



# EU and Morocco on Migration

The Consistency of Border Security and  
Human Rights Protection- *and where they clash*

Bachelor Thesis

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## **Abstract**

This research investigates to what extent the European Union's cooperation on migration with Morocco as a partner country of the European Neighbourhood Policy is consistent with human rights principles. The paper uses a normative research design by systematically looking at the existing legal framework of EU- Morocco cooperation on migration management in light of the EU's role as a promoter of human rights in its external action. The legal framework of cooperation between the EU and Morocco is examined in order to analyse the balance between border security and human rights protection, and the role of the EU as a normative power is verified. By focusing on the operational acting of the local authorities in the border region of Melilla, the compliance with the right to asylum and the right to non-refoulement is analysed. The study leads to the conclusion that, through its non-action, faced to human rights violations conducted by Moroccan and Spanish authorities, the EU is indirectly responsible for the violations as well. Instead of promoting the protection of human rights, the Union prioritises the protection of its external borders to Morocco.

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#### **List of abbreviations**

<b>AA</b>	<b>Association Agreement</b>
<b>CEAS</b>	<b>Common European Asylum System</b>
<b>EASO</b>	<b>European Asylum Support Office</b>
<b>EC</b>	<b>European Council</b>
<b>ECHR</b>	<b>European Convention on Human Rights</b>
<b>ECRE</b>	<b>European Council on Refugee and Exiles</b>
<b>EEAS</b>	<b>European External Action Service</b>
<b>EEC</b>	<b>European Economic Community</b>
<b>EMAA</b>	<b>Euro-Mediterranean Association Agreement</b>
<b>ENI</b>	<b>European Neighborhood Instrument</b>
<b>ENP</b>	<b>European Neighborhood Policy</b>

<b>EP</b>	<b>European Parliament</b>
<b>EU</b>	<b>European Union</b>
<b>EUCFR</b>	<b>EU Charter of Fundamental Rights</b>
<b>GRC</b>	<b>Geneva Refugee Convention</b>
<b>IOM</b>	<b>International Organization of Migration</b>
<b>MENA</b>	<b>Middle East and North Africa</b>
<b>NIS</b>	<b>Newly Independent States</b>
<b>NGO</b>	<b>Non-governmental organisation</b>
<b>TEU</b>	<b>Treaty on European Union</b>
<b>TFEU</b>	<b>Treaty on Functioning of the EU</b>
<b>UDHR</b>	<b>Universal Declaration of Human Rights</b>
<b>UNDTA</b>	<b>United Nations Declaration on Territorial Asylum</b>
<b>UNHCR</b>	<b>United Nations High Commissioner on Refugees</b>

# 1. Chapter

## 1.1 Introduction

Since 2017, the new main route for migrants from sub-Saharan countries with the goal of entering the European Union is the Western Mediterranean Route along Morocco (IOM, 2018). One reason for that is the enhanced cooperation on border control between the EU and Libya that prevents refugees from attempting to reach Europe. Furthermore, Non-governmental organisation (NGO) reports on human rights violations and the increased danger of crossing the Mediterranean via Libya cause the decrease of arrivals (IOM, 2018). In consequence, a shift of migration flows to the Western Mediterranean route occurred. With approximately 65.400 arrivals, this shift turned Spain into the main receiving country for migrants in Europe. Around 6.800 of these migrants arrived by land, meaning that they climbed the fence separating the Morocco from Spain and thus the EU from Africa.

As Spain is the only member state of the European Union that shares a land border with Africa, the geographical proximity of Morocco and Spain induces migrants to try to reach Europe through the Spanish enclaves Ceuta and Melilla. Even though the dangerous passage across the Mediterranean can be avoided, the attempt to overcome the fences can be life-threatening as well. Spanish authorities supported by the European Coast Guard and Border Agency FRONTEX are accused of disregarding asylum and refugee law principles, namely the right to asylum, anchored in the Universal Declaration of Human Rights (UDHR), and the right to non-refoulement, written down in the Geneva Convention relating to the Status of Refugees (GCR). Reports on push backs, describing the practice of violently rejecting und returning migrants who are about to cross a border or who have already achieved the soil of the destination country, become more frequent. Furthermore, the Moroccan authorities are accused of repatriating migrants to the Sahara-region at the Southern borders of the country, without official mandate (ECHR, 2018). Consequently, the question rises to what extent the Spanish and the Moroccan authorities do act in compliance with fundamental human rights.

The shift of migration flows to the Western Mediterranean route turns Morocco from a former country of origin to the main transit country for migrants in Africa with the goal to reach Europe. In reaction to that, migration management became one of the primary subjects on the

EU's Agenda for the upcoming years. In December 2018, the EU has announced stronger cooperation with its Southern neighbours (European Commission, 2018). Within the framework of the European Neighbourhood Policy (ENP), the EU aims to face the challenges of migration management in cooperation with Morocco in the form of a readmission agreement. With financial support of its European neighbour, Morocco shall prevent migrants from illegally crossing the border to Europe (European Commission, 2018). Cooperation under the Umbrella of the ENP, just like any other external action of the EU, must comply with EU law, namely with article 21 of the Treaty on European Union (TEU), and the therein stated objectives of the EU's external action. One main objective and value of external, as well as internal action the EU has committed itself to, is the protection and promotion of human rights. However, the readmission agreement with Libya illustrates how human rights violations are condoned by the EU in order to keep its borders safe.

This study aims to examine how the EU balances external border security and human rights protection in the border region of the Spanish enclave Melilla, within the framework of cooperation with Morocco. Therefore, the consistency of EU-Morocco cooperation with human rights protection is analysed in a first step, by examining the legal framework of their cooperation. In a second step, the cooperation between Spain and Morocco is examined in order to verify the consistency of human rights protection on the bilateral level. The inclusion of the Spanish-Moroccan cooperation is crucial to this analysis because of the special feature of geographical proximity of Melilla and Morocco. In a third step, the operational cooperation on the local level is analysed by examining reports of human rights organisations, and the concrete consistency of the operations with the right to asylum and the right to non-refoulement in the border region of Melilla is verified. The last part aims to answer the research question of this study:

*To what extent is EU cooperation on migration with Morocco consistent with refugee and human rights protection principles?*

## 1.2 Research design and methodology

In order to classify this question, the typology of legal research will be outlined in this section. The research question can be identified as a normative question that states the legal framework cooperation examining agreements that were adopted between Morocco and the European partners. The question then implies the analysis of consistency of the legal framework with general refugee and human rights protection principles in light of the EU's role as a normative power. The research question can be identified as a logical question. The aim of this research is to test whether the agreements on border cooperation work in practice by looking at the case of the Spanish Moroccan border region of Melilla. Moreover, it is tested whether this cooperation is in accordance with the right to asylum article 14 UDHR and with the right to non-refoulement article 33 GRC. This implies the explanatory and evaluative characteristic of this research question.

The research is divided in three sub-questions to be able to answer systematically the overall research question by considering the stated research design.

- 1) *What is the existing legal framework of EU-Morocco relation within the context of the launch of the ENP in the year 2004?*

The first sub-question outlines the development relations to Morocco towards the status of a privileged partner of the European Union. It focuses on the framing of general objectives based on the idea that the EU has the normative power to promote the protection of human rights. After examining the association agreement as legal base of cooperation, the analysis focuses on the development of relations since the launch of the ENP. The role of the EU as a normative power. To answer this sub-question, an exclusively systematic argumentation is used.

- 2) *What is the current state of EU-Morocco cooperation on migration and asylum?*

In a first step, the second part focuses on cooperation on migration and asylum between Morocco and Spain because of the geographic proximity. The circumstance that Spain owns two enclaves on the African ground directly bordering Morocco hence makes the relation a special one. After examining the domestic asylum law of the two countries, the Spanish-Moroccan readmission agreement as legal base of cooperation on migration and asylum is analysed. In a second step, Morocco's cooperation on migration with the EU is examined to be



able to compare the cooperation in a broader scale. The examination of the legal framework on migration serves to verify the importance of human rights protection in the course of cooperation. Furthermore, the promotion of human rights by the EU as a normative power is analysed. A systematic approach combined with a hermeneutic argumentation via syllogisms is used because the bilateral and the multilateral agreements are interpreted and situated within the hierarchy of norms.

3) *What is the current state of operational border cooperation in the Spanish-Moroccan border regions?*

The third sub-question focuses on the operational actions in the Spanish-Moroccan border region of Melilla. The non-refoulement principle stated in article 33 (1) of the GRC and the right to asylum stated in article 14 of the UDHR are defined more precisely in order to verify the consistency of the border operations with these two rights. To do this, reports of human rights organisations are consulted. A systematic argumentation via syllogisms is to be used because the consistency of legal principles will be analysed to identify whether the named principles apply to the current situation in the border region of Melilla.

In the conclusion, the analysis makes use of a systematic approach because it outlines the consistency and coherence of EU-Morocco border cooperation with two essential refugee and human rights protection principles: the asylum as stated in article 18 UDHR, as well as the right to non-refoulement as stated in article 33 (1) of the GRC. The conclusion summarizes the results of the study in order to answer the research question. The limitations of the study are formulated and practical implications and recommendations for further practice are given. The technique of argumentation via syllogisms is used to answer the research question.

## 1.3 Body of Knowledge and key concepts

### 1.3.1 Body of knowledge

This paper seeks to analyze the consistency of the EU as an external actor in relation to its cooperation on migration policies with one of the partner countries of the ENP. As the EU announced stronger cooperation on migration with Morocco, (European Commission, 2018), the EU's role as an external actor stands in the foreground and is accompanied by several concepts and principles of EU external relations law. The first concept focuses on the theory of normative power Europe mainly characterized by Ian Manners. Besides the ability to use civilian and military instruments in external action, Manners argues that the EU possesses normative power that can shape the conception of 'normal' in the world on the base of five core norms that are peace, liberty, democracy, rule of law and the respect for human rights (Manners, 2002). One main point of criticism of this theory is the inconsistent role of Europe as former imperialistic power that now proclaims to promote values of what the norm should be (Haukkala, 2008; Rosecrance, 1997).

However, human rights reports of different organisations (Amnesty International, 2018; IOM, 2018) complain about operations such as the so called 'push backs' of Spanish authorities in cooperation with Moroccan authorities causing inconsistency with the right to seek for asylum (Art. 18 EUCFR) and the non-refoulement principle (Art. 33(1) Geneva Convention) that both have the status of human rights. Therefore, these two norms will be analysed as key concepts because their compliance might stand in contradiction with the EU's promotion of human rights. Furthermore, another key concept for this paper is the European Neighborhood Policy. It is directly related to the concept of normative power Europe because it is the Union's instrument to spread the above stated norms in the European neighborhood. Since this study focuses on the Union's relation to Morocco, a special regard to the ENP and to the regional dimension as the Union for the Mediterranean is necessary for the analysis because Morocco is one of the 16 partner countries having a privileged partnership with the EU. The legal basis of the ENP is article 8 TEU based on the key features of the Solana-Patten *Joint Letter, Wider Europe* (2002). With its launch in 2004, the ENP represents an instrument of how the Union wants to present itself and how it wants to cooperate with its new neighboring countries faced to the fifth enlargement in 2004 and the accompanied new borders.

Another principle shaping the EU's external action is the principle of coherence and consistency. This principle of EU external relations law represents an ambiguous term whose clear definition and delimitation can be difficult (Den Hertog & Stroß, 2013; Van Vooren & Wessel, 2014). A compromise is Van Vooren & Wessel's generalizing definition of the 'avoidance of conflicts and creation of positive synergy' (2014, p. 313). However, the two terms can be identified as crucial elements of the Union's behavior as a global actor aiming to ensure that external policies do not conflict with the objectives of EU external action as stated in article 21 TEU. One of the objectives as stated in article 21 (2) b is to *consolidate and support democracy, the rule of law, human rights and the principles of international law*. Here again, the human rights protection is mentioned and hence it has to be stated out whether 'avoidance of conflicts' (Van Vooren & Wessel, 2014) is still guaranteed by the EU's enlarged cooperation with Morocco.

### **1.3.2 Key concepts**

#### **Normative Power Europe**

The way the European Union wants to appear towards the rest of the world can be characterized as an adaptive process depending on contextualization. Francois Duchêne's theory of a 'Civilian Power Europe' (Duchêne, 1973), assuming that the enlargement of the European Community (EC) from six to nine countries opened the way to a growing civilian power of the EC faced to the growing military power of the Soviet Union. It can be identified as the first approach drafting the EC's role in the world (Haukkala, 2008; Manners, 2002). Duchêne's model was criticised for its lack of self-sufficiency and for focusing too much on the role of economy. The claim for a 'Military Power Europe' became louder in order to enable a more balanced coexistence in light of the military force of the United States and the Soviet Union (Bull, 1982; Whitman, 1998). In 2002, Ian Manners revives the debate with the idea of normative power Europe'. He criticizes the instrumentality of the existing concepts and their "direct physical power in the form of actual empirical capabilities" (2002, p. 239). According to Manners, they neglect the role of normative power Europe that "exists as being different to pre-existing political forms, and that this particular difference pre-disposes it to act in a normative way" (2002, pp.239). This concept is based on Edward Carr's idea of a distinction between economic power, military power and the power over opinion in the context of the

balance of power theory (Carr, 1962). He argues that each of the norms named above stems from a special European post-war context and each of these norms is set down in previous and present founding principles of the EU. The power of the EU hence lies in its ability to influence the world community's idea of norms by promoting certain norms. Especially the norm of promoting human rights is of special interest for this study because it is questionable to what extent this European value is transcribed to the EU's migration management at the external borders to Morocco.

### **The European Neighborhood Policy**

The ENP aims to create the best possible relation to neighboring countries without the objective of becoming a member state of the Union. Paragraph 1 of article 8 sets the objectives of the ENP which are (1) The development of *special relationship with neighboring countries* [...] *characterized by close and peaceful relations based on cooperation* (2) The establishment of an *area of prosperity and good neighborliness* (3) on the basis of *the values of the Union*. The second paragraph outlines the implementation of these objectives pointing out *specific agreements with the countries concerned*. article 8 is often criticised for being obsolete (Van Vooren & Wessel, 2014) because the stated objectives and instruments of implementation can already be found in existing articles, namely in article 3 (5) TEU and article 21 TEU stating out the objectives of EU external relations with *the wider world* and article 217 of the Treaty on Functioning of the EU (TFEU) outlining the use of association agreements as legal instruments for cooperation *with one or more third countries*. The European Commission emphasizes that through the ENP, the EU *offers partner countries potential greater access to the EU's market* (European Commission, 2004) to outline the special feature of the ENP.

### **The right to asylum**

Since the concepts of normative power Europe as well as the ENP imply the respect and the promotion of human rights, it is crucial to define and limit certain principles in order to be able to analyze in scrutiny the compliance of EU-Morocco cooperation on border and migration management with human rights and refugee protection principles. One of the two principles this study focuses on is the right to asylum as written down in article 14 UDHR the focus of

EU-Morocco migration management lies on migrants seeking for asylum. In EU law, article 78 TFEU undermines the EU's commitment to the GRC. As the Union was often criticised for its lack of a legal harmonization of asylum policies (Chetail, De Bruycker, & Maiani, 2016; Orbie, 2016), article 78 expresses the Union's will to develop a common policy on asylum in order to offer an *appropriate status to any third-country national requiring international protection*. Further implications of the right to asylum are outlined in the last chapter.

### **The right to non-refoulement**

The second right that is examined in this thesis is the non-refoulement principle or the prohibition of expulsion or return in article 33 (1) GRC. The non-refoulement principle can be identified as the most essential component of refugee status and of asylum (UNHCR, 1977) because it expresses the protection of refugees against return to a country where they fear persecution. The attached condition implied in the article lies in the notion of *refugee*. Therefore, the article 33 (1) must be related to the definition of a refugee in article 1A2 implying the triple criterion of (1) *a well-founded fear of being persecuted* (2) the causal relation to be persecuted for *reasons of race, religion, nationality, membership of a particular social group or political opinion* and (3) *the absence of protection through the country of origin*. Seen that this right is explicitly named in article 78 TFEU, it can be identified as a fundamental human right and it is hence directly addressed by the concept of normative power Europe and the goal of the ENP to seek the promotion of human rights. As part of the TFEU, it is of particular relevance for asylum seekers and therefore, it is also crucial for this analysis.

### **Coherence and consistency**

The prevailing opinion identifies a hierarchical order of the two terms 'with consistency usually being a necessary component of coherence' (Den Hertog & Stroß 2013, p. 376). According to the dominant line of thinking, consistency, ensuring the avoidance of contradiction of policies with a view to general objectives, has a negative connotation, whereas coherence has a more positive connotation because *'policy fields actively work together to achieve common overarching goals'* (Den Hertog & Stroß 2013: 376). Even though the principle of coherence is applicable to all fields of EU external relations, as can be concluded from article 21 (3) TEU, the treaties

do not translate consistency into one explicit legal obligation, but they refer to it in different areas (Art. 13, 16 (6), 26(2) TEU). The consideration of this principle has to be taken into account in the analysis because it refers to the general objectives of the EU and it helps to create a framework of EU external action. It is questionable whether consistency, as essential element of EU external action, is given in the EU's cooperation on migration with Morocco.

To clarify the principle of consistency, it is useful to include case law of the European Court of Justice (ECJ) in which the role of consistency was already queried. One of the most known cases in which consistency plays a role is the case *Kadi vs. Commission*. Besides a clarification of the hierarchical structure of EU and international law, the court's decision represented an important concession in favor of human rights protection in EU external action. The UN Security Council mandated to freeze assets of persons who are associated with the Taliban or Osama Bin Laden. One name on the list was that of Mr Yassin Abdullah Kadi, a Saudi citizen residing in Sweden. In compliance with the UN resolution, Mr Kadi's assets were frozen. The ECJ decided to annul the decision because the EU could not impose any restrictive measures against Mr Kadi, as there was no evidence of his involvement in terrorist acts. The asked procedure by the UN did not comply with the EU Treaties, namely article 351 TFEU saying that agreements between the EU and third states must be compatible with the Treaties. Thereby, the ECJ decided that the EU's external action must be consistent with the Treaties and hence, with its goals and objectives.

#### **1.4 Scientific and social relevance**

Faced to the recorded considerable increase of (irregular) arrivals via the Western Mediterranean route towards the Northern region of Morocco (EEAS, 2018), the intensification of border cooperation on migration management between the EU and Morocco represents an indispensable component of the EU's agenda on migration policies in the year 2019. One crucial element of this cooperation should be the avoidance of a humanitarian crisis as the world saw in Libya (Zeit, 2018). May it be about the accusation of the construction of internment camps for refugees on the Libyan ground (Human Rights Watch, 2018) or the increasing number of humans drowning in the Mediterranean (IOM, 2019), the European Union, as a promoter and protector of human and refugee rights must take action in the framework of its

neighborhood policy. Quite contrary to that, accusations were made revealing that through its cooperation with North African countries, the Union even reinforces the violation of human rights. As first reports are now available about the current situation at the Moroccan border referring to the violation of human rights, it is necessary to analyze the current state of border cooperation in order to identify to what extent the current policies are ineffective and why. Further, the issue at stake consists of determining how the enlargement of border cooperation shall be elaborated in order to implement effective policies in compliance with human rights.

## 2. Chapter

This chapter is dedicated to give an overview on the process of strengthening the cooperation between the EU and Morocco within the framework of partnership and cooperation agreements. Cooperation between Europe and the Moroccan Kingdom dates to the 1950s, but as the Euro-Mediterranean Association Agreement (EMAA), within the framework of the Euro-Mediterranean Partnership (EMP), the Southern branch of the ENP, represents the legal basis of EU-Morocco relations, it is crucial to start the analysis by looking at the provisions this agreement brought for further cooperation between the two partners. As the bilateral cooperation on migration is part of chapter three, this chapter focuses on the general dynamics of diplomacy between the two partners with special regards to the development of the adoption of human rights protection principles and the accompanied role of the EU as a normative power. Thereby, the consistency of the agreements made between the EU and Morocco, considering the objectives of the ENP as stated in article 8 TEU and article 21 TEU, is analysed.

After presenting the general provisions of association agreements between the EU, the member states and third countries and therewith associated challenges of embeddedness of EU law supremacy and international treaty law, a closer look at the association agreement between the EU and Morocco is taken. But the EMAA, which came into force in March 2000, was only the base of cooperation as the launch of the European Neighborhood Policy (ENP) put cooperation between the EU and Morocco in a new light. Further, EU-Morocco relations have been intensified over the past decade due to interdependencies in several policy fields which lead to Morocco's position as a privileged partner of the EU today. The reasons for, and the consequences of such an intensification will be outlined in a third step. By doing so, the goal of this chapter is to answer the first sub-questions of the thesis:

- 1) *What is the existing legal framework of EU-Morocco relation?*



## 2.1 The EU's Association Agreements with third countries

In order to analyze the consistency of agreements made between the EU and the Moroccan Kingdom, it is crucial to have a look at past agreements. Even though in the past, relations between the two parties are partially marked by difficult negotiations, especially in the field of agricultural and fishery policies (Vaquer, 2010), Morocco is today one of the closest partners among the EU neighborhood. The Association Agreement set in the year 2000 between the EU and Morocco represents the legal launch of diplomatic relations. The legal base for association agreements is article 217 TFEU:

*The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.*

The Association Agreement (AA) with the Moroccan Kingdom was set up on the base of the Euro-Mediterranean Partnership of 1995 in the frame of the Barcelona Conference. It has created a framework for cooperation between the EU and Morocco. Covered areas by the AA are the development of political, trade, social, cultural and security policies. The term 'association' is not defined by the treaties but article 217 TFEU includes a broad definition of such an agreement which is the involvement of '*reciprocal rights and obligations, common action and special procedure*'. This notion however, stays very broad and could also be applied to other agreements concluded by the EU. Therefore, the European External Action Service (EEAS) presents several criteria the AAs must meet. 1) article 217 TFEU represents the legal basis of such a cooperation, 2) The partners must have the intention to establish closer economic and political cooperation than they would have without the agreement, 3) Creation of paritary bodies for the management of the cooperation, competent to take decisions that bind the contracting parties, 4) The offer of a 'Most favored Nation' Treatment, 5) Providing for a privileged relationship between the EU and its partner, 6) Since 1995, the clause on the respect of human rights and democratic principles is systematically included and constitutes an essential element of the agreement, 7) In a large number of cases, AAs replace a cooperation agreement thereby intensifying the relations between the partners (EEAS, 2011).

AAs such as the Euro-Mediterranean Agreement between the EU and Morocco dating from the year 1996, were set with countries of almost all regions of the world. Bilateral cooperation of

the EU thus goes further and is not limited to the EU neighboring countries included in the ENP framework. This results in a large complex of EU external relations, often identified as enhanced multilateralism and bilateralism leading to *'integration without membership'* and an *'EU legal space'* (Van Vooren & Wessel 2014, Lazowski 2008). It becomes obvious that the EU thus fulfills the role of a norm giver, not only in a socio-economic dimension, but also in a normative dimension. Since the respect of human rights and democratic principles is set as a policy goal of AAs, the EU's role as normative power becomes clear. However, the lack of concrete notions of article 217 TFEU as legal base of AAs gives the contracting parties the possibility to define to what extent the criteria have to be fulfilled.

### **2.1.1 The Euro-Mediterranean Association Agreement**

In order to analyse the nuances and intentions of further EU-Morocco cooperation agreements, it is crucial to first localize the Euro-Mediterranean Association Agreement (EMAA) in order to identify differences and changes in further agreements set between the EU and Morocco. First, it must be stated that the EMAA was founded in response to large political and constitutional reforms in Morocco (Haddadi, 2002). As the 1980s were marked by human rights violations and persecutions of political opponents in Morocco, as well as in other Maghreb states (Damis, 1998), the EU became increasingly concerned about further developments, leading to a consensus among the EU member states to give the Southern Mediterranean States a high priority in its external action. The development of a stronger institutional framework effectively contributing to the development of non-EU Mediterranean states in the form of increased financial aid and new free trade zones was part of the new political agenda of the Union. As *'there was a growing recognition among these policymakers of the need for a forum where they could discuss issues of joint concern to the EU and the Mediterranean 'Twelve' - drugs, immigration, political stability, the Middle East peace process, human rights, and the development of democratic institutions'* (Damis, 1998: 96), the creation of a new generation of association agreements was the issue at stake.

The AA negotiations between the EU and Morocco were partly very difficult and seemed to fail due to substantial different perceptions on the content and the objectives of the agreement (Damis, 1998, Haddadi, 2002). Further, the negotiations were overshadowed by differences on

fishery agreements about Spain's right to access to Moroccan fishing grounds. Differences in this area are mostly connected to the unsettled question of the Western Sahara. Morocco occupies the non-self-governing territory and does not recognize its autonomy. The Council v. Front Polisario case undermines the still persisting differences in light of a renewed fishery agreement between the EU and Morocco signed in February 2019 that included the Union's right to fish on the grounds of the Western Sahara, despite the Union's recognition of the Western Sahara's autonomy. Regarding the AA negotiations, consensus on agricultural products could not be found during the three years of negotiations. Therefore, the EU presented a 'take it or leave it' ultimatum to Morocco which resulted in the Kingdom's acceptance of the agricultural proposal with all its conditions.

The final AA between the EU and Morocco is very complex and detailed compared to other AAs set between the EU and other partners in the mid-90, for instance the AAs with Tunisia and Israel that were the first ones signed in the new association agreements generation, before the Moroccan agreement (Martin, 2009). The AA consists of five main objectives stated in article 1:

1. *provide an appropriate framework for political dialogue between the Parties, allowing the development of close relations in all areas they consider relevant to such dialogue,*
2. *establish the conditions for the gradual liberalisation of trade in goods, services and capital*
3. *promote trade and the expansion of harmonious economic and social relations between the Parties, notably through dialogue and cooperation, so as to foster the development and prosperity of Morocco and its people,*
4. *encourage integration of the Maghreb countries by promoting trade and cooperation between Morocco and other countries of the region,*
5. *promote economic, social, cultural and financial cooperation*

Considering the difficult prior negotiations between the two parties, especially the fact that consensus on trade and financial cooperation could be found, represents an important achievement and a significant step towards stronger cooperation. On the base of this consensus, further steps could later be made within the framework of the ENP. Nevertheless, the named objectives are broad and do not represent concrete regulations. Articles 3-96 however provide a detailed framework in eight chapters: political dialogue; the free movement of goods; the right of establishment and services; payments, capital competition and other economic provisions; economic cooperation; cooperation in social and cultural matters; financial cooperation; and institutional, general and final provisions. Faced to the fact that the new generation of

association agreements with the Southern Mediterranean countries was launched due to concerns about human rights violations and a shift towards increased authoritarian tendencies, provisions on human rights protection are kept very short and appear only in article 2 of the agreement:

*Respect for the democratic principles and fundamental human rights established by the Universal Declaration of Human Rights shall inspire the domestic and external policies of the Community and of Morocco and shall constitute an essential element of this Agreement.*

The formulations ‘shall inspire’ and ‘shall constitute’ leave enough scope to interpretations and do not represent a clear obligation for the contracting parties. Even though the agreement does not include any clauses that are inconsistent with fundamental human rights protection principles, not any other article includes clear provisions on the promotion of human rights. As the AA was concluded under the umbrella of the Euro-Mediterranean Partnership (EMP) that outlines the importance of human rights protection, already in its subtitling: ‘*Together for democracy, human rights and prosperity in the Mediterranean*’, the absence of directives or obligations of the contracting parties as well as the discrepancy between the valence of human rights in relation to their implementation is a lack that has been criticised by several scholars (Damis, 1998, Haddadi 2002, Martin, 2009).

## **2.2 The European Neighborhood Policy**

In the year 2004, relations between the EU and Morocco were deepened again. The partnership has known a turning point with the signature of the association agreement and with the launch of the ENP. The general goal of the ENP is to support the development of its Eastern and Southern Neighbors by offering financial assistance in return to political, economic and social reforms in the contracting countries. By creating regional dimensions of the ENP in the form of the Eastern Partnership and the Union for the Mediterranean, the ENP seeks to provide regional developments in the form of multilateral cooperation in order to create the best possible relations with its neighboring countries without the goal of a membership in the European Union. Constantly renewed and updated Association Agreements between the EU and its neighbors are the tools of such a cooperation. In the first instance, the latter have allowed an enhancement of the agreed political, economic and commercial relations, as well as

developments supported by cultural exchanges. On the base of the Association Agreement, relations between the EU and Morocco developed progressively towards a true partnership in the last decade, making Morocco today one of the EU's privileged partners. After concentrating on the EMAA, it is now crucial to focus on the further developments between the two partners by means of the ENP instrument. The jointly agreed Action Plan adopted in 2008 marked the launch of new bilateral relations. The main provisions of this new agreement contain the objective of promoting good governance as well as political and socio-economic reforms. It consists of four main areas. First: the promotion of common values, of a common economic trade zone, the participation of Morocco in European Programs and agencies as well as financial dimensions. The annually renewed action plan does not represent a treaty itself. It can rather be identified as the policy instrument that helps to implement the objectives set in the EMAA. The annual action plan consists of a long list of concrete projects on the Moroccan soil that are financed by the ENPI. The Union for the Mediterranean, the regional dimension of the ENP, announced stronger cooperation and larger financial aids for southern Mediterranean countries which were summarized in the European Neighborhood Instrument (ENI) as the key financial instrument supporting cooperation with Morocco for the period 2014-2020. The concrete acting of EU-Morocco cooperation under the umbrella of the ENP can thus be characterized as a tripartite model consisting of the EMAA as the legal base setting the objectives of cooperation, the annual action plans presenting the concrete project that are implemented in Morocco to attain these objectives, as well as the ENPI that finances these projects.

### **2.2.1 EU-Morocco Action Plans**

Since 2005, the EU and Morocco adopt annual action plans within the framework of the ENP based on article 8 TEU. They enable a targeted implementation of the instruments made available by the AA resulting in even stronger 'integration without membership' (Lazowski, 2008) predominantly in the field of socio-economic structures. Furthermore, the action plans aim to approach normative standards towards those of the EU in order to enable a full integration of Morocco in the European internal market. With regard to the EU's role as a normative power and human rights promoter, a notable aspect of this agreement is the first point of the list of priority actions of the action plan: *'pursuing legislative reform and applying*

*international human rights provisions'* (EU-Morocco Action Plan 2006, p. 3). Considering that this point is given priority to in the first place, is a notable commitment in favor of the EU's role as a human rights promoter. One example of a concrete project of the action plan is the implementation of an interministerial commission responsible for freedoms and human rights that declared the elimination of several reservations faced to international conventions on human rights that Morocco is a signatory partner of. This measure represents a degradation of human rights violations in a passive way because it uses the method of abolishing legal norms decelerating the commitment to human rights.

Furthermore, the application of human rights provisions represents an improvement as the AA only focused on the respect of human rights but not on concrete action to be taken in order to effectively implement human rights. Compared to the EMAA, the action plan emphasizes the priority of democratic principles, of human rights, and of the respect of the rule of law with short- and medium-term priorities. Besides the implementation of an interministerial commission, point 2.4 consists of a list of 17 objectives with the aim of *ensuring the respect, the promotion and the protection of human rights and fundamental freedoms conform with international norms*. This enhancement can be qualified as large progress. One main reason for the sudden change of mind might be the regime change and political and constitutional reforms under the new King Mohammed VI (Haddadi, 2002). The actors are aware of a lack of effectiveness of the new provisions: *Despite this progress Morocco still has a way to go on the path to democratisation, respect for human rights, good governance and consolidation of the rule of law; it needs to complete its legislative framework and adopt the relevant implementing laws. It is also necessary [...] to disseminate genuine culture of respect for human rights.* (Eu-Morocco Action Plan, 2006: 9). But Morocco's progress has been acknowledged by NGOs on-site: *It has made great strides in addressing past abuses and allowed considerable space for public dissent and protest in recent years* (Human Rights Watch, 2007). Hence, it can be concluded that the new Action Plan between the EU and Morocco contributed to an enhancement of their relation, as well as to an enhancement of the human rights situation in Morocco.

The EU's contribution to this progress is not deniable and proves the theory of normative power Europe. Since the launch of the ENP, a large progress and a large intensification of EU-Morocco relations has taken place resulting in one of the closest partnerships the EU maintains to a neighbouring state. The regime changes in Morocco, as well as reforms of EU external action

in the form of the ENP are two key elements leading to the new form of cooperation. Large commitments in the fields of human rights protection as well as financial aids and new trade zones were agreed on. Today, new agreements in asylum and migration questions are about to become a crucial area of cooperation of the two partners as the migratory flows from the sub-Saharan area towards Europe are passing through Morocco. The ‘integration without membership’ makes of Morocco one of the main privileged partners among the EU neighborhood.

### **2.3 Morocco’s ‘Advanced Status’**

First efforts of the Kingdom to come to the fore of the European Community were made in the 1980s. After a refused informal approach in 1984, a surprising formal application in summer 1987 has been rejected by the European Economic Community (EEC) on the ground that Morocco does not take part of the European territory. On the base of this case, a corresponding clause has been added to the Maastricht Treaty in 1992 limiting the option to accession to countries situated on the European continent. Nevertheless, Morocco’s application presented an intelligent diplomatic act pushing the former EEC to follow up with its relation to Morocco. Moreover, a large number of scholars agrees on the point that Morocco never aimed to become a member state, but rather a privileged partner of the European Union (Damis, 1998, Haddadi 2002, Martin, 2009). After lengthy processes of negotiations and bargaining during the 1990s, relations between the two parties constantly evaluated and led to Morocco’s present advanced status.

#### **2.3.1 Joint EU-Morocco document on the advanced status**

After the launch of the action plan within the ENP framework in 2004, the EU-Morocco association council announced the strengthening of their relations towards an advanced status of Morocco in July 2007. As a result, a *joint document on the strengthening of bilateral relations and an advanced status* was published in October 2008. It connects the main four policy fields of cooperation that are rooted in the EU-Morocco Action Plan and the Association Agreement: political, economic and social, human, as well as financial dimensions. Especially in the political dimensions, progress was made, and the ad hoc working group agreed on Morocco’s

participation in certain EU programs and agencies. This new participation predominantly includes an EU-Morocco Summit, reunions in New York between the EU High Representative for Common Foreign and Security Policy (CFSP) and the Moroccan Minister of Foreign Affairs, informal meetings of the Moroccan Minister of Foreign Affairs and the European correspondents, as well as sector-specific ministerial and other kinds of thematic meetings. Further, the Moroccan parliament obtained the status of an observer of the parliamentary assembly of the Council of Europe. Although the objective of Moroccan involvement in the named meetings and institutions is not explicitly stated, the joint document gives several indications. The enhancement of the political dialogue improves the development of further democratic structures and the reinforcement of a common security policy. Additionally, the dialogue and cooperation regarding the protection of fundamental and human rights has increasingly become reality. The joint document comprises the gradual adherence of Morocco to the conventions of the council of Europe regarding the protection of fundamental and human rights. In addition, the implementation of a national strategy regarding human rights is added to the document. This strategy includes inter alia cooperation on the implementation of the national strategy for equity and equality, the EU's support of the legislative reform regarding the protection of women against violence.

A new evaluation regarding the enhancement of human rights protection principles can be identified. The 2004 Action Plan included the implementation of human rights based on recommendations of the advisory committee on human rights. This measure resulted in a rather passive improvement of the human rights situation in Morocco in the form of a withdrawal of *'a number of reservations Morocco has entered against international conventions on human rights to which it is signatory'* (ENP Strategy Paper 2007: 8) whereas the joint agreement is the first document to include domestic measures in order to improve the human rights situation. Besides the supporting character of the EU's involvement in this process, Morocco has mapped out its own strategy to fight human rights violations. One reason for this development is the Kingdom's response to large protests in the course of the Arab Spring (European Commission, 2018). Constitutional reforms and the integration of values including democracy, the rule of law and human rights permit to simplify the process. When it comes to the role of the EU as a normative power that promotes the protection of human rights, it is interesting to observe that though the increasing implementation of human rights protection principles in Moroccan



domestic policies, the EU confessed a more equal position to the country. Although on an ad hoc and an observatory level, Morocco has gained the right to observe EU decision making the increasing approximation of powers between the two partners seems to have encouraged the domestic implementation of human rights protection principles. Here again the phenomenon of 'integration without membership' appears on a higher level than in the ENP Action Plan because now, Morocco participates in decision making procedures of the European Union.

## **2.4 Conclusion**

The first sub-question '*What is the existing legal framework of EU-Morocco relation*' can be answered as follows. Today, the EU has granted to Morocco the advanced status as a privileged partner. After difficult negotiations and disagreements during the 1990s, the EU and Morocco achieved the adoption of the Association Agreement that laid the foundation of diplomatic cooperation serving as a model for similar agreements between the EU and other countries of the region. With the launch of the ENP in 2004, new provisions have been added to the EU's external action and the promotion of human rights protection principles became one of its key objectives. In this context, the role of the EU as a normative power and human rights promoter has been analysed accordingly. The analysis showed that since the launch of cooperation between the two partners, a constant improvement of the legal status of human rights protection principles can be observed. Those principles were first situated in bilateral agreements between the two partners and they were gradually integrated in domestic Moroccan legislation. This development goes in line with increasingly strong cooperation of the EU and Morocco. A not deniable influence of the EU on Moroccan protection of human rights can thus be observed. However, domestic politics in Morocco play a key role in those developments. The constitutional reforms in 1992 and in 2011, in reaction to protests during the Arab Spring, caused significant improvement of the legal status of human rights protection principles. After the death of King Hassan II, the young Mohammed VI took the throne in 1999 and his modern policy line compared to his father's rather conservative policy making is another reason for the improvement. The Moroccan Kingdom pursues the target of improving the domestic situation which can hence be seen in legal reforms. Despite that, a lack of implementation and compliance of human rights can still be observed according to reports of human rights

organisations, namely, the violent repression of demonstrations *'using excessive force against protesters and arresting protest leaders, who were later sentenced to months in prison'* in the mining town of Jerada in March 2018 that went public and caused large critique of human rights violation conducted by the Moroccan authorities (Human Rights Watch, 2019).

As stated in chapter I, the ENP is based on article 8 TEU emphasizing the development of *'special relationships with neighboring countries, aiming to establish an area of prosperity and good neighborliness, founded on the values of the Union and characterized by close and peaceful relations based on cooperation'* (article 8 TEU). After having evaluated the relations between the EU and Morocco it can be concluded that the EU's external action is consistent with two of these goals. The adoption of Morocco's advanced status indicates that the relationship between the two partners is characterized by close and peaceful cooperation. Further, the adoption of the ENPI and Morocco's increasing access to the European market imply provisions of the second objective, the establishment of an area of prosperity and good neighborliness, although the implementation of this objective did not succeed entirely yet. Concerning the third implication of article 8, the consideration of the values of the Union, it can be concluded that the EU itself acts in consistence with human rights whereas the statements of human rights organisations imply Morocco's violation of human rights. The situation of human rights in Morocco improved over the last decade but as their protection is an element of the partnership, it is questionable whether the two partners are engaging enough in the implementation of this objective. However, cooperation between the EU and Morocco is stronger than ever before and *'integration without membership'* is taking place. But when it comes to the consistency of the ENP, some questions on the continuity of Morocco's advanced status come up. As Larbi Jaidi already stated in the year 2009: *'One may, however, question the added value offered by the advanced status in terms of the commitments undertaken within the framework of the ENP and the corresponding action plan'* (Jaidi 2009, p.1), it is difficult to localize the advanced status in the framework of the ENP. As the ENP aims to support regional developments in the form of the Eastern Partnership and the Union for the Mediterranean, strengthening the bilateral EU-Morocco relations weakens the multilateral approach of the ENP. An increased number of states obtaining an advanced status with ad hoc and very contextual agreements *'à la carte'* (Jaidi, 2009, p.6) can become a problem for the ENP and jeopardize regional cooperation. The ENP itself is in danger of becoming obsolete if it encourages a steady prioritization of cooperation

with certain countries of the ENP causing the '*advancing at different speeds*' (Jaidi, 2009, p.6) of its neighborhood. Besides the fact that Morocco also created its own way of becoming a privileged partner, the EU's external action causing a shift back to bilateral agreements is inconsistent with the provisions and the general idea of the ENP. The question remains whether the cooperation between the two partners can be qualified as equal.

### 3. Chapter

In a next step, the focus of the analysis is specified on concrete provisions of migration law in order to examine the EU-Morocco cooperation on migration and asylum. The last chapter led to the conclusion that the EU's general cooperation with Morocco leads to the improvement of the human rights situation in Morocco. The question now is whether this observation can be applied to more specific cooperation, namely the cooperation in migration and asylum questions. The EU faced a particularly high increase of migrant arrivals since the year 2015 (IOM, 2018). As a large number of migrants has reached Europe illegally, Commission President Juncker announced a strengthening of the EU's external borders in order to diminish illegal migration (European Commission, 2018). Border security thus became a key issue of the EU's agenda. In light of this, the announced strengthening of cooperation with Morocco on migration becomes sensitive issue as there is only a fine line between the protection of borders and the protection of migrants.

As explained in the introduction, the Spanish Moroccan cooperation is of special interest due to the geographical proximity and the particular role of the Spanish enclaves Ceuta and Melilla in EU-Morocco border management. With regard to the main research question, the inclusion of certain provisions of Spanish law, namely the Law on Public Security, is crucial for the analysis. Furthermore, the adoption of the Spanish Moroccan readmission agreement has to be taken into account for a better understanding of EU Morocco cooperation on migration. With these provisions in mind, this chapter aims to answer the second sub-question:

*2) What is the current state of EU-Morocco cooperation on migration and asylum?*

#### **3.1 Morocco's and Spain's legal structure of managing migration**

In 2014, the Spanish parliament surprisingly passed a new amendment of the Law on Public Security (*Ley Orgánica de protección de la seguridad ciudadana*) specifying the operational action of the Guardia Civil in the border regions of Ceuta and Melilla. The tenth additional provision of the law provides an official basis to legalise push backs:

*“Foreigners detected on the border line of the territorial demarcation of Ceuta or Melilla while trying to overcome [...] the border irregularly may be rejected in order to prevent their illegal entry into Spain”<sup>1</sup>*

The approved text regulates the rejection of migrants due to irregular crossing of the Spanish border. The *access to health care and free legal aid as well as the right to an interpreter* as stated in article 16 (2) of the Spanish asylum law can hence not be guaranteed if persons who crossed, or are about to cross the Spanish border, are rejected immediately.

*This can result in a serious breach of the principle of non-refoulement, which dictates that no state may expel or return a person to a country where their lives and physical integrity would be put at risk* (European Council on Refugees and Exiles ECRE, 2015).

This new amendment opposes not only the domestic regulation on asylum, notably article 13 (4) of the Spanish constitution, it is also inconsistent with the GRC, as well as with the UDHR. Furthermore, the risk that the division of powers cannot be guaranteed anymore, exists as well. Even though the provision does not explicitly name who is in power of rejecting the persons trying to overcome the border, it can be concluded that the Spanish Guardia Civil is the actor entrusted with this task. The legal examination of an application as an asylum seeker might therefore be left out and the executive powers of the state assume their right to take the decision and thereby bypass the judicial power.

Besides human rights organisations such as the ECRE, the United Nations, as well the Council of Europe sharply criticised the proceeding in Spain. Nils Muiznieks, the former Commissioner for Human Rights of the Council of Europe called for a withdrawal of the law:

*The proposed amendments to the Aliens Act aimed at legalising push-backs of migrants arriving in Ceuta and Melilla currently discussed in Spain are in clear breach of human rights law. The Spanish authorities should reconsider them and ensure that any future legislation fully abides by Spain's international obligations, which include ensuring full access to an effective asylum procedure, providing protection against refoulement and refraining from collective expulsions* (Council of Europe, 2015).

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<sup>1</sup> Translated by the author

Besides criticizing the new law, the EU did not take any measures, for instance in the form of sanctions to react to the acting of Spain. Therefore, the EU's role as normative power can be questioned as the theory states that the EU's external, as well as internal acting should be guided by the principles of the Treaties. The Spanish Alien Act does not comply with the GRC and the UDHR and therefore it does not comply with article 78 TFEU a fortiori. The principles of the Treaties are thus not respected by Spain. On the one hand, it can be argued that the non-compliance can be only related to the member state and not to the EU as a whole. On the other hand, the non-action of the EU can be interpreted as unspoken understanding. Either way, the EU's role as normative power fluctuates.

### **3.2 The Spain-Morocco Readmission Agreement**

After having outlined the Spanish Alien Act and the EU's reaction to it, the bilateral cooperation of Morocco and Spain will be analysed for a better understanding EU-Morocco cooperation. As can be concluded from the first part of this chapter, Spanish asylum regulations are restrictive. The Spanish Alien Act even includes provisions that are inconsistent not only with Spanish law, but also with general human rights regulations that Spain has committed itself to by signing several human rights conventions such as the GRC, the EU charter of fundamental rights and the Universal Declaration on human rights. With these provisions in mind, the Spanish Moroccan Readmission Agreement signed in 1992 and entered into force in 2012 must be analysed to better understand the EU's wish to adopt a readmission agreement with Morocco. The agreement enforces the interdependencies between the two countries through reciprocal obligations. Article 1 of the agreement presents the main objective of the agreement that is kept relatively short as it consists of only 3 pages and 16 articles.

*At the formal request of the border authorities of the requesting State, border authorities of the requested State shall readmit in its territory the third-country nationals who have illegally entered the territory of the requesting State from the requested State.*

The agreement hence transfers the decision of readmission to the border authorities, namely the Spain Guardia Civil and the Moroccan Sûreté Nationale. The objectives of this article have a common point of criticism with the Spanish Alien Act. By sending third-country nationals back to either Morocco or Spain, the two countries agree on bypassing their right to a legal decision

and an individual assessment. Article 3 (d) of the agreement expresses the absence of an obligation to readmission for persons that have been qualified as refugees according to the Geneva Convention on refugees by the requesting state:

*There is no obligation of readmission for those to whom the requesting State has recognized refugee status according to the Geneva Convention of 28th July 1951.*

The agreement however does not specify the exact procedure of ensure the protection from readmission. It can therefore be qualified as partially inconsistent with the right to seek for asylum because it does not guarantee the person's chance to ask for asylum because readmission could take place before the chance to seek for asylum was given to the repatriated person. Moreover, the significance of this agreement must be questioned. It took the agreement 20 years to enter into force. This incidence can be traced back to the fact that the Moroccan constitution and the necessary amendments were only adapted in the year 2011.

The decision in the case of N.D. and N.T. v. Spain, the European Court of Human Rights (ECHR) has decided that '*the immediate return to Morocco of sub-Saharan migrants who had attempted on 13 August 2014 to enter Spanish territory illegally*' without "*any prior administrative or judicial decision*' represents a violation of article 4 of Protocol No.4 of the European Convention on Human Rights (prohibition of collective expulsions of aliens) as well as a violation of article 13 (right to an effective remedy) taken together with article 4 of the Protocol No. 4. The criticism towards the Spanish authorities was expressed in a parliamentary question of the European Parliament (EP) in October 2018 that was answered by the Commission as follows:

*The bilateral Readmission Agreement between Spain and Morocco does not include provisions which would be incompatible with EC law and is in any case without prejudice to international and EC law. In line with Article 4 of the Schengen Borders Code(2), Member states are obliged to act in full compliance with the Charter of Fundamental Rights of the European Union and relevant international law related to access to international protection. This includes the 1951 Geneva Convention Relating to the Status of Refugees, in particular the principle of non-refoulement, Article 7 of the Schengen Borders Code, which requires border guards to fully respect human dignity.*

The Commission stated that it has taken note of the "*criticism*" of the ECHR and that own measures of monitoring would be taken to evaluate the situation. The clear inconsistency with human rights protection principles decided by court and the almost provocative degradation of the court decision by naming it "*criticism*" leads to the conclusion that the European Commission clearly ignores court decisions as well as international law and does not take

serious measures to fight human rights breaches. Again, the EU's acting as a normative power loses credibility because of the EU's non-acting faced to clear breaches of human rights protection principles by a European member state.

### **3.3 EU-Morocco cooperation on migration and asylum**

In a next step, the enlargement of cooperation on migration and asylum policies with Morocco to the EU-level will be outlined. Despite the launch of negotiations on an EU readmission agreement in the year 2000, an arrangement comparable with the Moroccan-Spanish model could not be arranged till the year 2013. One explanation for the failed negotiations is the imbalance of duties between the two partners. The domestic political considerations of the Kingdom were not included in a way that could enable such an agreement. As the national agenda on foreign policies consisted of an improvement of cooperation with sub-Saharan countries in order to achieve larger acceptance of its Western Sahara policy, an agreement on readmission with the European partners was not bearable (Carrera et al., 2016). The EU's strategy of using a '*fine balance of pressure and incentives*' (European Commission, 2015) to enhance cooperation on readmission thus failed. The second effort to create an agreement on migration management led to the adoption of the Mobility Partnership between the EU, Morocco and nine member states in the year 2013. The annual EU-Morocco Action Plans are kept very vague and can be understood as the general permission notice to further financial support provided by the EU. Therefore, the next section will focus on the latest documents and agreements concentrating on concrete measures of migration management between the EU and Morocco.

#### **3.3.1 Mobility partnership**

In 2013, the first agreement focusing on migration management between the EU and Morocco came into force. The *Joint declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member states* represents the legal base of cooperation in that area. The Mobility Partnership entered into force in the light of several



events. A first reason for the establishment of such an agreement in that year was the constantly increasing number of refugees using the Western Mediterranean route (Eurostat, 2015). In addition, Morocco was about to become the number one country of origin of non-EU nationals in 2013 (European Commission, 2015). Another aspect is the adoption of Morocco's national strategy on migration leading to the revival of negotiations on an agreement between the EU and Morocco. The Mobility Partnership envisages four objectives: 1. To manage the movement of persons and the legal and labour migration, 2. To strengthen cooperation on migration in order to exploit the positive potential of it, 3. Combat illegal immigration, 4. To comply with duly ratified instruments for the protection of refugees. For the realization of these objectives, the contracting parties agreed on dividing the tasks in six areas. Each of these areas consists of projects supported by the EU. One initiative for the prevention of illegal immigration, people-smuggling and border management is the continuation of '*cooperation on readmission to the mutual benefit of both parties*' (Mobility Partnership 2013: 6). The EU expresses de novo its clear will to adopt a readmission agreement with Morocco in return to visa facilitation for Moroccan citizens when entering the EU. This more-for-more approach however is perceived to be insufficient faced to the Kingdom's particular diplomatic position between Africa and Europe (Cassarino, 2016). Due to its reintegration in the African Union as its '*institutional family*', and its will to become an '*African power*' (Alioua and Ferrié, 2017), the Moroccan Kingdom expressed its refusal of the adoption of an readmission agreement with the EU: '*Morocco has realized that it can only occupy a leadership position by projecting a friendly and fraternal identity. This involved treating migrants of sub-Saharan origin as part of an "us" in contrast to the "them" of Europeans*' (Alioua and Ferrié, 2017, p. 26). Morocco's position as pivot between Europe and Africa explains its special relationship and the advanced status in relation to the EU.

In the area of international protection, the contracting parties agreed on only two points. The first one consists of the EU's support of the strengthening of the Moroccan legislative and institutional framework for asylum in accordance with the GRC. The second point consists of the promotion of capacities of the Moroccan authorities responsible for asylum procedures in cooperation with the EU agencies as well as with the United Nations High Commissioner on Refugees (UNHCR) (Mobility Partnership 2013: 9). The commitment to the GRC and the cooperation with EU and UNHCR agencies is a good initiative to ensure international

protection in order to guarantee the right to asylum and the right to non-refoulement. The measures undermine the EU's promotion of human rights in its neighbourhood. The normative power of the EU was proven again. However, it must be stated that these measures are not new. Before Morocco regulated and institutionalised migration and asylum management from the year 2003 on, the UNHCR was the responsible agency to accept and manage the applications of migrants in Morocco. Moreover, the GRC was signed and ratified by Morocco in the year 1956. Therefore, the commitment to these legal provisions does not represent a real progress. Even though the consistency of the Mobility Partnership with the EU and international law is given, the two measures ensuring international protection are kept very vague and do not represent a new achievement in order to improve the refugee and human rights situation in Morocco.

### **3.3.2 Enhancement of Frontex' legal capacity**

Another aspect that has to be taken into account is the enhancement of the capacity of the European coast guard agency Frontex. It is crucial to the analysis because it represents one major aspect of the EU's external acting regarding external border management. As a considerable increase of migratory flows towards Europe took place since 2014 (Eurostat, 2015), Commission President Jean-Claude Juncker announced a '*Strengthened and fully equipped European Border and Coast Guard*' in his state of the Union speech in September 2018 (European Commission, 2018). Therefore, Frontex should be strengthened through a new standing corps of 10.000 operational staff, '*own equipment such as vessels, planes and vehicles to be deployed at all times and for all necessary operations*' (European Commission, 2018). By the end of 2020, the operational staff shall hence be seven times larger than it was in 2018. The immense enlargement of Frontex' capacity became subject of critique (Koka, 2018). First, the enlargement would lead to a more difficult monitoring capacity of Frontex due to its inconsistent legal capacity and personality to act: "*The Frontex setup, it is argued, is a mixture of intergovernmental and supranational control. In any case, there is no clear cut delegation from one principal to an agent which complicates an assessment of the admissibility of the delegation of powers as well as of their nature.*" (Fink, 2012: 25). Faced to the fact that Frontex acts in cooperation with the national authorities of EU member states, it is secondly

questionable whether a cooperation of the European coast guard agency with the Spanish Guardia Civil is consistent with international human rights protection principles due to the continuous violations of human rights by the Spanish authorities within the framework of the Aliens Act.

The enhancement of Frontex' legal capacity can hence be questioned due to unclear legal capacity to act in an international context and in light of possible human rights violation in cooperation with the Spanish Guardia Civil. On the other hand, the enlargement can be seen as a tool to improve the human rights situation because of stronger support of the national authorities by a supranational actor that commits its consistency and "*full compliance with fundamental rights*" (European Commission, 2018).

### **3.3.3 Enlargement of EU cooperation on migration with Morocco**

Especially the Western Mediterranean route has seen a significant influx making it the most frequently used route into Europe (Frontex, 2019). As Morocco developed to the main transit country for migration along the Western Mediterranean route (Frontex, 2019), the EU took several measures to decrease irregular migration towards Europe and increase border security at its external borders to Morocco. In December 2018, the European Commission has published a fact sheet on a new cooperation on migration with Morocco. Besides the provided funding under the EU emergency Trust Fund for Africa, the ENI, and the Development Cooperation Instrument, the new cooperation provides new funding on the base of the Mobility Partnership.

Since 2014, 232 Million Euro were provided to finance 27 programmes implemented by different actors such as UN agencies, EU member states, civil society organisations as well as public institutions in order to realize targets agreed on in the Mobility Partnership. The support targets 5 main objectives that are financed as follows: 1. the socio-economic integration of migrants (10,1 Mio Euro), 2. governance and migration policies (28,5 Mio Euro), 3. Protection, resilience and rights of migrants (23,1 Mio Euro), 4. Migration management, border management and mobility (92,8 Mio Euro), 5. Fight against human trafficking (77,3 Mio Euro). Seen that most of the provided money is invested in migration and border management, demonstrates the EU's prioritisation upon these goals is demonstrated. It can be concluded

that the EU's enlargement of cooperation on migration with Morocco is ambiguous. The adoption of the Mobility Partnership as well as the increase of funding are important means in order to improve migration management at the EU-Moroccan borders. The Mobility Partnership backs better coordination as well as stronger support of migrants and refugees. In this context, the EU's role as a normative power becomes obvious again. However, the EU still insists on the adoption of a readmission agreement with Morocco. Besides that, the exceptional strengthening of Frontex' capacities and the therewith accompanied increasing border security over the gates of Europe indicate that the EU prioritizes the adoption of an isolationist policy at its borders instead of ensuring a rescue, accommodation and integration of refugees and migrants trying to reach Europe. From that standpoint, the EU's role of a normative power loses ground again.

### **3.4 Conclusion**

After having analysed the legal framework of migration and asylum management on the national and on the international level, the second sub-question "*What is the current state of EU-Morocco cooperation on migration and asylum?*" can be answered as follows.

There are several indications implying that Spain makes use of a restrictive approach to manage migration. The adoption of the Spanish Alien Act, despite large criticism and the ECHR's decision clearly stating the violation of human rights, is a factor leading to the conclusion that Spanish asylum law is restrictive, if not illegal. It is questionable whether the readmission agreement is consistent with the right to seek for asylum because there is no evidence that the migrants can apply for asylum before being readmitted. The consistency of Spanish-Moroccan cooperation on migration management with human rights protection principles can hence not be guaranteed. When it comes to the European level, it is first of all important to note that the European Commission ignores the ECHR's decision on the human rights violation through the Spanish and Moroccan authorities. Instead of taking measures to stop the illegal operations of the coast guards, the European Commission provides several sources of funding to Morocco to give an incentive for a multilateral readmission agreement, even though Morocco announced several times its refusal of such an agreement due to its intention to become a regional leader in Africa. The EU-Morocco relations are marked by close cooperation as can be concluded from

the last chapter. However, the EU's will to adopt a readmission agreement with Morocco contradicts with Morocco's will to improve its position in Africa. It cannot be taken for granted that the EU would act in line with human rights protection principles if such an agreement was adopted when looking at its reaction to the human rights violation by the Spanish and the Moroccan authorities. Therefore, the EU's role as a normative power promoting human rights can be queried again.

## 4. Chapter

As the last chapters demonstrated, EU-Moroccan cooperation is based on numerous agreements and treaties. One thing all these agreements have in common is the partner's commitment to the respect of human rights. In light of the launch of the ENP, the analysis demonstrated that the increasing cooperation between the EU and Morocco led to an increasing adoption of human rights protection principle, at least on paper. To verify the implementation of human rights protection principles, the right to asylum and the right to non-refoulement will be localised in the legal hierarchy of norms and defined in a precise way. On the base of this, the study examines the actual situation of border management at the borders to Melilla.

Reports of human rights organisations are used to examine the current state of border cooperation. Furthermore, it has to be stated that the border to Melilla has been chosen for the analysis as more data on this enclave was found than on Ceuta. In 2015, a total number of 1,3 million asylum applications was counted, a number that is three times higher than the approximately 431.090 applications in 2013 (Eurostat, 2019). Even though the number of asylum seekers was at its peak in 2015 and is constantly decreasing ever since (646.060 applications in 2018),

The number of arrivals at the Moroccan-Spanish borders has doubled and Spain counted the highest number of migrant arrivals in the year 2018 with a total number of 26,350 arrivals by mid-august. This represents three times the number of arrivals compared to the first seven months with a total number of 8,677 arrivals in 2017 (UNHCR, IOM, 2018). With the high influx of migrants on the way to Europe in mind, the issue at stake is to examine how the authorities in the border region of Melilla handle the situation. The chapter thereby aim to answer the third sub-question:

- 1) *What is the current state of operational border cooperation in the Spanish Moroccan border regions?*

#### 4.1 The right to asylum and the right to non-refoulement

The right to seek for asylum is a human right anchored in several conventions and legal frameworks. In EU law, the right to asylum is written down in article 18 of the European Charter of Fundamental Rights (EUCFR):

*The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.*

The article must be distinguished from the other fundamental rights of the Charta because it does not imply own provisions on the content of the right. As it refers to the GRC instead, it is debatable whether the right to asylum implies a subjective, enforceable right (Graßhof, 2009; Jarass, 2010; Calliess&Ruffert, 2016). However, the article obliges the EU and the member states to adopt and arrange the right to asylum according to provisions of international law, representing a subjective claim: “Article 18 includes the right of each individual to a concrete design of asylum law appropriate to the GRC” (Calliess &Ruffert 2016: 11).<sup>2</sup> The scope of protection, the limits of the right to asylum as well as its granting follows the GRC, namely article 1A2 GRC defining the status of refugees and article 33 GRC ensuring the non-refoulement principle (Graßhof, 2009) that will be illustrated in a next step. In accordance with article 33 GRC, article 18 EUCFR protects against direct or indirect expulsion or rejection to the pursuit state. Contrary to frequent assumptions, neither article 18 EUCFR nor the GRC include an explicit right to asylum even though article 18 can lead to a right to stay. The warranty of the right to asylum applies to third-country nationals and to European citizens, but as all the member states of the Union are generally qualified as safe countries of origin, asylum applications of European citizens are indeed possible but generally unfounded and hence obsolete. The design of the right to asylum must generally be consistent with the principle of proportionality of article 52 (1) EUCFR (Graßhof, 2009). Furthermore, the right to asylum applies “with due respect” to the TEU

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<sup>2</sup> Translated by the author

and the TFEU with special regard to article 78 TFEU ensuring the Union's commitment to the GRC. On the level of primary law, article 18 EUCFR goes beyond current law.

As the scope of protection, the limits, and the granting of article 18 EUCFR are not explicitly illustrated, the design of the right to asylum in the GRC will be discussed in a next step. The GRC is based on article 14 (1) UDHR of the year 1948 recognizing the right of persons to seek asylum from persecution:

*Everyone has the right to seek and to enjoy in other countries asylum from persecution.*

article 14 (1) UDHR describes the political right to asylum whereby the right to asylum is granted in a limited way. The article gives persons the right to ask for asylum, but it does not oblige countries to grant asylum which is due to the unwillingness of states to limit their sovereignty in the context of the adoption of the UDHR in the year 1948. Nevertheless, this attitude changed only three years later considering the adoption of the GRC as the member states of the human rights declaration agreed on clear obligations in relation to refugees, namely the obligation to not push back refugees at its borders. As stated before, neither the EUCFR nor the GRF include an explicit right to asylum that could lead to a right of entry, or a provision of stay. Instead, the GRC defines the term 'refugee' in article 1A2 GRC:

*For the purposes of the present Convention, the term "refugee" shall apply to any person who: (2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*

The wording consists of a three-step test defining a refugee. The first criterion is the '*well founded fear of being persecuted*'. The well-founded fear does not have to be proven, it is rather a question of credibility of the person's fear (Planès-Boissac, 2018). Therefore, it has to be verified whether the fear is subjectively and objectively a personal and actual, not a general fear. Despite sophisticated tests, this regulation is hard to implement as the reasons or the scope of fear are difficult to uncover. The term 'persecution' is intentionally not defined in order to leave room for the personal fate of applicants. But even if the persecution is not provoked by the state itself, there must be evidence that the state is not willing or not able to protect his citizens anymore. The second criterion are the five motifs for persecution '*race, religion,*



*nationality, membership of a particular social group or political opinion*’ and the causal link ‘*for reasons of*’.

The third criterion is the absence of protection in the country of origin ‘*outside the country of his nationality*’. The protection of the receiving country can be understood as substitutive because the country of origin is not able or not willing to guarantee the protection of its citizen. A return of the applicant to his country of origin as well as other reasons can lead to the withdrawal of the refugee status as stated in the cessation clause of article 1A5 (2) GRC and the exclusion clause of article 1F GRC. The reasons for exclusion, as well as for cessation of the refugee status are disregarded due to the scope of the thesis.

The right to asylum is a fundamental human right that must be respected by all contracting parties of the UDHR. Even though it is not explicitly stated in the GRC, the fact that the GRC is legally based on the UDHR leads to the validity of this right a fortiori. As the UDHR possesses the highest position in the hierarchy of norms of all contracting parties of the United Nations, it can be concluded that the right to asylum must be allowed except under the circumstances stated in article 1A5 (2) GRC and 1F GRC.

#### **4.2 The non-refoulement principle**

Next to the right to asylum as a human right, it is crucial to investigate the principle of non-refoulement as stated in article 33 GRC because human rights organisations claim that this right is massively violated by the coast guards in the Spanish-Moroccan border region (Human Rights Watch, 2018), with special regard to the Aliens Act adopted by Spain officially allowing push-backs. article 33 (1) GRC represents the legal obligation of states that binds them to the right to asylum of article 14 of the Universal Declaration of human rights because it obliges them to host persons identified as refugees:

*No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*

article 33 (1) GRC refers explicitly to the expulsion or the return of refugees. The ban must then apply a fortiori in the event of extradition in the interest of a foreign country (Hofmann, 2011). Furthermore, the scope of protection encompasses the stay of every refugee. It does not matter whether he is staying legally or illegally. It is nevertheless not clear whether the right to

non-refoulement protects persons asking for asylum who are still at the border and who did not enter the territory yet because the term *return* or *refouler* is ambiguous. According to the prevailing opinion, the rejection at the border is included in the article's wording (Ulmer, 1996). Additionally, the article determines that no return *to the frontiers of territories* of persecution is allowed *in any manner*. In a broad interpretation, this implies that the return itself of refugees is generally prohibited, including the rejection at the border of the receiving country. This is also the question in the case of the Spanish Moroccan border. But as the article does not explicitly name the rejection at the border, it is partially assumed that it only encompasses refugees who are already on the territory of the state (Hofmann, 2011). This, however leads to the result that a person that entered the border illegally would paradoxically enjoy more protection than a person that tries to enter the country legally. The UN Declaration on Territorial Asylum gives evidence about this interpretation. article 1 (1) UNDTA represents a reconfirmation of the right to asylum based on article 14 of the Universal declaration of Human Rights. As article 3 (1) of the declaration states:

*No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.*

The article clearly indicates that already a rejection at the border is prohibited in the case that life or freedom of the person due to one of the motifs stated above could be endangered. In reaction to large criticism on the practice of "hot deportations" by the Spanish Guardia Civil based on the adoption of the Aliens Act, and in light of the Spanish-Moroccan readmission agreement, the Spanish authorities argued that they would apply a different interpretation of the non-refoulement principle that does not qualify rejection at the border as violation of this right. Spain argues that the prohibition of refoulement implies principally that the host country is not allowed to send a refugee back to the persecuting country. Repatriation to another country, namely Morocco, however is possible. This practice is often criticised because it cannot be guaranteed that the returned person does not fear persecution in the country he or she is returned to (Amann, 1994; Hofmann, 2011). In the case of Spain and Morocco, it is argued that a return of sub-Saharan refugees to Morocco is legitimate as Morocco is qualified as a safe country and it is normally not the state of persecution of refugees trying to reach Europe (Cassarino, 2017). This argument is questionable as several NGO reports describe discrimination and mistreatment

of refugees in Morocco (Amnesty International, 2018). These reports will be examined in a next step.

In summary it can be said that international law took several measures to enforce refugee rights. The right to asylum is a universal right applicable in all countries that ratified UDHR notwithstanding the fact that the right to asylum as a human right does not oblige member states to act. Therefore, the adoption of the GRC represents a key element as it obliges the states to not reject refugees at their borders. In contrast to frequent assumptions, the right to asylum however is not explicitly formulated in the GRC. This is due to the fact the GRC is legally based on the right to asylum in article 14 of the Universal declaration of Human rights having the highest status in the hierarchy of norms. The principle of non-refoulement in combination with the article 14 UDHR are legal instrument that bind the contracting countries to the right to asylum. As the European member states, as well as Morocco are countries that ratified the UDHR as well as the GRC, the EU, Spain as well as Morocco oblige themselves to the protection of refugees.

#### **4.3 Human rights reports about the Spanish enclave Melilla**

The last subchapter is dedicated to verifying the consistency of operational acting of the Spanish and the Moroccan authorities in the border region of Melilla with the right to asylum and with the principle of non-refoulement. To do so, the annual reports of human rights organisations describing the operations of the border guards in the Spanish-Moroccan border region are consulted.

One of the biggest entry ways into Europe for migrants and refugees into Spain is from Morocco (Eurostat, 2019). Most migrants attempt to cross into the small Spanish enclaves of Ceuta and Melilla turning Spain into the only European country with land borders with Africa. The migrants and refugees storm the border fence in Ceuta and Melilla in their thousands to overwhelm the border guards (Human Rights Watch, 2018). According to the Guardia Civil, between 75-80% of migrants try to enter Europe by trying to jump the fence to Melilla . The Spanish government established an Integrated System of External Surveillance (*Sistema Integrado de Vigilancia Exterior SIVE*) within the framework of the Plan South (*Plan Sur*) that came into force in 2002 in order to combat illegal immigration. Within this framework, Spain strongly increased security at the border of Melilla in the year 2005. The fence of the 12 km

long border between Melilla and Morocco that was only built in 1990 in order to stop irregular migration and drug trafficking, was extended to three fences that are six meters high and equipped with anti-climb rids, razor wire and sensitive cameras (Amnesty International, 2015). Where the Spanish territory begins is a sensitive issue. As the Alien Act states, persons can be rejected as long as they did not enter the Spanish soil. However, the Guardia Civil is not allowed to know which of the three fences has to be passed in order to enter the Spanish territory. It is argued that this information has to be kept secret because the publication of this information would threaten measures to combat organized crime. But this uncertainty is also a mean to help the Spanish authorities to justify the rejections of migrants, because the common practice of the coast guards is to push back migrants as long as they did not cross the third fence. This causes the largely criticised scenes showing the Spanish coast guards violently trying to remove migrants from the fences. However, the Superior Courts of Andalusia and Madrid, as well as the local court of Melilla have stated that the border starts outside the first fence. Persons who are pushed back from the fence are not given the chance to ask for asylum on the Spanish territory. This leads to the effect that the practice of the Spanish authorities is inconsistent with article 13 (4) of the Spanish constitution, article 14 of the UDHR and therefore also with article 78 TFEU ensuring the granting of the right to asylum. Spain thus violates international law. Beyond that, the fact that the European Commission does not draw necessary consequences faced to these violations as well as to the ECHR's decision in the case of N.D. and N.T. v. Spain lead to the conclusion that the EU accepts the practice of the Spanish authorities.

In order to verify the consistency of these operations with the principle of non-refoulement, it has to be clarified whether the lives or freedoms of refugees are threatened when returned to Morocco. In October 2005, Amnesty International reported on migrants and refugees who *“have been rounded up by Moroccan forces and either summarily deported to Algeria or dumped in desert areas”*. In consequence, at least 10 of the deported migrants have died before reaching the next urban area. Even 13 years later, in September 2018, the Moroccan security services arrested about 150 sub-Saharan migrants in Tangier and forced them onto busses displacing them close to the southern border of the country. Once arrived at the border, the migrants were obliged to walk to the next urban area located in Algeria in order to travel back to their home countries (Amnesty International, 2018). The reports state that the migrants were returned before they were given the chance to present their legal documents. A lawful verification of documents

possibly leading to the recognition of the refugee status is thus not taking place. Hence, the right to asylum and the right to non-refoulement are not guaranteed. Furthermore, the fact that the return to the southern borders of the country is life threatening, and the fact that migrants could be forced to turn back to the countries in which they fear persecution, leads to the conclusion that this practice is inconsistent with article 33(1) GRC and article 78 TFEU and thus, illegal as well.

#### **4.4 Conclusion**

It can be concluded that the Spanish and the Moroccan practice, as well as their cooperation in border and migration management is inconsistent with the right to asylum and with the right to non-refoulement. The acting thus violates international, EU, and domestic law of the two countries. As human rights organisations constantly report on human rights violations in connection with the practice of push backs conducted by the Spanish authorities and repatriation to the southern borders of Morocco conducted by the Moroccan authorities, it can be stated that no improvement was made. Besides the acting of the national authorities, the EU's role has to be mentioned as well. Despite regular reporting on the precarious situation of migrants and refugees, and in light of the neglect of the ECHR's decision on human rights violation at the EU's southern borders to Morocco, the EU only takes measures to strengthen its border protection as the enhancement of Frontex' capacity shows, instead of improving the protection of migrants and refugees. In light of this, the effectiveness of the right to asylum and the right to non-refoulement must be questioned. Even though these two rights are anchored in every legal system of the contracting countries of the GRC, violations are conducted without any legal or political consequences. The EU's inaction faced to the ECHR's decision indicates the lack of a legal instrument of this court to take restrictive measures. Furthermore, the analysis of the concrete situation at the border of Melilla leads to further questioning of the EU's role as a normative power in its neighbourhood. The case showed that the EU does not take actions to promote the protection of human rights. By ignoring the acting of a member state that actively violates human rights, the EU takes part of these violations in an indirect way.

## 5. Conclusion

The research aimed to identify the obstacles of cooperation in border management between the EU and Morocco. Based on a systematic approach, the consistency of border security and human rights protection have been determined by analysing the relations between the EU and Morocco in a first step, the cooperation on migration management in a second, and the operational cooperation in the border region of Melilla in a third step. By doing so, the consistency of cooperation with human and refugee rights, namely the right to asylum and the right to non-refoulement anchored in international, European, and national law, has been set out. The systematic analysis was based on the theory of normative power Europe. One of the theory's central ideas is the assumptions that the EU has the power to promote the implementation of human rights in non-EU in its external acting. In the case of the EU and Morocco, the framework of cooperation is the European neighbourhood policy regulating the cooperation of the EU with its Eastern and Southern neighbours. On the basis of this, the research aimed to answer the research question:

*To what extent is EU cooperation on migration with Morocco consistent with refugee and human rights protection principles?*

The analysis has emerged that the two partners share a close relationship. After tense relations in the 1990s due to failed negotiations on fishery agreements and the unsettled question of the Western Sahara, the EU and Morocco succeeded to develop an ever-closer relation resulting in Morocco's advanced status as a privileged partner of the EU. It was shown that the implementation of the ENP is a main reason for that. The implementation of annual action plans supports the dialogue between the two partners. The aim of human rights protection is present in the cooperation with Morocco under the ENP, but it has become evident that this aim is not a priority of the cooperation. Furthermore, the analysis depicted a problem in the actual trend of the EU to offer advanced status to an increasing number of ENP partner countries. A steady prioritisation of certain contracting countries of the ENP weakens the multilateral approach of the ENP that aims to reinforce its relations with all MENA countries. The EU's approach can hence be interpreted as partly inconsistent with the goals and the general idea of the ENP.

The implementation of the Spanish Alien Act represents a violation of the right to asylum and the right to non-refoulement as it allows the push back of migrants who are entering the Spanish border. The practice of push backs contradicts directly EU and international law. The readmission agreement between Spain and Morocco is a key instrument of border cooperation

between the two countries. Furthermore, the Spanish Moroccan readmission agreement has been qualified as unlawful as it represents a violation of human rights.

Regarding the EU level, the analysis led to the conclusion that no measures were taken to stop these violations. The adoption of the Mobility Partnership as well as newly authorised funding enforcing Frontex' capacity illustrate the EU's prioritisation of border security. The investigation of reports of human rights organisations leads to the conclusion that the Spanish, as well as the Moroccan authorities avail illegal practices to hinder migrants from crossing the Spanish border. Migrants and refugees are pushed back violently from the Spanish soil although they have already crossed the fence. This practice is inconsistent with the right to asylum and the right to non-refoulement anchored in the UDHR and the GRC. Furthermore, the Moroccan authorities avail the practice of returning refugees and migrants to the Southern borders of Morocco where they fear death in the desert or the return to the countries they fled to escape persecution. This practice is inconsistent with the right to asylum as the life of the migrants is clearly threatened.

The EU's acting in light of human rights violations contradicts with the theory of normative power Europe as the stated prioritisation illustrates the EU's will to protect its borders instead of human rights. The demonstrated violation of the right to asylum and the right to non-refoulement leads to the conclusion that the theory of normative power Europe is not applicable to the case of EU-Morocco cooperation on migration. The theory lacks explanatory potential and thus, must be rejected. Without taking measures faced to the violations and faced to the adoption of the Spanish Moroccan readmission agreement that was qualified as inconsistent with human rights, the EU insists on the creation of an own readmission agreement with Morocco.

One practical implication that can be resumed from this study is the necessity to assign the European court on human right the competence to enforce judgements. The fact that it does not have this competence enables member states as well as the Union itself to violate EU law without consequence. The research was limited to the consistency of EU external action with the right to asylum and the right to non-refoulement. Due to the limits of this thesis, the exceptions of these rights could not be examined even though their consideration could enrich

the results. The examination of the consistency of EU external action with respect to the exceptions of human rights can be subject of further research.



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