North African Migration under Surveillance. Between Home Country an Host Country

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In North Africa, the "Arab Spring" made 2011 a historic year, thanks to media coverage throughout the world.[1] The major political upheavals that occurred during this period had an immediate impact on the massive movement of refugees, whether within the region or to Europe.

According to statistics provided by the International Organization for Migration (IOM) for May 2011, nearly 780,000 people fled Libya to find refuge in neighbouring countries. In Tunisia, the official figures for the same period indicate the presence of more than 380,000 refugees[2] from Libya, as a result of the armed conflict between Gaddafi's supporters and the opponents to his regime: among them, there were not only Libyans, but also foreign refugees, mainly from Somalia, Sudan, Eritrea, Ethiopia, Iraq and the Côte d'Ivoire.

Elsewhere in the Euro-Mediterranean area, there was a considerable increase in the number of illegal migrants with nearly 25,000 arriving on the Italian coastline during the months of January and February 2011, mostly Tunisians, Libyans and Sub-Saharan Africans. This sparked a debate on a proposal for reforming the Schengen Accords, which was adopted on 7 June 2012 and which included the possibility of re-establishing temporary controls on the European Union (EU)'s internal borders in "exceptional circumstances".

The spectacular nature of the migration crisis in 2011 can undoubtedly be seen as a singular and exceptional episode. It was in fact an important, though somewhat spasmodic, element in the migration policy followed over the last twenty years between Europe and North Africa.

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[1] Major political events in 2011 led to the downfall of existing regimes in Tunisia, Egypt and Libya, and serious political uprisings in other Arab countries (Yemen and Syria in particular): President Z. Ben Ali went into exile on 14 January 2011, after a month of violent popular unrest that the Tunisians call the 'Jasmin Revolution', led to the dismantlement of the governing RCD party and election of a constitutional convention in October 2011; President M. Moubarak resigned on 11 February 2011 following an uprising by the Egyptian people; civil war in Libya, death of President M. Gaddhafi and election of the National Transition Council's provisional government in October 2011.

[2] According to IOM statistics, in 2011 refugee populations fled Libya for Egypt (278,000 persons), Niger (62,000), Chad (25,000), Algeria (19,000), Italy (11,000), Sudan (2,800) and Malta (1,100): http://www.migration-crisis.com/libya/reports/view/424

To support this hypothesis, this article will review the issues involved in readmission agreements between EU Member States and North African countries as a way of controlling migration, after a discussion of dual migratory flows that are on the increase: illegal departures towards Europe and the arrival of a Sub-Saharan population in North Africa since the 1990s. In addition, it will attempt to analyse the reinforcement of migratory controls in North Africa which were set up in 2003 when the EU decided to fix its external borders through the integration of new members.

In addition to participating in the policy for cooperation over border controls and humanitarian aid, North African countries were now part of a wider – Mediterranean-wide – process as they found themselves becoming countries of destination and transit for populations from the South. Today, as work begins on drafting new constitutions, some of these countries, such as Tunisia, are reflecting on the terms of new national legislation on the rights of refugees.

North Africa: a region of emigration and transit

Traditionally, North Africa is a region of departures for Europe. More than 4 million North Africans now live abroad (nearly 2.5 million Moroccans, 1.2 million Algerians and 800,000 Tunisians) of which 85% are in Europe.

But there have been significant changes since the 1990s. The situation in terms of migration in North Africa is marked by two major factors: higher levels of illegal migration by North Africans to Europe; and a growing number of Sub-Saharan Africans in transit for Italy, Egypt, Turkey, the Balkans, or Israel, or staying for a few years in North Africa (Bredeloup and Pliez 2005; Boubakri and Mazzella 2005; Anteby 2009). There are few official statistics for these migrants in North African countries: either for reasons of deliberate policy, as officially revealed by the Tunisian National Institute of Statistics in March 2011, or because existing statistics collection methods make it impossible to obtain exact figures on migratory flows (entries and exits from the country) in this region and to distinguish between migrants who are long-term residents and those who are in transit for other countries. It should be noted that nationals from members in the Union du Monde Arabe and some Sub-Saharan countries who

entered Tunisia without needing a tourist visa, as authorized by the CEN-SAD[3] Agreement, are not counted as foreign residents.

Nevertheless, collective and comparative field surveys emphasize that, in recent years, sub-Saharan migration to North Africa and other countries along the south-eastern Mediterranean coast has increased for more than 10 years: Malians, Senegalese, Ivoirians, Gabonese in Tunisia and Morocco; Malians and Nigerians in Algeria; Senegalese, Malians, Gambians and Guineans in Mauritania; Sudanese and Chadians in Libya; and Sudanese, Ethiopians, Eritreans and Somalis in Egypt.[4]

These sub-Saharan migrants can become long-term residents (Peraldi 2011). For many years, they have provided cheap labour for North African countries. Libya, in particular, has taken advantage of this opportunity, having seen the benefits – well before Morocco, Algeria and Tunisia which have stricter labour laws – of having a labour force that could contribute to the country's new economic boom. Over the last four decades, Libya has regularly encouraged the migration of workers from black Africa (Sudan, Chad, Eritrea) (Pliez 2003).

There are several factors behind the arrival of Southern migrants in North Africa: the lure of a "new Europe" in 1990 which created the illusion of freedom of movement, in other words that North Africa was already part of Europe; ethnic, economic and political conflicts and natural disasters which displaced populations across the African continent; cooperation policies between North Africa and the rest of Africa, encouraged over the last 15 years by countries, including Libya, as part of an African rapprochement policy (CEN-SAD) and by new agencies such as NEPAD (New Partnership for African Development).[5] South-South migration has also developed as a result of greater access of air transport and the development

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3   International organization with 28 African Member States, created on 4 February 1998 in Tripoli at a Heads of State Summit Meeting (Libya, Mali, Niger, Sudan, and Chad), with the aim of "guaranteeing freedom of movement by persons and capital between Member States and the freedom to live, work, acquire property and set up a business in any of the Member States".

4   The Saharan Territories Programme, as part of a Concerted Incitation Action *Espace et Territoires. Société, économie, cultures, langages, representations* at the Ministry for Research (Project Leader: Olivier Pliez (CNRS, CEDEJ)), 2003-2006; the IRMC Progarmme *Le Maghreb et les nouvelles configurations migratoires internationales: mobilité et réseaux*, (Project Leader: H. Boubakri), 2000-2003; the FSP-IRMC Programme *Etudiants étrangers au Maghreb et dans l'espace euro-méditerranéen* (Project Leader: S. Mazzella), 2005-2009.

5   Regulation of inter-regional freedom of movement in Africa was a major priority for the Economic Community of West African States (ECOWAS/CEDEAO) which, on 18 January 2008, adopted a Common ECOWAS Approach to Migration with the objective of guaranteeing freedom of movement within the region, a condition *sine qua non* for encouraging economic development. At the same time, in partnership with the West African Economic and Monetary Union, ECOWAS proposed the reinforcement of controls on inter-regional and inter-continental migration by creating a unique biometric , similar to the Schengen visa, for certain non-West African countries.

of major roads in Africa over the last 10 years (Choplin and Lombard, 2010).

One of the results of this dual cooperation policy has been the emergence of a multifaceted sub-Saharan migration: refugees, adventure-driven migrants, sportsmen and women, traders, students in public and private higher education, diplomats and international executives, such as the African Development Bank's 800 employees and their families now living in Tunis (Boubakri and Mazzella, 2005).

Externalization of border controls

The North African region, because it has become an area of emigration and transit, participates in many trans-border cooperation programmes since the 1990s as part of European migration policy. This policy for Euro-Mediterranean collaboration has generated a large number of agreements which are expected to stop the passage of illegal migrants: legislation covering sanctions against organizers and participants in illegal emigration networks, training of coastal patrol personnel, installation of new detection equipment,[6] trans-border projects for increasing frontier security in return for more substantial economic and cultural cooperation projects.

The Euro-Mediterranean Conference in Barcelona in November 1995 launched what is now known as the Barcelona Process and established a multilateral framework for cooperation between the EU and 12 Mediterranean countries and territories. This conference was the continuation of a first meeting held in 1990 as part of the fairly informal arrangements known as "the 5+5 Dialogue"[7] which is still active: its last summit was held in Tunisia in 2003. The Barcelona Conference led to other initiatives for cooperation under the European Neighbourhood Policy (ENP) that were later extended to cover the Southern Mediterranean,[8]

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[6] There is a massive increase in the use of new technologies for external border surveillance: detection probes for CO_2 and heart beats, thermic and infra-rouge cameras, and new generation radar for the detection of landings.

[7] Group composed of Tunisia, Algeria, Libya, Morocco, Mauritania (North Africa) and Italy, France, Portugal, Spain and Malta (Europe).

[8] This neighbourhood policy provides additional funding for public and private actors with support from the African Development Bank and the World Bank. It is based on a financial and operational convention: the European Neighbourhood and Partnership Instrument (ENPI) and one of its priorities is the Cross-border Cooperation (CBC). Between 2007 and 2013, 13 cooperation projects were signed as part of these programmes by Tunisia and Italy, with €8 million in grants.

and later as part of the Union for the Mediterranean.[9] The objectives that drove the multiplication of these political cooperation institutions were ambitious: to place the question of border security at the centre of a programme for economic development and to encourage Euro-Mediterranean cooperation.

Re-admission agreements: an instrument for trans-frontier cooperation

A re-admission agreement is a legal convention by which the signatory states agree to accept the return of their nationals after their arrest as illegal migrants in another country and, in addition, the return of foreigners who are not their nationals but who transited their territory prior to entering and being arrested in the other country. These are just one of the key instruments in the EU's policy for reducing illegal migration over the last twenty years (Charles 2001). In return for signing bilateral re-admission agreements, the Euro-Mediterranean countries enter into negotiations for financial and technical aid, cooperation plans and quotas for legal immigrants from countries that express a real determination to combat illegal immigration. Since the mid-1990s, we have seen an increasing number and variety of cooperation programmes as part of readmission agreements between EU Member States and North African countries.

One of the first agreements between European and North African countries was signed by Spain and Morocco in 1992 which related to the situation in which Moroccan and Sub-Saharan migrants were camped outside the towns of Ceuta and Melilla. This agreement led to the annual expulsion of a thousand migrants receiving social assistance in 1993 and 1994.[10] However, it was nearly another four years before Rabat agreed to readmit 65 illegal migrants from Sub-Saharan Africa who had transited Morocco. This long delay was used to negotiate improvements in the situation of Moroccans in Spain, together with a reduction of Morocco's external debt. In 1998, Tunisia was the first North African country to sign a readmission and

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9   The Union for the Mediterranean, created in July 2008, brings together the 27 EU Member States, the 10 countries involved in the Barcelona Process since its foundation, and Eastern European countries who are candidates for entry into the EU. Its main priorities include: civil protection, de-pollution of the Mediterranean, development of solar energy in the Mediterranean and the Euro-Mediterranean University.

10   *L'immigration irrégulière subsaharienne à travers et vers le Maroc*, ILO, 2002. The solution applied later, and still in application, is to issue expulsion orders for these migrants and allow them to cross the Moroccan border in the hope that they will then voluntarily return to their country of origin.

cooperation agreement with Italy[11] which contained conditions on migration controls and patrols in territorial and international waters with the EU. This agreement focused on ensuring fair treatment for nationals legally resident in the other's territory. It also laid down conditions for cooperation on the prevention and reduction of illegal immigration: each country was obliged to readmit its nationals when they had entered or were resident illegally on its territory, and to readmit foreigners, except nationals of the Arab Maghreb Union Members States, who were arrested as illegal migrants in the territory of either party where there was proof of their having entered directly from the territory of the other party (Ben Jemia 2005).

The Euro-Mediterranean Association Agreements[12] with EU countries also include a re-admission clause. Algeria signed four of these agreements between 1994 and 1997 (with France, Germany, Spain and Italy) for the return of its illegal migrants and of foreigners who had illegally transited its territory. In 2003, Mauritania signed a re-admission agreement with Spain for the return of its nationals and of migrants from third-party countries arrested in Spain having transited through its territory. Mauritania then sends third-party nationals to its borders with Mali and Senegal (Ahmed Salem 2010; Omar Bâ and Choplin 2005).

Since 1998, Italy and France, as Europe's southern border, were particularly active in developing cross-border cooperation with North Africa. These two countries have signed no less than 30 re-admission agreements (with arrangements for police training in emigration countries, development and cooperation plans, and annual quotas of visas with priority given to certain categories of workers) with Morocco, Tunisia, Algeria, Mauritania, Egypt and Turkey. In 2004, Italy played a key role in persuading the EU to lift the embargo on sales of arms by Libya in exchange for a convention banning chemical weapons in Libya and an agreement on its active participation in the fight against clandestine migration (Perrin 2011).

EU readmission agreements have evolved into a system of predominantly bilateral readmission, involving various migration countries, whether rich or poor, democratic or totalitarian, stable or fragile. In recent years, cooperation over readmission has become one

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11   This agreement, which has not been published, came into force on 23 September 1999, is available on http://www.stranieri.it/legislazione/italia/accordi/accordi_TUV/Ab98_tn.htm.

12   Between 1998 and 2005, the European Union negotiated Euro-Mediterranean Association Agreements with seven Southern Mediterranean countries (Algeria, Morocco, Tunisia, Israel, Lebanon, Egypt, Jordan) for the creation of structures for North-South discussions on policy and free trade.

method, among others, for consolidating the framework for wider bilateral cooperation, which covers other areas of strategic (and sometimes more important) policy such as security, energy, trade and the fight against terrorism.

Making third-party countries more responsible: the limitations

Cross-border controls can contribute to a situation where migrants become illegal because of loopholes in political and legal measures: for example, by restricting the number of asylum applications over the last ten years, since rejected asylum seekers now find themselves in an inextricable situation; by refusing to allow students on study visas to renew their visas because they have failed their exams; and by not clarifying or not making the political and legal arrangements required for the implementation of re-admission agreements. Various studies (Charles 2001; Cassarino 2010) emphasize that a re-admission agreement does not guarantee respect for international standards or protection of fundamental rights. The Council of Europe is now calling for negotiation of re-admission agreements only with countries that fully comply with the Declaration of Human Rights and the 1951 Geneva Convention, that establish effective procedures for asylum-seekers, and that protect the right to freedom of movement for their nationals by not introducing penalties for illegal entry and exit from their territory (Cassarino 2010, 54).

What can be done, however, about procedures for the readmission of illegal migrants between third-party countries when there are no formal conventions between them? As readmission agreements do not exist between North African countries or between North African and Sub-Saharan countries, expulsions to neighbouring countries are governed by 'informal' national practices.

High tension in Tunisia

During the period 2003-2010, Tunisia followed Morocco's example in tightening up its legislation (Ben Jemia, et al. 2004): more police controls, legislation amendments (in February 2004) requiring new passports and travel documents and heavier penalties for crimes linked to trafficking of migrants which will apply to all persons having a direct or indirect link to the crime in question. Foreign migrants who entered Tunisia illegally during

this period (or who have since become illegal, in the case of students with valid visas) have told harrowing tales of their delivery to the Libyan border *manu militari*.

Tunisian legislation allows African foreigners to stay in the country for three months after their visa has expired. However, Ivoirians and Malians arriving without a visa, as authorized by the legislation (unlike Cameroonians, for example), later find themselves in difficulty. If they do not have a university registration or work permit, i.e. without valid papers, they are arrested as illegal migrants. In numerous interviews carried out during this period, diplomatic staff in African Embassies (Senegal, Mali, Côte d'Ivoire, Nigeria) in Tunisia expressed concern about the confused and difficult situations in which their nationals found themselves: from repeated expulsions for overstays of valid visas (three months for tourists), arrests for forged travel documents or student cards, and attempts to emigrate illegally from Tunisia. Few migrants are able to pay for a ticket home, especially as they probably used all their savings to pay for their journey. Although the African embassies can, in some cases, repatriate them and pay the re-admission costs, most of the time they do not have the funds to offer them any assistance.

The situation is even more complicated when Africans die or are lost at sea as they must contact families and arrange for the identification and burial of bodies. Managing migration and re-admission is all the more difficult for countries with no consulate and only an honorary consul with Tunisian nationality, as is the case for Cameroon.

Creation of retention centres in 2003

In 2003, Tunisia created retention centres known as 'temporary welcome centres'. Today, they no longer exist but, until 2010, they served as police out-stations along the Tunisian coast for housing illegal migrants before being expulsed across the Libyan border. This was confirmed by IOM's representative in Tunis in 2005 who was investigating the existence of these 'informal' centres in order to convince, in vain, the Tunisian government to organize official expulsions in collaboration with IOM and the Tunisian Red Crescent.

> "There's a centre in Tunis. They don't hit you, you can use the telephone. You spend about 15 days minimum to a month there. You are better treated than in Europe, at least that's what the Nigerians I met there told me. You have a good lunch, hot water, mattresses, it's clean but once you leave … From Tunis, you go to Sousse, from Sousse to Gabès and from Gabès to Medenine. They give you food, sometimes they put you in chains. The border is at Ben Guerdane. But there are bandits there, soldiers who know that the authorities are far away. There are no officers any more, they take your money.

They leave you at the border during the night, if you run quickly, you might dodge the Libyan customs officers. In the group, there were also women, we had to leave them. I walked through the night with another group, we walked as far as Zuara, and then to Surman. Our clothes were filthy. Between Zuara and Surman, there were marshes, wire fences 5 metres high. There was a tarmacked road about 1 kilometre away but we didn't go near it, we stayed in the fields, it wasn't the desert, just sandy clay. In Surman, no one tells you anything. The police don't check on you." During the interview, he also mentioned that he was thinking about returning to Tunisia before his expulsion, because he did not want to stay in Libya.

Extract from an interview with Jacob, a 40 year old Mauritanian shopkeeper from Nouakchott, former Fishing Officer (Tunis, 13 June 2005). He was arrested without legal papers and imprisoned in one of these retention centres in 2003. He talked about his prison experience and expulsion to Libya.

The future of Libyan refugees in Tunisia after the Jasmin Revolution

In 2011, the situation changed: illegal migrants could no longer be sent back to the Libyan border. On the contrary, Southern Tunisia had to cope with an influx of refugees from Libya. Because of the political crisis in 2011, Sub-Saharan migrants were even more vulnerable. They flee Libyan work camps only to find themselves in refugee camps in Tunisia, Egypt and Algeria. Some risked their lives by boat crossings while others who remained in Libya were heavily suspected of being in the pay of Muammar Gaddafi's militia during this period. The emergency situation in South Tunisia is managed by the Tunisian Army, the UN High Commission for Refugees (UNHCR) and various other international agencies and charities such as IOM, the International Medical Corps, Caritas Middle East and North Africa (which provides material support for Libyan refugees and foreign asylum seekers living outside the camps in Tunisia (Iraqis and Ivoirians)), and NGOs such as the International Committee of the Red Cross, the International Federation of the Red Crescent, and the Danish Refugee Council.

The Choucha camp near the Tunisian-Libyan border at Ras Jdir was set up in order to take in people fleeing Libya during the 2011 war. Between January and March 2011, the most difficult period of the Libyan conflict, the camp held as many as 20,000 people and up to 4,000 more arrived every day. Libyans were rapidly moved into local towns and were accepted by the Tunisian population, but Sub-Saharan refugees were kept in Choucha.

By April 2012, a year after the war in Libya had ended, the camp held a total of 2,905 refugees who were living in Libya before December 2011, representing twenty different nationalities: Somalis (924 persons), Sudanese (910), Eritreans (456), Iraqis (292), and

Ethiopians (213) (HCR 2012). Statistics show that most of the refugees are male, aged between 18 and 60 (16% are minors), heads of family and Muslim. For most of them, their applications have been accepted, or are being processed, for transfer to a foreign country, of which the five most important being: USA (800 cases accepted in 2011 and 700 being processed in 2012), Norway (500), Sweden (200), Australia (110), and the Netherlands (42).

> This was the case of one Sudanese family among the 800 refugees who had been accepted for resettlement in the USA. Arriving in the Choucha camp in March 2011, the family group was composed of the couple with three young children, one having been born in the camp and the husband's brother with his family, and had been living in Libya for more than 10 years. The two brothers were political refugees from Sudan who had worked in Libya as teachers of agronomics and economics in a high school. While waiting for their departure for the USA, they were teaching in the school set up 6 months ago in the Choucha camp. The ex-teacher of agronomics had used the waiting period in the camp to set up small vegetable patches in front of the tents marked out with plastic bottles and exposed to the wind and sand. "In Libya, I felt as if I was standing on a high wire between two buildings. I was living in an open air prison with my family. It was impossible to leave because I was afraid of being suspected of treason by the Gaddafi government and thus putting my family in danger. I was living in fear. One of my colleagues was imprisoned for treason, just because he had used a green cloth to wipe the blackboard, green being the colour of the Libyan flag. I was summoned to the police station every month to inform the officer of any changes in our situation: a move, birth of a child, a new car or television …"
> Today, he wants to live in a country which will guarantee him freedom of expression and movement (Interview in Choucha camp, 26 April 2012).

Today, the situation in the camp is even more difficult for the 240 persons, mainly young unmarried men from West Africa who, because they are not recognized as refugees, do not come under the UNHCR mandate. The Tunisian government and UNHCR are looking for a solution that will facilitate their departure and thus speed up its closure. The Tunisian government is keen to close the camp quickly in order to avoid its being turned into the second settlement area, after Lampedusa, for migrants shipwrecked in the Mediterranean: on 18 March 2012, 74 Somalis were saved at sea by the Tunisian army and transferred to the Choucha camp so that they could have access to humanitarian aid.

Current negotiations between UNHCR and the President of Tunisia and his Ministers for the Interior, Foreign Affairs, Justice and Human Rights focus on the adoption by the Tunisian government of legislation on the question of refugees and asylum. Although at the international level Tunisia is a signatory of the 1951 Geneva Convention on the status of refugees and the 1969 Organization of African Union (OAU) Convention on the problems of

refugees in Africa, there is no national legal framework on this question in Tunisia. Closing the camp is thus dependent on the provisional Tunisian government's agreement to change existing laws on asylum and according official refugee status to people whose applications for asylum have been rejected by UNHCR in the Choucha camp.

Conclusion

Controls of migrants between the European Union and North Africa are fairly similar *mutatis mutandis* to those established in countries along the EU's external borders: Southern European countries now becoming countries of destination for new waves of migrants (Italy, Spain, Portugal, Greece) and border islands (Malta and Cyprus) which are being asked to act as border guards for the EU's borders;[13] and countries situated on the Schengen borders whose participation on migratory controls is now a major issue for the EU. We have seen that the EU has introduced a double process: externalisation of border controls, and obligations on countries of origin to take responsibility as countries of origin and as new countries of destination and/or transit.

It is possible to see the strategies of bilateral and multilateral cooperation proposed by the European Union as a way of reinforcing the imbalance between wealth and poverty by transferring the cost of migration by increasing pressure on poorer nations without any guarantees of a return on their involvement. In short, this cooperation policy could, at best, be seen as an avatar for a withdrawal on economic policy or, at worst, as a new episode of neo-colonialism.

We can, on the other hand, consider that the policy on Euro-Mediterranean cooperation is the indicator of change, a new orientation for North-South relations, where Southern countries are seen as having a dissymmetric economic relationship with the EU while, as political partners in their own right and partly responsible, on condition that they negotiate compensation, for their emigrant nationals and their immigrants. In other words, we can see that some assumption of responsibility on the part of Southern countries on the way in which they

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13   During an economic crisis, former countries of origin in Southern Europe (Italy, Portugal, Spain, and Greece) continue to send their unskilled labour to other European countries and further afield, with which they have links in their economic and political history, while becoming countries of destination and transit for people from Africa. Since 2004, new EU members have, to a lesser extent, followed the same pattern. The number of immigrants varies between 7% and 11% of the total population for former EU countries of destination (Germany, Belgium, the Netherlands, Austria, Great Britain, and France) and between 2% and 5% for the more recent entrants (Ritaine 2005; Sintès 2010).

introduce migration policies which, for too long, were neglected despite the economic opportunities it might offer.

Undoubtedly, these two interpretations are not mutually exclusive. It is not just a question of transferring the problem further south. Today, setting aside border controls on migrants and the emergency situation, North African countries, such as Tunisia, must ask themselves: to whom do we grant the right to asylum?

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