



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

WORKING PAPERS

RSCAS 2016/43
Robert Schuman Centre for Advanced Studies
BORDERLANDS Project

Norm Localisation and Migration Laws in the Maghreb

Ylenia Rocchini

European University Institute
Robert Schuman Centre for Advanced Studies
BORDERLANDS Project

Norm Localisation and Migration Laws in the Maghreb

Ylenia Rocchini

EUI Working Paper **RSCAS** 2016/43

This text may be downloaded only for personal research purposes. Additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the author(s), editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper, or other series, the year and the publisher.

ISSN 1028-3625

© Ylenia Rocchini, 2016

Printed in Italy, August 2016

European University Institute

Badia Fiesolana

I – 50014 San Domenico di Fiesole (FI)

Italy

www.eui.eu/RSCAS/Publications/

www.eui.eu

cadmus.eui.eu

Robert Schuman Centre for Advanced Studies

The Robert Schuman Centre for Advanced Studies (RSCAS), created in 1992 and directed by Professor Brigid Laffan, aims to develop inter-disciplinary and comparative research on the major issues facing the process of European integration, European societies and Europe's place in 21st century global politics.

The Centre is home to a large post-doctoral programme and hosts major research programmes, projects and data sets, in addition to a range of working groups and *ad hoc* initiatives. The research agenda is organised around a set of core themes and is continuously evolving, reflecting the changing agenda of European integration, the expanding membership of the European Union, developments in Europe's neighbourhood and the wider world.

Details of the research of the Centre can be found on:

<http://www.eui.eu/RSCAS/Research/>

Research publications take the form of Working Papers, Policy Papers, and e-books. Most of these are also available on the RSCAS website:

<http://www.eui.eu/RSCAS/Publications/>

The EUI and the RSCAS are not responsible for the opinions expressed by the author(s).

BORDERLANDS: Boundaries, Governance and Power in the European Union's Relations with North Africa and the Middle East

Challenging the notion of Fortress Europe, the BORDERLANDS research project investigates relations between the European Union and the states of North Africa and the Mediterranean Middle East (MENA) through the concept of borderlands. This concept emphasises the disaggregation of the triple function of borders demarcating state territory, authority, and national identity inherent in the Westphalian model of statehood. The project explores the complex and differentiated process by which the EU extends its unbundled functional and legal borders and exports its rules and practices to MENA states, thereby transforming that area into borderlands. They are connected to the European core through various border regimes, governance patterns, and the selective outsourcing of some EU border control duties.

The overarching questions informing this research is whether, first, the borderland policies of the EU, described by some as a neo-medieval empire, is a functional consequence of the specific integration model pursued inside the EU, a matter of foreign policy choice or a local manifestation of a broader global phenomenon. Second, the project addresses the political and socio-economic implications of these processes for the 'borderlands', along with the questions of power dynamics and complex interdependence in EU-MENA relations.

Funded by the European Research Council (ERC) within the 7th Framework Programme, the BORDERLANDS project is hosted at the Robert Schuman Centre for Advanced Studies, European University Institute, and directed by Professor Raffaella A. Del Sarto.

For more information: <http://borderlands-project.eu/Home.aspx>



European Research Council
Established by the European Commission



Abstract

In the 2000s, Morocco, Tunisia and Algeria have proceeded to revise their outdated laws regulating the movements of people across national borders. Such timely legislative action has been deemed to be the result of the European Union's external policy on transferring its restrictive migration governance to neighbouring countries. The legal framework emerging from the Maghreb reforms does appear to have broadly converged towards restrictive migratory policies. However, the paper outlines how such policy convergence has been in part achieved through a localisation of international legal norms, which did not result in an approximation to international and EU law. Ultimately, the paper sets out to show how migratory laws in the Maghreb do play a part in the externalisation of the EU's border control, but do so by actually departing from the same international and EU normative standards that the Union has been promoting to its Maghreb neighbours.

Keywords:

Migration; Maghreb; international law; norm localisation; European Union.

Introduction*

In the 2000s, Morocco, Tunisia and Algeria have, one after the other, proceeded to revise their outdated laws regulating the movements of people across national borders. Hence, in 2003 Morocco adopted the Law no. 02-03¹ on the “entry and stay of foreigners and on the irregular immigration and emigration,” repealing a number of legal acts dating back to the French protectorate. One year later, in Tunisia, the Organic Law no. 2004-6² amended some migration-related provisions included in the 1975 law on passports and travel documents.³ Lastly, in 2008 Algeria first adopted a new law on the “conditions of entry, stay and circulation of foreigners”,⁴ replacing a previous law from 1966,⁵ and then, in 2009, amended the penal code⁶ introducing, *inter alia*, the crimes of illicit traffic of migrants and illicit exit from the country for both nationals and foreigners.

Such timely legislative action has been deemed to be the result of the pressures exerted by the European Union (EU), to curb migrant arrivals on its territory. In particular, it has been linked to the external dimension of the EU migration policies,⁷ which, with a view of involving third (sending and transit) countries in the management of migration flows, has been working towards the transfer of international and EU migration-related rules and practices.⁸ These recent legal changes would then also be the result of the EU’s alleged norm-based foreign policy, deemed to have influenced the Maghreb states’ legislative policies on the movements of people.

Indeed, the legal framework emerging from these reforms appears to have broadly converged towards the same restrictive legal trends that are identifiable in Europe, as well at the international level. More specifically, as argued by Perrin,⁹ with these reforms the Maghreb countries have converged toward global trends of migrant criminalisation and border securitising. The emerging legal framework in the Maghreb is then likely to curb migratory flows heading to Europe.

However, an examination of the legal provisions adopted in the Maghreb also shows that such policy convergence has been achieved partly through a localisation of international legal norms, which, significantly, did not result in an approximation to international and EU standards. Therefore, the main argument of this paper is that, notwithstanding the EU’s efforts at transferring its own rules and practices, as well as relevant international standards, in the Maghreb the achievement of restrictive outcomes as to migratory policies has actually been realised by departing, to some extent, from

* Research for this paper was conducted in the framework of the BORDERLANDS Project, funded by the European Research Council under grant agreement number 263277. The project is directed by Raffaella A. Del Sarto and hosted at the European University Institute, Robert Schuman Centre for Advanced Studies, Florence. The author would like to thank Raffaella Del Sarto and Jonathan Zaragoza Cristiani for comments on earlier drafts of this paper, as well as Julie Northey for language-editing.

¹ Law no. 02-03 on the entry and stay of foreigners in the Kingdom of Morocco and on the irregular emigration and immigration, promulgated by the Dahir n. 1-03-196 of 11 November 2003.

² Law no. 2004-6 of 3 February 2004, *Journal officiel de la République tunisienne*, no. 11, 6 February 2004.

³ Law no. 1975-40 of 14 May 1975, *Journal officiel de la République tunisienne*, no. 34, 20 May 1975.

⁴ Law no. 08-11 of 25 June 2008, *Journal officiel de la République algérienne*, no. 36, 2 July 2008.

⁵ Law no. 66-211 of 21 July 1966, *Journal officiel de la République algérienne*, no. 64, 29 July 1966.

⁶ Law no. 09-01 of 25 February 2009, *Journal officiel de la République algérienne*, no. 15, 8 March 2009.

⁷ de Haas, 2005 and 2007:61; Freyburg, Lavenex *et alia*, 2015: 156.

⁸ The cooperation with third countries in the area of migration management and border control has taken different forms ranging from operational arrangements to readmission agreements, development assistance and foreign direct investments. On the emergence of the external dimension of the EU migration policies, see Boswell, 2003.

⁹ Perrin, 2015: 194.

international and EU legal norms. This has ultimately jeopardised the protection of the fundamental rights of migrants in these countries.

It is, however, important to stress that this does not account for the entire legal framework concerned with migration in the Maghreb. Although, by and large, the reforms prove to share a restrictive and repressive nature, some provisions have also entailed an increased protection of a few procedural and substantial rights of migrants. This is especially the case of the comprehensive reform adopted in Morocco in 2003 – though its implementation appears at times erratic or even lacking¹⁰ – but also of the unprecedented regularisation campaign carried out in the same country in 2014. Although contentious in certain respects,¹¹ this campaign has notably resulted in enhancing the legal condition of about 18,000 foreigners¹² through the delivery of residence permits.

The political science literature has investigated the Maghreb states' migration policies, emphasising the role played by the EU and its member states¹³ or their domestic drives.¹⁴ National legislations concerned with migration have been the object of dedicated studies¹⁵ and comprehensive comparative analyses of the relevant laws have also been carried out.¹⁶ While drawing on literature from across these strands, this paper focuses on specific aspects of migration laws in the Maghreb and on their positioning with respect to international and EU migration law. More specifically, by theoretically framing these legislative acts as a local appropriation of international norms, this paper sets out to outline how Algeria, Morocco and Tunisia have legally internalised two distinctive, internationally recognised norms: the right to leave any country including one's own and the criminalisation of migrant smuggling. Although inspired by very different values, these norms mark to an equal degree the current legal framework concerned with migration in the Maghreb states.

The paper will first present the theoretical approach framing the recent Maghreb reforms of migration law, in the context of the EU's external migration policies, its associated undertakings at transferring rules and practices, and norm socialisation processes sustained by international migration fora. It will then move to examine empirically the localisation of the two above-mentioned international norms, so as to highlight how the emerging legal framework departs in some measure from the same international and EU normative standards that the Union has been promoting to its southern Mediterranean neighbours.

Theoretical framework: migration laws in the Maghreb as local appropriation of international legal norms

A core proposition of this paper is that the Algerian, Moroccan and Tunisian legislators resorted, *inter alia*, to a localisation of international legal norms to reform their respective legislation on the circulation of people. The reference to international law in regulating migration, however, was not new, as international legal norms, such as the right to leave, had been incorporated into domestic law since the construction of the Maghreb post-independence legal systems. Moreover, the very first migratory legislations in the Maghreb have contributed to the strengthening of norms that have been

¹⁰ For instance, access to the Kingdom's territory can be refused to visa exempt nationals and visa holders on the basis of the discretion of security officials. See Khrouz, 2013.

¹¹ See Khrouz, 2015.

¹² *Ibidem*.

¹³ Belguendouz, 2003 and 2005.

¹⁴ Natter, 2013; Berriane, de Haas and Natter, 2015; Cherti and Collyer, 2015.

¹⁵ See in particular CARIM – Consortium for Applied Research on International Migration, Analytical & Synthetic Notes – Legal Module, published online between 2005 and 2011. On Morocco see also Khrouz, Ouardi and Rachidi, 2008.

¹⁶ Perrin, 2004, 2005, 2008 and 2009.

codified in international instruments only recently, as is the case of the criminalisation of migrant smuggling.

The assumption that international law has played a crucial role in the recent law-making on migration in these countries does not only rely upon the identification in these laws of notions, definitions and rules that stem from or present characteristic features of international (customary and treaty) law. It is also confirmed by public statements made by government members¹⁷, and suggested by the time frame in which the Tunisian and Algerian reforms took place.¹⁸ As a result, the most recent changes in migratory legislation in the Maghreb appear as having engaged with international law, and this then emerges as a key reference in the law drafting process.

Diffusion of law and norm diffusion

An extensive body of literature, mainly developed by legal and international relations scholars,¹⁹ has identified and investigated the diffusion of law – under different labels such as circulation, transplantation and transposition – and, most importantly here, the diffusion of European and international norms. Whereas the spread of ideas is a shared broad interest, legal scholars have mostly focused on the municipal law of states and on the interactions between legal orders, including customary and non-state law.²⁰ International relations scholars have instead paid greater attention to the worldwide circulation of international and EU norms, as reflecting the pervasive (normative) power of international and regional institutions, and then affecting more genuinely political settings on the global scale.

Initially concerned with norm diffusion at the level of the international system,²¹ international relations scholarship has then shifted its focus to the impact of international norms on domestic political systems. Several political, organisational and cultural determinants have been singled out and examined, in order to explain international norm compliance at the national level.²² Although conveniently reorienting the focus on the domestic context, these approaches have been criticised for being excessively static. They have thus been challenged by the concept of localisation,²³ which seeks to capture the complex process of the reconstruction of transnational norms by local agents. This may start with the selection of international norms and lead to adjustments of their shape and content, rather than merely resulting in norm acceptance or rejection. As a consequence of this process, outside norms acquire a “significant congruence with local beliefs and practices”²⁴ and are finally incorporated into the domestic legal system.

¹⁷ In commenting on the reasons for the adoption of the migration Law no. 02-03 a month after its entry into force, the Moroccan Minister of Interior stated that the law was meant to align domestic legislation with the international conventions on the rights of emigrants and irregular foreigners as well as to respect Morocco’s commitments towards its partners in the fight against emigration. See Khrouz, Ouardi and Rachidi, 2008: 18. Similarly, the Algerian Minister of Interior and Local Communities presented the Law no. 08-11 in Parliament as a response to the inadequacy of the previous legal framework with respect to the current reality of the country and the evolution of international law. See Zeghib, 2009: 80-81.

¹⁸ As regards the criminalisation of migrant smuggling, Tunisia and Algeria ratified the UN Migrant Smuggling Protocol (the international legal instrument of reference on the issue) in 2003 and 2004 respectively, that is before amending their migration-related legislation.

¹⁹ The contribution of the social science literature to the spread of ideas and its relevance for study of the diffusion of law should not be neglected. See Twining, 2005.

²⁰ For an overview and critical assessment of this literature see Twining, 2004.

²¹ Finnemore and Sikkink, 1998.

²² For an overview of this literature, see Cortell and Davis, 2000.

²³ Archaya, 2004.

²⁴ Ibidem.

As regards the European Union, the diffusion of its norms and practices has been pointed out as one of the distinctive features of its foreign action, as well as an unintended effect of its internal policies.²⁵ Though the Union's very activity of law-making may be regarded as a diffusion of law in itself,²⁶ much attention has been paid to the processes of Europeanization, through which candidate and new member states have integrated the EU *acquis*.²⁷ Far from being limited to actual or prospective formal membership, the scholarship on EU external governance has come to highlight how the transfer of rules and practices can also reach neighbouring countries.²⁸ Through bilateral agreements or informal cooperation frameworks, part of the EU *acquis*, which constitutes the basis of the EU's external action, is then, assumedly, transferred to the neighbourhood.

Migration in the EU's contractual relations with the Maghreb states

The legal basis upon which the relations between the EU and the Maghreb countries are currently built on lies in the Association Agreements signed with Tunisia in 1995, Morocco in 1996 and Algeria in 2002. The approximation to the EU's *acquis* is primarily and broadly established in these legally binding agreements, with regulatory convergence towards European standards being indicated, specifically, as regards trade-related issues.

In the realm of migration, however, specific formal requirements for the Maghreb countries to approximate their legal framework to the EU *acquis* are not stated. While the Trade and Cooperation Agreements concluded in 1976 only established the equal social treatment of Maghreb workers residing in Europe,²⁹ the Association Agreements that replaced them have instead introduced some provisions on irregular migration. They restated the principle of non-discrimination with respect to social protection measures, but explicitly excluded irregular residents from benefiting from them. In a more general vein, they also included migration among those social matters on which a dialogue between the parties should regularly take place. More relevant engagements in dealing with irregular migration were however worded in mere programmatic terms. The Tunisian and Moroccan agreements indicate that cooperation shall also cover the return of irregular residents (art. 69-3c), and the Algerian text provides for the negotiation of readmission agreements to be initiated at the request of either party, and possibly covering also third-country nationals (art. 84).³⁰

European and international migration law

The broadly defined legal basis for the transfer of EU migration-related rules to the Maghreb countries runs parallel with the limited legislative harmonisation existing on the matter. This is, in turn, the result of the historic reluctance of member states to delegate their legislative competence to the EU in this field. Deemed to be one of the last strongholds of state sovereignty, the regulation of migration has hitherto known very limited success at the supranational level. Nonetheless, some European common rules have been established since the 1980s in the areas of border management and visa policies, the conditions of entry and stay for some categories of migrants, irregular immigration and the return of migrants in an irregular situation.

²⁵ See Uçarer and Lavenex, 2002.

²⁶ The EU legislative activity inevitably involves a continuous dialogue between scholars and law-makers with different legal backgrounds which results in a circulation of legal models and a progressive convergence of rules and interpretative approaches. See Benacchio and Pasa, 2005.

²⁷ Sedelmeier, 2011.

²⁸ Lavenex and Schimmelfennig, 2009.

²⁹ Lavenex, 2002: 167.

³⁰ Collyer, 2008: 168.

Likewise, on the side of international law, the limited legal framework on migration must not be overlooked. Although the diverging interests of countries on the global scale does not make the development of binding legal norms any easier, customary and treaty international law has nonetheless gained increasing recognition and affirmation. Eventually, even if a proper regime of international migration law is still missing, not least because of the lack of a dedicated international institution,³¹ a multi-layered migration governance does exist.³² This is made up of norms scattered across a variety of multilateral regimes, regional and trans-regional treaties and bilateral agreements.

Finally, the European and international legal orders are certainly not devoid of interconnections. Not only are EU rules often embedded in overarching international norms – whose presence and robustness may actually facilitate the emergence of EU legislation³³ – but the very development of international standards in the field of migration and asylum has been indicated as an objective to which the Union should contribute.³⁴

Norm socialisation, international migration law and the EU's normative role

The lack of legislative harmonisation in migration policy has not deterred the EU in its attempts at promoting its normative preferences in neighbouring countries. In this case, however, international law and legal standards, rather than the EU *acquis*, have been advocated as the templates to abide by.³⁵ As noted above, this may well lead to an approximation towards EU rules, as these impact on and, at the same time, are influenced by international norms. Such normative endeavours fall within the external dimension of the EU's migration policy, which developed gradually³⁶ along with the expansion of the *acquis* on the matter. In this context, a multitude of EU development cooperation programmes featuring capacity-building activities has been deployed, with the aim of engaging sending and transit countries in a process of norm socialisation.³⁷ Through this process of knowledge transfer, the target countries have been taught about relevant international norms, and encouraged to internalise them, so as to allegedly enhance the state capacity to face movements of people, and eventually ensure their cooperation in migration management. Several financial instruments³⁸ have thus been mobilised since 2001 to sustain this development of the cooperation aspect of the EU's external migration policy.

Furthermore, at the international level, the limited body of hard law existing in the field of migration has prompted the proliferation of soft mechanisms promoting cooperation between sending, transit and receiving countries.³⁹ These open *fora* of interaction may also be regarded as norm

³¹ Alenikoff, 2007.

³² Kunz, Lavenex and Panizzon, 2011.

³³ This is the case of the EU directives regarding the qualification as refugee and the right to family reunification. See Roos and Zaun, 2014.

³⁴ Council of the European Union, 2005: 7. See also Trauner and Wolff, 2014: 13. Besides, that the Union “shall contribute to [...] the strict observance and development of international law” is explicitly indicated as one of its goals in art. 3(5) of the Treaty on the European Union (TEU).

³⁵ Lavenex and Wichmann, 2009: 99.

³⁶ For an overview with specific respect to the Mediterranean region, see Cassarino, 2005.

³⁷ Socialisation to international norms refers to the crucial process through which a state internalises constitutive norms of the international society and so becomes a member of it. See Risse and Sikkink, 1999.

³⁸ Among these: Budget line B7-667 – Cooperation with Third Countries in the Field of Migration, 2001-2003; MEDA JHA I and II Programme (2003-2006); Financial and Technical Assistance to third Countries in the Areas of Migration and Asylum (AENEAS), 2004-2006; Thematic Programme Migration and Asylum TPMA, 2007-2013. See Lavenex and Stucky, 2011: 120-121.

³⁹ The UN High-Level Dialogue on Migration and Development and the Global Commission on International Migration (GCIM) represent some examples. For more on international migration *fora*, see Kunz, Lavenex and Panizzon, 2011.

socialisation exercises, since while being driven by the search for common views among equal partners, they are inevitably subject to the influences of supranational organisations and their legal standards.

These various forms of socialisation to international norms have considerably increased in number and activity over recent years. The preparation of draft laws on asylum in Tunisia and Morocco are a case in point, as the influence of outside norms is patent.⁴⁰ Yet, these socialisation exercises appear to have also played a role in the legislative reforms enacted in the region in the 2000s, featuring a reinterpretation of some international norms. As we will see in the following section, this has been the case as regards the right to leave and the criminalisation of migrant smuggling.

Localising international migration norms in the Maghreb

An analysis of the localisation of two international norms – the right to leave any country and the criminalisation of migrant smuggling – can be used to illustrate how current migratory laws in the region diverge from some of the international and, to a lesser extent, EU standards that Algeria, Morocco and Tunisia purport to appropriate.

The right to leave any country including one's own

The right to leave any country, including one's own, is the international facet of the freedom of movement. While the right to leave is an international legal norm, the right to enter another country remains one of the most resilient attributes of state sovereignty. This “incomplete right” protects the departure from any country for both citizens and third-country nationals and is closely connected to the right to seek and enjoy asylum. The right to leave imposes on states the negative obligation of not obstructing the departure of people from their territories and the positive obligation of issuing travel documents. Although separated from the right to enter, the right to leave enjoys a prominent status in international law. Indeed, it is a norm not only reiterated by several international and regional legal instruments, but also one that holds the status of customary law, so that no derogation is allowed.⁴¹

Among the international treaties protecting it, it is worth mentioning the UN Universal Declaration of Human Rights of 1948 (art. 13.2) and the 1966 International Covenant on Political and Civil Rights (ICCPR, art. 12.2), considered the universal pillars of international human rights law. At the regional level, it is important to recall the Protocol n. 4 (art. 2.2) to the European Convention on Human Rights (ECHR), which entered into force in 1968.

Like many other basic human rights, however, the right to leave is subject to some restrictions. These are worded in a very similar way in positive law, as legal instruments usually require that any restriction must be provided by law and must be necessary to protect national security, public order, public health or morals, as well as the rights and freedoms of others.⁴² The necessity requirement is particularly important since it imposes a proportional test on the restrictions adopted by states: these must not only be lawful and geared to protect the mentioned legitimate aims but also proportionate to their achievement.

As in most countries all over the world, in the Maghreb the right to leave is enshrined in constitutional texts.⁴³ At the same time, however, the adoption of migration laws made lawful exit

⁴⁰ Although not yet presented to the Parliament, the last version of the Tunisian draft law on asylum resonates with the 1951 UN Refugee Convention, while the Moroccan bill appears highly indebted to EU legislation. See Perrin 2015: 209-213.

⁴¹ On the customary law nature of the right to leave see Chetail, 2014.

⁴² Art. 29.2 of the UN Universal Declaration of Human Rights, art. 12.3 of the ICCPR and art. 2.3-4 of the Protocol n. 4 to ECHR.

⁴³ Since independence in Algeria and Tunisia. Morocco included it only in the last constitutional text of 2011.

from the country dependent on certain conditions and, most importantly, criminalised exit not complying with them.

The relevant legislations currently in force have localised the right to leave in a way that constrains it in slightly different ways. In Tunisia the dated texts that are still in force – the 1968 law on the condition of foreigners⁴⁴ and the 1975 law on passports and travel documents – respectively provide that foreigners and citizens wishing to leave the national territory have to use border crossing points and hold a valid travel document. While retaining these conditions, the provisions adopted in Morocco in 2003 (art. 50) and in Algeria in 2009 (art. 175 *bis* 1 added to the Criminal Code) introduced the notion of “illicit” or “clandestine” exits, including outward border crossings carried out with fraudulent travel documents or geared to avoid the presentation of official documents. As the reason, especially for citizens, for leaving a country in such a way is usually the lack of rights to enter another country, these provisions have often been deemed as actually criminalising the exit of individuals who do not have a visa to enter, in most cases, a European state. Furthermore, whereas the ensuing criminal sanctions may vary – from 15 days’ to up to 1 year’s prison sentence, accompanied or substituted, according to the circumstances, by financial sanctions – the almost identical wording used in Morocco and Algeria, in making reference to illicit or clandestine exits, supports the argument that these provisions were actually well-designed for the externalisation of the EU’s migration management.

The distinctive restrictions attached to the right to leave, in the Maghreb, appear as challenging this international norm in several ways. As currently worded, they in fact significantly differ from the general restrictions provided for by international law, by specifically addressing the issue of illicit or clandestine border crossings. A look at the stance held by the UN Human Rights Committee, at states’ practices worldwide, and at relevant case-law by the European Court of Human Rights, will serve to identify some of the legitimate limits on the right to leave, and their scope of action. This will finally allow us to grasp the singularity of the notion of irregular exit that is embedded in the Maghreb states’ legislations.

Among the international bodies established by the treaties protecting this international norm, the Human Rights Committee is the only one that has thoroughly examined it. On the one hand, the Committee provided guidance on the meaning of the right to leave in the context of the ICCPR by issuing in 1999 the General Comment no. 27,⁴⁵ whereby it specified the principles that should guide its application. As regards the scope of this right, the Committee stressed that it is not restricted to persons lawfully residing within the territory of a state, but also extends to irregular aliens (paragraph 8). In highlighting the negative obligation attached to the right to leave, the Committee also reminded states that they should refrain from placing obstacles that “impair the essence of the right”. In other terms, “the relation between right and restriction, between norm and exception, must not be reversed” (paragraph 13). On the other hand, sitting in its capacity as a dispute resolution body under the ICCPR Optional Protocol, the UN Human Rights Committee has examined the interpretation by different states of the right to leave, on a number of occasions. The Committee concluded that states can reasonably restrict the right to leave of individuals who have, for example, not respected their national service obligations or who represent a threat to national security.⁴⁶

Similarly, states’ practice across the world shows that, besides national security concerns, common restrictions to the right to leave are linked to an individual’s criminal or civil obligations, such as required measures to execute an arrest warrant, collect taxes or prevent the evasion of a debt.⁴⁷ Interestingly, in the aftermath of the Second World War, there was a tendency to observe the right to

⁴⁴ Law no. 1968-198 of 22 June 1968, *Journal officiel de la République tunisienne*, no. 26, 26 June 1968.

⁴⁵ Human Rights Committee, General Comment 27, Freedom of movement (Art.12), U.N. Doc CCPR/C/21/Rev.1/Add.9, 1999.

⁴⁶ For a review of these decisions see Havey and Barnidge, 2005: 5-10.

⁴⁷ See Plender, 1987.

leave particularly as regards foreigners, as opposed to nationals. In fact, many developing countries claimed that restrictions on the departure of skilled and trained citizens were legitimate measures vis-à-vis the socio-economic implications of a potential “brain drain”.⁴⁸

The UN Human Rights Committee and states’ practice point to the most common lawful restrictions to the right to leave. However, that a certain measure to limit this right falls within the state’s legitimate interests and meets the necessity and proportionality requirements, remains essentially a matter of interpretation. Likewise, the appraisal of the individual circumstances of a specific case is pivotal to the ascertaining of the legitimacy of any interference with the right to leave. Thus, case-law and judges’ reasoning offer valuable clarifications as to the lawful derogations that international law can tolerate.

The most interesting insights into the restrictions on the right to leave in migration-related legislations can be drawn particularly from a recent decision issued by the European Court of Human Rights (ECtHR). Although the case law of this Court does not apply to the Maghreb countries, it seems to offer meaningful points of reflection on the issue. While the majority of the ECtHR’s rulings regarding this right had so far concerned disputes on tax and customs liabilities or criminal prosecution, in the 2012 case *Stamose v. Bulgaria*⁴⁹ the Court ruled for the first time on a two-year travel ban imposed by the Bulgarian government on a Bulgarian citizen, following his expulsion from a foreign country for overstaying. This decision then concerns the restrictions imposed by a state on the right to leave of its nationals, as a result of the infringement of a third country’s migratory legislation (as Bulgaria had not yet entered the EU at the time the Bulgarian decision was brought to the ECtHR). In other words, in this case a measure of externalisation of migration policy was under the scrutiny of the Strasbourg Court.⁵⁰

The Court proved to be aware that the Bulgarian legislation had been designed to “discourage and prevent breaches of the immigration laws of other States” (paragraph 32) and in particular to “allay the fears of, among others, the then member States of the European Union in respect of illegal emigration from Bulgaria” (paragraph 36). By contextualising the adoption of such legislation in the visa waiver discussions with the EU, the Court also highlighted that Bulgaria had intended to prevent foreign states from refusing entry to Bulgarian nationals or from toughening their visa regime in their respect. Against this background, the ECtHR held that it might be prepared to accept that restrictions to the right to leave one’s own country resulting from infringing the immigration laws of another state “may in certain compelling situations be regarded as justified” (paragraph 24). Eventually, however, the Court did not reach a finding on the legitimacy of the aims pursued by the Bulgarian authorities. Instead, it concluded that the travel ban amounted to a breach of the right to leave, since prohibiting the applicant from travelling to *any and every* foreign country was a disproportionate measure. In fact, according to the Strasbourg judges, the “normal consequences of a serious breach of a country’s

⁴⁸ *Ibidem*. In this respect, it is worth mentioning the Strasbourg Declaration on the Right to Leave and Return, issued following a meeting of international experts convened by the International Institute of Human Rights in 1986. In the final recommendations, the international community is urged to consider the establishment of bilateral or multilateral measures of protection and compensation in favour of those developing countries suffering a significant “brain drain”. See the Strasbourg Declaration on the Right to Leave and Return, 1987.

⁴⁹ *Stamose v. Bulgaria*, Application No. 29713/05, judgment of 27 November 2012.

⁵⁰ It is however worth mentioning the Jipa decision (Case C-33/07) issued by the Court of Justice of the European Union (CJEU) in 2008 on the compatibility with EU law of a travel ban placed on a Romanian (and also European) citizen as a result of his expulsion from Belgium for “illegal residence”. On that occasion, the CJEU restated its position by retaining the judgement that restrictions on the free movements of a European citizen are allowed provided that the individual’s personal conduct does constitute a “genuine, present and sufficiently serious threat to one of the fundamental interests of society and that the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues”. The CJEU finally retained its judgement that it was for the national court to establish whether that was the case. Therefore, it did not exclude the possibility that a travel ban resulting from the illegal residence in another member state may represent a lawful measure. See Guild, 2013: 22-23.

immigration laws would be for the person concerned to be removed from that country and prohibited (by the laws of that country) from re-entering its territory for a certain period of time” (paragraph 34).

Although enshrined in the Constitution, the right to leave appears considerably limited in the Maghreb countries, by means of statutory provisions concerned with migration and the circulation of people. In Tunisia, the two laws dating back to 1968 and 1975 seem to be connected to a control of the national territory and of the movements of people across it. Yet, the penalties prescribed – potentially leading to incarceration for up to a year – are undoubtedly severe and point to the authoritarian nature of such control. In Algeria and Morocco, the recent adoption of the notion of clandestine exits seems instead to expose the legislator’s intent to meet the EU’s calls for stemming the migrant inflows to Europe.

In this respect, the ECtHR’s reasoning offers particularly meaningful indications as to the legitimacy of the restrictions to the right to leave. Accordingly, the relevant provisions in the Maghreb seem unlikely to pass the necessity and proportionality test. Even though the aim of preventing unauthorised or irregular exits might be regarded as legitimate, the nature of the sanctions foreseen to preserve such an aim could hardly be considered as proportionate. In fact, while a (too) broad limitation of the freedom of movement (engendered by the travel ban) is at stake in the Bulgarian legislation, it is a deprivation of liberty (prison sentence) that nationals and aliens could possibly face in the Maghreb.

The criminalisation of migrant smuggling

The notion of “migrant smuggling” and its criminalisation in international law are very recent. Although drawing from a pre-existing web of international laws concerned in different ways with this phenomenon, a clear definition of migrant smuggling and the obligation to criminalise the relevant conducts associated with it were codified only in 2000, with the adoption by the UN General Assembly of two treaties: the Convention on Transnational Organised Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing it (one of the so-called “Palermo Protocols”), which entered into force respectively in September 2003 and January 2004.

These instruments, and in particular the Migrant Smuggling Protocol, require state parties to adopt in their domestic legislation specific provisions that criminalise conducts qualified as smuggling of migrants. It is thereby intended to provide for the deterrence and punishment of migrant smuggling, as well as to promote its prevention, international cooperation and technical assistance to developing countries in the field.⁵¹ The UN treaty law outlines a specific regulation of migrant smuggling by addressing several aspects connected to the offence. The present analysis, however, restricts its attention to the notion of migrant smuggling, as it is on the very identification of the offence that the provisions enacted in the Maghreb express a significantly different view.

Unlike the right to leave, the obligation to criminalise migrant smuggling stems from a source of international law (a treaty) that commits only states that are party to the above-mentioned treaties, namely those who have signed and ratified them. This also means that even though originating from international treaties, there is no general obligation under international law to criminalise the smuggling of migrants. Among the Maghreb states examined here, only Morocco has neither signed nor ratified the Organised Crimes Convention and the Migrant Smuggling Protocol. Tunisia and Algeria did so in 2003 and 2004 respectively. Nevertheless, in Morocco the facilitation of irregular migration is specifically sanctioned by criminal penalties included in the 2003 migration law. These provisions appear to have engaged with the international legal framework in more than one regard. Also, statements issued by Moroccan authorities explicitly pointed to international law as a reference

⁵¹ See United Nations, 2004: 349.

frame for the adoption of the 2003 law.⁵² These elements allow us to include Morocco in the following analysis and to draw some conclusions in light of the international and European legal framework devoted to migrant smuggling.

The set of rules provided for by the Migrant Smuggling Protocol proceeds from the very definition of “migrant smuggling”. The Palermo Protocol expressly addresses it in art. 3(a) by identifying the basic (physical and fault) elements of the offence in the “procurement [...] of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” and in the underlying intent to “obtain, directly or indirectly, a financial or material benefit”.⁵³ Accordingly, the international understanding of the activities labelled as “migrant smuggling” reveals itself to be intrinsically associated to the illegal crossing of a border and the procurement of some kind of profit. The source of the obligation to criminalise such conduct lies in a different article (art. 6), which also includes other acts, such as the enabling of the illegal stay of a person in a State Party, the production and provision of fraudulent travel documents and the participation in, the organisation or direction of the smuggling process.

Though not devoid of ambiguities,⁵⁴ the international definition of migrant smuggling was intended by the drafters to rule out any criminalisation of all those activities providing support to migrants “for humanitarian reasons or on the basis of close family ties”.⁵⁵ Similarly, the criminal liability of smuggled migrants is expressly excluded from the scope of the Protocol (art. 5). However, as the Protocol sets out only minimum standards, it leaves states free to enact or retain domestic laws that criminalise migration-related offences. As a consequence, international law does not prevent states from imposing criminal sanctions for mere irregular entry or residence, as well as for activities that support migrant smuggling in the absence of any element of profit (art. 6.4).

Relying on the preservation of national laws stated in the Protocol, in 2002 the then-EC adopted a different legal framework with respect to what it called the “facilitation” of illegal immigration, thus discarding the term “migrant smuggling”. While being among the first signatories of the Protocol, the EC in fact proceeded to lay down its own regulation of the issue in the Facilitators’ Package. This comprises the Directive 2002/90/EC, defining the facilitation of unauthorised entry, transit and residence and the Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. While the former provides for sanctioning of the facilitation of irregular immigration, the latter establishes minimum rules as to the criminal penalties to be prescribed by member states for the related offences.

In particular, the Directive criminalises assistance to irregular entry, transit and residence of aliens (art. 1.1(a)), but restricts the requirement related to a “financial gain” only to the facilitation of irregular residence (art. 1.1(b)). Furthermore, the implications of such legislative choice are inadequately avoided by a following “may” provision, allowing EU member states to not impose sanctions in cases of “humanitarian assistance”, enabling a third-country national to enter, or transit, a member state (art. 1.2).⁵⁶

⁵² See footnote 17.

⁵³ The art. 3(a) of the Migrant Smuggling Protocol reads “‘Smuggling of migrants’ shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

⁵⁴ For instance, the terms ‘procurement’ and ‘financial or other material benefit’ are not further specified, thus leaving room for some uncertainties as to the acts and advantages that fall within the treaty provisions. See Aljehani, 2015.

⁵⁵ United Nations, 2006: 469.

⁵⁶ “Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned”.

The European notion of the smuggling of migrants is then significantly wider than the one adopted by the Palermo Protocol, and allows member states to enact a strict policy towards the phenomenon. This is no surprise as the Facilitators' Package itself originates from a proposal drafted by a member state, France, and reflects the national concerns about irregular migration and the urge to provide a strong response to it. The very limited reference to a "financial gain" might be motivated by the need to capture a wide range of smuggling activities, especially since the benefit element can be difficult to prove in criminal proceedings.⁵⁷ However, and regardless of the actual prosecution and conviction rates, the mere⁵⁸ possibility given to member states to prosecute relatives, NGO members and volunteers providing assistance to irregular migrants appears as an excessively harsh measure. This is even more striking in that the previous provisions criminalising irregular immigration included in the Schengen Convention (at art. 27(1))⁵⁹ – and amended by the Facilitation Package – did include the reference to the "purposes of gain". The EU legislation on migrant smuggling then exposes its prominent focus on the fight against irregular migration, in which it seems to include any person involved with foreigners in an irregular situation, all likely to be prosecuted for criminal charges.⁶⁰

Narrowed in the EU *acquis*, the intent element of the international notion of migrant smuggling is clearly called into question by the migratory reforms enacted in the Maghreb. Criminal sanctions for the facilitation of irregular entry, exit and residence were already foreseen, with no reference to the underlying intent, in the first migration-related regulations enacted in Algeria in 1966 and in Tunisia in 1968. It is only with the most recent legislative interventions in the field, however, that the identification of such offences came to be openly questioned. In fact, the 2003 Moroccan law and the 2004 Tunisian reform proceeded to criminalise the facilitation of the irregular entry and *exit* of foreigners and nationals even when performed on a "free or voluntary basis." Also with respect to the Council's Directive, then, these provisions take a step further by expressly punishing any assistance to migrants in an irregular situation.

The reference to some kind of benefit is introduced only in Algeria in 2009, with a law amending the penal code and aimed at transposing the Palermo Protocol into domestic law, as also showed by the use of the term "migrant smuggling." In the criminal provision adopted, however, such intent is required exclusively with regard to the irregular *exit* of people, regardless of their nationality. The criminalisation of the irregular "entry, circulation, stay and exit" of foreigners – already foreseen in the first regulation of the matter of 1966 – is, at the same time, maintained in the new migratory law of 2008, though the criminal sanctions were considerably increased.⁶¹ The focus on the irregular exit, along with the irregular entry and residence, with respect to nationals, besides foreign migrants, is unprecedented and exposes the Maghreb states' commitment to curbing illicit activities that are likely to facilitate the irregular outward movements of people.

The legislation on migrant smuggling in the Maghreb departs to a significant extent from the international and European legal framework. Several aspects of this legislation are contentious, with

⁵⁷ The difficulty to establish the intention to gain some kind of benefit or the existence of an agreement to receive a payment for the smuggling services provided can, for instance, stem from its "invisibility" or the shortcomings in investigation especially at borders. See Aljehani 2015: 126-130.

⁵⁸ A recent study commissioned by the Civil Liberties, Justice & Home Affairs (LIBE) Committee of the European Parliament highlights a knowledge gap regarding the criminalisation of migrant smuggling and humanitarian assistance due to the limited data available on the implementation of the Facilitators' Package across member states. See Carrera, Guild, Aliverti, Allsopp, Manieri and LeVoy, 2016.

⁵⁹ Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, 19 June 1990.

⁶⁰ See Guild, 2010: 39.

⁶¹ In particular, the maximum prison sentence was increased from 1 to 5 years by the 2008 reform. See Kerdoum, 2009.

some provisions even featuring characteristics typical of exceptional laws.⁶² In this context, then, the patent questioning of the notion of migrant smuggling appears only as one of the controversial features of the framework – yet an influential one, since the entire criminal regulation of the matter proceeds from it.

The relevance of the intent element in the smuggling operations has more recently found confirmation also on the EU side. The Action Plan against Migrant Smuggling set out by the Commission for the years 2015-2020 announced the reform of the current legislation in the sense of “avoiding risks of criminalisation of those who provide humanitarian assistance to migrants in distress.”⁶³ Moving the focus onto the highly profitable business that the smuggling of migrants represents, the EU seems now resolved to embrace a stance on the issue that is more consistent with the international view of the phenomenon.

Conclusions

The localisation of the international migration norms examined in this paper emerges as a distinctive feature of the most recent changes enacted in the Maghreb states’ migration laws. As a result, the relevant legal framework in the region seems to have converged towards the same restrictive and repressive trends that increasingly characterise the regulation of migration-related issues worldwide. In doing so, it also appears to meet the EU calls for stemming migration inflows to Europe, as the departures from North African shores are hindered by law. Moreover, far from being limited to “law in books”, this portrayal is corroborated by the action of law enforcement and judicial authorities. Public statements,⁶⁴ media outlets⁶⁵ and published case-law⁶⁶ reveal, in fact, how the apprehension and conviction of migrants leaving North African shores in an irregular way are common practice. Although this enforcement of the law may conveniently change according to political priorities – which may be facilitated by the weak independence of the judiciary – it nevertheless shows that these reforms have found concrete application, and are not just apparent responses to the EU’s pressures.

Notably, this localisation of international norms not only threatens the fundamental rights of migrants, but also purposely hampers the emigration of nationals. This represents an outstanding shift in the migration policy of the Maghreb states, which have most frequently seen the emigration of their citizens as a relief from domestic unemployment and an instrument of national development.⁶⁷ Such shift may well proceed from the intent of enhancing the authoritarian control over society. Dissidents may for instance resort to (irregular) exit from the country as a way to escape the repression of

⁶² This is especially the case of the law enacted in Tunisia in 2004 that criminalises a wide range of conducts and prescribes harsh penalties. For a thorough legal examination of its provisions see Ben Achour, 2014.

⁶³ EU Action Plan Against Migrant Smuggling (2015-2020), COM (2015) 285 final, European Commission, 2015.

⁶⁴ Several communications from Tunisian ministries and public bodies concerning data on apprehensions for irregular exit and migrant smuggling are reported, for example, in Boubakri, 2010: 52.

⁶⁵ The association Algeria Watch, among others, keeps track of the “crime of harraga” (irregular emigration) by collecting and republishing, on a regular basis, the relevant articles appearing in the Algerian press. See <http://www.algeria-watch.de>.

⁶⁶ Moreover, the legal qualification of criminal acts, and the interpretation and enforcement of laws by courts appear at times problematic. In Tunisia, for instance, notwithstanding the opposite position held by the Court of Cassation, lower courts have on several occasions convicted Tunisian nationals that had irregularly left the country for the offence of migrant smuggling on the basis of the 2004 Law. In other words, irregular migrants have been condemned for being responsible of their own smuggling. For references to rulings and their analysis, see Ben Achour, 2011: 16-17. The same use of the 2004 provisions on migrant smuggling to convict irregular Tunisian emigrants is confirmed by interviews reported in Hendow, 2013.

⁶⁷ See Natter, 2014.

national authorities.⁶⁸ Similarly, the criminalisation of migrant smuggling, as it is conceived of in Algeria, Morocco and Tunisia, is likely to affect those organisations of civil society that provide assistance to migrants. In this respect, however, the considerable pressure exerted by the EU and its member states cannot be overlooked. The accelerated conclusion of readmission agreements between the Maghreb and European states in the last two decades has in fact generated, or considerably increased, the costs associated to the irregular presence of citizens abroad. Similarly to the reasons that have led the Maghreb states to engage in readmission arrangements, the rationale for such modification of the emigration policy lies in the entanglement of the EU's restrictive immigration policies, with the advantages that the Maghreb countries can obtain in exchange for their cooperation. Against a backdrop of increasing pressures from the outside, then, making an instrumental use of international legal norms, even though at the expense of nationals' emigration, may contribute to securing other major benefits.

Notwithstanding the proliferation of norm socialisation *fora* and the EU's activism as rule promoter, the Maghreb reforms have also sharpened the distance from international law and, though to a less extent, from the EU *acquis*, as regards the right to exit and the criminalisation of migrant smuggling. The Maghreb convergence towards restrictive outcomes as to migratory policies is thus not associated to legal norm compliance. This is connected to the migratory profile of the Maghreb countries, which are predominantly an origin and transit area for migrants (even though they are increasingly becoming a destination as well). While worldwide restrictive and repressive migratory policies aim at reducing *immigration*, i.e. the foreigners' admittance into the state's territory, in the Maghreb, migratory policies of the same nature are equally geared at reducing *emigration*. As a consequence, the EU's calls to secure stricter controls on migrant movements have been accommodated by the Maghreb countries, but with the adoption of legal provisions departing from the EU and international legal framework. Without denying the Maghreb states' autonomy, such accommodation appears as the predictable result of the pressures exerted by the EU, more concerned about recruiting its neighbours to achieve its migration policy goals than spreading its own and international legal standards. In fact, the localisation of international norms operated in the Maghreb conveniently matches the EU's interests in outsourcing border control on persons: the legal measures adopted in the Maghreb impinge on the number of departures from North African countries in a way that is likely to reduce migrant arrivals in Europe. This is also confirmed by the increasingly vocal calls by the EU and its member states for sending and transit countries to stem migrant arrivals to Europe.⁶⁹

Ultimately, the legal regulation of migration-related issues in the Maghreb appears to resonate with the conceptualisation of the EU as a "normative empire".⁷⁰ As The Union's "action of transferring EU rules and practices beyond its borders" primarily serves its economic and security interests vis-à-vis the neighbourhood, this normative behaviour is considerably reduced when it comes to spreading norms that run against its interests. In particular, the EU's normative behaviour that translates into the transfer of its model of migration management appears to be limited to those rules and practices that fit its agenda of reducing migrant arrivals in Europe.

⁶⁸ This was the case of the uprisings that took place in 2008 in the mining area of Gafsa in Tunisia. See Cassarino, 2014: 109-110.

⁶⁹ To cite just few examples that show the climax in public statements and commitments: the Union's call on Morocco to adopt visa requirements for third country nationals (especially those from West Africa) and implement measures preventing the illegal migration of aliens *transiting* through Morocco, expressed in the 1999 Morocco Action Plan and elaborated by the High-Level Migration Working Group, a body created within the EU Council; the Nice declaration issued by the Conference of the Interior Ministers of the Western Mediterranean (CIMO) in 2006, praising the North African countries' efforts at stemming illegal *emigration* towards Europe; and finally the most recent EU-Turkey agreements that foresee the end to, or at least a substantial reduction of irregular crossings between Turkey and the EU.

⁷⁰ Del Sarto, 2016.

As regards migration, in fact, a tension may arise between reducing unwanted migration flows and exporting international and European legal standards that constrain the movements of people within strict, yet human rights compliant rules. In the case of the Maghreb countries, such tension, coupled with the legislative attitude of autocratic regimes, has finally resulted in departure from the very norms on international migration that these countries were urged (by the EU) and compelled (by international commitments) to adhere to and adopt into domestic legislation.

References

- Alenikoff, Alexandre T. (2007), International Legal Norms on Migration: Substance without Architecture, in Cholewinski Ryszard, Richard Perruchoud and Euan MacDonald, *International Migration Law: Developing Paradigms and Key Challenges*, The Hague: T.M.C. Asser Instituut, 467-479
- Aljehani, Abdelnaser (2015), The Legal Definition of the Smuggling of Migrants in Light of the Provisions of the Migrant Smuggling Protocol, *The Journal of Criminal Law*, 79(2): 122-137
- Archaya, Amitav (2004), How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism, *International Organization*, 58(2): 239-275
- Belguendouz, Abdelkrim (2003), Le Maroc non africain gendarme de l'Europe? Alerte au projet de loi n°02-03 relative à l'entrée et au séjour des étrangers au Maroc, à l'émigration et à l'immigration irrégulières!, Rabat: Imprimerie Beni Snassen
- Belguendouz, Abdelkrim (2005), Expansion et sous-traitance des logiques d'enfermement de l'Union européenne : l'exemple du Maroc, *Cultures & Conflits*, 57: 155-219
- Benacchio, Gian Antonio and Barbara Pasa (2005), *A Common Law for Europe*, Budapest; New York: Central European University Press
- Ben Achour, Souhayma (2011), Le droit tunisien face à la traite des personnes et au trafic de migrants, *Analytic and Synthetic Notes – Legal Module*, CARIM-AS 2011/47, Florence: European University Institute
- Ben Achour, Souhayma (2014), Le cadre juridique des migrations clandestine en droit tunisien, *Revue Tunisienne des Sciences Juridiques, Politiques et Sociales*, 1: 89-116
- Berriane, Mohamed, Hein de Haas and Katharina Natter (2015), Introduction: Revisiting Moroccan Migrations, *Journal of North African Studies – Special Issue: Revisiting Moroccan Migration*, 20(4): 503-521
- Boister, Neil (2003), Transnational Criminal Law?, *European Journal of International Law*, 14(5): 953-976
- Boswell, Christina (2003), The 'External Dimension' of EU Immigration and Asylum Policy, *International Affairs*, 79 (3): 619-638
- Boubakri Hassen (2010), Tunisie. Migration, marché du travail et développement, *ILO Document de travail (Institut International d'Etudes Sociales)*
- Carrera Sergio, Elspeth Guild, Ana Aliverti, Jennifer Allsopp, Maria Giovanna Manieri and Michele LeVoy (2016), Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants, *European Parliament, Directorate-General for internal policies, Policy Department C: Citizens' Rights and Constitutional Affairs*
- Cassarino, Jean-Pierre (2005), Europe's Migration Policy in the Mediterranean: An Overview, *Analytic and Synthetic Notes – Political and Social Module*, CARIM-AS 2005/10, Florence: European University Institute
- Cassarino, Jean-Pierre (2014), Channelled Policy Transfers: EU-Tunisia Interactions on Migration Matters, *European Journal of Migration and Law*, 16: 97-123
- Cherti, Myriam and Michael Collyer (2015), Immigration and Pensée d'Etat: Moroccan Migration Policy Changes as Transformation of 'Geopolitical Culture', *Journal of North African Studies – Special Issue: Revisiting Moroccan Migration*, 20(4): 590-604
- Chetail, Vincent (2014), The Transnational Movement of Persons under General International Law - Mapping the Customary Law Foundations of International Migration Law, in Vincent Chetail and

- Céline Bauloz (eds), *Research Handbook on International Law and Migration*, Cheltenham: Edward Elgar Publishing, pp. 1-72
- Chetail, Vincent (2003), Freedom of Movement and Transnational Migrations: A Human Rights Perspective, in Chetail Vincent and Alexandre T. Alenikoff (eds), *Migration and International Legal Norms*, The Hague : T.M.C. Asser press, 47-60.
- Collyer, Michael (2008), Emigration, Immigration, and Transit in the Maghreb, in Zoubir Yahia H. and Amirah-Fernández Haizam (eds), *North Africa. Politics, Region, and the Limits of Transformation*. London; New York: Routledge, 159-178.
- Cortell, Andrew P. and James W. Jr. Davis (2000), Understanding the Domestic Impact of International Norms: A Research Agenda, *International Studies Review*, 2(1): 65-87
- Council of the European Union (2005), A Strategy for the External Action of JHA: Global Freedom, Security and Justice, Brussels, 15446/05, 6 December 2005
- de Haas, Hein (2005), Morocco: From Emigration Country to Africa's Migration Passage to Europe, Migration Information Source, Migration Policy Institute. Available at www.migrationinformation.org.
- de Haas, Hein (2007), Morocco's Migration Experience: A Transitional Perspective, *International Migration*, 45(4), 29-70
- Del Sarto, Raffaella A. (2010), Borderlands: The Middle East and North Africa as the EU's Southern Buffer Zone', in Dimitar Bechev and Kalypso Nicolaidis (eds.), *Mediterranean Frontiers: Borders, Conflicts and Memory in a Transnational World*, London: I.B. Tauris, 149-167
- Del Sarto, Raffaella A. (2016), Normative Empire Europe: The European Union, its Borderlands, and the 'Arab Spring', *Journal of Common Market Studies*, 54(2): 215-232
- European Commission (2015), EU Action Plan Against Migrant Smuggling (2015 - 2020), COM(2015) 285 final, 27 May 2015
- Finnemore, Martha and Kathryn Sikkink (1998), International Norm Dynamics and Political Change, *International Organization*, 54 (4): 887-917
- Freyburg, Tina, Sandra Lavenex, Frank Schimmelfennig, Tatiana Skripka and Anne Wetzel (2015), *Democracy Promotion by Functional Cooperation. The European Union and its Neighbourhood*, New York: Palgrave Macmillan
- Guild, Elspeth (2010), Criminalisation of Migration in Europe: Human Rights Implications, *Issue paper – Council of Europe, Commissioner for Human Rights*
- Guild, Elspeth (2013), The Right to Leave a Country, *Issue paper – Council of Europe, Commissioner for Human Rights*
- Harvey, Colin and Robert P. Jr. Barnidge (2005), The Right to Leave One's Own Country Under International Law, Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration
- Hendow, Maegan (2013), Tunisian Migrant Journey: Human Rights Concerns for Tunisians Arriving by Sea, *Laws*, 2(3): 187-209
- Kerdoum, Azzouz (2009), La loi 08-11 sur la condition des étrangers: mutation des règles juridiques algériennes et leur impact sur la migration irrégulière, *Analytic and Synthetic Notes – Legal Module, CARIM-AS 2009/06*, Florence: European University Institute
- Khrouz, Nadia, Adila Ouardi and Hicham Rachidi (2008), Le cadre juridique relatif à la condition des étrangers au regard de l'interprétation du juge judiciaire et de l'application du pouvoir exécutif,

- GADEM - Groupe Antiraciste d'Accompagnement et de Défense des Etrangers et Migrants, <http://www.gadem-asso.org/-Publications-du-GADEM>
- Khrouz, Nadia (2013), "Politiques" publiques et présence des étrangers au Maroc, *Farzyat/Inégalités*, 9 September 2013, available at <http://www.farzyat.org/politiques-publiques-et-presence-des-etrangers-au-maroc>
- Khrouz, Nadia (2015), Nouvelle politique d'immigration : entre régularisation, intégration et lutte contre la migration irrégulière, *Edito – Centre Jacques Berque*, available at <http://www.cjb.ma/les-rééditions-du-cjb/item/2927-nouvelle-politique-d-immigration-entre-regularisation-integration-et-lutte-contre-la-migration-irreguliere.html>
- Lavenex, Sandra (2002), EU Trade Policy and Immigration Control. In Lavenex Sandra and Uçarer Emek M. (eds), *Migration and the Externalities of European Integration*, Lanham Md.: Lexington Books, 161-178.
- Lavenex, Sandra and Rachel Stucky (2011), 'Partnering' for Migration in EU External Relations, in Kunz Rachel, Lavenex Sandra and Panizzon Marion (eds), *Multilayered Migration Governance. The Promise for Partnership*, Abingdon, Oxon ; New York : Routledge, 116-142
- Lavenex, Sandra and Nicole Wichmann (2009), The External Governance of EU Internal Security, *Journal of European Integration*, 31(1): 83-102
- Lavenex, Sandra and Frank Schimmelfennig (2009), EU Rules Beyond EU Borders: Theorizing External Governance in European Politics, *Journal of European Policy*, 16(6): 791-812
- Natter, Katharina (2013), The Formation of Morocco's Policy Towards Irregular Migration (2000-2007): Political Rational and Policy Process, *International Migration*, 52(5): 15-28
- Natter, Katharina (2014), Fifty years of Maghreb Emigration. How States Shaped Algerian, Moroccan and Tunisian Emigration, *International Migration Institute Working Paper*, 95
- Perrin, Delphine (2004), La nouvelle politique juridique de l'Europe en matière de contrôle et de limitation des migrations, *L'Année du Maghreb*, I: 117-137
- Perrin, Delphine (2005), Le Maghreb sous influence: le nouveau cadre juridique des migrations transsahariennes, *Maghreb-Machrek*, 185: 59-80
- Perrin, Delphine (2008), L'étranger rendu visible au Maghreb. La voie ouverte à la transposition des politiques juridiques migratoires européennes, *Asylon(s)*, 4, <http://www.reseau-terra.eu/article770.html>
- Perrin, Delphine (2009), Sémantique et faux-semblants juridiques de la problématique migratoire au Maghreb, *Migrations Société*, 1(123-124): 19-49
- Perrin, Delphine (2015), Regulating Migration and Asylum in the Maghreb. What Inspirations for an Accelerated Legal Development?, in Ippolito Francesca and Seline Trevisanut (eds), *Migration in the Mediterranean*, Cambridge: Cambridge University Press, 192-214
- Plender, Richard (1987), The Right to Leave Any Country Including One's Own, in Butler William E. (ed), *International Law and the International System*, Dordrecht; Boston: M. Nijhoff, 135-153
- Radeljic, Branislav (2014), The European Neighbourhood Policy and Its Capacity to Manage Mobility and Migration, in Walton-Roberts Margaret and Hennebry Jenna (eds), *Territoriality and Migration in the E.U. Neighbourhood*, NY London: Springer, 193-208
- Risse, Thomas and Kathryn Sikkink (1999), The Socialization of International Human Rights Norms into Domestic Practices: Introduction, in Risse Thomas, Stephen C. Ropp, Kathryn Sikkink (eds), *The Power of Human Rights International Norms and Domestic Change*, New York: Cambridge University Press, 1-38

- Ross, Christof and Natascha Zaun (2014), Norms Matter! The Role of International Norms in EU Policies on Asylum and Immigration, *European Journal of Migration and Law* 16 (1): 45-68
- Sedelmeier, Ulrich (2011), Europeanisation in New Member and Candidate States, *Living Reviews of European Government*, 6(1): 1–52
- Strasbourg Declaration on the Right to Leave and Return (1987), *Human Rights Law Journal* 8: 478-484
- Trauner, Florian and Sarah Wolff (2014), The Negotiation and Contestation of EU Migration Policy Instruments: A Research Framework, *European Journal of Migration and Law* 16 (1): 1-18
- Twinning, William (2004), Diffusion of Law: A Global Perspective, *The Journal of Legal Pluralism and Unofficial Law*, 36(49): 1-45
- Twinning, William (2005), Social Sciences and Diffusion of Law, *Journal of Law and Society* 32(2): 203-240
- United Nations (2004), Legislative Guides for the Implementation of the United Nations Convention against Organised Crime and the Protocols thereto
- United Nations (2006), *Travaux préparatoires* of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto
- Zeghib, Hocine (2009), Les étrangers en Algérie: quelle statut juridique?, *Naqd*, 1 (26-27): 73-85

Author contacts:

Ylenia Rocchini

Robert Schuman Centre for Advanced Studies

European University Institute

Villa Schifanoia

Via Boccaccio, 121

I-50133 Firenze

Email: Ylenia.Rocchini@EUI.eu