Rethinking Euro-Mediterranean cooperation: new approaches for research and education

Alessia Chiriatti and Ester Sigillò

Collana
Studi internazionali e comparati [3]
Rethinking Euro-Mediterranean cooperation: new approaches for research and education

Alessia Chiriatti – Ester Sigillò

With Emidio Diodato and Maura Marchegiani
Alessia Chiriatti and Ester Sigillò
Introduction: the transnational cooperation in the FEP/IT programme p. 11

Emidio Diodato
Geopolitics: the study and teaching of international politics p. 15

Maura Marchegiani
The Challenges of the Euro-Mediterranean Cooperation under the prism of international law p. 24

Ester Sigillò
The EU’s response to Arab Uprisings: a shifted paradigm? p. 33

Alessia Chiriatti
Learning methods in International Relations p. 48

Alessia Chiriatti and Ester Sigillò
Conclusion: Rethinking the Euro-Mediterranean cooperation: from theory to practice p. 63

Biographical notes p. 68
The Challenges of Euro-Mediterranean Cooperation under the prism of international law

Maura Marchegiani

Introductory Remarks

The field of international development cooperation generally poses particular challenges, due to all its characteristics, which have obviously influenced its structure and nature, as well as the legal approach towards it.

First of all, it is a recent legal phenomenon, which only acquired its normative, conceptual and systemic autonomy during the 20th century and in particular after the Second World War as a result of the idea that development could be universalized to the advantage of all humanity.

Secondly, it is a very large, heterogeneous and varied phenomenon, because it is articulated at a universal level, as well as at a regional level, with formulas and characteristics that change significantly according to the circumstances and which are based on sources differing greatly one from the other in terms of their nature (binding or soft law), their structure (bilateral or multilateral standards), and their effectiveness (therefore they may be guiding principles, or programmatic standards, or even simple performance requirements).

It is finally a sector where the protagonists (i.e. primarily the donor States on one side, and the receiving States on the other) are on a deeply skewed plane, and seeing that the protagonists of the international law are the creators and at the same time the subjects of the legal obligations, this obviously has consequences once again on the content of the standards in terms of development cooperation, as well as on the synallagmatic nature of the relationships that will be created.

In this context, the Mediterranean space is a laboratory entirely emblematic of the asymmetrical nature of cooperation; indeed, it represents a small synthesis of various contrapositions, especially in a geo-political context, full of still unresolved endogenous tensions. And in time this has prevented a real overview of the Mediterranean (as observed with the failures of the Barcelona process, as well as the Union for the Mediterranean), in a context that has recently been aggravated by the migration crisis.

Because of all these characteristics, the law of development cooperation is a very fragmented legal phenomenon, since it is articulated on different levels. It is also an interdependent and cross-cutting discipline that affects several sectors of international law, in particular concerning international economic law, environmental law and the protection of the rights of the individual. In addition, it also touches on areas other than law, such as technological innovation, ecology, pollution, health issues, sociology, zootechnics, and it is therefore necessary to make a coordinated effort among all the different issues and tensions that are at stake.

The evolution of the notion of “development” in international law

The major challenge that development cooperation poses is therefore very complex, and it can be summed up precisely by the attempt (yet again) at finding a common thread in a such a vast, evanescent and fragmented theme.
A possible key to reading would consider the purpose of the main objective of cooperation which is, or should be, the promotion of human development. In fact, it has recently been stated that there is an increasingly close binomial between development cooperation and the protection and promotion of human rights. In other words, the concept of development is no longer exclusively tied, as it was originally right after the II World War, to strict productive growth, but is centred on the human being, and from here the concepts of sustainable development and social development arise. In this sense, the affirmation of the idea of an individual right of access to development takes place in a double perspective in terms of international law. It is based primarily on a strictly classical intergovernmental dimension, that is to say, in the less developed countries’ right, during the process of formation, to participate satisfactorily in the dynamics of the global market and international economic dynamics. There is, however, an individual dimension, centred on the right of peoples, as well as the right of every individual, to participate in development decision-making processes and to benefit without discrimination from economic growth. It is also clear that these two dimensions have as ultimate beneficiary the individual, the human person. The most recent dynamics and practice in the field of Euro-Mediterranean cooperation can therefore be analysed under this particular prism, notably the gradual affirmation of an individual right to development.¹

To this end, after a brief historical-legal framework describing the evolution of the global development cooperation discipline, some of the most recent and controversial instruments used for regional development cooperation will be analysed.

The cooperation is obviously based on an exchange, an exchange through which the various actors involved get richer: cooperation is not a question of a unilateral reception, nor especially of volunteerism: at the base, there are always interests, of strategic, economic or political nature, to establish a regime of cooperation. These are normally mutual interests, not necessarily coincidental, but there must be an exchange of interests. From this point of view, after having traced the characteristics and aims of development cooperation in general, a concrete dimension will be explored, through the analysis of a specific dimension of development cooperation between the countries of the Mediterranean Sea. This is a context particularly problematic and at the same time fascinating, given that Mediterranean Sea represents a large liquid border between the Countries of the northern and southern shores and between which there is a profound asymmetry.

The Mediterranean context makes it possible to reflect on one issue which is therefore valid on a universal scale: development cooperation represents a sector to be managed with extreme caution. Even today, in fact, the borders of most of the former colonial States have remained those designed together by the European chancelleries during the Berlin Conference of 1873. Moreover, economic relations have often remained standing and, in some cases, been strengthened by unilaterally exerted pressure on various fronts and even by military interventions, as in the specific cases of relations between Mali and France or between Libya and Italy.

The emersion and the evolution of the legal question of development at an international level

In the framework of international relations between States and international Organizations, the process, through which the development cooperation model has evolved, has been characterized by the dynamism of the actors involved and by the flexibility of the instruments used.
The idea of development cooperation is in fact based on the finding of a profound asymmetry, which starts from the assumption of a structural distinction between developed and developing countries, a symptomatic distinction characterised by a certain rigidity, as it is based on a sort of hierarchy deriving from the level of development, which therefore sees the advanced countries as a model to imitate and, more or less at the bottom, the backward countries, that must be transformed, from a structural, economic and social point of view, in order to advance and pursue the model of the developed countries.\(^2\)

Although the different historical phases are all characterized by profound social and economic gaps with strong inequalities in the distribution of natural resources and economic wealth, profound and epochal changes have become necessary in the international community to allow the question of development to acquire an autonomous dignity on a political and legal level.

The end of the Second World War and the birth of the UN have in fact favoured the affirmation of two geopolitical processes of particular importance such as, in particular, the passage from the era of so-called coexistence to that of international cooperation on the legal and institutional level,\(^3\) as well as the affirmation of the principle of self-determination of peoples, which put an end to the colonial era. These circumstances constituted the factual and legal preconditions for the affirmation of the notion of “international development law”.

The UN Charter in particular recognizes the interdependence between political, economic and legal factors as an essential component characterizing international society.\(^4\) Cooperation therefore acquires a broader dimension and systemically invests in many sectors of international relationship life, including the sector of peace and security, as well as that of economic and social cooperation, in full awareness of the link between economic and social cooperation and the establishing of lasting peace conditions.\(^5\)

It is therefore within a more general dimension that the theme of development must be framed: the processes of economic growth cannot be considered merely in their “productivistic” dimension, but also in their interactions with other equally important sectors that international law regulates and considers worthy of protection. It is in this dimension that the integrated concept of human development takes shape, considered that it concerns the relations of interdependence and admixture that are established between international development law, human rights, international environmental law and peace processes.\(^6\)

Despite having played and continuing to play a fundamental role in stimulating and coordinating development cooperation, it must nevertheless be clarified that the UN does not have adequate tools for global economic governance, nor the financial resources to carry out direct interventions.

The European Union as an international actor of development cooperation

The UN represents the typical expression of institutionalized cooperation at a universal level, even if the limits that characterize its structure and functioning do not always allow the Organization to respond adequately to the needs of the current international community. At a regional level, instead, more or less successful attempts are being made to develop models of development cooperation through forms of commercial, economic and in some cases even political integration that not only aim to create a mere coordination in the respective actions, but also aspire to pose as the typical institutional form assumed by the international law of interdependence.
In this perspective, the typical model at a regional level is the EU, which has always included development cooperation in its external action, even if, with the entry into force of the Lisbon Treaty, this sector has been the subject of a profound revision.

Title III, entitled Cooperation with third Countries and humanitarian aid, explicitly states the objective of outlining a complete and satisfactory set-up of the subject, which is achieved primarily through the clarification of multiple legal bases of the action aimed at development cooperation, as well as economic, financial and technical cooperation with third countries.

According to the broad picture outlined in articles 208 ff. of the TFEU, the development cooperation policy sets the goal of reducing and eliminating poverty in developing countries, through the attribution to the EU of a parallel concurrent policy. In this perspective, Member States and the EU are required to act in compliance with the principle of coherence, understood not only in its negative sense, or in preventing the hypotheses of contradictions in sectoral and transversal interventions, but also in its positive meaning, i.e. to ensure full compatibility between the development cooperation policy and all other related policies.

In implementing the development cooperation policy, the criterion of internal and external complementarity of the interventions of the EU and the Member States is in force to guarantee the effectiveness of aid on the basis of a rational coordination and coordination between the institutions and the governments, promoted by the Commission, which does not exclude the possibility of joint actions however. Respecting the competences of the EU and the Member States in cooperative matters, both the EU and the Member States cooperate with third States, beneficiaries of direct assistance, as well as with the international Organisations in the typical form of cooperative multilateralism (art. 211 TFEU).

In this dimension, the most recent cooperation strategies developed by the European Union appear to be aimed at pursuing other interests with respect to the typical and classic objectives of development aid.

Cooperation with Third States in the management of the migratory flows in the European Union perspective

This attitude is particularly evident in the initiatives implemented in terms of external relations and in particular in the new partnership framework for cooperation with third countries, especially in Africa, drawn up by the Commission last June and in the initiatives connected thereto. In fact, this initiative starts from the idea of promoting an innovative use of the existing international cooperation instruments with the countries of origin and the origin of the flows, with the risk, however, of producing purely rhetorical reflexes and ending simply by increasing the interdependent relationship between the concepts of development and security, so that development cooperation is exhausted in “serving” security-related needs, denaturing, in essence, the very idea of cooperation.

The pursuit of specific interests, in a logic of reciprocity, is indeed traditionally based on large-scale partnership programmes and not only for the management of migration with third countries of origin and transit flows. Moreover, this approach represents a constant feature in the external dimension of European policies on immigration and asylum, especially in the last fifteen years.

It is therefore clear that development cooperation cannot be based on mere “charity”, but rather, on the search for mutual benefits and the pursuit of the interests of each of
the parties. This also applies to migration policies: in developing a renewed partnership strategy with third countries, in order to cope with the exceptional dimensions of the current migration crisis, it is therefore clear that the objective of guaranteeing adequate management of migration flows can also be pursued through the granting of a series of benefits for the countries of origin and transit of flows.

Within the framework of large-scale partnership programmes for the management of migration with third countries of origin and transit flows, the European Union and the Member States are used to ensuring not only the supply of vehicles, support staff and infrastructures for the treatment and management of migrants, but also, to an increasingly incisive extent, a series of advantages in terms of access to and participation in institutional forms of cooperation, provision of preferential mechanisms for the entry of citizens in the countries of destination, and aid to development, given the commitment by third countries to guarantee greater control of their outgoing borders.

The objective of guaranteeing adequate management of migratory flows through the granting of a series of benefits for the countries of origin and transit of flows, in a logic of reciprocity, therefore represents a constant feature of the external dimension of European policies on the subject of immigration and asylum, especially in the last fifteen years. In exercising this prerogative, however, the European Union, the Member States and Third States all have the obligation to respect, each in its own sphere of jurisdiction, the substantial and procedural limits that international law enforces, with particular regard to respect for the rights of applicants for international protection.

The new EU partnership framework for development cooperation

The recent initiatives implemented by the European institutions to deal with the migration crisis, however, present some problematic profiles, which concern, inter alia, the question of their full compatibility with the international obligations incumbent in various capacities on the European Union and its Member States.

The partnership framework developed by the Commission in June 2016, aimed at cooperation with individual Countries of origin or transit, has been repeatedly recalled by the European Council, which defines it as an innovative strategy to deal with the exceptional dimensions of the current migration crisis and to counteract its root causes. This instrument has been designed, in the Commission’s strategy, to pursue rapid and operational repatriation of irregular migrants; apply the necessary levers for the rapid achievement of tangible results in the fight against immigration, making use of all relevant EU policies, mobilizing spheres of competence of the Member States and seeking synergies with Member States to ensure effective collaboration in the management of the migration phenomenon with the countries of origin and transit of migrants.

However, this initiative gives rise to a considerable number of critical remarks. In fact, from the wording of this communication, the approach does not appear particularly innovative, because in reality it proposes to exploit the already existing instruments of the EU and the Member States in the field of cooperation in order to stem migration to Europe.

It also clearly emerges that the Union’s greatest concern is not development cooperation, but rather, to ensure that the flows are contained. What prevails is a logic of deterrence, which represents for the EU the main objective to be pursued in relations with third Countries. More generally, this new partnership framework risks cementing a shift towards a foreign policy that only needs one goal, to curb migration, at the expense of European credibility and the ideals that, at least abstractly, the EU encourages and promotes,
such as the protection of fundamental values and human rights.

A further element of concern lies in the fact that the financing proposed in the partnership would require an overall re-orientation of the European Union’s development planning towards the objective of ensuring a decisive brake on migratory movements. This approach, if corroborated, would risk posing as an unacceptable contradiction with the commitment to use development cooperation with the aim of eradicating poverty, as sanctioned by the Lisbon Treaty. Indeed, in the most traditional and authentic sense of the concept of development cooperation, aid should benefit people in need, and should not instead be used as a lever for controlling migration.

Some critical remarks concerning the external dimension of the EU approach to migration

Forms of international cooperation, such as those to which the European Union has paid increasing attention, risk being essentially preordained to the pursuit of interests strictly connected to the need for security and containment of migratory flows, as they do not point to the actual creation of a link between European States and beneficiary States of aid, a link that can only be based on effective and equitable cooperation and not on a latent, continuous subordination. Moreover, such tools are not completely compatible with the aims of international cooperation, as they end up being simply instrumental to the pursuit of interests other than the logic of cooperation, representing a “stretch”, which ends up “bending” the instruments of cooperation to the satisfaction of the European Countries’ own interests, without becoming in any way functional to the development of the Countries receiving aids.

In order to guarantee a holistic approach to migration, able to pursuing the needs of development cooperation, it is indeed necessary to point out that such proposals do not represent a real change, a concrete turnaround in the management of humanitarian emergencies, such as those currently signified by the mass exodus.

In this perspective, while the Mediterranean Sea represents a synthesis of these contrasts, contradictions, profound asymmetry and structural imbalances between the northern and southern Countries, it is also a place for contamination and continuous transit\textsuperscript{16}. It is a plural sea which separates and combines, found between the lands without belonging exclusively to any of them and “which has left its sign on every side of the other”. It is a Middle Sea, with a vocation for a universalism that is not dogmatic or \emph{a priori}, but syncretic and \emph{a posteriori}, living on translations, which does not ask to burn one’s roots, but to renew them thanks to a comparison with the other, a vocation for exchange in which both interlocutors are enriched without any unilateral reception.\textsuperscript{17}

Notes

\textsuperscript{1} In the Report of the Secretary-General “In larger freedom: towards development, security and human rights for all” (A/59/2005, 21 March 2005), Kofi A. Annan stressed the close interdependence between the security dimension, that of peace and that of development and recognised « that threats are interlinked, that development, security and human rights are mutually interdependent, that no State can protect itself acting entirely alone and that all States need an equitable, efficient and effective collective security system; and therefore commit themselves to agreeing on, and implementing, comprehensive strategies for confronting the whole range of threats, from international war through weapons of mass destruction, terrorism, State collapse and civil conflict to deadly infectious disease, extreme poverty and the destruction of the
environment” (II. Freedom for Fear, Paragraph 6, lett. a).

2 When in 1949 the American president Truman defines the south of the world as “underdeveloped”, a new page in history opens up. The hateful opposition between the superior races and the inferior races that had established itself in the era of colonialism has disappeared, but a new form of hierarchy is affirmed, that between the “modern” countries and the “backward” countries, which is not based on structural contrasts (related to race, ethnicity or religion), therefore ideally accessible to all, but which is however symptomatic of a rigidity that is based on the scale of development.

3 Until the nineteenth century, relations between states were essentially limited to the creation of post-war or post-crisis balances and to this end it was sufficient to meet periodically or as needed in the context of diplomatic conferences. The era of cooperation was born when, at the end of the nineteenth century, and as a consequence of the sudden development in the communications and transport sector, some strictly technical interests were shared by a group of states or by the international community as a whole. This process led to the creation of new institutions, administrative unions, embryonic forms of international organizations, aimed at stable cooperation between States on certain issues to be jointly addressed (Union for Communications, the format of envelopes of letters for example) on issues which evidently did not yet touch the dynamics of development, but which had the merit and role of institutionalizing cooperation between states. With the birth of the League of Nations, established by the Covenant of 1919, at the end of the first edition of the GM, more far-reaching goals were pursued as the Society set itself the goal of establishing more favorable conditions for the peaceful coexistence of peoples and for the development of all energies human, and already the notion and the term “development” was already glimpsed (see in particular art. 22).

4 The Charter of San Francisco has accentuated, with respect to the Pact on the League of Nations, the interest for economic and social cooperation, which represents one of the main objectives of the UN, as emerges in particular from articles 1.3 and 55 of the Charter, entirely dedicated to the International economic and social cooperation. However, these are provisions with a vague, very broad, programmatic content, which do not confer specific and incisive powers on the international organization.

5 See UNCTAD, Investment Policy Framework for Sustainable Development, UNCTAD/DIAE/PCB/2015/5, which adopts the approach of a deep structural asymmetry in economic and political relations.

6 The concepts of human development and sustainable development were established during some important international conferences that marked some important milestones in the historical and legal evolution of the concept of development cooperation (see, inter alia, Stockholm Declaration of the United Nations Conference on the Human Environment, 1972; Agenda 21, UN Conference on Environment and Development, Copenhagen Accord, 2009; Paris Outcome, 13 December 2015).


8 In this regard, see the Declaration on principles relating to the external aspects of migration policy, Edinburgh European Council, 11-12 December 1992, Presidency Conclusions, DOC / 92/8 of 13/12/1992, Annexe 5, Partie A, in to which the Community and its Member States at that time the Community and its Member States already committed themselves to implement a coordinated action “within their respective spheres of competence”, to favor “the conclusion of bilateral or multilateral agreements with countries of origin or transit in order to ensure that illegal immigrants can be brought back to their countries of origin”, taking into account the “practice followed in these States with regard to readmission” (in particular Point XVI, paragraphs 6 and 7).

9 This approach was subsequently expressed with particular clarity by the Seville European Council, on 21 and 22 June 2002, which emphasized the importance of “ensuring the cooperation of the countries of origin and transit in matters of joint management and control borders and readmission” and to provide third countries with the “technical and financial assistance necessary for the purpose”, providing “adequate resources within the framework of the financial perspectives” (Par. 34).

10 In this regard, compare the Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank on the creation of a new partnership framework with third countries under the European Agenda on Migration, 7 June 2016, COM (2016) 385
final.
11 Consider, for example, the propensity to conclude readmission agreements with the EU, which are considered advantageous from a political, economic and financial standpoint. On the subject, with specific reference to the area of North Africa, E. A. MRABET, Readmission Agreements. The case of Morocco, in European Journal of Migration and Law, 2003, p. 379 ss.
12 One of the most widely used incentives in practice is precisely the start of negotiations for the conclusion of visa facilitation agreements, which have often been conducted in parallel with the negotiations concerning, in particular, the conclusion of readmission agreements. Compare the negotiations on readmission with the Russian Federation, Ukraine, Bosnia and Herzegovina, the Yugoslav Republic of Macedonia, Moldova, the Republic of Montenegro, Serbia.
15 In this regard, see the Conclusions of the European Council of 22-23 June 2017, available online, mentioning also the controversial Statement between the European Union and Turkey of 18 March 2016.
16 For this vision, see in particular I. Chambers, Mediterranean Crossings. The politics of an interrupted Modernity, Duke University Press, 2008.
17 In these terms, F. Cassano, Mediterraneo contro il conflitto tra le civiltà, in E. Triggiani (ed.), Europa e Mediterraneo. Le regole per la costruzione di una società integrata, Editoriale Scientifica, 2010, p. 35 ff.

Bibliography

J. Poon (2016), “Insight EU-Turkey Deal: Violation of, or Consistency with, International
Law?”, in European Papers, 1(3), pp. 1195-1203.
In today’s world, the processes of cooperation meet, from one side, the need of a multifaceted approach to the development issues, thus including the different instances from institutions, transnational actors and civil society; from the other, the demand of sustainability and of the application of new instruments and mechanisms in the relationships between people from different cultures and backgrounds.

Starting from this point, rethinking Euro-Mediterranean cooperation means to reshape profoundly the dialogue with the Arab world, investing on the interdependence and the pursuit of common interests, especially after the intervention of the so-called Arab Springs. Moreover, it means the change of patterns in the educational programmes, considering schools and universities as the hotbed of new ideas and tendencies for the international society in the future. This process needs to involve also the level of research and dissemination and to provide the use of the newest instruments of distance and active learning.

This book represents the spin-off of the FEP/IT Program (Education for Experts in Transnationals Euro-Mediterranean Processes for the Internationalization and the Cooperation between Italy and Tunisia), conducted by the University for Foreigners of Perugia and funded by the Italian Minister of Foreign Affairs. The project, dedicated to a small group of ten students from Italy and Tunisia, represents one of the first concrete attempts at rethinking the paradigm of cooperation starting from young people from two shore of the Mediterranean. The book, thus demonstrating the innovative process of cooperation and cultural exchange, and moreover including a multidisciplinary vision, has the final aim to illustrate the challenges at the cooperation and educational level. In this view, the chapters included in this book focus, first of all, on a critical analysis of post-Arab springs geopolitical relations in the light of a paradigm shift. Consequently, the authors have focused their contributions on the EU’s response to Mediterranean socio-political changes after 2011 and to the role of international law in international cooperation specifically related to the Mediterranean dimension. The book dedicated a chapter to the new learning mechanism in IR, that finally encounters the fieldworks conducted by the students during the FEP/IT Program, illustrated in the last chapter.