The External Faces of EU External Migration Law and Policy: an Introduction

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1 Introducing the Intersecting Policy Universes

The so-called ‘European humanitarian refugee crisis’ has dominated the European Union (EU) policy agenda since 2015. Policy focus was streamlined and resources were channelled in particular towards enhancing the EU’s cooperation with third countries, especially in the ‘neighbourhood’ and in Africa, to externalize refugee reception and employment, while continuing to collaborate on border and migration management as well as on readmission and return, trafficking and human smuggling. EU cooperation with third countries on migration, borders and asylum has been framed by several actors in securitarian and humanitarian terms in an attempt to find an easy fix to this ‘political crisis’. Adding to this mainstay of migration ‘crisis’ politics, are employability and mobility as foci of emerging intersectionality in EU external migration policy.

Certainly these dynamics are not new. The literature has showed how ‘crisis labelling’ has constituted a recurrent practice by migration policy makers since the end of the cold war (Jeandesboz and Pallister, 2014). The nexus between migration management and ‘foreign affairs’ has found wide attention in the academic literature covering the so-called ‘external dimension’ of EU migration policy (Geddes 2009; Boswell 2003). Yet ‘linkage’ has gained more urgency in how the stress related with a ‘crisis’ blurs separate spheres of law, policy and society. Overlapping competencies and unresolved responsibilities result from ‘blurring’, other side-effects are less consequential and instead, more programmed, such as the EU’s packaging of otherwise distinct policy components to obtain a better ‘bargain’, a rapid ‘relief’. While governance research has begun to unpack ‘blurring’ and ‘levelling’ as distinct reactions to stress and crisis (Piattoni, 2009; Caponio and Correa-Jones, 2018; Panizzon and van Riemsdijk, 2018), a more problem-driven approach is necessary to understand how and when packaging becomes a policy technique and for whose benefit.

The literature on intersectionality has realized that while intersectionality is more a policy phenomenon than a self-standing theory, reference to related theories contribute to solidly frame policy intersectionality from several
angles, ranging from policy convergence and divergence, intergovernmental and supranational initiatives, multi-layered governance, diffusion and implementation, and policy learning (Pagoulatos and Tsoukalis 2015). Public policy transfer has been applied to measure the impact and effects of EU policy instruments (Trauner and Wolff, 2014) and to explain how lessons learned from ‘managing’ migration are now being transcribed to find solutions for large movements of refugees. Diffusion theory – an offspring from policy transfer scholarship and complex regime theory – might explain why the refugee crisis led to a ‘flexible’ use of EU policy instruments for different purposes (Lavenex 2016; Acosta and Geddes, 2014; Hampshire 2016). Intersectionality as a spin-off from these different theories informing EU migration studies, can contribute to frame EU third country cooperation since it re-confirms packaging ‘solutions’ to the challenges stemming from the ‘crisis’ (Guild and Carrera, 2016).

To understand the implications of intersectionality on human rights protection, democratic rule of law, liberalization of labor market access, norm diffusion to third countries, we embed intersectionality into ‘neighbouring’ concepts of regime complexity, diffusion and venue shopping (Guiraudon, 2000, Lavenex, 2013), the externalization of the state and policy diffusion (Caponio and Jones-Correa, 2017). In practice, some types of intersections, such as the well-studied visa conditionality exchanged for the intake of Syrian refugees in the EU-Turkey deal, out-rightly replaces the more discursive, democratic, de-politicized bottom-up ‘partnership’ approach (Kunz, 2011) known from the Global Approach on Migration and Mobility (GAMM), ENP action plans and the EU mobility partnerships (Reslow, in this volume). However, the intersecting tracks of trade agreements under GATS and national legislation on immigration can also work in favour of de-politicizing and privatizing labor migration (Jurje, in this volume).

2 Intersectionality and ‘Crisis’: Partners or Protractors?

If anything, this new ‘crisis’ of ‘numbers’ (Piguet, 2017) and ‘governance’ (Panizzon and van Riemsdijk, 2018) has required policy innovation, and one way to achieve it was to invest the humanitarian-securitarian rationale of combatting irregular migration with new functions, such as connecting it to trade, investment and education policies in what becomes a market-based version of humanitarian relief in the EU-Jordan and EU-Lebanon Compacts. Whereas in the EU Mobility partnerships, legal pathways are opened in return for cooperation on readmission and return (Reslow, 2015; Reslow, in this volume), in the Compacts, trade preferences are exchanged in return for obtaining work permits as a legal pathway to refugee employment, in what in essence is a deterrence strategy