studies 2023) Analysis 17 <https://cdn.ceps.eu/wp-content/uploads/2023/04/CEPS-2023-10-In-depth-analysis-EU_Africa.pdf>.

thereby enhancing economic integration and regional collaboration.¹⁷⁹ However, it was only after the end of the Cold War that the ‘Southern Neighbourhood’ increased with the ‘Barcelona Process.’ In 1995, the EU inaugurated the Euro-Mediterranean Partnership (EMP) with three objectives: i) policy and security, focusing on the creation and maintenance of peace and stability; ii) the civilian dimension, which aims to promote cultural exchange and human development; and iii) the economic dimension, dedicated to creating a Mediterranean area of shared prosperity.¹⁸⁰ With the same spirit, less than a decade later, the European Neighbourhood Policy (ENP) was inaugurated. The ENP areas of cooperation gravitated around politics, economics, culture, and security.¹⁸¹ This is a particularly optimistic *momentum* for the new-born European Union, which seeks to establish strong Mediterranean ties and collaboration with particular attention to human rights.¹⁸² This, however, has been carried out with limited use of ‘human rights clauses,’¹⁸³ and some of the most prominent human rights NGOs have declared this effort a dead letter.¹⁸⁴

It is important to note that, in practice, the ENP saw implementation through financial means under the European Neighborhood Partnership Instrument (ENPI) from 2007-2013, the European Neighbourhood Instrument (ENI) from 2014-2020, and today through the Neighbourhood, Development and International Cooperation Instrument (NDICI – Global Europe).¹⁸⁵ In sum, all these financial instruments’ scope has been to foster cross-border and cross-regional cooperation, as well as strengthening governance and equitable economic and *social development*.¹⁸⁶ Moreover, the ENP has evolved in the last twenty years, and now includes three additional priorities for cooperation: economic development for stabilization, security, and migration and mobility.¹⁸⁷

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*, at pp. 17–18.

¹⁸¹ Mircea Brie, ‘The Reform of the EU Neighbourhood Policies and Instruments in the Post-2020 Period’ (2020) 2022 *Analele Universității din Oradea. Seria: Relații Internaționale și Studii Europene* 129, pp. 2–3.

¹⁸² Ayadi and Ronco, see note 178 above, p. 18.

¹⁸³ See also: Lorand Bartels, *Human Rights Conditionality in the EU’s International Agreements* (Oxford University Press 2005), pp. 32–44 <<https://academic.oup.com/book/3064>> accessed 21 May 2024.

¹⁸⁴ Amnesty International - EU Office, ‘Towards Sustainable Peace and Security: The Human Rights Imperative for the Barcelona Process, Memorandum to the Euro—Mediterranean Ministerial Meeting in Valencia/Spain’ (*FormsPal*, April 2002) <<https://formspal.com/amnesty-eu/>> accessed 21 May 2024 See also: Human Rights Watch <https://www.hrw.org/news/2002/04/11/letter-ministers-foreign-affairs-euro-mediterranean-partnership-occasion-their-april>.

¹⁸⁵ Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU of the European Parliament and of the Council and repealing Regulation (EU) 2017/1601 of the European Parliament and of the Council and Council Regulation (EC, Euratom) No 480/2009 (Text with EEA relevance).

¹⁸⁶ Brie, see note 181 above, pp. 3–4.

¹⁸⁷ ‘European Neighbourhood Policy | EEAS’ <https://www.eeas.europa.eu/eeas/european-neighbourhood-policy_en> accessed 21 May 2024.

B. Evolution of European Union Development and Cooperation Agreements

In addition to the Cooperation strategies and policies with neighboring countries, the EU has adopted development cooperation policies with third countries across the globe, starting in 1957 with the Treaty of Rome.¹⁸⁸ Today, this strategy has culminated with the adoption of the Samoa Agreement, which updated the former Cotonou Agreement on Cooperation and Development.¹⁸⁹ The timeline below compiles the evolution of development and cooperation.

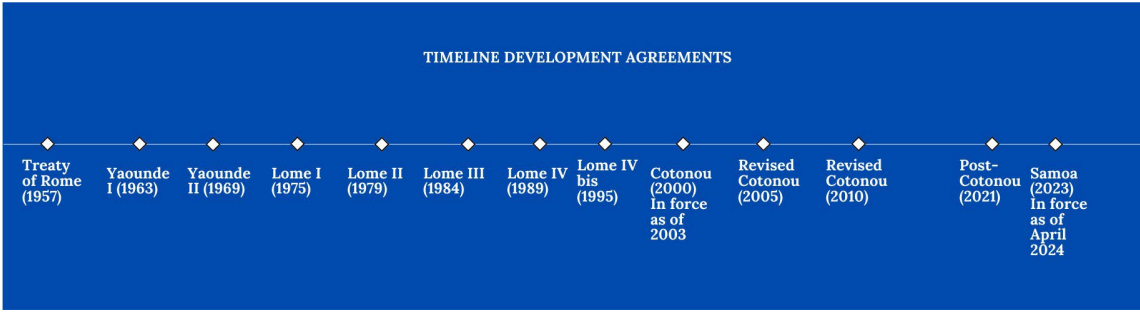


fig 1. Timeline Development Agreements

i. Treaty of Rome

The Treaty of Rome in 1957¹⁹⁰ established the European Economic Community (EEC) and set the foundation for cooperation with overseas countries and territories (OCT),¹⁹¹ mainly with ex-colonies.¹⁹² Notably, the EEC created a free economic trade area within the Community.¹⁹³ However, at the time when the EEC was established, six of its founding members still maintained colonial ties with a number of countries in the African continent.¹⁹⁴ During the negotiations, the six countries, France in particular, insisted on including in some way the African Colonies in the agreement.¹⁹⁵ Because of this, Part Four of the Treaty is dedicated to Association of Overseas Countries and Territories¹⁹⁶ (Treaty of Rome Part Four), and Art. 131 recites:

¹⁸⁸ While the “development cooperation policy” is not defined as such until later in the 1992 Maastricht Treaty the Treaty of Rome lays the ground for it.

¹⁸⁹ Cotonou Agreement, 2000.

¹⁹⁰ European Union, Treaty Establishing the European Community (Consolidated Version), Rome Treaty, -, 25 March 1957, <https://www.refworld.org/legal/agreements/eu/1957/en/40087>, accessed 27 May 2024.

¹⁹¹ Judith Kast-Aigner, *A Corpus-Based Analysis of the Terminology of the European Union’s Development Cooperation Policy* (Peter Lang D 2010) 43–44 <<https://www.peterlang.com/view/title/53660>> accessed 21 May 2024.

¹⁹² Ayadi and Ronco, see note 178 above, p. 16.

¹⁹³ Kast-Aigner, see note 191 above, pp. 47–48.

¹⁹⁴ *Ibid.*, at p. 47.

¹⁹⁵ *Ibid.*

¹⁹⁶ ‘L’association des pays et territoires d’outre-mer’, Association of Overseas Countries and Territories (My Translation).

Les États membres conviennent d'associer à la Communauté les pays et territoires non-européens entretenant avec la Belgique, la France, l'Italie et les Pays-Bas des *relations particulières*.¹⁹⁷ Ces pays et territoires, ci-après dénommés « pays et territoires », sont énumérés à la liste qui fait l'objet de l'Annexe IV du présent Traité.

Le but de l'association est la promotion du développement économique et social des *pays et territoires*,¹⁹⁸ et l'établissement de relations économiques étroites entre eux et la Communauté dans son ensemble.

Conformément aux principes énoncés dans le préambule du présent Traité, l'association doit en premier lieu permettre de favoriser les intérêts des habitants de ces pays et territoires et leur prospérité, de manière à les conduire au développement économique, social et culturel qu'ils attendent.¹⁹⁹

Indeed, the expression '*des relations particulières*'²⁰⁰ refers precisely to the colonial ties.²⁰¹

This formulation is not by chance: the treaty did not limit the creation of the free trade area to the countries within the EEC, but extended it to EEC and Associated states, and among Associated states themselves.²⁰² Crucially, the Treaty of Rome establishes collective responsibilities to provide aid assistance.²⁰³ To this aim, the Implementing Convention of the Treaty of Rome created the 'Development Fund,' which was the first in a series of eleven funds,²⁰⁴ later re-baptized 'European Development Funds' (EDF). These, until the Samoa Agreement,²⁰⁵ represented one of the EU's major instruments for providing development aid.²⁰⁶

ii. Yaoundé Conventions

The Treaty of Rome framework was expanded through the Yaoundé Conventions (I and II) of 1963 and 1969, which formalized economic and technical cooperation between the EEC and

¹⁹⁷ Emphasis added.

¹⁹⁸ Emphasis added.

¹⁹⁹ "The Member States agree to associate with the Community the non-European countries and territories which have special relations with Belgium, France, Italy and the Netherlands. These countries and territories, hereinafter called 'countries and territories', are listed in the Annex IV to this Treaty. The purpose of the association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole. In accordance with the principles set out in the Preamble to this Treaty, association shall primarily serve to promote the interests and prosperity of the inhabitants of these countries and territories, so as to lead them to the economic, social and cultural development they expect." My Translation. Art. 131, Rome Treaty, 1957.

²⁰⁰ Special Relations (My Translation).

²⁰¹ Kast-Aigner, see note 191 above, p. 47.

²⁰² *Ibid.*, at p. 48.

²⁰³ *Ibid.*

²⁰⁴ 'European Development Fund (EDF) | EUR-Lex' <<https://eur-lex.europa.eu/EN/legal-content/summary/european-development-fund-edf.html>> accessed 22 May 2024. 'Each EDF is concluded for a period of several years. Since the conclusion of the first partnership convention in 1964, the EDF cycles have generally followed the partnership agreement/convention cycles. 1st EDF: 1959-1964; 2nd EDF: 1964-1970 (Yaoundé I Convention); 3rd EDF: 1970-1975 (Yaoundé II Convention); 4th EDF: 1975-1980 (Lomé I Convention); 5th EDF: 1980-1985 (Lomé II Convention); 6th EDF: 1985-1990 (Lomé III Convention); 7th EDF: 1990-1995 (Lomé IV Convention); 8th EDF: 1995-2000 (Lomé IV Convention and the revised Lomé IV); 9th EDF: 2000-2007 (Cotonou Agreement); 10th EDF: 2008-2013 (Revised Cotonou Agreement); 11th EDF: 2014- 2020 (Revised Cotonou Agreement).'

²⁰⁵ They have been eliminated in the Samoa Agreement. Samoa Agreement, 2023.

²⁰⁶ 'European Development Fund (EDF) | EUR-Lex' see note 204 above; Kast-Aigner, see note 191 above, p. 48.

18 African states, emphasizing trade and aid.²⁰⁷ This cooperation remains regulated through financial assistance (EDF), and was supplemented by loans granted by the European Investment Bank.²⁰⁸ Yaoundé II does not present substantive changes with respect to Yaoundé I, but expands the number of non-EEC participants to the Convention from 18 to 19.²⁰⁹

iii. Lomé Conventions

The Lomé Conventions, commencing with Lomé I in 1975 and followed by subsequent conventions in 1979 (Lomé II), 1984 (Lomé III), and 1989 (Lomé IV), marked a significant expansion of this cooperation, incorporating 46 African, Caribbean, and Pacific (ACP) countries. The Lomé Conventions introduced several significant novelties compared to the preceding Yaoundé Conventions, reflecting an evolution in the European Community's approach to development cooperation.²¹⁰ A notable change was the abandonment of the colonial terminology associated with the Yaoundé Conventions, replacing terms such as 'Association' and 'Associated States' with the concept of the African Caribbean Pacific *ACP Group*, which at least in principle gave the developing countries a formal framework and a sense of identity²¹¹ independent of their colonial past.²¹² Moreover, the Lomé Conventions introduced non-reciprocal trade preferences, granting ACP states duty-free access to the EEC market for most products and establishing protocols for specific commodities like sugar and bananas. This shift aimed to stabilize export earnings through the *Système de Stabilisation des Recettes d'Exportation* (STABEX) system, which provided compensation for fluctuations in export revenues of primary commodities.²¹³

Each of the four Lomé Conventions brought distinct features. Lomé I introduced the innovative STABEX system for stabilizing export earnings. Lomé II added SYSMIN, a financing facility for the mining sector, although it was seen as the least innovative. Lomé III reorganized the Convention's text to improve clarity and introduced themes of food security and self-sufficiency, reflecting an increased emphasis on agricultural cooperation. Lomé IV and its revision, Lomé IV bis, marked a shift towards political conditionality, requiring ACP states to implement structural adjustments and adhere to principles of human rights, democratic

²⁰⁷ Kast-Aigner, see note 191 above, pp. 52–70.

²⁰⁸ *Ibid.*, at p. 53.

²⁰⁹ Mauritius joined in 1972 the Convention. *ibid.* 54.

²¹⁰ *Ibid.*, at p. 73.

²¹¹ Francois Misser, 'ACP-EU Cooperation. Milestone Events' [2008] *The Magazine of Africa - Caribbean - Pacific & European Union Cooperation and Relations*, p. 12.

²¹² Kast-Aigner, see note 191 above, p. 73–74.

²¹³ *Ibid.*, at p. 74–75.

governance, and the rule of law to receive financial aid.²¹⁴ Simultaneously, and as stated above, the EEC forged cooperation agreements with non-member Mediterranean countries during the 1970s and 1980s, including Egypt, Algeria, Morocco, and Tunisia in 1978. These agreements aimed to promote development through trade, social measures, and regional cooperation, further diversifying the geographical focus of the EEC's development efforts.

C. The ACP-EU Partnership Agreements

i. Cotonou Agreement

Importantly, the significance of the Lomé Conventions also lies in their foundational role in shaping the Cotonou Agreement, signed in 2000 and entered into force in 2003.²¹⁵ At the time of its ratification, 77 states signed the agreement, with one additional state after the update in 2010.²¹⁶ It was originally intended to be in force until February 2020 but has been extended to 2021. Negotiations for a new instrument started in 2017 but only resulted in the adoption of the Post-Cotonou in 2023, which entered into force in April 2024. Indeed, Cotonou represents a watershed moment in the EU Cooperation and Development Policy. The Lomé Conventions established a precedent for a more politically nuanced and conditional framework of cooperation, which the Cotonou Agreement built upon reflecting the evolving nature of ACP-EU relations. Cotonou is the example *par excellence* of the EU agreements in which the Migration and Development Nexus is present, in its 'root causes' interpretation.

In light of the analysis presented in the fourth section of the first chapter, the nature of the Cotonou Agreements is multifaceted. Indeed, it shares common features with the Partnership Cooperation Agreements (PCAs).²¹⁷ However, while these are normally *bilateral* agreements, the ACP is an exception: it functions similarly to a PCA but applies collectively to a group of countries – the African, Caribbean, and Pacific (ACP) states. Like the PCAs, the Cotonou Agreement includes emphasis on core principles like democracy and human rights,

²¹⁴ *Ibid.*, at p. 75.

²¹⁵ Cotonou Agreement, 2000.

²¹⁶ Angola; Benin; Botswana; Burkina Faso; Burundi; Cabo Verde; Cameroon; Central African Republic; Chad; Comoros; Congo; Côte d'Ivoire; Democratic Republic of the Congo; Djibouti; Equatorial Guinea; Eritrea; Eswatini; Ethiopia; Gabon; Gambia; Ghana; Guinea; Guinea-Bissau; Kenya; Lesotho; Liberia; Madagascar; Malawi; Mali; Mauritania; Mauritius; Mozambique; Namibia; Niger; Nigeria; Rwanda; São Tomé and Príncipe; Senegal; Seychelles; Sierra Leone; Somalia; Sudan; Tanzania; Togo; Uganda; Zambia; Zimbabwe; Antigua and Barbuda; Bahamas; Barbados; Belize; Cuba; Dominica; Dominican Republic; Grenada; Guyana; Haiti; Jamaica; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Suriname; Trinidad and Tobago; Cook Islands; Fiji; Kiribati; Marshall Islands; Micronesia; Nauru; Niue; Palau; Papua New Guinea; Samoa; Solomon Islands; Timor-Leste; Tonga; Tuvalu; Vanuatu. Timor-Leste only joined in 2005.

²¹⁷ See above Chapter 1, s. D, 1.4.2.

the establishment of multi-tiered dialogue for cooperation, economic cooperation with provisions for trade and investment, and also *readmission and migration management cooperation clauses*.²¹⁸ In addition to that classification, while not being a Development Aid and Assistance Agreement²¹⁹ itself, it paves the way for bilateral agreements of development aid and assistance nature negotiated under this framework.²²⁰

In comparison to the Lomé Conventions, the core objective of fostering economic, social, and cultural development in ACP countries were strategically expanded in Cotonou to encompass promoting peace and security, and nurturing a stable and democratic political environment. This shift is most evident in the sharpened focus on poverty reduction and eventual eradication, which aligns with the principles of sustainable development and the gradual integration of ACP countries into the global economy.²²¹ Although the Cotonou Agreement unites the EU and its member states with 78 ACP countries, its structure is straightforward. It rests on three pillars: 1) development cooperation, 2) economic and trade cooperation, and 3) the political dimension.²²²

Development cooperation (1) is the heart of the instrument: in addition to Governments, Cotonou also involves “parliaments, local authorities, civil society, the private sector, and economic and social partners.”²²³ In expanding participation, it is emphasized the need for participatory approaches and the involvement of diverse stakeholders in political dialogue and project implementation.²²⁴ The cooperation activities included in the Agreement are mainly oriented at 1) economic development, focusing on the industrial, agricultural, or tourism sectors of ACP countries; 2) social and human development to improve health, education, and nutrition services; and 3) regional cooperation and integration to promote and expand trade among ACP countries.²²⁵ Moreover, depending on the countries’ levels of development, cooperation arrangements and priorities may vary. The most important change introduced in the Cotonou Agreement with respect to Lomé is that the partners to the agreement are equal and the ACP

²¹⁸ Emphasis added.

²¹⁹ See above Chapter 1, s. D, 1.4.1.

²²⁰ “[T]he Community and its Member States, of the one part, and the ACP States, of the other part, hereinafter referred to as the “Parties” hereby conclude this Agreement in order to promote and expedite the economic, cultural and social development of the ACP States, with a view to contributing to peace and security and to promoting a stable and democratic political environment.” Art. 1, Cotonou Agreement, 2000.

²²¹ Karin Arts, ‘ACP-EU Relations in a New Era: The Cotonou Agreement’ (2003) *Common Market Law Review* 95, 98.

²²² Art. 1, Cotonou Agreement, 2000.

²²³ Art. 2, Cotonou Agreement, 2000.

²²⁴ Kast-Aigner, see note 191 above, p. 196.

²²⁵ Cotonou Agreement, 2000.

countries determine their own development policies.²²⁶

The Cotonou Agreement significantly changed economic and trade cooperation, replacing the *non-reciprocal trade preferences*²²⁷ of the Lomé Conventions with Economic Partnership Agreements (EPAs) between the EU and African, Caribbean, and Pacific (ACP).²²⁸ The EPAs juggled three key principles: reciprocity, sustainable development, and regional integration.²²⁹ Reciprocity demands ACP countries to partially open their markets to European goods for preferential EU access, raising concerns about fairness. Development goes beyond trade, aiming to foster sustainable growth and poverty reduction in ACP nations. Regionalism encourages ACP countries to sign EPAs as regional blocs, promoting regional integration and smoother trade. To address potential imbalances, differentiation grants special treatment to ACP's Least Developed Countries. Importantly, EPAs are an integral part of the EU-ACP cooperation and were negotiated pursuant of Art. 36(1)²³⁰ of Cotonou and in accordance with WTO rules with a view of removing 'barriers to trade between them and enhancing cooperation in all areas relevant to trade.'²³¹

Moreover, the EPAs were designed to *conform* to the World Trade Organization (WTO), seeking to harmonize ACP-EU trade relations within the global trade system, mitigating potential conflicts,²³² and, at the same time, generates two key challenges.²³³ Firstly, it raises the question of how effectively traditional multilateral development assistance could be adjusted to align with the assumptions of trade agreements. Secondly, it compelled a reevaluation of whether the WTO's approach to development in the 2000s was truly sufficient.²³⁴ In that respect, the IISD in 2004 published a brief report, whereby it argued that the agreement implicitly critiques the conventional trade regime by embedding trade liberalization within a broader political, financial, and institutional context.²³⁵ This comprehensive approach would suggest that economic liberalization alone may be insufficient

²²⁶ 'Cotonou Agreement | EUR-Lex' <<https://eur-lex.europa.eu/EN/legal-content/summary/cotonou-agreement.html>> accessed 23 May 2024.

²²⁷ Emphasis added.

²²⁸ Kast-Aigner, see note 191 above, p. 197.

²²⁹ *Ibid.*

²³⁰ See also Art. 36(1) Cotonou Agreement, "In view of the objectives and principles set out above, the Parties agree to conclude new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade."

²³¹ James Thuo Gathii, 'The Cotonou Agreement and Economic Partnership Agreements' in United Nations (ed), *Realizing the right to development: essays in commemoration of 25 years of the United Nations Declaration on the Right to Development* (United Nations 2013), p. 260.

²³² Konrad von Moltke, 'Implications of the Cotonou Agreement for Sustainable Development in the ACP Countries and Beyond' (International Institute for Sustainable Development 2004), p. 15.

²³³ *Ibid.*, at p. 21.

²³⁴ *Ibid.*

²³⁵ *Ibid.*, at p. 17–18.

for development, especially for least developed countries, highlighting the need for supportive political and financial frameworks to achieve sustainable development and poverty reduction.²³⁶ In this respect, the principle of differentiation under the Cotonou Agreement allowed for special treatment of the least developed ACP countries, ensuring they retained non-reciprocal trade preferences under initiatives such as the Everything But Arms (EBA).²³⁷

The Cotonou agreement established three institutional bodies. First, the ACP-EU Joint Parliamentary Assembly receives annual progress reports and makes recommendations on how well the agreement's goals are being met. Secondly, the Joint ACP-EU Ministerial Trade Committee, which focuses on trade issues, discusses, monitors trade agreements, and analyzes how global trade talks affect ACP economies. Thirdly, the ACP-EU Development Finance Cooperation Committee: this committee keeps an eye on how development funds are being used and makes sure they're achieving progress. They ensure development aid is being implemented effectively.²³⁸ Importantly, the Cotonou Partnership Agreement (CPA) creates a complex interplay with the bilateral development activities of EU member states. While the Cotonou Agreement offers a framework for cooperation between the EU and ACP countries, it goes beyond trade preferences, encompassing political dialogue, financial assistance, and institutional development.²³⁹ This intricate structure means the CPA interacts with member states' independent development programs, which collectively provide a larger share of funding than the EU budget itself. As a result, the EU's push to integrate the CPA with trade regimes and negotiate Economic Partnership Agreements (EPAs) had significant consequences for these member state bilateral programs within the ACP region.²⁴⁰

The third pillar, the political dimension (Title II),²⁴¹ is comprised of the following aspects: a comprehensive political dialogue on national, regional, and global issues; *promoting human rights and democratic principles*; developing peacebuilding policies, conflict prevention and resolution; addressing *migration issues and security issues*, including the fight against terrorism and countering the proliferation of weapons of mass destruction. Interestingly, in addition to the readmission clause that will be discussed later, Cotonou also contains Human Rights conditionalities. This, at least on the first moment resulted in the exclusion of some countries, like Cuba, for their poor human rights records.²⁴² However, today this seems to be

²³⁶ *Ibid.*

²³⁷ Kast-Aigner, see note 191 above, p. 198.

²³⁸ *Ibid.*, at pp. 198–200.

²³⁹ von Moltke, see note 232 above, p. 20.

²⁴⁰ *Ibid.*

²⁴¹ Title II "The Political Dimension", Arts. 8-13, Cotonou Agreement, 2000.

²⁴² Bartels, see note 183 above, p. 35.

again a dead-letter, as many countries with poor human rights record are included in the later versions of the Cotonou Agreement. As observed by Thuo Gathii, while enshrining human rights as a core principle, it lacks a strong enforcement mechanism linking them to the operational aspects of development cooperation and trade.²⁴³ This compartmentalization weakens the human rights framework within the partnership, particularly concerning the growing emphasis on Economic Partnership Agreements (EPAs).²⁴⁴

ii. Samoa Agreement

As state above, the previous Cotonou agreement was due to expire in February 2020, and was extended until 2021. In September 2018, on the margins of the United Nations General Assembly in New York, negotiations commenced to establish a successor to the Cotonou Agreement. By December 2020, these discussions had yielded a political agreement²⁴⁵ on the text for a new, modernized treaty.²⁴⁶ However, the process took longer than expected. Only in July 2023, the Council gave the green light, allowing provisional application and opening to signature of the Post-Cotonou agreement. This agreement, replacing the Cotonou Agreement, will serve as the governing framework for cooperation between the 27 European Union member states, its member states, and the 79 OACPS countries for the next two decades.²⁴⁷ It is only in April 2024 that the new negotiated agreement actually entered into force, after the vote of the parliament and with a strong majority.²⁴⁸

The path leading to the adoption of the Samoa Agreement is nothing but an easy one. Indeed, one of the greatest challenges, in addition to signing an agreement that reflected the

²⁴³ Thuo Gathii, see note 231 above, p. 273.

²⁴⁴ *Ibid.*

²⁴⁵ 'Post-Cotonou: Negotiators Reach a Political Deal' (*European Commission - European Commission*, 3 December 2020) <https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2291> accessed 24 May 2024.

²⁴⁶ 'Post-Cotonou: Council Gives Greenlight to the New Partnership Agreement with the African, Caribbean and Pacific States' <<https://www.consilium.europa.eu/en/press/press-releases/2023/07/20/post-cotonou-council-gives-greenlight-to-the-new-partnership-agreement-with-the-african-caribbean-and-pacific-states/>> accessed 24 May 2024.

²⁴⁷ The OACPS Countries party to the "Samoa Agreement" are: Angola; Antigua and Barbuda; Bahamas; Barbados; Belize; Benin; Botswana; Burkina Faso; Burundi; Cabo Verde; Cameroon; Central African Republic; Chad; Comoros; Congo; Cook Islands; Côte d'Ivoire; Cuba; Democratic Republic of the Congo; Djibouti; Dominica; Dominican Republic; Equatorial Guinea; Eritrea; Eswatini; Ethiopia; Fiji; Gabon; Gambia; Ghana; Grenada; Guinea; Guinea-Bissau; Guyana; Haiti; Jamaica; Kenya; Kiribati; Lesotho; Liberia; Madagascar; Malawi; The Maldives; Mali; Marshall Islands; Mauritania; Mauritius; Micronesia; Mozambique; Namibia; Nauru; Niger; Nigeria; Niue; Palau; Papua New Guinea; Rwanda; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Samoa; São Tomé and Príncipe; Senegal; Seychelles; Sierra Leone; Solomon Islands; Somalia; Sudan; Suriname; Tanzania; Timor-Leste; Togo; Tonga; Trinidad and Tobago; Tuvalu; Uganda; Vanuatu; Zambia; Zimbabwe. *With respect to Cotonou, The Maldives joined the Agreement.*

²⁴⁸ On Wednesday 10 April, MEPs approved by 448 votes to 31, with 131 abstentions, the signing in Apia last November of the Samoa Agreement between the EU and 79 members of the Organisation of African, Caribbean and Pacific States (OACPS) 'AGENCE EUROPE - Parliament Adopts Its Position on Samoa Agreement between EU...' <<https://agenceurope.eu/en/bulletin/article/13388/16>> accessed 27 May 2024.

relationship between the EU and ACP states, is the fact that the EU itself changed: new states joined the Union without having negotiated the agreement, and some left (UK). Moreover, the Lisbon Treaty entered into force in 2009 removed the reference to the *ACP Group* in the EU treaties.²⁴⁹ Following a period of limited engagement with the African, Caribbean, and Pacific (ACP) group under the Barroso II Commission, a change in leadership brought a renewed focus on the partnership. In 2014, the newly appointed Commission President, Jean-Claude Juncker, emphasized continuity by mandating negotiations for a revised Cotonou Agreement.²⁵⁰ This signaled the Commission's preference for maintaining the partnership, even highlighting its potential for joint global action. However, EU member states held diverse views on the matter: after Brexit,²⁵¹ the Commission strived to find a compromise between those member states favoring continuity and those calling for fundamental change.

The change of leadership of the European Parliament in 2019 during the 2021-2027 budget negotiations, as well as the COVID-19 pandemic marked a severe setback in the negotiations. Moreover, the ACP Group also underwent some changes during the negotiations of the Post- Cotonou Agreement. In December 2019 the Georgetown Agreement was revised, rechristening the group as the 'Organisation of African, Caribbean and Pacific States' (OACPS), but also outlying ambitious goals for broader international engagement beyond the EU partnership. However, these aspirations have not yet translated into a significant transformation of the OACPS's international profile. Furthermore, the organization's influential member, South Africa, departed in September 2021, raising concerns about its future financial sustainability and diplomatic clout. As the High Representative for Foreign Affairs and Security Policy, Joseph Borrell, commented:

[T]he EU and the African, Caribbean and Pacific states represent over 1.5 billion people and more than half of the seats at the United Nations. With this new agreement, we will be better equipped to address emerging needs and global challenges, such as climate change, ocean governance, migration, health, peace and security.²⁵²

Indeed, the Samoa Agreement covers *six priority areas* or principles: democracy and human rights; sustainable economic growth and development; climate change; human and social

²⁴⁹ Niels Keijzer, 'New Start between Europe and the African, Caribbean and Pacific States: What Future for the Past?' *Welthungerhilfe.de - Für eine Welt ohne Hunger und Armut*, June 2023) <<https://www.welthungerhilfe.org/global-food-journal/rubrics/development-policy-agenda-2030/post-cotonou-is-the-signing-coming-now>> accessed 25 May 2024.

²⁵⁰ *Ibid.*

²⁵¹ Sophia Price, 'Brexit, Development Aid, and the Commonwealth' (2016) 105 *The Round Table* 499.

²⁵² 'Post-Cotonou: Council Gives Greenlight to the New Partnership Agreement with the African, Caribbean and Pacific States', see note 246 above.

development; peace and security; migration and mobility.²⁵³ This common foundation encapsulated in the six priority areas is combined with an unprecedented novelty, which is the introduction of three specific regional protocols for Africa, the Caribbean, and the Pacific.²⁵⁴ This "3+1" structure is aimed at effective regional priority addressing: enhanced governance under the Samoa Agreement involves multiple levels, including the OACPS-EU Council of Ministers, Ambassadorial Level Senior Officials Committee, Joint Parliamentary Assembly, and Summits of Heads of State or Government.²⁵⁵

Importantly, despite this difference in the structure, the Samoa Agreement maintains the role of a framework agreement in relation to the EPAs. It will ensure their strong linkage, with the objective of inclusive, sustainable economic growth and development. The EPAs will continue to be grounded in the provisions of appropriate measures outlined within the framework agreement. These measures are to be implemented in the event of a breach of the agreement's essential or fundamental elements, such as democracy, human rights, the rule of law, non-proliferation, and good governance/anti-corruption.²⁵⁶

Moreover, the European Development Fund (EDF), which had been present until Cotonou, ceases to exist in the tabled version of the Samoa Agreement.²⁵⁷ In place of EDF, the Samoa Agreement integrates support for cooperation within the EU budget (NDICI) discussed above. The Samoa Agreement places a stronger emphasis on achieving the Sustainable Development Goals (SDGs) and combating climate change, guided by the 2030 Agenda for Sustainable Development and the Paris Agreement. Additionally, the agreement adopts a 'comprehensive and balanced approach to migration,'²⁵⁸ promoting well-managed migration and mobility. At the same time, it also enhances cooperation to tackle the root causes of irregular migration, trafficking, and smuggling of migrants.

D. National Approaches to Development Aid and Assistance

The last part of this chapter analyzes the national approach to Development Aid within France

²⁵³ Art. 1(3), Samoa Agreement, 2023.

²⁵⁴ Art. 6(1), Samoa Agreement, 2023. "This Agreement consists of the General Part (Parts I to VI), three Regional Protocols ("the Regional Protocols") and Annexes.

²⁵⁵ Maria Luisa Troncos, 'Samoa Agreement: The EU's New Partnership with the Countries of the Organisation of African, Caribbean and Pacific States (OACPS)' (CARIFORUM-EU Consultative Committee 7th meeting, 29 November 2023) <<https://www.eesc.europa.eu/en/news-media/presentations/samoa-agreement-eus-new-partnership-countries-organisation-african-caribbean-and-pacific-states-oacps>> accessed 25 May 2024.

²⁵⁶ *Ibid.*

²⁵⁷ Annex I, Cotonou Agreement.

²⁵⁸ Arts. 62-76 Title VI Migration and Mobility, Samoa Agreement, 2023.

and Italy. These countries are of particular interest mainly for two reasons. Firstly, they are EU members, and therefore fall under the umbrella framework of the Samoa Agreement. Secondly, their approach to Migration and Development has been particularly marked by ‘country specific policies and agreements of co-development.’²⁵⁹ While they both explicitly endorse a ‘root causes’ approach to migration, their individual approaches differ: France includes a migration clause in the majority of its Development agreement, whereas the Bilateral Agreements analyzed with Italy as a Counterpart do not include any mention of migration or readmission, but they are included in the broader strategy of the Partnership With Africa²⁶⁰ and Piano Mattei.²⁶¹ This trend has been observed across Europe. Indeed, the mention of the ‘root causes’ approach to Development Aid and Assistance is also explicit in Spain,²⁶² which also presents its approach to migration as ‘preventive.’²⁶³ Similarly, northern countries like Sweden²⁶⁴ or Germany also include this dynamic in their development agreement with third countries. Accordingly, Sweden allocates nearly SEK 2.3 billion (approx. EUR 230 million) over four years (2024–2027). Its aim is to support efforts towards more stable and democratic development while addressing the root causes of irregular migration.²⁶⁵ Germany addresses the root causes of migration through bilateral development cooperation agreements, focusing on economic opportunities, stability, and climate resilience in partner countries.²⁶⁶ Initiatives include return centers and contributions to the European Trust Fund for Africa, promoting sustainable conditions to reduce irregular migration.

i. Italy Development Agreements

Due to its geographical position, Italy is one of the main ‘entry points’ to the European Union territory. Since the 1990s, Italy has experienced significant waves of immigration, transforming the country from a source of emigration to a destination for migrants.²⁶⁷ Initially, Italy saw an

²⁵⁹ Schiller and Faist, see note 18 above, pp. 152–153.

²⁶⁰ ‘A Partnership With Africa’ <https://www.esteri.it/mae/resource/doc/2020/12/a_partnership_with_africa_en.pdf>.

²⁶¹ Piano strategico Italia-Africa: Piano Mattei, XIX Legislatura - Testi allegati all’ordine del giorno.

²⁶² ‘The 2021-2024 FOREIGN ACTION STRATEGY’ (Gobierno de España), p. 73.

²⁶³ ‘Favoreceremos los enfoques preventivos y la capacitación en origen’ (We will favour preventive action and capacity building in the country of origin. My Translation) *ibid.*, at p. 55.

²⁶⁴ OECD, ‘Sweden’, *International Migration Outlook 2023* (OECD 2023) https://www.oecd-ilibrary.org/social-issues-migration-health/international-migration-outlook-2023_b0f40584-en accessed 26 May 2024.

²⁶⁵ Regeringen och Regeringskansliet, ‘Government Adopts New Development Assistance Strategy for Middle East and North Africa, Focusing on Economic Development and Counteracting Irregular Migration’ (*Regeringskansliet*, 21 March 2024) <<https://www.government.se/press-releases/2024/03/government-adopts-new-development-assistance-strategy-for-middle-east-and-north-africa-focusing-on-economic-development-and-counteracting-irregular-migration/>> accessed 27 May 2024.

²⁶⁶ In 2020 Germany adopted the BMZ 2030 Reform ‘BMZ 2030 Reform’ (*Federal Ministry for Economic Cooperation and Development*, 2020) <<https://www.bmz.de/en/countries/reform-strategy-bmz-2030>> accessed 27 May 2024.

²⁶⁷ Giorgia Di Muzio, ‘Introduction’ [2012] Country Profile 23: ‘Italy’ 3 <<https://www.bpb.de/themen/migration-integration/laenderprofile/english-version-country-profiles/145707/introduction/>> accessed 26 May 2024; See also: Giuseppe Sciortino, *Immigration* (Erik Jones and Gianfranco Pasquino eds, Oxford University Press 2015)

influx of migrants from neighboring countries and the Balkans, particularly Albania.²⁶⁸ By the late 1990s and early 2000s, immigration patterns shifted as Italy became a key entry point for migrants from Africa, the Middle East, and Asia seeking refuge and better economic opportunities. Throughout the 2010s, Italy's geographic position made it a critical landing point for migrants crossing the Mediterranean Sea. The migration issue became highly politicized, with various Italian governments implementing different policies to manage the influx. Efforts included stricter border controls, bilateral agreements with North African countries, and increased patrols in the Mediterranean.²⁶⁹

By 2022, Italy saw a resurgence in migrant arrivals, with around 160,000 people reaching its shores, a significant increase from previous years. The continued instability in countries like Libya and Tunisia, coupled with broader global issues such as economic inequality and climate change, have sustained migration pressures.²⁷⁰ Italy's response has involved not only managing arrivals but also addressing 'root causes' in migrants' countries of origin through development aid and cooperation agreements.²⁷¹ Indeed, since 2017, Italy began formally integrating *development aid* into its migration management strategy, focusing on economic development and stability in key source countries to mitigate migration flows. With the law budgetary 2017, Italy established the 'Fondo per l'Africa,'²⁷² aimed at supporting operations of an 'extraordinary nature' to impulse cooperation with African Countries crucial for migratory routes.²⁷³

A decree issued by the Foreign Minister on February 1st, 2017, clarified that the fund would be a significant component of Italy's measures against irregular immigration and human trafficking.²⁷⁴ The implementation of the fund involves the Italian Agency for Development Cooperation, other public administrations, the EUTF Board and Committee,²⁷⁵ the IOM, the United Nations High Commissioner for Refugees (UNHCR), and other competent international

<<https://academic.oup.com/edited-volume/28117/chapter/212284681>> accessed 26 May 2024; Enrico Pugliese, *L'Italia Tra Migrazioni Internazionali e Migrazioni Interne* (Mulino 2002).

²⁶⁸ Di Muzio, see note 267 above, p. 3.

²⁶⁹ 'The State of the World's Human Rights: April 2024' (Amnesty International 2024) 217–218 <<https://www.amnesty.org/en/documents/pol10/7200/2024/en/>> accessed 26 May 2024.

²⁷⁰ 'The State of the World's Human Rights: April 2024' (n 269); Human Rights Watch, 'Italy: Events of 2023', *World Report 2024* (2024) <<https://www.hrw.org/world-report/2024/country-chapters/italy>> accessed 26 May 2024.

²⁷¹ Paul Clist and Gabriele Restelli, 'Development Aid and International Migration to Italy: Does Aid Reduce Irregular Flows?' (2021) 44 *The World Economy*, pp. 1282–1283.

²⁷² Fund for Africa (My Translation).

²⁷³ Art. 621, Legge di Bilancio 2017, A fund is established within the budget forecast of the Ministry of Foreign Affairs and International Cooperation, with a financial allocation of 200 million euros for the year 2017, for extraordinary measures aimed at revitalizing dialogue and cooperation with African countries of priority importance for migration routes (My translation).

²⁷⁴ Art. 1, Decreto Fondo per l'Africa, 'Finalità e ambito di applicazione'.

²⁷⁵ 'Objective and Governance - European Union' <https://trust-fund-for-africa.europa.eu/our-mission/objective-and-governance_en> accessed 13 June 2024.

organizations. Development cooperation activities can also be assigned to civil society organizations.²⁷⁶ The 2020 Budget law has transformed the Africa Fund into the 'Migration Fund,' expanding its geographical scope to include non-African countries. For the three-year period 2020-2022, the overall budget is 100 million Euro (30 for 2020, 30 for 2021 and 40 for 2022).²⁷⁷

In 2019, recognizing the intertwined issues of sustainability, peace, terrorism, crime, migration, and climate change, Italy decided to launch 'A Partnership with Africa.'²⁷⁸ In this document, strategic emphasis is placed on sectors such as renewable energy, environmental sustainability, and economic development.²⁷⁹ Additionally, Italy supports improvements in governance, infrastructure development, and humanitarian aid to create a comprehensive support system for African nations. Geographically, Italy focuses on the Sahel region, the Horn of Africa, and North Africa due to their strategic importance in terms of migration routes and security concerns. Importantly, development cooperation is strategically used to address the root causes of migration. Italy employs a multilevel strategy for migration management that enhances economic opportunities and living conditions in both origin and transit countries.²⁸⁰ In the past five years Italy has already destined some important development aid programs in particular to Somalia, Mozambique, Ethiopia, Libya, and Sudan.²⁸¹

This strategy was further intensified under Prime Minister Giorgia Meloni's administration, which in January 2024 launched the 'Mattei Plan' during the Italy-Africa summit.²⁸² The plan aims to enhance Italy's cooperation with African countries, focusing on energy, migration, and various sectors including health, education, and agriculture. The Mattei Plan is designed to address the root economic causes of migration from Africa by improving living conditions and creating economic opportunities in African nations. With an initial funding of 5.5 billion euros, the plan includes investments and loans to support projects in renewable energy, infrastructure, and capacity building.²⁸³ One of the primary objectives is to position Italy as a key *energy* bridge between Africa and Europe, helping Europe reduce its dependence on Russian energy.²⁸⁴ This initiative is part of Italy's broader strategy to play a more significant

²⁷⁶ 'Che cos'è il Fondo Africa' (*Openpolis*, November 2018) <<https://www.openpolis.it/parole/che-cose-il-fondo-africa/>> accessed 26 May 2024.

²⁷⁷ 'A Partnership With Africa', see note 260 above, p. 25.

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*, at p. 22.

²⁸⁰ *Ibid.*, at pp. 24–25.

²⁸¹ La cooperazione con l'Africa e il piano Mattei' (*Openpolis*, February 2024)

<<https://www.openpolis.it/esercizi/la-cooperazione-con-lafrica-e-il-piano-mattei/>> accessed 26 May 2024.

²⁸² Piano strategico Italia-Africa: Piano Mattei Piano Mattei, see note 261 above.

²⁸³ 'La cooperazione con l'Africa e il piano Mattei', see note 281 above.

²⁸⁴ *Ibid.*

role in African development, in alignment with its G7 presidency goals. By addressing the push factors of migration and enhancing economic development, the Mattei Plan seeks to curb irregular migration flows to Europe.²⁸⁵

Simultaneously to these ambitious multilateral projects, Italy engaged in development aid and assistance first and foremost through bilateral cooperation agreements, aimed at fostering sustainable development, economic growth, and social inclusion. These agreements are to be read in conjunction with the above-presented broader plans that Italy has with respect to development aid. Indeed, these bilateral agreements fall within the scope of BLAs, PCAs, and PTAs presented in the first chapter, and more in general of the Cotonou-established EPAs. To give a scale of how prominent the use of development aid bilateral agreements is, only considering the bilateral agreements signed from 1990 to the day of writing have been considered. For this analysis, the sample taken is of bilateral agreements of development and cooperation between Italy and 17 countries,²⁸⁶ and the research resulted in 195 agreements signed between Italy and Counterparties. Interestingly, in the text of these bilateral agreements there is no trace of a ‘migration clause’ or conditionality. However, the countries selected are all either Northern African countries or Sahel countries. This, as it has been presented, is a special focus in the Partnership with Africa and the Piano Mattei, which have the explicit goal of addressing the root causes of migration through development aid. Indeed, by restricting the research to agreements signed between 2017 – the year of the institution of the Africa Fund - to 2024, data show that 75 of the 195 agreements²⁸⁷ have been signed only in the past seven years. These agreements aim to promote sustainable development, improve infrastructure, and enhance socio-economic conditions in the involved counterparties. For example, the agreements with Ethiopia²⁸⁸ and Somalia²⁸⁹ emphasize environmental sustainability and peace-

²⁸⁵ Daniele Fattibene and Stefano Manservigi, ‘The Mattei Plan for Africa: A Turning Point for Italy’s Development Cooperation Policy?’ (*IAI Istituto Affari Internazionali*, 11 March 2024) <<https://www.iai.it/en/pubblicazioni/mattei-plan-africa-turning-point-italys-development-cooperation-policy>> accessed 26 May 2024.

²⁸⁶ In addition to Somalia, Mozambique, Ethiopia, Libia and Sudan to which Italy has diverted most of the development aids, countries considered are Northern African Countries and the Sahel Countries given the particular focus they have under the Partnership with Africa. In total, the countries considered are: Somalia, Eritrea, Sudan, Algeria, Marocco, Libia, Senegal, Burkina Faso, Chad, Egypt, Etiopia, Mali, Mauritania, Mozambique, Niger, Nigeria, Tunisia ‘Ministero Degli Affari Esteri e Della Cooperazione Internazionale - Archivio Dei Trattati Internazionali Online’ <<https://itra.esteri.it/Home/Search>> accessed 13 March 2024.

²⁸⁷ *Ibid.*

²⁸⁸ Between 1990 and 2024 Italy has signed 39 treaties with Ethiopia: <https://itra.esteri.it/Home/Search>. Examples of them are: Accordo Esecutivo Relativo al Programma “Recupero Ambientale e Sviluppo Sostenibile dell’area del Lago Boye nel Comune di Jimma” (Italia-Etiopia) 13/09/2023 AID 12838; and Accordo Mediante Scambio di Note Emendativo dell’Accordo Inerente al Programma “Rafforzamento dei Servizi di Intermediazione del Lavoro a Sostegno della Trasformazione Economica in Etiopia”, fatto ad Addis Abebea il 9 Luglio 2021 (AID 12238).

²⁸⁹ Development Co-operation Framework Agreement (Italy-Somalia), (adopted 09/12/2020, entered into force 29/08/2022) AID 12752; and Accordo in Relazione al Programma “Verso la Pace e la Stabilità” in Somalia (TPSS FUND) (Italy-Somalia), (adopted 25/07/2023, entered into force 25/07/2023).

building initiatives, respectively. In Niger, projects focus on agricultural development²⁹⁰ and female education.²⁹¹ The agreements with Mozambique support the national healthcare system, while those with Burkina Faso target sustainable apiculture.²⁹² Additionally, debt conversion initiatives with Algeria and Egypt²⁹³ demonstrate Italy's commitment to economic cooperation and financial stability.

Overall, these agreements reflect Italy's strategic emphasis on fostering development through diverse, targeted interventions across Africa. This reflects the use (or misuse) of the development aid included in the priority of the country to curb migration. Whether the argument is that migration is *beneficial for every country*²⁹⁴ involved in the migration process, or that development aid will stop migration at the root, the ultimate goal remains to use development as a means of control.

ii. France Development Agreements

Immigration to France has evolved since the 19th century, with significant influxes from neighboring European countries, especially Italy, Poland, and Spain post-World War I. After World War II, labor shortages prompted more immigration, contributing significantly to population growth.²⁹⁵ The decolonization movement in the second part of the 20th century, and particularly the independence of Algeria in 1962,²⁹⁶ led to a substantial number of North African settlers in France. This period also saw the arrival of French citizens repatriated from North Africa.²⁹⁷ Immigration policies began to tighten in the 1970s due to economic downturns and rising unemployment among native French workers, leading to restrictions that remain in place today.²⁹⁸ By the early 21st century, France had a diverse immigrant population, with significant

²⁹⁰ Accordo Esecutivo tra il Governo della Repubblica Italiana e il Governo della Repubblica del Niger per l'Esecuzione del "Progetto di Piccola Irrigazione per lo Sviluppo della Produzione del Pomodoro" (PPI/DPT). (Italia-Niger) 17/06/2023 (AID 12208).

²⁹¹ Accordo Esecutivo tra il Governo della Repubblica Italiana e il Governo della Repubblica del Niger per l'esecuzione del "Progetto per l'Accelerazione dell'educazione femminile" (PAEF). (Italy-Niger) 17/06/2023 (AID 12236).

²⁹² Accordo Esecutivo per L'Esecuzione del "Progetto di Sostegno allo Sviluppo Sostenibile dell'Apicoltura in Burkina Faso" (PADD/AF) 15/05/2023 (AID 11639).

²⁹³ Italian Government and the Government of Egypt. "MoU Italy-Egypt for a new Partnership for Development" 17 March 2024.

²⁹⁴ Emphasis added.

²⁹⁵ John E Flower and others, 'People, Immigration of France' (2024) France <<https://www.britannica.com/place/France>> accessed 27 May 2024.

²⁹⁶ Elizabeth Buettner, 'Soldiering on in the Shadow of War - Decolonizing La plus Grande France', *Europe after Empire: Decolonization, Society, and Culture* (1st Edition, Cambridge University Press 2016) 107–108 <<https://www.cambridge.org/core/product/identifier/9781139047777/type/book>> accessed 27 May 2024.

²⁹⁷ On decolonization of North Africa see also: Richard Alba and Roxane Silberman, 'Decolonization Immigrations and the Social Origins of the Second Generation: The Case of North Africans in France (1).' (2002) 36 *International Migration Review*, p. 1169.

²⁹⁸ Frederick Cooper, 'The Politics of Decolonization in French and British West Africa' in Frederick Cooper, *Oxford Research Encyclopedia of African History* (Oxford University Press 2018) 11

numbers from North Africa, Sub-Saharan Africa, and former French colonies in Asia and the Americas.²⁹⁹ The Amsterdam Treaty of 1999 further influenced immigration policies, aligning them with broader European Union regulations. Today, France's immigration policies have undergone significant evolution and refinement, reflecting the country's complex demographic and socio-economic landscape. As of 2022, approximately 12.8% of the French population was foreign-born, with a noticeable influx from countries like Morocco, Algeria, and Tunisia. The year 2021 saw France admitting 278,000 new immigrants, with a substantial portion being labor migrants and family reunifications.³⁰⁰

Like Italy and other European countries, France's immigration policies are quite restrictive. As of February 2023, a new law has passed which has been criticized, for it removes important safeguards against the risk of *refoulement*, it weakens the appeal rights and due process rights for asylum seekers, and it introduces measures to withdraw residence permits for people who allegedly 'do not comply with the principles of the Republic.'³⁰¹ In terms of Development Aid and related agreements, France's development policy is guided by Act no. 2014-773³⁰² and decisions by the French Interministerial Committee on International Cooperation and Development (CICID), chaired by the Prime Minister. The CICID's 2018 guidelines reaffirm poverty eradication, SDGs implementation, the Paris Climate Agreement, and global common goods protection.³⁰³ Five priorities are set: international stability, climate, education, gender equality, and health. The policy aims for 0.55% of the Gross National Income (GNI) to be allocated to ODA by 2022, focusing on grants and bilateral assistance through civil society and humanitarian organizations.³⁰⁴ France identified 19 African 'priority countries' to be the primary beneficiaries of Development Assistance, receiving significant bilateral funding. In 2019, France's ODA reached €10.9 billion, 0.44% of GNI.³⁰⁵ In 2021, France adopted a new Law regarding Development strategies and Aid, reinforcing France's commitment to development aid, emphasizing transparency, accountability, and a results-

<<http://oxfordre.com/africanhistory/view/10.1093/acrefore/9780190277734.001.0001/acrefore-9780190277734-e-111>> accessed 27 May 2024.

²⁹⁹ Flower and others, see note 295 above.

³⁰⁰ OECD, 'France', *International Migration Outlook 2023* (OECD 2023) <<https://www.oecd-ilibrary.org/sites/2b69225b-en/index.html?itemId=/content/component/2b69225b-en>> accessed 26 May 2024.

³⁰¹ Eva Cossé, 'French Lawmakers Adopt Regressive Immigration Bill | Human Rights Watch' *Human Rights Watch* (20 December 2023) <<https://www.hrw.org/news/2023/12/20/french-lawmakers-adopt-regressive-immigration-bill>> accessed 27 May 2024.

³⁰² LOI n° 2014-773 du 7 juillet 2014 d'orientation et de programmation relative à la politique de développement et de solidarité internationale (1) - Légifrance.

³⁰³ Ministère de l'Europe et des Affaires étrangères, 'Development Assistance' (*France Diplomacy - Ministry for Europe and Foreign Affairs*) <<https://www.diplomatie.gouv.fr/en/french-foreign-policy/development-assistance/>> accessed 27 May 2024.

³⁰⁴ *Ibid.*

³⁰⁵ *Ibid.*

oriented approach. It aims to address the root causes of migration and poverty by focusing on sustainable economic growth, stability, and resilience in developing countries.³⁰⁶

Both the LOI 2014-773 and the new LOI 2021-1031 make explicit reference to the migration and development nexus.³⁰⁷ France's development aid is heavily directed towards fragile and conflict-affected states, recognizing that instability and violence are significant push factors for migration. Aid programs in these regions focus on building resilience, promoting peace, and providing humanitarian assistance. By addressing the '*causes profondes des crises et des fragilités*'³⁰⁸ and the long-term stability of these areas, France aims to *prevent the displacement* of populations and *reduce the flow of migrants* seeking safety and better living conditions. This is evident in the increased aid to sub-Saharan Africa and the Mediterranean region, which includes targeted support for health systems, education, and economic development. In addition, France's development aid policy includes significant contributions to multilateral efforts and partnerships with international organizations and other countries.³⁰⁹ This collaborative approach enhances the impact of France's aid programs and ensures that they address complex global challenges comprehensively. The coordination with the European Union and adherence to frameworks such as the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change illustrate France's commitment to global development goals.³¹⁰

As said, France has identified 19 Priority Countries³¹¹ to whom it redirects the development aid and assistance. With each of these countries, France has signed agreements of different kinds, ranging from technical assistance, education, agriculture, and 'pure' development financial aid.³¹² Indeed, the scope of these agreements is aligned with the broader scope of development aid and assistance enshrined both in the 2014 and 2021 laws and more in general with the EU framework of Cotonou.³¹³ Arguably, a trend has emerged in

³⁰⁶ LOI n° 2021-1031 du 4 août 2021 de programmation relative au développement solidaire et à la lutte contre les inégalités mondiales (1) 2021 (2021-1031).

³⁰⁷ LOI n. 2014-773, annex II, paragraph migration, mobilité et development "*La politique de développement et la politique migratoire doivent être en cohérence. La France reconnaît le rôle des migrations dans le développement des pays partenaires, les migrants étant des acteurs à part entière du développement en y contribuant par leurs apports financiers, techniques et culturels.*"

³⁰⁸ 'The root causes of crises and fragility' (My Translation). Art. 17, LOI n° 2021-1031.

³⁰⁹ 'Politique Française En Faveur Du Développement' (MINISTRE DE L'EUROPE ET DES AFFAIRES ÉTRANGÈRES 2022), p. 129.

³¹⁰ *Ibid.*, at pp. 129–130.

³¹¹ Bénin, Burkina Faso, Burundi, Comores, Djibouti, Éthiopie, Gambie, Guinée, Haïti, Liberia, Madagascar, Mali, Mauritanie, Niger, République centrafricaine, République démocratique du Congo, Sénégal, Tchad, Togo.

³¹² See also: 'Ministère de l'Europe et Des Affaires Étrangères Internet : Traités'

<https://basedoc.diplomatie.gouv.fr/exl-php/recherche/mae_internet_traites> accessed 11 June 2024.

³¹³ They were all signed under the "aegis" of Cotonou, but they also align with the development plan of Samoa Agreement.

international agreements towards the convergence of migration control and development assistance. These agreements often use co-development strategies, where development aid is basically contingent upon the recipient country's cooperation in readmitting its emigrated citizens.

Chapter 3: Neocolonial Legacies in the Readmission Clauses in Development and Cooperation Agreements

From a preliminary analysis of the Development and Cooperation agreements of the European Union with a focus particularly on Italy and France, it is evident that while the prevailing approach to the Migration and Development Nexus is the 'root causes' one, there is increasingly a tendency to include also the more liberal 'migration as a tool for development' approach, promoted first and foremost by international institutions. However, a critical analysis of these two approaches shows the shortcomings of both, and, in particular, the neocolonial legacies still embedded today in the framing of these agreements. In the present thesis the theoretical framework of the Migration and Development Nexus, and the legal framework under inquiry, have been presented. This chapter aims to explore the post-colonial remnants present in the inclusion of the two approaches³¹⁴ to the Migration and Development Nexus in the above-presented Development Agreements. In that regard, emphasis is placed on the *readmission clause*, which is the utmost evidence of the EU's tendency to link migration with security concerns and, simultaneously, include it in the trade agreements in general, and also in Post-Cotonou as a *conditionality* to disseminate 'development aid.'³¹⁵ This, in turn, unveils the still uneven relation of power that is embedded between EU-ACP states, present since the very conception of the Development Agreements.

A. Readmission and Return in European Union Law

While the focus of the present thesis is precisely on the (mis)use of readmission in DCAs and PCAs,³¹⁶ readmission and return are indeed addressed also by specific instruments. A brief overview of these instruments will help in contextualizing the issue. The notion of readmission

³¹⁴ Root-Causes approach and Win-Win Approach, or "migration as a tool for development".

³¹⁵ Lavenex, see note 5 above.

³¹⁶ As specified above, the distinction between DCAs and PCAs is thin in the case of the Cotonou and the Samoa Agreement. In general terms, they are included in both types of agreements (see above Chapter 1, s. D).

is crucial in the way in which Western countries, particularly the European Union deal with migration. Indeed, especially after 9/11, countries have adopted migration policies that tend to associate migration with national security threats.³¹⁷

This, in turn, led to a securitized approach to migration, which sees the protection of the border as the ultimate objective of any migration policy. However, as said, migration policy is not enacted only through explicit migration laws, and development agreements increasingly include the objective of curbing migration or making migration beneficial for the development of all - and ultimately, again, diminish migration. At the European level, the legal instruments on migration are extremely fragmented.³¹⁸ This dispersion makes it notoriously challenging to maintain a comprehensive overview. In this respect, observing the magnitude of resources dedicated to each instrument can offer an understanding of the priorities of the European agenda.

The Dublin Regulation expanded from ten to twenty-three pages between 2003 and 2013. Similarly, the Students and Researchers Directive (EU) 2016/801 spans thirty-two pages, and the Frontex Regulation (EU) 2019/1896 extends to 100 pages, excluding annexes - both starkly contrasting with the more concise Family Reunification Directive 2003/86/EC and the original Long-Term Residents Directive 2003/109/EC, which are seven and ten pages, respectively.³¹⁹ Before entering the discussion on readmission, it is key to recall another related concept, which is 'return.' The main instrument governing the latter one at the European Level is the 2008 DIRECTIVE 2008/115/EC, 'Return Directive.' The addressee of the 'Return Directive' are 'third-country nationals residing in the territory illegally.'³²⁰ The decision of return can therefore be applied, as established in the Dublin Regulation,³²¹ also to individuals who have filed an application for asylum which has been denied.³²² The Return Directive defines return as follows:

³¹⁷ Haas, see note 6 above, p. 6; Thym, 'Irregular Presence and Return', see note 82 above, p. 507.

³¹⁸ 'EU migration law comprises roughly twenty pieces of core legislation, several dozen smaller instruments, and more than 200 judgments of the Court in Luxembourg'. Daniel Thym, 'General Features of EU Legislation' in Daniel Thym, *European Migration Law* (1st edn, Oxford University Press Oxford 2023), p. 253 <<https://academic.oup.com/book/46560/chapter/407966766>> accessed 31 May 2024; Pieter Boeles and others, *European Migration Law* (Intersentia 2014), p. 37.

³¹⁹ Thym, 'General Features of EU Legislation', see note 317 above, pp. 253–254.

³²⁰ Art. 6(1), Return Directive 2008/115/EC.

³²¹ Art. 19(3), Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

³²² 'If the outcome is negative, the asylum applicant must be considered "staying illegally" for the purposes of the Return Directive, irrespective of whether she may remain on the territory until a domestic court has decided on appeal in accordance with Art. 46(5)–(10) Asylum Procedures Directive' in Thym, 'Irregular Presence and Return', see note 82 above, p. 527.

[...] the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to: his or her country of origin, or a country of transit *in accordance with Community or bilateral readmission agreements or other arrangements*,³²³ or another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted.³²⁴

The role of the readmission agreements in implementing the return - which has to be in accordance with the principle of *non-refoulement* - is made explicit under the *definitions* section of the Return Directive provided above.³²⁵ Importantly, States are required to readmit their nationals under customary international law, as reaffirmed by the GCM.³²⁶ Therefore, the necessity of readmission agreements to implement any 'return decision' stems from the need to address loopholes such as identifying nationals, obtaining travel documents, accepting transfers, and organizing removal.³²⁷ Readmission agreements can take different shapes and forms and do not represent 'an end in itself.'³²⁸ Their primary aim is to facilitate cooperation in returning migrants irregularly present in the country to their countries of origin or transit.³²⁹ Readmission agreements involve a mutual commitment by each party to accept certain categories of individuals at the request of the other party without formal procedures. While their primary aim is to address illegal immigration, these agreements are also utilized for the rapid expulsion of asylum seekers and are essential for the effective implementation of safe third-country policies.³³⁰ The EU-27 Member States have commonly used a range of incentives to encourage cooperation on readmission from countries in the South Mediterranean and Africa. These incentives include special trade concessions, which grant favorable trading terms; preferential entry quotas for economic migrants, allowing a certain number of individuals from these regions to enter the EU for work; and technical cooperation and assistance, providing expertise and resources to help improve local capabilities.³³¹

³²³ Emphasis added.

³²⁴ Art. 3(3), Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

³²⁵ Art. 5, Return Directive 2008/115/EC.

³²⁶ Thym, 'Irregular Presence and Return', see note 82 above, p. 537; Mariagiulia Giuffrè, 'Obligation to Readmit? The Relationship between Interstate and EU Readmission Agreements' in Francesca Ippolito and Seline Trevisanut (eds), *Migration in the Mediterranean* (1st Edition, Cambridge University Press 2016), p. 266 <https://www.cambridge.org/core/product/identifier/9781316104330%23CN-bp-11/type/book_part> accessed 31 May 2024; Nils Coleman, *European Readmission Policy: Third Country Interests and Refugee Rights* (BRILL 2009), p. 28.

³²⁷ Thym, 'Irregular Presence and Return', see note 82 above, p. 537.

³²⁸ Jean-Pierre Cassarino, 'Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area' [2010] SSRN Electronic Journal 6 <<http://www.ssrn.com/abstract=1730633>> accessed 31 May 2024.

³²⁹ Iole Fontana and Matilde Rosina, 'The Tools of External Migration Policy in the EU Member States: The Case of Italy' (2024) n/a JCMS: Journal of Common Market Studies 7 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/jcms.13581>> accessed 2 June 2024.

³³⁰ Agnès Hurwitz, 'Safe Third Country Practices, Readmission, and Extraterritorial Processing' in Agnès Hurwitz (ed), *The Collective Responsibility of States to Protect Refugees* (Oxford University Press 2009) 67 <<https://doi.org/10.1093/acprof:oso/9780199278381.003.0003>> accessed 31 May 2024.

³³¹ Cassarino, 'Unbalanced Reciprocities', see note 327 above, p. 6.

When considering the return of individuals to their countries of origin, another important issue within readmission agreements arises: the issue of *non-refoulement*.³³² As explained, 'return' applies to those individuals who reside illegally in the territory, including asylum applicants whose application has been rejected. Moreover, return is implemented by bilateral or multilateral Readmission Agreements. However, even in the presence of readmission agreements, the return must be carried out in accordance with the principle of *nonrefoulement*. Neither the readmission agreements per se nor the concept of 'return' embedded in there imply immediately the violation of the principle of *non-refoulement*.³³³ Crucial to this concept is the notion of 'safe third country' present also in the Procedures Directive.³³⁴ While the notion of a safe third country can be in itself a ground for the inadmissibility of an asylum application, the assessment of whether a country is safe or not is intended to be carried out on a case-to-case basis. Indeed, just because a country is generally considered safe, even within the European Union, doesn't mean it's safe for everyone. Some people may have specific circumstances that put them at risk of persecution.³³⁵

However, to determine the 'safety' of third countries for returning asylum seekers, states increasingly rely on lists of 'safe third countries.' This mechanism effectively denies an asylum seeker access to substantive asylum procedures in a specific state on the grounds that they could have, or should have, sought asylum in another country where they would have qualified for and received protection.³³⁶ In accordance with paragraph 46 of the preamble of the Asylum Procedures Directive:

(46)Where Member States apply safe country concepts on a case-by-case basis or designate countries as safe by adopting lists to that effect, they should take into account, inter alia, the guidelines and operating manuals and the information on countries of origin and activities, including EASO Country of Origin Information report methodology, referred to in Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office (6), as well as relevant UNHCR guidelines.³³⁷

³³² Mark Klaassen, 'The Compatibility of Third Country Nationals Clauses in Readmission Agreements with the Principle of Non-Refoulement' 19–20; Hallee Caron, 'Refugees, Readmission Agreements, and "Safe" Third Countries: A Recipe for Refoulement?' (2017) XII Journal of Regional Security, pp. 27-28.

³³³ Klaassen, see note 331 above, p. 19.

³³⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast). (Asylum Procedures Directive).

³³⁵ James C Hathaway, *The Rights of Refugees under International Law* (Second edition, Cambridge University Press 2021), pp. 375–376; Morgan Meaker, 'No Such Thing as a "Safe" Country - World | ReliefWeb' (8 September 2015) <<https://reliefweb.int/report/world/no-such-thing-safe-country>> accessed 11 June 2024.

³³⁶ Hurwitz, see note 329 above, p. 46.

³³⁷ Preamble, para 46, Directive 2013/32/EU.

Accordingly, the Directive leaves the door open for each EU state to have its own list of countries of origin who are deemed safe 'for the purposes of examining applications for international protection.'³³⁸ As a consequence, individual countries can sign readmission agreements with the countries deemed 'safe' and establish therefore a procedural obligation on third countries to readmit their own nationals. Yet, the very existence of a 'list of safe countries' does not take into account the fact that the countries deemed 'safe' by a European state might not be safe for some individuals, for the reasons listed above.³³⁹ In other words, considering a country generally safe does not adequately account for individual circumstances, such as those of minority group members who may face specific discrimination, even in countries where the overall population is considered 'safe.'³⁴⁰ Despite these concerns, and in accordance with Art. 37 of the Asylum Procedures Directive, Italy³⁴¹ and France³⁴² have drafted their own lists.

i. Readmission in Cotonou and Samoa Agreement

In the following section, the analysis will focus on return and readmission policies within the Cotonou Agreement and the Samoa Agreement, based on the context provided earlier.

The Cotonou Agreement is very succinct in terms of migration, and therefore in terms of readmission. In particular, Migration is addressed in Art. 13: provisions appear to be aimed at protecting the rights of migrants, 'normalizing' migration flows, preventing flows, and preventing illegal migration.³⁴³ In this context, the Cotonou Agreement also approaches the obligation of accepting return and readmission, and makes explicit the scope of fighting illegal

³³⁸ Art. 37(1), Directive 2013/32/EU.

³³⁹ 'Debunking the "Safe Third Country" Myth. ECRE'S Concerns about EU Proposals for Expanded Use of the Safe Third Country Concept' (European Council on Refugees and Exiles 2017) Policy Note 8 3; Suzanne Seiller and Loïc Vasseur, "'Safe" Countries: A Denial of the Right of Asylum' (European Association for the defence of Human Rights, International Federation for Human Rights, EuroMed Rights 2016) 7 <https://euromedrights.org/wp-content/uploads/2016/10/AnalysePaysSurs-FINAL-EN-12052016_final.pdf>.

³⁴⁰ Seiller and Vasseur, see note 338 above, p. 7.

³⁴¹ Italy deems as "Safe Third Country" the following states: Albania, Algeria, Bangladesh, Bosnia and Herzegovina, Cameroon, Cape Verde, Colombia, Ivory Coast, Egypt, Gambia, Georgia, Ghana, Kosovo, North Macedonia, Morocco, Montenegro, Nigeria, Peru, Senegal, Serbia, Sri Lanka, Tunisia. Ministero degli Affari Esteri e della Cooperazione Internazionale, 'Aggiornamento della lista dei Paesi di origine sicuri prevista dall'articolo 2-bis del decreto legislativo 28 gennaio 2008, n. 25' (7 May 2024) Gazzetta Ufficiale della Repubblica Italiana, Serie Generale, n. 105, <https://www.gazzettaufficiale.it/eli/id/2024/05/07/24A02369/sg> accessed 30 May 2024.

³⁴² France deems as "Safe Third Country" the following states: Albania, Armenia, Bosnia and Herzegovina, Cape Verde, Georgia, India, Kosovo, North Macedonia, Mauritius, Moldova, Mongolia, Montenegro, Serbia 'La liste des pays d'origine sûrs' <<http://www.cnda.fr/Ressources-juridiques-et-geopolitiques/La-liste-des-pays-d-origine-surs>> accessed 31 May 2024.

³⁴³ Eleonora Koeb and Henrike Hohmeister, 'The Revision of Article 13 on Migration of the Cotonou Partnership Agreement', p. 3.

migration, and adopts a prevention policy.³⁴⁴ Although the agreement specifies that return procedures must respect the human rights and dignity of the individuals being returned, it does not explicitly require compliance with the principle of *non-refoulement*. Regarding the obligation to accept the return and readmission of nationals, the European states and ACP states frame it as follows:

- i) - each Member State of the European Union shall accept the return of and readmission of any of its nationals who are illegally present on the territory of an ACP State, at that State's request and without further formalities;
- each of the ACP States shall accept the return of and readmission of any of its nationals who are illegally present on the territory of a Member State of the European Union, at that Member State's request and without further formalities.³⁴⁵

[...]

(ii) at the request of a Party, negotiations shall be initiated with ACP States aiming at concluding in good faith and with due regard for the relevant rules of international law, *bilateral agreements governing specific obligations for the readmission and return of their nationals*.³⁴⁶ These agreements shall also cover, if deemed necessary by any of the Parties, arrangements for the readmission of third country nationals and stateless persons. Such agreements will lay down the details about the categories of persons covered by these arrangements as well as the modalities of their readmission and return.³⁴⁷

In accordance with the provision on bilateral agreements to arrange the readmission of third-country nationals, Italy, France, and Spain have been particularly prolific among the EU member states in this respect. However, although African countries have concluded over 40 bilateral readmission agreements, primarily with France, Italy, and Spain, this relatively high number of agreements does not necessarily indicate a strong willingness on the part of African countries to cooperate on readmission.³⁴⁸

From a *prima facie* analysis, this obligation could seem reciprocal. However, more often than not, even when they are designed to be reciprocal, readmission agreements impose mutual obligations that cannot be equally enforced on both contracting parties. This disparity arises from the asymmetrical effects of implementing these agreements and the varying structural,

³⁴⁴ "In the framework of the political dialogue the Council of Ministers shall examine issues arising from illegal immigration with a view to establishing, where appropriate, the means for a prevention policy." Art. 13(5)(a), Cotonou Agreement, 2000.

³⁴⁵ Art. 13(5)(c)(i), Cotonou Agreement, 2000.

³⁴⁶ Emphasis added.

³⁴⁷ Art. 13(5)(c)(ii), Cotonou Agreement, 2000.

³⁴⁸ Jean-Pierre Cassarino, 'Symposium on Reconceptualizing IEL for Migration: Framing Migration in the Post-Cotonou Agreement: Priorities and Challenges', p. 5.

institutional and legal capacities of the parties to manage the return of unauthorized aliens, whether they are nationals or third-country nationals transiting through a contracting party.³⁴⁹ In the context of return and readmission due to the illegal presence of a migrant - which, as explained above, can also result from the rejection of an asylum application - another crucial aspect is the Visa regime governing entry to and exit from European territory. Firstly, within the European Union's Schengen Area, individuals can move freely across member states.³⁵⁰ However, not all third-country nationals are treated equally in this context. There is a specific list of countries³⁵¹ whose citizens can obtain a tourist visa valid for three months, permitting legal stay within the Schengen Area. This arrangement places citizens from these countries in a more favorable position regarding entry into the European space and imposes a different burden on migration governance for their countries of origin, and is established through specific agreements with third countries.³⁵² On this latter aspect, it is fundamental to put the issue of visas in perspective: while many - usually Western - country nationals across the world have automatic access to travel visas through their passport, most of the countries do not enjoy this reciprocal privilege to access EU countries.³⁵³ Moreover, the agreements on visa are not offered by the EU out of its generosity. Instead, they are generally part of a conditionality policy. In exchange for this visa liberal politics, third states can agree on a range of conditions: from document security to criminal matters and the treatment of minorities, to readmission agreements.³⁵⁴

The negotiations leading to the Samoa Agreement placed a significantly greater emphasis on issues of return, readmission, and migration in general.³⁵⁵ Whereas the Cotonou

³⁴⁹ Cassarino, 'Unbalanced Reciprocities', see note 327 above, p. 2.

³⁵⁰ The Schengen area allows free circulation within the Schengen area which does not coincide with the European Union territory. Only 25 of the 27 member states of the EU are part of the Schengen Agreement, signed in Luxembourg in 1985. Moreover, the 4 countries member of the European Free Trade Association, which are not EU member states, are part of the Schengen Agreement: Iceland, Liechtenstein, Norway, and Switzerland. Among EU member states, Ireland and Cyprus are the only two countries not joining the agreement. The Schengen Acquisition Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders OJ L 239, 22/09/2000.

³⁵¹ Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification).

³⁵² Daniel Thym, 'Visa Policy' in Daniel Thym, *European Migration Law* (1st edn, Oxford University Press Oxford 2023) p p . 283–284 <<https://academic.oup.com/book/46560/chapter/407967119>> accessed 31 May 2024.

³⁵³ As Lenard argues, "Citizens of many wealthy countries are the lucky recipients of visa waiver programs, by which they are permitted visa-free entry to many more countries than are citizens of relatively poorer countries. But, citizens from poorer countries are typically required to apply for visas, which are difficult to access and which often contain substantial rights restrictions [...]. Patti Tamara Lenard, 'Visa Issuance and Denial in an Unequal World' in Patti Tamara Lenard, *Democracy and Exclusion* (1st edn, Oxford University Press New York 2023), pp. 106–107 <<https://academic.oup.com/book/46543/chapter/407928584>> accessed 31 May 2024.

³⁵⁴ Thym, 'Visa Policy', see note 351 above, p. 286.

³⁵⁵ Marina Strauss, 'EU Reaches Agreement with African, Caribbean States – DW – 04/16/2021' (*dw.com*, 16 April 2021) <<https://www.dw.com/en/post-cotonou-eu-reaches-agreement-with-african-caribbean-and-pacific-states/a-57220259>> accessed 1 June 2024; 'Post-Cotonou: Negotiators Reach a Political Deal', see note 245 above;

Agreement addressed migration in a single article, the Samoa Agreement allocates an entire Title VI to migration issues and includes a specific annex dedicated to return and readmission procedures. Article 78 of return and readmission recites as follows:

1. The Parties reaffirm their right to return illegally staying migrants and reaffirm the legal obligation of each Member State of the European Union and each OACPS Member to readmit their own nationals illegally present on the territories of the OACPS Members or the Member States of the European Union, respectively, without conditionality and *without further formalities other than the verification provided for in paragraph 3*. To that end, the Parties shall cooperate on return and readmission and shall ensure that the rights and dignity of individuals are fully protected and respected, including in any procedure initiated to return illegally staying migrants to their countries of origin.”

[...]

3. The Member States of the European Union and the OACPS Members shall respond swiftly to readmission requests of each other. They shall carry out verification processes using the most appropriate and most efficient identification procedures, with a view to ascertaining the nationality of the person concerned and to issue appropriate travel documents for return purposes, as set out in Annex I. Nothing in that Annex shall prevent the return of a person under formal or informal arrangements between the State to which a readmission request is submitted and the State submitting a readmission request [...].³⁵⁶

The article raises at least two serious concerns. First, the ‘burden’ of procedural aspects of return seems to be pending entirely on the ‘requested’ (i.e. country of origin) state, as it is also evident in the procedural clarifications included in Annex I.³⁵⁷ However, even if the obligation of returning own nationals is pending on both EU countries and ACP countries,³⁵⁸ in practice, Global South-South and Global South-to-North migration are much more frequent phenomena than Global North to South.³⁵⁹ Therefore, this poses a huge unbalanced burden on ACP

Cassarino, ‘Symposium on Reconceptualizing IEL for Migration: Framing Migration in the Post-Cotonou Agreement: Priorities and Challenges’, see note 347 above, p. 3.

³⁵⁶ Art. 78, Samoa Agreement, 2023.

³⁵⁷ “If the person subject to the readmission request is in possession of an expired passport, a valid or an expired identity card or another official identity document with a photograph, or if the person’s identity has been confirmed by all appropriate means, including as a result of a search carried out in the visa application records or any other official records of the requesting State, *the requested State shall*, on receipt of the relevant information, provide valid travel documents as soon as possible after the request of the requesting State, unless justifiable reason is provided for additional time, in which case the requested State shall provide the travel documents in the shortest possible time; [...] In any event, when it receives a readmission request for one of its nationals, the requested State shall respond at the latest within 30 days of that request, in line with the time limits provided for in Standard 5.26 of Chapter 5 of Annex 9 to the Convention on International Civil Aviation, done at Chicago on 7 December 1944, by providing its nationals with appropriate travel documents for return purposes or by satisfying the requesting State that the person concerned is not one of its nationals.” Annex I, Samoa Agreement, 2023.

³⁵⁸ “Each Member State of the European Union shall accept the return and the readmission of any of its nationals who is illegally present on the territory of an OACPS Member [...]; and “Each OACPS Member shall accept the return and the readmission of any of its nationals who is illegally present on the territory of a Member State of the European Union”, Art. 78(2), Samoa Agreement, 2023.

³⁵⁹ Heaven Crawley and Joseph Kofi Teye, ‘South–South Migration and Inequality: An Introduction’, *The Palgrave Handbook of South–South Migration and Inequality* (Springer International Publishing 2024) 1–5

countries and reiterates the idea that such provisions included in development and cooperation partnership agreements have the ultimate goal of being a migration control means from the side of EU states.

Secondly, and most importantly, the requirement of procedures to be compliant with the principle of *non-refoulement* is completely absent in the procedures for return and readmission, in the Samoa Agreement and in the Cotonou Agreement. In Samoa, the principle of *non-refoulement* is only touched upon in the chapter regarding refugees and asylum seekers. However, the principle of *non-refoulement* applies irrespective of one's legal status and can directly interest countries that are party to the EU-ACP agreement. In this respect, the preoccupation extends to both EU countries and ACP countries, as the assessment of the risk of torture, or inhumane degrading treatment should be a case-to-case one, as there exists no country in the world that is 'safe' universally and for everyone.

ii. Italy Readmission Agreements

In line with the European Directive on Return, and the provision already present in the Cotonou Agreement and reinvigorated in the Samoa Agreement, Italy has established a number of readmission agreements with EU countries and with third countries.³⁶⁰ Namely, Italy has established readmission agreements with several countries, including Albania, Nigeria, and Tunisia, to manage the return of migrants irregularly present in the country. These agreements are critical components of Italy's migration strategy, facilitating the orderly repatriation of unauthorized nationals. For instance, the Italy-Albania agreement originally initiated in 1997 has been renewed multiple times, including the last update in 2024.³⁶¹ Similarly, agreements with Nigeria (2000) and Tunisia (1998) have been pivotal for repatriation. Moreover, Italy has also concluded readmission agreements with several other EU countries, enhancing cooperation and consistency in migration policies across the European Union. In recent years, Italy has expanded its network of readmission agreements to include countries like Pakistan (2010), Egypt (2012), and the Gambia (2016), reflecting its ongoing efforts to address

<https://doi.org/10.1007/978-3-031-39814-8_8> accessed 2 June 2024; See also: Kerilyn Schewel and Alix Debray, 'Global Trends in South–South Migration' in Heaven Crawley and Joseph Kofi Teye (eds), *The Palgrave Handbook of South–South Migration and Inequality* (Springer International Publishing 2024) <https://doi.org/10.1007/978-3-031-39814-8_8> accessed 2 June 2024.

³⁶⁰ Italy's Bilateral Readmission Agreements in Jean-Pierre Cassarino, 'Inventory of the Bilateral Agreements Linked to Readmission' <<https://dataverse.harvard.edu/citation?persistentId=doi:10.7910/DVN/VKBCBR>> accessed 2 June 2024.

³⁶¹ Camera dei deputati, 'Protocollo Italia-Albania in materia migratoria - Cittadinanza e immigrazione - Politica estera e relazioni internazionali' (*Documentazione parlamentare*, 8 March 2024) <<https://temi.camera.it/leg19/provvedimento/protocollo-italia-albania-in-materia-migratoria.html>> accessed 2 June 2024.

migration challenges comprehensively.³⁶²

These are part of the Italian – and broadly speaking European – strategy of harmonization within the EU, and at the same time externalization of migration. Indeed, being the oldest instruments used by EU member states to manage migratory flows, readmission agreements are essential components of external migration policy.³⁶³ Italy has extensively utilized bilateral readmission agreements, with the most recent example being the ‘Italy-Albania’ readmission agreement.³⁶⁴ Notably, this agreement includes the concerning practice of externalizing asylum procedures.³⁶⁵ As said, direct agreements with the explicit scope of migration governance, i.e. return and readmission, are not the only way in which migration is attempted to be curbed at national level. Instead, it is often included in other kinds of agreements with a migration clause.³⁶⁶

As it has been observed in the Cooperation agreements on development and aid in Italy, and the Partnership Agreements signed in accordance with the broader European Scope of the Cotonou and Post-Cotonou Agreement,³⁶⁷ there is no mention specifically of Migration Clauses. Yet, Italy includes the ‘Migration Curbing scope’ in the border scope of the Italy Partnership with Africa, and within the ‘Piano Mattei for Africa’ whose scope is to cooperate on different aspects ranging from energy to agricultural and technical assistance.³⁶⁸

³⁶² ‘Italy’s Bilateral Agreements Linked to Readmission - Jean-Pierre Cassarino’ (28 October 2011) <<https://www.jeanpierrecassarino.com/datasets/ra/it/>> accessed 2 June 2024.

³⁶³ Marion Panizzon, ‘Readmission Agreements of EU Member States: A Case for EU Subsidiarity or Dualism?’ (2012) 31 Refugee Survey Quarterly 101, 114; Fontana and Rosina, see note 328 above, pp. 6–7; Jean-Pierre Cassarino, ‘Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area’ [2010] SSRN Electronic Journal, pp. 6–7 <<http://www.ssrn.com/abstract=1730633>> accessed 2 June 2024; Annabelle Roig and Thomas Huddleston, ‘EC Readmission Agreements: A Re-Evaluation of the Political Impasse’ (2007) 9 European Journal of Migration and Law, pp. 363-365.

³⁶⁴ Judith Sunderland, ‘Italy’s Dodgy Detention Deal with Albania | Human Rights Watch’ (1 February 2024) <<https://www.hrw.org/news/2024/02/01/italys-dodgy-detention-deal-albania>> accessed 2 June 2024; Human Rights Watch, see note 270 above.

³⁶⁵ Steffen Angenendt and others, ‘The Externalisation of European Refugee Protection: A Legal, Practical and Political Assessment of Current Proposals’ 3 <<https://www.swp-berlin.org/10.18449/2024C13/>> accessed 2 June 2024; Klaassen, see note 331 above, p. 23–24.

³⁶⁶ “Migration clauses in broader bilateral agreements” [...] bilateral agreements that, whilst addressing various objectives and issues, also incorporate migration cooperation. Examples include treaties of friendship and good neighbourhood, strategic partnerships, and agreements of cultural and scientific cooperation.’ Fontana and Rosina (n 328) 8; and ‘These agreements (e.g., memoranda of understanding, arrangements, pacts, and police cooperation agreements including a clause on readmission) are often based on a three-pronged approach covering 1]the fight against unauthorized migration, including the issue of readmission, 2) the reinforced control of borders, including ad hoc technical assistance, and 3] the joint management of labor migration with third countries of origin, including enhanced development aid.’ Cassarino, ‘Unbalanced Reciprocities’, see note 327 above, p. 9–10.

³⁶⁷ Notably, the Post-Cotonou Agreement was in force in the “bridge period” between the expiry of the Cotonou Agreement and the Temporary enter into force of the Samoa Agreement (November 2023 to April 2024, when it entered into force).

³⁶⁸ ‘A Partnership With Africa’ (n 260) 24–25; ‘La cooperazione con l’Africa e il piano Mattei’, see note 281 above.

iii. France Readmission Agreements

Like other European countries, and in particular Italy, Spain, and Greece, also France has been at the forefront of the emerging phenomenon of bilateral readmission agreements.³⁶⁹

In general, as explained above,³⁷⁰ the French policy on immigration can be considered restrictive or repressive, and in alignment with the trend of the European Union. For instance, in January 2024, France has promulgated a law 'Pour contrôler l'immigration, améliorer l'intégration',³⁷¹ which has been described by several Human Rights NGOs as 'the most repressive migration law since 1945'.³⁷²

Indeed, readmission agreements signed by France are critical to its migration strategy, involving cooperation with both European and non-European countries. Notable agreements include those with Algeria (2001), Morocco (1993), and Turkey (2006). In recent years, France has expanded its agreements to include countries such as Georgia (2013) and Armenia (2015), reflecting its ongoing efforts to address migration challenges comprehensively. These agreements facilitate the return of individuals without legal residency, reinforcing migration governance and bilateral cooperation.³⁷³ In the context of France's development strategy in the external affairs, as said, France has identified 19 'least developed' priority countries.³⁷⁴ Instances of the inclusion of a readmission clause within Bilateral Agreements on other issues, such as Development Aid and Assistance, are frequent in the agreements signed by France. In the agreement with Burkina Faso signed in Ouagadougou in 2009, the contracting parties agreed on measures regarding the coordinated management of migration and sustainable development.³⁷⁵ In that respect, for instance, both France and Burkina Faso agree to support financial instruments in France that facilitate the transfer of migrants' funds and their investment in Burkina Faso's economic development.³⁷⁶ At the same time, article 10 is dedicated to readmission of nationals:

³⁶⁹ Cassarino, 'Unbalanced Reciprocities', see note 362 above, p. 9.

³⁷⁰ See above, Chapter 2, s. D, 2.4.2.

³⁷¹ "To control migration, improve integration" (My Translation).

³⁷² 'Loi asile et immigration : chronique d'une catastrophe annoncée | Human Rights Watch' (15 February 2024) <<https://www.hrw.org/fr/news/2024/02/15/loi-asile-et-immigration-chronique-dune-catastrophe-annoncee>> accessed 2 June 2024.

³⁷³ 'France's Bilateral Agreements Linked to Readmission - Jean-Pierre Cassarino' (22 November 2011) <<https://www.jeanpierrecassarino.com/datasets/ra/fr/>> accessed 2 June 2024.

³⁷⁴ 'La France concentre son effort de solidarité, en subventions et dons, dans un nombre limité de pays prioritaires, tous des PMA (Pays les Moins Avancés), en particulier en Afrique subsaharienne'. Ministère de l'Europe et des Affaires, 'Priorités géographiques' (*France Diplomatie - Ministère de l'Europe et des Affaires étrangères*) <<https://www.diplomatie.gouv.fr/politique-etrangere-de-la-france/developpement/priorites-geographiques/>> accessed 11 June 2024.

³⁷⁵ France and Burkina Faso. "Accord entre le Gouvernement de la République Française et le Gouvernement de la République du Burkina Faso relatif à la gestion concertée des flux migratoires et au codéveloppement." Ouagadougou, 10 January 2009.

³⁷⁶ Art. 4, France and Burkina Faso, 10 January 2009.

[S]e trouve en situation irrégulière toute personne, dont il est établi ou présumé par la Partie requérante, sur la base des documents énumérés dans l'annexe VI, qu'elle possède la nationalité de la Partie requise, et qu'elle ne remplit pas, ou ne remplit plus, les conditions d'entrée ou de séjour applicables sur le territoire de la Partie requérante. Conformément au principe d'une responsabilité partagée en matière de lutte contre la migration irrégulière, la France et le Burkina Faso réadmettent, dans le respect de la dignité et des droits fondamentaux des personnes, leurs ressortissants en situation irrégulière sur le territoire de l'autre Partie. Dans le respect des procédures et des délais légaux et réglementaires en vigueur en France et au Burkina Faso, chaque Partie délivre, à la demande de l'État requérant, les laissez-passer consulaires nécessaires à la réadmission de ses ressortissants en situation irrégulière.³⁷⁷

A similar dynamic is displayed in the bilateral agreement signed between France and Benin in 2007 in Cotonou.³⁷⁸ Article 22 of the agreement is dedicated to 'Codéveloppement et aide au développement',³⁷⁹ whereas the entire Chapter VI is dedicated to the 'Readmission et Admission Exceptionnelle au Séjour'.³⁸⁰ The same instance also arises in the cases of bilateral agreements on Development and Cooperation with Senegal and Mali,³⁸¹ and, even if less explicitly also with Comoros,³⁸² Djibouti,³⁸³ Madagascar,³⁸⁴ Liberia,³⁸⁵ Togo.³⁸⁶

³⁷⁷ Any person is in an irregular situation if it is established or presumed by the requesting Party, on the basis of the documents listed in Annex VI, that he or she holds the nationality of the requested Party and does not fulfil, or no longer fulfils, the conditions of entry or residence applicable on the territory of the requesting Party. In accordance with the principle of shared responsibility for combating irregular migration, France and Burkina Faso shall readmit their nationals who are in an irregular situation on the territory of the other Party, while respecting the dignity and fundamental rights of individuals. In compliance with the legal and regulatory procedures and deadlines in force in France and Burkina Faso, each Party shall, at the request of the requesting State, issue the consular laissez-passer necessary for the readmission of its nationals in an irregular situation. (My translation) France- Burkina Faso 2009, Art. 10.

³⁷⁸ Décret n° 2010-230 du 5 mars 2010 portant publication de l'accord relatif à la gestion concertée des flux migratoires et au codéveloppement entre le Gouvernement de la République française et le Gouvernement de la République du Bénin (ensemble cinq annexes), signé à Cotonou le 28 novembre 2007 (1).

³⁷⁹ Co-Development and Development Aid.

³⁸⁰ Readmission and Exceptional (or Temporary) Admission (My translation).

³⁸¹ France-Mali agreement. However, as of 16 November 2022, given the evolution of the political and security situation, France announced the cessation of Official Development Assistance to the Country. «Mali | AFD - Agence Française de Développement». Consulted 2 June 2024. <https://www.afd.fr/en/page-region-pays/mali>.

³⁸² France and Comoros. "Accord de coopération en matière de développement, défense et migration." [Online]. Available: <https://pragmamedia.fr/comores-france-accord-developpement-defense-migration/>.

³⁸³ France and Djibouti. "Renouvellement du traité de coopération entre la France et Djibouti." [Online]. Available: <https://www.defense.gouv.fr/actualites/france-djibouti-renouvellement-du-traite-cooperation-cours-discussion>.

³⁸⁴ France and Madagascar. "Document de coopération entre la France et Madagascar." [Online]. Available: https://basedoc.diplomatie.gouv.fr/exl-php/util/documents/accede_document.php?1710961132487.

³⁸⁵ France and Liberia. "Document de coopération entre la France et le Liberia." [Online]. Available: https://basedoc.diplomatie.gouv.fr/exl-php/util/documents/accede_document.php?1710960975527.

³⁸⁶ France and Togo. "Document de coopération entre la France et le Togo." [Online]. Available: https://basedoc.diplomatie.gouv.fr/exl-php/util/documents/accede_document.php?1710962037176. In the cases of Mali and Senegal, they are agreements on Development with a specific section (normally either one article or a chapter) dedicated to the readmission clause. Only agreements on development, co-development and development aid have been considered in the present analysis. However, the same readmission clause can be present in other agreements concerning technical cooperation, assistance, agricultural cooperation, or education.

B. Readmission Clauses as part of the Migration and Development Nexus

The main scope of this chapter is to shed light on how the return and readmission policies adopted at the European and at National level reflect a particular understanding of the Migration and Development Nexus, especially when readmission provisions are embedded in development and Cooperation agreements. The emphasis on readmission and return policies, which is in alignment with the broader European Union legal framework specifically on Migration, Return, and Readmission, showcases a still massive presence of the ‘root causes’ approach. However, the latest version of EU-ACP Partnership Agreements also includes more liberal instances on the nexus, with a view to stressing the positive impact that migration can have on the development ‘of all countries’, i.e. origin, transition, and destination. Yet, it stays on the assumption that development is eventually - somehow - also lead to less migration. These two aspects will be analyzed in this subsection.

i. Root Causes approach in the Cotonou and Samoa Agreements, and Italy

As it is evident from the many instruments adopted on Development aid and assistance by the European Union,³⁸⁷ the primary goal of the EU is at the very least to prevent migration. Indeed, Article 79(1) of the Treaty on the Functioning of the European Union (TFEU) calls upon the institutions to ensure the ‘prevention of and enhanced measures to combat illegal immigration.’³⁸⁸ The approach of Cotonou on development and migration is prominently on the ‘root causes’ strategy, in line with the time in which it was signed, where the more liberal approach was still in its initial stages. The paragraph 4 of the above-discussed Article 13 makes this goal more explicit:

4. The Parties will take account, in the framework of development strategies and national and regional programming, of structural constraints associated with migratory flows with the purpose of supporting the economic and social development of the regions from which migrants originate and of reducing poverty.³⁸⁹

Clearly, the goal is the normalization of migration flows through development cooperation and training.³⁹⁰ Similarly, in the Samoa Agreement, the focus remains also prominent on the root causes approach. Namely, Article 1(f) reads as follows:

[I]mplement a comprehensive and balanced approach to migration, so as to reap the benefits of safe, orderly and regular migration and mobility, stem irregular migration

³⁸⁷ The Emergency Trust Fund, the Neighbourhood Policy, and the Samoa Agreement 2023.

³⁸⁸ Art. 79(1), Treaty on the Functioning of the European Union (TFEU), 1957.

³⁸⁹ Art. 13(4), Cotonou Agreement, 2000.

³⁹⁰ Koeb and Hohmeister, see note 342 above, p. 7.

while addressing its root causes, in full respect of international law and in accordance with the Parties' respective competences.³⁹¹

Moreover, the second part of the Title VI on Migration and Mobility is dedicated to irregular migration, and Article 70 reads:

The Parties confirm the shared political commitment to address the root causes of irregular migration and forced displacement and to develop adequate responses thereto.³⁹²

This confirms an ambiguous approach to the Migration and Development Nexus which, as in the Cotonou Agreement perpetuates a traditional securitization paradigm in its linkage of development cooperation with migration control mechanisms.

Furthermore, the readmission and return provisions in the Samoa Agreement, and to a lesser extent in the Cotonou Agreement, must be understood in the context of addressing the root causes of migration. These provisions clearly indicate that development aid is conditional upon the willingness of counterparts to cooperate in controlling migration, effectively making migration management a prerequisite for receiving development assistance.³⁹³ The economic disparities and 'developed' status of EU countries put the EU in a privileged position in negotiating with ACP countries, and ultimately use development aid to support its protection of EU borders.

In France and Italy, as mentioned above, the approach to migration is broadly aligned with the EU one. However, there are differences in the way they approach it. In Italy, the 'root causes' approach is explicitly mentioned in the Broader scope of the 2017 'Fondo per l'Africa', in the 2019 document 'A Partnership with Africa', and in the recently adopted Piano Mattei for Africa.³⁹⁴ While readmission is usually not a clause specifically included in the bilateral agreement on development and cooperation, development aid is still made conditional upon the willingness of the state to cooperate on restricting migration a priori in the framework agreements.

ii. 'Win-Win' Approach in the Cotonou and Samoa Agreements, and France

As anticipated, the entire section of the Title VI of the Samoa Agreement is dedicated to Migration and Mobility, with particular emphasis to Migration and Development. A more liberal

³⁹¹ Art. 1(f), Samoa Agreement, 2023.

³⁹² Art. 70, Samoa Agreement, 2023.

³⁹³ Lavenex, see note 5 above.

³⁹⁴ Piano strategico Italia-Africa: Piano Mattei Piano Mattei, see note 261 above.

view is also included, while it is absent in the Cotonou Agreement. Article 65 reads as follows:

[T]he Parties agree that well-managed *migration can be a source of prosperity*,³⁹⁵ innovation and sustainable development and further agree to cooperate and support countries of origin, inter alia by boosting growth and employment opportunities, promoting investment, private sector development, trade and innovation, education and vocational training, health, social protection and security, especially for youth and women. The Parties shall cooperate to create conditions that would limit the negative impact of the loss of skills on the development of countries of origin.³⁹⁶

The rest of the chapter II of the Samoa Agreement³⁹⁷ also focuses on more detailed aspects of development and migration, namely diaspora, remittances and South-South migration, as well as climate change and environmental degradation. While reading the article on 'Migration the one adopted and presented before by the World Bank,³⁹⁸ IOM,³⁹⁹ UNDP,⁴⁰⁰ and OECD,⁴⁰¹ it has to be read in conjunction with the objectives of the entire Partnership Agreement. In France, unlike Italy, return and readmission clauses are explicitly included in several development aid and cooperation agreements, but the root causes approach is not mentioned as such in the broader scope of the development strategy of France.⁴⁰² However, this makes it clear that the dispersion of development aid is conditional to migration cooperation, with the goal of reducing irregular migration. Importantly, France was the first country⁴⁰³ to promote the 'co-development' approach which has then been of inspiration for Italy and Spain. This approach, promoted in a report published in 1997 by the Inter-Ministerial Delegate for Co-development and International Migration, Sami Naïr,⁴⁰⁴ consisted of articulating policies around five main axes: (1) Managing legal migration through migration contingents and co-development agreements with partner countries; (2) Supporting development projects in key regions of origin with migrant involvement; (3) Strengthening co-development efforts through local authorities and associated organizations or services; (4) Assisting students and young professionals with studies and work experience in France on a circular migratory basis; (5) Facilitating the productive investment of migrants' savings.⁴⁰⁵ Today, France also focuses on

³⁹⁵ Emphasis added.

³⁹⁶ Art. 65, Samoa Agreement, 2023.

³⁹⁷ Chapter II of the title VI on Migration and Mobility, Samoa Agreement, 2023.

³⁹⁸ World Bank, see note 3 above, pp. 127–128.

³⁹⁹ Milan, Bisong and Knudsen, see note 124 above, p. 225.

⁴⁰⁰ 'Promoting Development Approaches to Migration and Displacement', see note 18 above, pp. 5–6.

⁴⁰¹ OECD and International Labour Organization, see note 67 above, p. 3.

⁴⁰² *Migration and Development Policies and Practices: A Mapping Study of Eleven European Countries and the European Commission* (ICMPD, International Centre for Migration Policy Development; ECDPM, European Centre for Development Policy Management 2013), pp. 87–88.

⁴⁰³ Schiller and Faist, see note 18 above, p. 152.

⁴⁰⁴ *Migration and Development Policies and Practices: A Mapping Study of Eleven European Countries and the European Commission*, see note 401 above, p. 87.

⁴⁰⁵ *Ibid.*, at p. 88.

the interlinkage between Migration and Development. In the inter-ministerial ‘Migration and Development’ strategy for 2022-2030, France commits to implement a ‘holistic approach’ focusing on two areas: safe and orderly migration, and ‘capitalize the potential of regular migration as a vehicle for development.’⁴⁰⁶

C. Why do states agree on *Readmission Clauses*? Addressing Neocolonial Legacies

This analysis does not entail necessarily a value assessment of migration or of development. Instead, this analysis focuses on the perpetual legacies of colonialism in the present-day politics of international law due to the inclusion of the ‘root causes’ approach, the ‘win-win’ approach, and, in particular, of the readmission clauses in migration agreements. In the last part of this analysis, I will flesh out the three ways in which asymmetries of power are being continued by the inclusion of the migration and development nexus in the Cotonou and Samoa Agreement and in the bilateral agreements on development aid and assistance concluded by Italy and France.

Crucially, the embryonal form of the Samoa Agreements is to be traced back to the Treaty of Rome, whereby the majority of the states that were then defined “ACP-Group” were colonies of European States.⁴⁰⁷ My argument is that the current agreements establish and reinforce a specific dynamic between EU states and third countries, which cannot be understood without considering the impact of colonial legacies. Based on these premises, I argue that by including the readmission clause, the Samoa Agreement, Italy, and France, replicate neocolonial legacies at least in two ways: (1) Through the Win-Win Approach: Migrants from third countries coming to Europe become ‘tradable commodities,’ as third countries agree to receive development aid under the condition of accepting returned migrants; (2) Through the Root Causes Approach: although the EU enshrines principles and values of solidarity and respect for human rights in its Treaty, these principles seem to apply only to their own citizens. The return clauses are not enshrined to mandate compliance with the principle of non-refoulement. A forced return that violates the principle of non-refoulement can still hold the sending state responsible for the violation. However, the return clause, which establishes readmission agreements making returns automatic, effectively facilitates returns without properly assessing the safety of the country of origin on a case-by-case basis.

⁴⁰⁶ Expertise France Group AFD, ‘Expertise France and Migration’.

⁴⁰⁷ See Capther 2, s. 2.2.1., and s. 2.2.3, under the “Lomé conventions” the term “Associated States” was replaced with the present label “ACP Group”.

i. Migrants as Tradable Commodities

As previously discussed, in agreements adopting the ‘win-win’ approach to the Migration and Development Nexus, migration is redefined as beneficial for all parties involved. It is argued that this approach benefits countries of origin first and foremost by encouraging remittances.⁴⁰⁸ Therefore, the responsibility of ‘development’ falls hugely on individuals and the private-owned transfers,⁴⁰⁹ and shifts away from the state, and other economic and political institutions.⁴¹⁰

In this context, the Readmission clauses are the utmost evidence of the asymmetry of power present in the Development and Cooperation agreements: while encouraging money and skill transfer, the agreements, both multilateral and bilateral, fundamentally pose an attempt to restrict and curb migration.⁴¹¹ As presented, this can be manifested in legal texts in different ways. In the Cotonou Agreement, the readmission is mildly included in one paragraph of the only article dedicated to migration.⁴¹² This imposes - at least in principle - equal obligations on parties which require, in conformity with the customary obligations, to readmit nationals. However, as argued above, this obligation is symmetrical only on paper, and in practice, this burden falls hugely on third parties because a) migration Global South-Global North is greater in numbers than the reverse and b) due to the visa policy regime, EU citizens are much less likely to be illegally present in a third country compared to non-European citizens.⁴¹³

While the point of the Partnership Cooperation Agreement and the derivative Development Aid and Cooperation Agreements is to address the development challenges of the ACP countries, or ‘Global South countries,’ this is not addressed with the aware mindset that ‘economic underdevelopment [...] and poor social infrastructure [...] were among the effects of colonialism.’⁴¹⁴ For instance, the agreement refrains from proposing measures such as debt relief, which would adequately address development issues using existing mechanisms - which however rely on the voluntary actions of creditor states.⁴¹⁵

⁴⁰⁸ Arts. 65 and 67, Samoa Agreement. See also: World Bank, see note 3 above, pp. 9–10.

⁴⁰⁹ Chetail, ‘Paradigm and Paradox of the Migration-Development Nexus’, see note 10 above, p. 206.

⁴¹⁰ Kabbanji, see note 2 above, p. 1; See also: de Haas, ‘Migration and Development’, see note 2 above; Skeldon, see note 74 above.

⁴¹¹ Kabbanji (n 2) 7.

⁴¹² Art. 13, Cotonou Agreement, 2000.

⁴¹³ Thym, ‘Visa Policy’ (n 351) 280–281.

⁴¹⁴ Verene Shepherd, chair of the Committee on the Elimination of Racial Discrimination, in ‘Racism, Discrimination Are Legacies of Colonialism’ (*OHCHR*, 17 October 2023) <<https://www.ohchr.org/en/get-involved/stories/racism-discrimination-are-legacies-colonialism>> accessed 4 June 2024.

⁴¹⁵ ‘In 1996, the World Bank and the IMF launched the Heavily Indebted Poor Countries (HIPC) Initiative in response to accumulation of unsustainable, developing-country debt in the 1970s and 1980s. It called for voluntary

Moreover, taking a step back from the ‘migration and development nexus,’ the inclusion of readmission clauses in the context of development agreements looks uncanny. Indeed, the assumption is that illegal migrants are agents of (in)security, and if ‘developing’ countries want to secure development aids through Preferential Trade Agreements (PTAs), Economic Partnership Agreements (EPAs), and Partnership and Cooperation Agreements (PCAs), they must cooperate in the mission of curbing migration.⁴¹⁶ Importantly, in the Samoa Agreement and in the development strategy of France, the ‘win- win’ approach is progressively included, making mention of remittances. However, as already anticipated in the first chapter, while explaining the limits of blindly conceiving migration as a tool for development, this approach still contains the ‘root causes’ approach and does not lead to a paradigm shift.⁴¹⁷ It is another ‘nuance’ of the fact that the ultimate goal of bringing development to the ‘underdeveloped world’ is to achieve lower rates of migration.⁴¹⁸

ii. Keeping development subjects in the ‘developing’ world

As has been pointed out above, the root causes approach rests on the myth that ‘more development’ will lead to less migration.⁴¹⁹ As said, this approach is considered by scholars as ineffective because more development in the short term leads to more migration.⁴²⁰ However, it is also deplorable because it fails to see that the ‘root causes’ for ‘underdevelopment’ - which may lead people to seek opportunities elsewhere - is underdevelopment itself, i.e., the colonial past. It is not by chance, indeed, that the ‘areas of interest’ of France and Italy are broadly the areas where these countries held colonial power. Moreover, it is not by chance that the ACP group of states was originally a group of countries with whom some European countries entertained colonial ties.

Indeed, if the fact that more development aid does not lead to lower rate of migration, but instead increases the migration waves, why do states keep insisting on the root causes

debt relief from all creditors and gave eligible countries a fresh start on foreign debt that had placed too great a burden on resources for debt service.’ ‘Heavily Indebted Poor Countries (HIPC) Initiative’ (*World Bank*) <<https://www.worldbank.org/en/topic/debt/brief/hipc>> accessed 4 June 2024; ‘Developing Countries Must Be Provided with Debt Relief to Prevent Financial Brink, Preserve Progress, Deputy Secretary-General Tells Development Finance Dialogue | Meetings Coverage and Press Releases’ <<https://press.un.org/en/2022/dsgsm1718.doc.htm>> accessed 4 June 2024; ‘A/77/169: Towards a Global Fiscal Architecture Using a Human Rights Lens - Report by Independent Expert on Foreign Debt and Human Rights, Ms. Attiya Waris’ (*OHCHR*) <<https://www.ohchr.org/en/documents/thematic-reports/a77169-towards-global-fiscal-architecture-using-human-rights-lens-report>> accessed 4 June 2024.

⁴¹⁶ See above, Chapter 1, s. D. “Overview of the “Migration and Development nexus” in Bilateral Agreements”.

⁴¹⁷ Chetail, ‘Paradigm and Paradox of the Migration-Development Nexus’, see note 10 above, pp. 199–200.

⁴¹⁸ Bakewell, see note 75 above, p. 1342.

⁴¹⁹ Jørgen Carling and Cathrine Talleraas, ‘Root Causes and Drivers of Migration’, p. 6.

⁴²⁰ ‘[...] economic development in poor countries leads to more, not less, migration!’ Haas, see note 2 above, pp. 79–80.

approach? By taking into account the presence of the readmission clause in the agreements, i.e. the conditionality,⁴²¹ it seems to give strength to the argument that it is part of a trade-off or a blackmail whereby countries on the receiving end agree to cooperate in keeping or returning migrants.

Moreover, both the EU-ACP agreements and the bilateral agreements on cooperation, contain a return and readmission clause, see the absence of mention of the *non-refoulement*. While this can be seen as an instrument to make sure that readmission happens in an efficient and simple way, it overlooks 1) that not all of the countries of origin are safe, or at least no country is 'universally' safe; 2) that the fact that a migrant person is irregularly present in a territory does not necessarily imply that they are a security concern. To better understand this point it is necessary to recall the observations mentioned in the first chapter on the fallacy of the dichotomy between 'regular /irregular migrant,' and 'economic migrant/refugee.'⁴²² Indeed, the measures concerning returning migrants, and obligations for countries of origin on readmission, are addressed exclusively to migrants that are deemed to be present irregularly in another country. This can also result from the rejection of an asylum application. However, the readmission - and connected readmission bilateral agreements - might risk overlooking the situation in which a person sees the asylum application rejected i.e. does not have asylum claims to stay in the territory but can also not be refouled because they might risk inhuman or degrading treatment in the country of origin or transit. Allegedly, to include the return and readmission clauses in the DCAs, or PCAs which have the goal of Development and Cooperation, is a way to push 'Global South' states to cooperate in keeping the 'development subjects' in the 'underdeveloped world,' with the promise that development like a *deus ex machina* will eventually stop the need for people to migrate.

Conclusions

*Il vecchio mondo sta morendo, quello nuovo tarda a comparire. E in questo chiaroscuro nascono i mostri.*⁴²³

A. Gramsci

This quote attributed to Gramsci encapsulates the idea of the transition from the colonial order to the profound decolonization. This, I argue, is needed in approaching the Migration and

⁴²¹ Lavenex, see note 5 above.

⁴²² See above, Chapter 1, s. C. "The Migration and Development nexus in International Institutions".

⁴²³ "The old world is dying, the new one is slow to emerge. And in this chiaroscuro monsters are born" (My translation).

Development Nexus in the DCAs and PCAs. The present dissertation has focused on how migration – and in particular readmission – conditionalities are viciously embedded in the context of DCAs and PCAs; they achieve this by endorsing two different approaches of the Migration and Development nexus: the root causes approach and the win-win approach.

To study this dynamic on a practical level, the framework of the European Development and Cooperation Agreement, which led to the adoption of the Cotonou Agreement, has been analyzed. This historical evolution is crucial to understand that such agreements were formulated at a time when European states still had formal colonial ties with the third countries participating in the agreements. While these countries have gained independence in the past 67 years,⁴²⁴ the DNA of these agreements still contains the original, colonial-supporting dynamic. This is showcased in particular through the presence of the win-win approach and the root causes approach, notably in the latest version of the Agreement, signed in Samoa in 2023. The utmost evidence of this dynamic is the presence of the readmission clauses. They are reflective of the assumption that migrant people present irregularly in the territories represent necessarily a security threat, and therefore migration should be tackled ‘at its root’ through development aid. Nonetheless, development aid is granted only insofar as the receiving countries agree on the procedures to return their nationals. Moreover, readmission clauses showcase a ‘paradox’. While remittances are also included in the agreement as the first and foremost means to ‘bring development’ to countries of origin, this is still compounded with the necessary condition of reducing the migration flows at their minimum, through the readmission provisions. This is paradoxical, because while states flee from the responsibilities of past colonization in the present day ‘underdeveloped’ countries, they fail to promote concrete actions, such as debt relief, that could actually reflect the supposed spirit of solidarity of these agreements. All considered, the Samoa Agreement seems to be again a means for EU countries to control migration.

The development and cooperation they propose to third countries seems to be only a way to engage third states in the effort of protecting the ‘Fortress Europe’⁴²⁵ and keep ‘developing subjects’ in the ‘underdeveloped world’. This same dynamic also emerges in the context of the bilateral agreements on development aid and assistance between both Italy and France with third countries. The national contexts show differences and similarities: while both countries have as their ultimate goal of reducing the flows of migration, this mission is carried

⁴²⁴ Since the Treaty of Rome, 1957, see note 190 above.

⁴²⁵ Ward, see note 6 above; Shilhav, see note 6 above; Carr, see note 6 above, pp. 17–18, and pp. 141–142; Neisser, see note 6 above, p. 140; For a more philosophical account of the issue, see also: Kühnemund, see note 6 above.

out in different ways. On the one hand, Italy states in the overarching instruments⁴²⁶ the goal of sending development aid to reduce migration and requires third states to commit in the effort of returning migrants. While that of development aid to reduce migration has proven to be a myth in practice,⁴²⁷ it is then evident that the real goal of development aid is to blackmail third countries to participate in the efforts of returning migrants. On the other hand, France seems to have, at least in theory, implemented the nuance of 'win-win' approach in their development strategies. However, a study of the bilateral development and cooperation agreements France has with third countries showcases that in several instances France includes the readmission clause precisely in the development agreements. This illustrates the paradox between the presented narrative change and its actual implementation.

Finally, the present dissertation offers a post-colonial interpretation of how viciously these conditionalities are embedded behind the good word of cooperation and solidarity. This allows us to understand that these dynamics do not come from anywhere and that it is part of the decolonization enterprise to contextualize them as neocolonial legacies - and finally dismantle them.

⁴²⁶ Fondo per L'africa, A partnerhsip with Africa, and Piano Mattei for Africa.

⁴²⁷ Haas, see note 2 above, p. 79.

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