

MIGRATION POLICY TRANSFER TO “DISOBLIGING” NEIGHBOURS: UNDERSTANDING EU RELATIONS WITH LIBYA AND RUSSIA

Oleg KORNEEV*
Emanuela PAOLETTI**

The aim of this chapter is to compare the interaction between the EU with Libya and Russia between the late 1990s until 2011, in the context of migration governance in the European “neighbourhood”, and, through the concept of policy transfer, understand the extent to which they invite a broader definition of the European neighbourhood. This comparison builds on crucial similarities between these two countries. First, home to considerable oil and gas reserves, both Libya and Russia have been major migrant receiving countries with high demand in labour, in contrast to other countries in the EU neighbourhood such as Algeria and Morocco. (1) Second, since the early 2000s, the EU has viewed both as key transit countries for irregular migrants heading toward the EU, and has been willing to use these countries as its buffer zones. Third, starting from the late 1990s to 2011 for Libya and 2013 for Russia, both countries were key geopolitical partners for the EU. Despite having different bargaining positions, from EU perspective, cooperation with Russia and Libya was key since it considerably affected EU migration management capacities. Beyond the purview of established multilateral fora, the EU has engaged in close relations with Russia and Libya despite their not being parties to European Neighbourhood Policy (ENP). The fact that the two countries did not partake in the ENP is central to our analysis.

* CERAL, University Paris 13 (France) and Laboratory for Social Anthropological Research, Tomsk State University (Russia). Funding statement: Research for this chapter was supported by the French National Research Agency through its programme Hosting High Level Researchers (grant number ANR-16-ACHN-0034) and the “Tomsk State University competitiveness improvement programme” (grant number 8.1.27.2018).

** Refugee Studies Centre, University of Oxford (United Kingdom).

(1) Al-Atrash, A., Maghur, A., Nafad, A. O., “Libya”, in Fargues, P. (ed.) *EU Neighbourhood Migration Report*, San Domenico di Fiesole (FI), Robert Schuman Centre for Advanced Studies, European University Institute, 2013, p. 127-142.

The ENP, targeting Eastern Europe, Southern Caucasus, as well as the Southern and Eastern Mediterranean, (2) has attempted to put under the same umbrella countries that have very little in common. Various scholarly works focusing on the assessment of the ENP as a policy transfer instrument, have generally done this through comparisons either between ENP countries or between an ENP country to a non-ENP country. (3) In this chapter, we attempt a comparison of two non-ENP countries that are, nonetheless, important EU neighbours. To use the terminology from experimental sciences, (4) such a research design allows us to comparatively examine what happens within the “control group” (countries beyond the ENP remit) instead of only comparing dynamics in the “treatment group” (countries affected by the ENP) and how the “treatment” and “control” groups compare to each other.

In this context, the chapter seeks to explain how Libya and Russia contributed to, and were deeply implicated in, the development of EU neighbourhood. This perspective builds on the proposition that the interaction with countries that influence so significantly migration patterns to the EU and yet are not fully ENP members has much to say about EU neighbourhood strategy and impact. In particular, we seek to answer three questions: 1. How have main migration issues been negotiated? 2. What characterises EU relations with Russia and Libya and what are their similarities and differences? 3. How can we understand the patterns of bilateral collaboration and what do they tell us about shifting asymmetries in power relations? To unpack these questions we shall recur to the notion of policy transfer, that we shall define below.

This chapter is divided into four sections. First, we review the relevant literature and define the concept of policy transfer. In elaborating the ideas central to this endeavour, we present the analytical

(2) European Commission (2003) “Wider Europe neighbourhood: a new framework for relations with our eastern and southern neighbours”, COM (2003) 104 final, 11 March 2003.

(3) Bicchi, F., “The impact of the ENP on EU-North Africa relations: the good, the bad and the ugly”, in Whitman, R., Wolff, S., (eds), *The European Neighbourhood Policy in Perspective: Context, Implementation and Impact*, Basingstoke, Palgrave Macmillan, 2010; Korneev, O., “Primus inter pares? The EU’s justice and home affairs policies in its Eastern European Neighbourhood”, InBev-Baillet Latour Working Paper no. 32, Leuven, Catholic University of Leuven, 2008; Zhyznomirska, L., “The European Union’s ‘Home Affairs’ Model and its European Neighbours: Beyond the ‘Area of Freedom, Security and Justice’?”, *Comparative European Politics*, 9 (4-5), 2011, p. 506-523.

(4) Hinkelmann, K., Kempthorne, O., *Design and Analysis of Experiments*, Volume I: *Introduction to Experimental Design*, Hoboken, Wiley, 2nd ed., 2008.

framework that we employ to explain the selected case-studies. In the two sections that follow, we trace the negotiations on migration between the EU and Russia and those between the EU and Libya and highlight differences and similarities. The analysis on Libya ends with the 2011 revolution while the one on Russia covers events until the end of 2013. The temporal focus is dictated by the fluid nature of ongoing events in Libya and by the volatile dynamics of EU-Russia relations. In the case of Libya, the democratic impasse since the demise of Qaddafi strongman rule and related re-definition of the patterns of interaction with the EU make it impossible to entertain a thorough analysis of EU-Libyan relations. Likewise, the crisis in EU-Russia relations following the events in Ukraine means that only future research will be able to investigate trends and patterns in their relations since 2014. Here, we probe into the dynamics of policy transfer in the form of either policy acceptance or resistance manifested by EU counterparts. Special attention is given to bargaining dynamics and policy outcomes in such areas as readmission, visa facilitation and border management. Because of our concern with the mechanics of engagement, we structure the discussion around these areas of cooperation rather than the analytical categories of policy transfer. Nonetheless, the empirical discussion intends to unearth the way in which policy transfer occurs. The section will show how agendas, problems and solutions in EU cooperation with Russia and Libya are comparable, though different, insofar as they are mutually constituent rather than unilaterally driven by the EU.

The fourth section reflects on the evolving meaning of the “neighbourhood” through the lens of formal, informal and ad hoc methods of cooperation on migration. Representing outliers or “outsiders” (5) not only of the European integration process, but also of the ENP, the cases of Libya and Russia are markers of processes and norms redefining EU neighbourhood concept. In conclusion, we argue that the relative leeway enjoyed by Libya and Russia and the patterns of two-way transfer with the EU rest on the features that the two countries shared economically and politically, on their migration management capacities, as well as their not being formal neighbours of the EU, even though they belong to the EU’s “invented neighbourhood”. (6)

(5) Smith, K., “The outsiders: The European neighbourhood policy”, *International Affairs*, 81 (4), 2005, p. 757-773.

(6) The concept of the “invented neighbourhood” was elaborated by the team of the Migration Policy Centre at the European University Institute during its work on the CARIM-East

As it has been eloquently formulated by Zhyznomirska: “[...] the neighbourhood as an entity does not need to exist for a policy to be adopted: it can be « created » through the policy and for the sake of policy. The representation of a specific group of countries as « neighbouring » has made it possible to turn this « neighbourhood » into an object of governance by the EU. Moreover, the neighbourhood was invented through the discourse of danger and insecurity before the formal policy – the ENP – was introduced”. (7)

Overall, focusing on the role played by two “difficult” or even “disobliging” neighbours in the construction of EU neighbourhood, we intend to contribute to two strands of literature – on the policy transfer in the area of migration and on the role of “outsiders” in the evolution of EU neighbourhood policy. The expected contribution stems from the application of the concept of policy transfer to EU-Libya and EU-Russia relations. The concept shall help us appreciate the conditions of bilateral engagement and, thus, through their comparison, improve our understanding of the respective case studies. This chapter does not aim to make a theoretical contribution to literature on policy transfer, but rather, it invites critical reflection on the “invented” character of the EU neighbourhood, interdependent nature of EU neighbourhood policy, its paradoxes and emerging features. It also contributes to a broader discussion on the usefulness and efficiency of the ENP as a policy transfer framework.

1. Policy Transfer and its Discontents

In recent years, the political science literature on policy transfer has been burgeoning. (8) At the risk of simplification, it can be argued that policy transfer “focuses on policy content and on the role of agency in transferring ideas and practices from one time or

project (2011-2013). Their discussions and the original publication initiative “Inventing a European Neighbourhood: How Migration Shapes the Borderlands of Europe” put forward by Weinar, A., Fargues, P. and Jaulin, T. have greatly inspired this chapter.

(7) Zhyznomirska, L., “The European Union’s ‘Home Affairs’ Model and its European Neighbours: Beyond the ‘Area of Freedom, Security and Justice’?”, *Comparative European Politics*, 9 (4-5), 2011, p. 517.

(8) Duina, F., Lenz, T., “Regionalism and diffusion revisited: From final design towards stages of decision-making”, *Review of International Studies*, 2016, p. 1-15; Dolowitz, D. P., Marsh, D., “Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making”, *Governance*, 13, 2000, p. 5-23.

space to another”. (9) In particular, the understanding of policy transfer used in this chapter and its starting assumptions are located in the literature looking at the governance mode through which the EU attempts to transfer given rules to its neighbours. (10) The focus is on the adoption of EU rules in non-member states, i.e. their *institutionalization* at the domestic level. The process includes the transposition of EU legislation into domestic law, the restructuring of domestic institutions according to EU rules, or the change of domestic political practices according to EU standards. (11) Proponents of this concept in EU studies have often viewed policy transfer as a unidirectional rational process, whereby a policy mechanism is brought in by a policy transfer agent to a policy transfer recipient. (12) This framing stems, inter alia, from the fact that the approach has been applied to the study of EU enlargement and, in particular, to the process whereby the prospective of EU membership influences governance in the Central and Eastern Europe. (13) Against this backdrop, previous research has recognised the constraints on the EU and invited caution “in assuming the extent to which the EU has shaped governance overall”. (14)

Critiques of unidirectional approaches draw attention to the fact that the so-called “recipients” play an active role in this process either through wholehearted engagement with the policy transfer agent or through resistance to its policy transfer efforts. (15) An exemplary case study of resistance to EU policy transfer is how the fight against corruption endorsed by the EU in the South Caucasus has been transformed in the local context. (16) This chapter thus builds on the growing scholarship recognising that policy transfer is a complex and power-laden process instead of a straightforward

(9) Bache, I., Taylor, A., “The Politics of Policy Resistance: Reconstructing Higher Education in Kosovo”, *Journal of Public Policy*, 23 (3), 2003, p. 279-300.

(10) Schimmelfennig, F., Sedelmeier, U., “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe”, *Journal of European public policy*, 11 (4), 2004, p. 661-679.

(11) *Ibid.*, p. 670.

(12) Monar, J., “The EU as an International Actor in the Domain of Justice and HomeAffairs”, *European Foreign Affairs Review*, 9 (4), 2004, p. 395-415.

(13) Grabbe, H., “How does Europeanization affect CEE governance? Conditionality, diffusion and diversity”, *Journal of European Public Policy*, 8(6), 2001, p. 1013-31.

(14) *Ibid.*, p. 1014.

(15) Here we build on a key premise of social anthropology and, more specifically, post-colonial studies, according to which any expression of power inevitably produces resistance.

(16) Boerzel, T., Risse, T., “From Europeanisation to Diffusion. Introduction”, *West European Politics*, 35(1), 2012, p. 1-19.

A-to-B movement. (17) We apply the concepts of policy transfer, acceptance and resistance to unpack the complex give-and-take bargaining that defies the prevailing view of third countries as passive recipients of EU unilateral policies and of the externalising potential of EU migration policies.

In the text to follow, we use a simplified definition of policy transfer, as the process in which knowledge about policies and administrative arrangements in one political setting are used in the development of policies and practical measures in another political setting. (18) Institutional concepts of policy diffusion, convergence, lesson drawing, institutional isomorphism or policy translation could also be applied to this study. For example, policy translation (19) implies a more “localised” set of actors who “translate” and promote concepts, in other words “local” actors are rather active in this process; while policy diffusion (20) is often linked to actions of external actors, although “local” actors are also involved. However, essentially, these different concepts collapse into the notion of “policy transfer” which is the most straightforward way to say that a policy/concept/practice from a locality/polity/nation-state/international institution has been (either unchanged or modified) applied in another locality. Simply put, “policy transfer” is a more overarching concept, it is more often used by scholars and is better understood by non-specialist audiences; in other words, it is a more mainstream way of referring to mechanisms that are nuanced in the other aforementioned concepts. Therefore, for the purposes of internal consistency we shall focus on the notion of transfer. As conceptual framework, it allows us to understand and explain in a thrifty yet probing manner dynamics of reciprocity. How does the concept of policy transfer operate theoretically and empirically? Dolowitz and Marsh also explain: “Policy transfer is initiated by jurisdictions, international organisations, agencies, etc. in order to develop a policy that addresses a particular policy issue/prob-

(17) McCann, E., Ward, K., “Policy Assemblages, Mobilities and Mutations: Toward a Multidisciplinary Conversation”, *Political Studies Review*, 10 (3), 2012, p. 325-332.

(18) Dolowitz, D. P., Marsh, D., “Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making”, *Governance*, 13, 2000, p. 5.

(19) Mukhtarov, F., “Rethinking the travel of ideas: policy translation in the water sector”, *Policy & Politics*, 42 (1), 2012.

(20) Boerzel, T., Risse, T., “From Europeanisation to Diffusion. Introduction”, *West European Politics*, 35(1), 2012.

lem, although, of course, whether the data are used, or used as intended, depends on a range of factors associated with the policy-making environment and situation which are often beyond the control of those who initiated the transfer process. As such, the relationship between policy transfer and policy outcomes is a crucial one”. (21)

In this chapter we understand policy transfer as interlinked with the ability to implement central policy measures. (22) To do so, we elaborate on the notion of policy transfer and in particular policy acceptance or resistance. We argue that policy-transfer is a multi-vector process, insofar as the policy recipient may shift role to reverse the direction of the policy transfer or, at least, to adjust it to its own policy goals. Accordingly, the process may entail acceptance, i.e. the adoption of the given policy or resistance, i.e. rejection of a policy being transferred or transformation of its content. As argued by those who advocate the concepts of “policy diffusion” (23) or “policy translation”, (24) there is a need to account for the nuanced, multi-directional and culturally-contingent character of the process. (25) It involves “translation” of policies by local actors to local realities.

Looking at the varying degrees of policy transfer shall allow us to establish the relative coercive or voluntary nature of the process. (26) The focus of this chapter is on the way in which reciprocal interactions unfold. In particular, we examine how in the process whereby the EU engages with third countries, policies and practical measures of both parties undergo some transformations. Importantly, our concern is not with theoretical advancement of the concept of policy transfer but instead with the conditions at play in the comparative context. We examine and compare EU-Russia and EU-Libya engagements on migration

(21) Dolowitz, D. P., Marsh, D., “The Future of Policy Transfer Research”, *Political Studies Review*, 10, 2012, p. 340.

(22) Ellermann, A., “The Limits of Unilateral Migration Control: Deportation and Inter-State Cooperation”, *Government and Opposition*, 43 (2), 2008, p. 168-89.

(23) Boerzel, T., Risse, T., “From Europeanisation to Diffusion. Introduction”, *West European Politics*, 35(1), 2012.

(24) Mukhtarov, F., “Rethinking the travel of ideas: policy translation in the water sector”, *Policy & Politics*, 42 (1), 2012, p. 71-88.

(25) Duina, F., Lenz, T., “Regionalism and diffusion revisited: From final design towards stages of decision-making”, *Review of International Studies*, 2016.

(26) Dolowitz, D. P., Marsh, D., “Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making”, *Governance*, 13, 2000, p. 14.

until respectively 2013 and 2011 and focus on the notions of policy transfer and policy resistance and acceptance in the framework of the ENP. The latter has been conceptualised as an overarching external policy framework and process (27) aimed at creating – to borrow from social movements theory – political opportunity structures (28) necessary to transfer specific EU-led policies to the so-called “ring of friends” (29) or “circle of friends”. (30) The EU does not extend this policy framework to Russia and Libya. Russia has never been part of the ENP. Officially, the framework for cooperation with Russia is contained in the Partnership and Cooperation Agreement (1994), and this partnership was, until recently, based on discursive reciprocity, i.e. originating from both sides as opposed to unilateral in nature. Libya has been part of the ENP remit from the very start of the initiative, but de-facto Libya is not covered by any of the concrete mechanisms of the ENP, (31) despite the EU attempts to bring this partnership to life after the uprisings in 2011. Therefore, both Russia and Libya are beyond the remit of the ENP. The lack of framework notwithstanding, one witnesses intensive diverse and, yet under-researched, policy transfer processes in EU-Russia and EU-Libya interactions in the realm of migration governance.

2. Migration Policy Transfer: the Case of EU-Libya Engagement

In the brief empirical analysis that follows, we summarize the main events framing EU-Libyan relations over the 2000s until 2011, and examine how policy objectives of both parties changed over time. We focus on three main issues: readmission agreements,

(27) Keukeleire, S., MacNaughtan, J., *The Foreign Policy of the European Union*, Houndmills, Palgrave Macmillan, 2008.

(28) Tarrow, S., *Power in Movement: Social Movements and Contentious Politics*, Cambridge, Cambridge University Press, 1998.

(29) Smith, K., “The outsiders: The European neighbourhood policy”, *International Affairs*, 81 (4), 2005, p. 757.

(30) By and large “Circle of friends” is defined as a shared neighbourhood founded on common values (Cremona, M., Meloni, G., *The European Neighbourhood Policy: A Framework for Modernisation? EUI Working Papers Law 2007/21*, San Domenico di Fiesole (FI), European University Institute, 2007, <http://cadmus.eui.eu/bitstream/handle/1814/6976/LAW-2007-21.pdf?sequence=1&isAllowed=y>).

(31) Smith, K., “The outsiders: The European neighbourhood policy”, *International Affairs*, 81 (4), 2005, p. 760.

Libya’s cooperation with Frontex and Libya’s membership to the Barcelona Process. (32) In providing a succinct empirical account of the diplomatic exchanges on these three issues, we investigate the extent to which evolving knowledge of the respective interlocutors determined either the acceptance or resistance of policies from either side.

Well before EU sanctions were lifted, the EU was keen to normalize relations with Libya. In November 2002, the General Affairs and External Relations Council stated that it was “essential to initiate cooperation with Libya”. (33) At the end of 2004, the European Commission (EC) led a technical mission to Libya in order to explore concrete opportunities for further cooperation. (34) On 2-3 June 2005, the Justice and Home Affairs (JHA) Council committed to strengthen the cooperation with Libya endorsing an integrated approach to migration and human-rights conditionality. (35)

The rapprochement between Libya and the EU was influenced by concomitant developments in the Italian-Libyan relations. The discussions between Italy and Libya on migration controls started in the late 1990s. On July 4, 1998, a Joint Communiqué was signed and in the period following the signing of the agreement, a number of meetings between Italian and Libyan authorities on migration-related issues, among other things, took place. Between 2000 and December 2007, no formal agreements on migration were signed between the two countries. (36) Nevertheless, the discussions on migration continued, and a set of concrete actions was implemented. Of particular relevance are the measures informally agreed, in Tripoli on July 3, 2003. Reportedly, the two countries reached an agreement involving, among other things, the exchange of information on migrant flows

(32) It is noteworthy that although the EU insisted to obtain Libyan ratification of the 1951 Convention as a prelude to cooperation, cooperation started without a Libyan promise to ratify the convention.

(33) Consilium, General Affairs and external relations, 2463rd Council meeting, General Affairs, Brussels, 18 November 2002, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/73248.pdf.

(34) European Commission, *Technical Mission to Libya on illegal immigration*, 27 Nov-6 Dec 2004, 2005, <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>.

(35) Council of the European Union, *JHA Council adopts conclusions on the introduction of dialogue and cooperation with Libya on immigration issues*, 2005, <http://www.eu2005.lu/en/actualites/communiqués/2005/06/03jai-libye/>.

(36) Cuttitta, P., “Readmission and forcible return in the relations between Italy and North African Mediterranean countries”, paper presented at the Ninth Mediterranean Research Meeting, Florence, Montecatini Terme, 12-15 March 2008.

and the provision to Libya of specific equipment to control sea and land borders. (37)

Two subsequent agreements are noteworthy. On December 28, 2007, Italy and Libya signed an agreement on the joint patrolling of coasts, ports, and bays in northern Libya to prevent people-smuggling. (38) The agreement was the culmination of a tortuous ten-year long history of diplomatic exchange and included a number of formal and informal cooperative arrangements on migration, culture, colonial issues, and joint business ventures. It is against this background that the EU initiated formal discussions with Libya.

On 12 November 2008, the EU launched negotiations on the comprehensive Framework Agreement. This followed the settlement of the trial involving five Bulgarian nurses and one Palestinian doctor in 2007. Notoriously, the latter had been detained pending a death penalty over charges of having infected with HIV Libyan children in a hospital in Benghazi. When eventually the sentences were converted to life imprisonment and Libya acquiesced in European request to extradite the prisoners, the European Commissioner Waldner-Ferrero announced an enhanced relationship between the EU and Libya. The proposed framework agreement was intended to strengthen political dialogue, to manage migration and to develop trade and economic relations. The Framework Agreement was expected to provide “an opportunity to step up political dialogue between Libya and the EU”. (39) In other words, it was intended to give strategic direction and structure to the development of Libya-EU relations, while ensuring that they were conducted in respect for European values.

By November 2010, six of the ten chapters had been finalised, including the general principles of political dialogue. Yet difficulties emerged with the chapters relating to freedom, justice and security as well as migration. (40) As stated by Štefan Füle,

(37) Paoletti, E., *The Migration of Power and North-South Inequalities: The Case of Italy and Libya*, Basingstoke, Palgrave Macmillan, 2010.

(38) Gazzini, C., *Assessing Italy's Grande Gesto to Libya*, *Middle East Report*, 16 March 2009, www.merip.org/mero/mero031609.html.

(39) European Parliament, *Report, Plenary sitting with a proposal for a European Parliament recommendation to the Council on the negotiations on the EU-Libya Framework Agreement (2010/2268(INI))*, Committee on Foreign Affairs, RR452883EN.doc, PE452.883v02-00, 2010, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2010-0368+0+DOC+PDF+V0//EN>.

(40) European Parliament, *Motion for a resolution*, 15 June 2010, B7-0396/2010, 2010, www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+B7-2010-0396+0+DOC+PDF+V0//EN&language=EN.

European Commissioner for Enlargement and Neighbourhood Policy, Libya had agreed to establish a regular dialogue on human rights and fundamental freedoms, which was a key objective for the EC. (41) Yet three of the main issues at the core of the agreements on migration remained unresolved to the point that the European Commission had to revise its own policy objectives and accept Libya's agenda. The transformation of European policy-objectives and, as result, of the measures implemented with Libya can be understood as marker of gradual policy-transfer entailing resistance from Libya. The first example regards the negotiations on the readmission agreement.

By and large, in the relations between the EU and neighbouring countries, readmission agreements are considered a necessary tool for efficient management of migration flows into the EU. As a communication by the European Commission in 2011 stated, “since they should facilitate the swift return of irregular migrants, they are supposed to be a major element in tackling irregular immigration”. (42) This is true in the relations with North Africa in general and with Libya in particular. In its *Conclusion* on 18-19 June 2009, the Council of the European Union stated that “concluding the negotiations on the EC readmission agreements with key countries of origin and transit such as Libya and Turkey is a priority (43)”. In fact, readmission agreements were initially discussed as part of the Framework Agreement with Libya. Yet, despite European insistence, Libya refused to sign the readmission agreement.

In concomitance with the temporary closure of UNHCR's office in Libya on 9 June 2010, the EU and Libya began the seventh round of negotiations on migration and asylum. During this round of negotiations, the two sides signed a guidance programme which included priorities for the EU in its financial and technical contribution to Libya but left out the readmission clause. Shortly afterwards, the Commission announced that “the readmission of irregular migrants from third countries will not be retained in the negotiation in the aim

(41) European Parliament, *Debates*, Wednesday 19 January 2011, Strasbourg, 2011, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20110119+ITEM-013+DOC+XML+V0//EN>.

(42) European Commission, *Common Steps towards visa free short term travel for Russian and EU citizens (Russia- EU Visa dialogue)*, Brussels, 2011.

(43) Council of the European Union, *Presidency Conclusions*, 18/19 June 2009, 112255/2/09, Rev 2, Conclusion 2, https://www.consilium.europa.eu/uedocs/cms_data/docs/presdata/en/ec/108622.pdf.

to reach an agreement with Libya and finalise this negotiation”. (44) The renouncement of the readmission agreement was justified also by weak human rights framework in Libya. The following statement from the European Parliament is evidence of this: “The EU has requested a « readmission agreement » as part of the Framework Agreement, but Tripoli has no intention to accept it. Given the systematic disregard for human rights in Libya and the persistence of torture and death penalty, it is unconscionable that the Council and the Commission seek such an agreement to return people forcibly to Libya”. (45)

The European Parliament thus established that it was “absolutely unacceptable that Council and Commission go on seeking a readmission agreement with Libya. This goes against EU cores values and the EU Charter of Fundamental Rights”. (46) The negotiations on the readmission agreement point to a discrepancy between initial agenda and final outcome. Despite EU insistence, the issue was eventually dropped from the bilateral engagement. The EU yielding to Libyan requests can be taken as one instance of policy-resistance in so far as the EU retracted the centrality of a readmission agreement.

The second contentious issue regards the collaboration on external border management with Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the European Union. Established by the Council Regulation no. 2007/2004 of 26 October 2004, Frontex was tasked to “implement the operational aspects of external border management, including return of third-country nationals illegally present in the Member States”. (47) As stated in the Council Regulation, “effective control

(44) Council of the European Union, *Outcomes of proceedings, High Level Working Group on Asylum and Migration (HLWG)*, 12-13 July 2010, Brussels, 27 July 2010, 12423/10, LIMITE, JAI 648, ASIM 86, COAFR 279, www.statewatch.org/news/2010/jul/eu-council-hlwg-asylum-migration-outcomes-12423-10.pdf.

(45) Cuttitta, P., “Readmission and forcible return in the relations between Italy and North African Mediterranean countries”, paper presented at the Ninth Mediterranean Research Meeting, Florence, Montecatini Terme, 12-15 March 2008.

(46) European Parliament, *Report, Plenary sitting with a proposal for a European Parliament recommendation to the Council on the negotiations on the Eu-Libya Framework Agreement (2010/2268(INI))*, Committee on Foreign Affairs, RR452883EN.doc, PE452.883v02-00, 2010, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2010-0368+0+DOC+PDF+V0//EN>, p. 12.

(47) Official Journal of the European Union, *Council Regulation (EC) No. 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*.

and surveillance of external border is a matter of the utmost importance to Member States regardless of their geographical position”. (48) Since its inception, the agency was also mandated to cooperate with, inter alia, third countries in the area of external border management.

In the relations with Libya, both the EU and member states such as Italy had long called for Libya to join forces with Frontex to ensure coordinated control of sea borders. Yet Libya repeatedly refused to formalize relations with the European Agency and partake in the Frontex-led patrolling. (49) As the European Commission pointed out in 2008, while Frontex achieved “very positive results” on “day-to-day” cooperation with numerous third countries, dialogue with Libya was still lacking. (50) The importance of a possible Frontex-Libyan collaboration and the failure to seal an agreement are also evidenced by the following quote from Simon Busuttil, Member of the European Parliament and Head of the Maltese Delegation: “Unfortunately, [...] Frontex has not yet made enough effort. [...] An [...] important factor that requires attention is cooperation with Libya and other third countries which are the departure points for immigrants. Without the cooperation of these countries we will get nowhere”. (51) In fact, Frontex conducted operations in the Mediterranean without Libya’s collaboration. This is further evidence of policy resistance whereby the EU yielded to Libya’s determination not to join EU-led patrolling of sea borders. Bargaining outcomes in this area stem from the relative dependence of the European Commission on Libya’s willingness to engage.

The third issue at the centre of the EU-Libya cooperation/interaction relates to Libya’s membership to the then Barcelona Process. As the Council of the EU stated in 2005, Libya’s full integration into the Barcelona Process was “the overall objective of engagement with

(48) Council of the European Union, *Presidency Conclusions*, 18/19 June 2009, 112255/2/09, Rev 2, Conclusion 2,

https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/108622.pdf.

(49) FRONTEx, *Frontex-Led EU Illegal Immigration Technical Mission to Libya*, 28 May-5 June 2007, http://www.infinitoedizioni.it/fileadmin/InfinitoEdizioni/rapporti/LibyaMissionMayJune07R_eportFrontex.pdf

(50) European Commission, *Evaluation and future development of Frontex and Eurosur* P6_TA (2008)0633, European Parliament resolution of 18 December 2008 on the evaluation and future development of the FRONTEx Agency and of the European Border Surveillance System (Eurosur) (2008/2157[INI]), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:045E:0041:0047:EN:PDF>.

(51) European Parliament, *Debates*, Tuesday, 15 September 2009, Strasbourg <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20090915+ITEM-004+DOC+XML+V0//EN>.

Libya” and that “participation in the Barcelona Process remains subject to Libya’s formal application to the Process and acceptance of the whole Barcelona acquis”.⁽⁵²⁾ However, the European Commission was unable to fully entice Libya into multilateral engagement and eventually reconsidered its own objectives *vis-à-vis* Libya.

Since 2004, Libya was repeatedly invited, yet refused, to join first the Barcelona Process (Council of the European Union, 2004) and subsequently the Union for the Mediterranean (UfM) which by addressing development and employment indirectly covers issues related to migration. On 10 June 2008, Qaddafi opposed the proposals for the Union because it would harm Arab and African unity efforts. In his own words, “we are member states of the Arab League and also the African Union and we will not take any chances with damaging Arab or African Unity. [...] Our European partners need to understand that. We are in favour of partnership projects but they must take account of these red lines”.⁽⁵³⁾

By 2011, Libya had not yet committed to join the newly established Union for the Mediterranean. The reasons why Libya succeeded in overriding European initial priorities and foiling its agenda go beyond the initial purposes of this analysis. What is worth emphasising, however, is the tension between the EU’s objectives and dealing with a disobliging interlocutor. The following quote by Ana Gomes, member of the European Parliament and Rapporteur on Libya, bears testimony to this: “We are conveying a very clear message to the Council and to the Commission, which has the task of negotiation, but also to our Libyan interlocutors, on what points we believe are absolutely essential to be met if we are to achieve the improvements that we want to see in the bilateral relations, and also on the crucial question of respect for human rights in Libya. That message is very clear.”⁽⁵⁴⁾

These statements notwithstanding, the measures agreed between the EU and Libya expose the limited European clout as the EU was unable to fulfil its own objectives. Initial agenda priorities are at

(52) Council of the European Union, *JHA Council adopts conclusions on the introduction of dialogue and cooperation with Libya on immigration issues*, 2005, <http://www.eu2005.lu/en/actualites/communiqués/2005/06/03jai-libye/>.

(53) France24, *Qaddafi opposes Mediterranean Union plan*, 10 June 2008 <http://www.france24.com/en/20080610-khadafi-gaddafi-opposes-mediterranean-union-plan-libya>.

(54) See: European Parliament, *Debates*, Wednesday 19 January 2011, Strasbourg, 2011, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20110119+ITEM-013+DOC+XML+V0/EN>.

variance with the final outputs of the negotiations. On the one hand, Libya agreed to a number of requirements such as strengthening border controls and developing detention centres. Yet the EU was unable to institutionalise and control relations with its North African counterpart such as signing the readmission agreement with Libya. In turn, the EU acquiesced to Libya’s demand for an *ad hoc* arrangement beyond and above standard methods of engagement such as the Barcelona Process.

3. Migration Policy Transfer: EU-Russia Cooperation on Migration

In the absence of such an overarching – both ideological and material – external policy structure as the ENP, EU-Russia cooperation on migration has been to a large extent structured by what can be called “the visa issue”. Although, since the early 1990s, the bilateral agenda has been dominated by transit irregular migration and the need to improve border management cooperation, the symbolic meaning of the visa issue can hardly be overestimated. Moreover, the discussions on potential visa lifting have also made these other problems more visible and pressing. Beyond a mere dynamic of conditionality, the strive of the Russian authorities for the recognition of Russia’s special place and role among EU partners – the famous “strategic partnership” mantra – has defined much of what the Russian government has done to obtain a visa free regime with the EU. An important caveat: according to most experts as well as the EU official discourse, reaching a visa free agreement is not only in Russia’s but also in EU’s interests, in particular if one adopts a political economy perspective.⁽⁵⁵⁾ This is, however, a long-lasting process characterised by numerous deadlocks. But even if the end result of this process is far from clear, a number of cases of migration policy transfer have occurred on the way.

We discuss these cases through the lenses of the *Common Steps towards visa-free short term travel for Russian and EU citizens*

(55) Van Elsuwege, P., Fomina, J., Korneev, O., Sembaeva, A., Voynikov, V., *EU-Russia Visa Facilitation and Liberalization: State of Play and Prospects for the Future*, Berlin, EU-Russia Civil Society Forum, 2013.

(hereinafter – Common Steps) adopted in December 2011. (56) The Common Steps include a list of actions for both the EU and Russia as preparation for negotiations on the conclusion of a visa waiver agreement. The structure of the Common Steps is similar to the “Visa Liberalization Action Plans” (VLAPS) with the countries of the Eastern Partnership seeking for a visa free regime with the EU. However, the difference is not only in the name. This document has emerged as a product of negotiations between the European Commission and the Russian government. Hence, one crucial feature of the Common Steps is underestimated by many to-date analyses (57) – this document is, at least in principle, much less of a conditionality instrument and much more a reciprocal mechanism insofar as “instead of just presenting Russia with a set of conditions that need to be fulfilled in order to qualify for a visa-free regime (as the EU did in the Western Balkans, Moldova and Ukraine), the EU agreed to design a set of steps for both sides to take, which underscored the equality between the EU and Russia”. (58)

The overall conclusions of the EU monitoring groups involving representatives of EU Member States, the European Commission and specialized agencies have been positive as regards the implementation of the first three thematic blocks of the Common Steps concerned with issues of internal security. With regards to the first block, in particular, Russia has started issuing biometric passports using the standards of the International Civil Aviation Organization (ICAO). The respective Presidential decree No. 1709 (59) entered into force in January 2013. At the end of 2012, the Russian Parliament has also introduced several important legislative changes to the normative acts regulating migration control measures in Russia (60) that

(56) European Commission, *Common Steps towards visa free short term travel for Russian and EU citizens (Russia-EU Visa dialogue)*, Brussels, 2011.

(57) With a clear exception of Hernandez i Sagrera, R. and Potemkina, O., *Russia and the Common Space on Freedom, Security and Justice: Study*, Brussels, European Parliament, 2013.

(58) European Council on Foreign Relations *European Foreign Policy Scorecard 2012: Russia*. London.

(59) Ukaz Prezidenta Rossiiskoi Federatsii ot 29 dekabrya 2012, no.1709, « O pasporte grazhdanina Rossiiskoi Federatsii udostoveriyayuschem lichnost grazhdanina Rossiiskoi Federatsii za predelami territorii Rossiiskoi Federatsii soderzhaschem na elektronnom nositele informat-sii dopolnitelnye biometricheskie personalnye dannye ego vladeltsa », *Sobranie zakonodatelstva RF*. 31.12.2012, no. 53 (2), st.7861.

(60) Federalnyi zakon Rossiiskoi Federatsii ot 30 dekabrya 2012, no.320-FZ, “O vnese-nii izmeneni v Federalnyi zakon ‘O pravovom polozhenii inostrannykh grazhdan v Rossiiskoi Federatsii’”, *Sobranie zakonodatelstva RF*, 31.12.2012, no. 53(1), st.7645; Federalnyi zakon Rossiiskoi Federatsii ot 30 dekabrya 2012, no. 321-FZ, “O vnesenii izmeneniya v stat’yu

were in line with the prescriptions of the second thematic block of the Common Steps largely endorsed by the EU.

The most impressive progress has been achieved on the issue of readmission. Cooperation on readmission and related issues has come to dominate EU-Russia interactions in the sphere of migration since the move towards the development of the Common Space of Freedom, Security and Justice in 2003. Since 2006, when the EU-Russia readmission agreement was signed, its successful implementation has been defined by the European Commission as one of its top priorities, as well as a crucial pre-condition for talks on visa-free regime. It has later become a cornerstone of the Common Steps. The eventual transfer of readmission mechanism to the very core of the Russian migration policy is a prominent case of successful EU policy transfer.

Russia started implementing the Readmission Agreement in October 2007 – even in the absence of implementation protocols with EU Member States. It was the second country after Albania to do so. The Russian Federal Migration Service (FMS) established good working relations with its EU-based counterparts and cooperation in migrants’ identification and removal is progressing smoothly, (61) even though approximately 50% of all readmission applications from EU Member States to Russia are rejected by the FMS as ill-founded. (62) Importantly, as indicated by a representative of the European Commission, “Russia’s adherence to the EU-level readmission agreement has been instrumental in stimulating EU Member States to use this legal mechanism instead of other bilateral means”. (63)

Prior to the entry into force of the EU-Russia readmission agreement, EU Member States and Russia, similar to Eastern Partnership countries (64) used various legal mechanisms in their

26 Federalnogo zakona ‘O poryadke vyezda iz Rossiiskoi Federatsii i v’ezda v. Rossiiskuyu Federatsiyu’, *Sobranie zakonodatelstva RF*, 31.12.2012, no. 53(1), st.7646.

(61) Hernandez i Sagrera, R. and Potemkina, O., *Russia and the Common Space on Freedom, Security and Justice: Study*, Brussels, European Parliament, 2013.

(62) From informal consultations at the Russian FMS, February 2013.

(63) Coleman, N., International Relations Officer, European Commission, DG HOME: questions and answers section, *The Management of the External Borders of the EU and its Impact on the Human Rights of Migrants: The Italian Experience. A Consultation between the UN Special Rapporteur on the Human Rights of Migrants, Mr François Crépeau Civil Society, and Academia*, European University Institute, Florence, 3 October 2012.

(64) Brunarska, Z., Mananashvili S., Weinart, A., *Return, readmission and reintegration in the Eastern Partnership countries: an overview. CARIM-East RR 2013/17*, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI), European University Institute, 2013.

cooperation for expulsion purposes not limiting themselves to readmission procedures. Once the EU-Russia readmission agreement entered into force, Russia has been consistent in requesting EU Member States to cooperate under the EU-Russia readmission agreement instead of using other schemes for “return”. The lack of consistency in EU Member States’ use of EU-level readmission agreements were emphasized by the European Commission as a serious problem for the EU’s readmission policy in its evaluation report in 2011.⁽⁶⁵⁾ Therefore, the insistence of the Russian Federal Migration Service on the use of the EU-level readmission agreement has been important for the development of the EU’s readmission policy. Moreover, the Russian government has also concluded readmission agreements with major migrants’ origin and transit countries, most importantly in Central Asia, but also with Vietnam and Turkey, whereas negotiations were under way with Pakistan and Afghanistan. These were important steps, as is clear from the following statement by the Head of EU Delegation to Russia: “[We have] fears that a visa-free regime with Russia would lead to a large inflow of irregular migrants to the European Union, as well as to an increase in criminal activities. This is not really about [the fear of] Russian citizens. However, the transparency of your [Russian] southern borders creates a risk of increase in human and drug trafficking”.⁽⁶⁶⁾

Overall, the EU-Russia readmission agreement was characterized by a competent EU official as the only one that has been properly used in EU readmission policy.⁽⁶⁷⁾ This had to do with scale dynamics as regards Russia and, most importantly, with the need to extend the network of readmission agreements further from EU direct neighbours/partners to other countries in the world. Russia is the only country that has actually gone in this direction – its contribution to the “domino effect” in the proliferation of readmission agreements is obvious and this is something unique. The European

(65) European Commission, *Evaluation of EU Readmission Agreements*, COM (2011) 76 final, Brussels.

(66) Valenzuela, F., Interview to the *Komsomolskaya Pravda*, 6 May 2010, p. 2.

(67) Coleman, N., International Relations Officer, European Commission, DG HOME: questions and answers section, *The Management of the External Borders of the EU and its Impact on the Human Rights of Migrants: The Italian Experience. A Consultation between the UN Special Rapporteur on the Human Rights of Migrants, Mr François Crépeau Civil Society, and Academia*, European University Institute, Florence, 3 October 2012.

Commission has explicitly stated on many occasions that implementation of the EU-Russia readmission agreement would also be judged based on Russia's success in concluding readmission agreements with important countries of origin and transit, which is much more than just an effective implementation of the EU-Russia readmission agreement per se. Such dynamic of proliferation is not the case for Moldova or Ukraine.⁽⁶⁸⁾ Therefore, the comment mentioned here refers to a broader context of EU readmission policy – its disseminative ideology – in which Russia definitely plays a bigger role than any other Eastern Partnership or European Neighbourhood country.⁽⁶⁹⁾

In its *First Progress Report on the implementation by Russia of the Common Steps towards visa free short-term travel of Russian and EU citizens under the EU-Russia Visa Dialogue*, the European Commission modestly notes that “the EU-Russia readmission agreement functions satisfactorily”.⁽⁷⁰⁾ But a thorough analysis shows that EU-Russia cooperation on readmission presents a classical “impact case study” of EU policy transfer in migration sphere. This policy mechanism is now found not only in the relations between the policy transfer agent (the EU) and the recipient (Russia), but also in policies of the recipient towards other states. This is almost a unique case in EU readmission policy worldwide, and nothing similar has been manifested in EU cooperation with any of its “neighbours”.

Importantly, the success story of EU-Russia cooperation on readmission has only become possible due to another highly prominent case of policy transfer in relationships of the two partners. Only in this case, Russia has reversed the roles and pushed through a major novelty in EU external migration policy tool-box: it is in the context of EU-Russia negotiations on readmission, that the idea of visa facilitation has come to life. And the first ever EU visa facilitation

(68) It is important to note that whereas Ukraine under President Yanukovich was rather uncooperative on migration issues, Moldova was trying to develop its own network of readmission agreements but, as a small country, had little negotiating power.

(69) Korneev, O., Leonov, A., « Eurasia and Externalities of Migration Control: Spillover Dynamics of EU-Russia Cooperation on Migration », in Zaiotti, R. (ed.), *Externalizing Migration Management: Europe, North America and the Spread of « Remote Control » Practices*, London, Routledge, 2016, p. 154-176.

(70) European Commission, *First Progress Report on the implementation by Russia of the Common Steps towards visa free short-term travel of Russian and EU citizens under the EU-Russia Visa Dialogue*, COM (2013) 923 final, Brussels.

agreement – concluded with Russia in 2006 – has created a precedent for a series of similar agreements with ENP countries in the East. (71)

A much more politicised process, EU-Russia visa liberalization dialogue has been experiencing a lot of pressure from the general context of EU-Russia relations. Immediately after the disclosure of the Common Steps, (72) it has become obvious that this list of actions is not a *Road Map* or an *Action Plan* in the bureaucratic terminology of the European Commission, since it does not set any chronological prioritization for actions to be taken and gives no promise of consequences once the measures mentioned in the document would have been achieved. The Visa Liberalization Action Plans for Eastern Partnership countries contain more clearly defined benchmarks and the process of visa liberalization is more transparent. The Common Steps are more general in nature, which makes the process much more political, as it is not clear what level of implementation would be deemed sufficient. Importantly, the Common Steps represent a soft law instrument, which does not have binding legal power for the parties. According to its final provisions, once its implementation is completed, the Parties will decide, in accordance with their respective internal procedures, on starting negotiations on an EU-Russia visa waiver agreement. This means that full implementation of the Common Steps does not automatically result in visa free short travel. Further steps in the visa liberalization process will depend on the political decisions of the parties.

At the same time, a no-risk statement on the potential migration pressure from Russia to the EU expressed by EU representatives during the session of the EU-Russia Migration Dialogue in Kaliningrad (73) echoes several studies done to assess migration potential from Eastern Partnership countries to the EU in the possible absence of a visa regime. While studies produced by some of the EU security-oriented agencies, like Frontex, seem

(71) Trauner, F., Kruse, I., "EC visa facilitation and readmission agreements: a new standard EU foreign policy tool?", *European Journal of Migration and Law*, 10 (4), 2008, p. 411-438; Korneev, O., "Primus inter pares? The EU's justice and home affairs policies in its Eastern European Neighbourhood", *Bev-Baillet Latour Working Paper* no. 32, Leuven, Catholic University of Leuven, 2008.

(72) Initially, this was not a public document and this issue fuelled a very critical reaction from civil society.

(73) EU-Russia Dialogue on Migration and Asylum, Kaliningrad Session. 4-5 July 2013, http://www.fms.gov.ru/press/news/news_detail.php?ID=68343.

to be cautious in their forecasting and are rather alarmist as regards potential migration risks, research done within academia is sceptical about the high risk of increasing migration pressure from Ukraine or Moldova to the EU. (74) There has not yet been such a thorough study on Russia. However, already in 2002 in its very first reaction to President's Putin letter proposing to mutually abolish visas, the European Commission clearly identified two main problems that were supposed to be dealt with before the parties would start visa-free negotiations: crime and illegal migration. In particular, the European Commission has noted that “before the EU and Russia are able to identify and carry out the measures needed to set the conditions for abolishing the visa regime, co-operation on crime and illegal migration should be stepped up immediately including preparation of a readmission agreement”. (75)

These requirements put forward by the European Commission reflected the founding ideas and principles of the nascent common immigration policy of the European Union and, in particular, its impact on the EU relations with third countries. Politicization that has started years later was virtually absent in the first analysis that was instead formulated by the European Commission in a technical manner. At a later stage, the whole visa dialogue has been diverted from the prevention of irregular immigration risk, according to which a no- or low-risk migration scenario as regards a third country should be considered a sufficient ground for visa liberalization. The Commission's report from December 2013 (76) did not provide the necessary basis for the Council to give a green light for opening up negotiations on a visa-free regime with Russia. Here, the goals linked to constructing solid neighbourhood – implying the need to prioritize visa-free regimes with Moldova and Ukraine over the one with Russia – have taken priority over pragmatic approach that would normally lead to a visa-free regime.

(74) Weinar, A., Korneev, O., Makaryan, S., Mananashvili, S., *Consequences of Schengen Visa Liberalisation for the Citizens of Ukraine and the Republic of Moldova. Migration Policy Centre Research Report 2012/01*, San Domenico di Fiesole (FI), European University Institute, 2012; CASE, ENPI – *Costs and Benefits of Labour Mobility between the EU and the Eastern Partnership Partner Countries final reports*, Berlin, Case, 2013.

(75) European Commission, *Communication from the Commission to the Council “Kaliningrad: Transit”*, COM (2002) 510 final, Brussels, 18 September 2002.

(76) European Commission, *First Progress Report on the implementation by Russia of the Common Steps towards visa free short-term travel of Russian and EU citizens under the EU-Russia Visa Dialogue*, COM (2013) 923 final, Brussels.

4. Evolving Meaning of European Neighbourhood

In bringing together the strands of the empirical analysis, this section compares the relations between the EU and Libya with those between the EU and Russia and considers similarities and differences. Through this comparison, we seek to better understand the patterns of bilateral collaboration and shifting asymmetries in power relations.

The methods of cooperation between Libya and Russia differ in several respects. In the case of Russia, the EU has been able to negotiate a major readmission agreement, which came at the price of visa facilitation and a promise of visa liberalization that eventually had a spill-over effect in the neighbourhood. Therefore, the agreement on visa facilitation can be considered a case of reciprocal policy transfer with Russia's resistance to sign a readmission agreement being the reason for the emergence of an EU-wide visa facilitation mechanism. The reciprocity has been further emphasized with the adoption of the Common Steps. This document has identified more reciprocal mechanisms to be adopted by the both sides, which is reflected by the fact that the document does not include references neither to EU *acquis* nor to EU standards. The readmission agreement is however a case of one-way policy transfer which can be considered an example of wider "policy diffusion" (77) dynamics in so far as Russia has eventually pursued readmission agreements with third countries thus becoming a transferring actor seeking neighbouring countries to adopt similar policies.

In the case of Libya, however, the EU was less successful in transferring its practices. The readmission agreement proposed by the EU was eventually put off the table. Similarly, the EU proposals on joint border patrolling were never fully endorsed by Libya. In the Libyan case, there was significant alteration of either the EU agenda with Libya or of the EU approach to migration policy in general due to Libya's resistance. The two cases thus appear diverse. While the EU was able to "transfer" to Russia readmission agreements as well as negotiate visa-facilitations, thus triggering general policy acceptance, the case of Libya can be best qualified as policy-resistance. Yet, two cases share important affinities, such as Libya's and Russia's

(77) Boerzel, T., Risse, T., "From Europeanisation to Diffusion. Introduction", *West European Politics*, 35(1), 2012, p. 1-19.

capacities to direct bilateral discussions in line with their strategic priorities. In the remainder of this chapter, we shall explore the reasons behind differences and similarities. We shall do so by reflecting on three main factors: 1) the leeway of authoritarian governments, 2) the fragmented nature of EU institutions and 3) the presence of issue-linkages within the broader negotiations.

These factors come from different theoretical strands. The first relates to the political context and concerns largely the domestic costs of rule adoption. In line with the work of Schimmelfennig and Sedelmeier,⁽⁷⁸⁾ we will observe the extent to which ostensibly authoritarian governments turn down EU offers instead of accepting the political power costs of adopting liberal democratic rules. The second factor related to institutions is based on the scholarship establishing that institutions structure the context in which actors search for policy options shape.⁽⁷⁹⁾ Thirdly, issue-linkages refer to “the linking of separate items that appear on the agenda of the negotiators”.⁽⁸⁰⁾ It is based on the appreciation of the “changing knowledge and social goals” that define the content of the collaboration and has already been applied to policy transfer.⁽⁸¹⁾ In covering wide-ranging ground, these explanatory factors shall account for multi-faceted nature of the engagement and invite further reflection on the reciprocal nature of policy transfers. As we shall see, the first and third speak to commonalities while the second betrays some differences between the concerned parties.

First, both Russia and Libya had developed as relatively authoritarian regimes free of the constraints that normally characterize democratic institutions. At a minimum, from the perspective of Libya and Russia, methods of cooperation and actual policies could be both formal and informal and in general well beyond the purview of democratic checks and balances. In other words, limited domestic hurdles result in increased leeway in agenda-setting. Arguably, in the

(78) Schimmelfennig, F., Sedelmeier, U., “Governance by conditionality: EU rule transfer to the candidate countries of Central and Eastern Europe”, *Journal of European public policy*, 11 (4), 2004, p. 661-679.

(79) Bulmer, S., Dolowitz, D., Humphreys, P., Padgett, S., *Policy transfer in European Union governance: regulating the utilities*, London, Routledge, 2015, p. 5.

(80) Haas, E., “Why collaborate? Issue-linkage and international regimes”, *World Politics*, 32 (03), 1980, p. 357-405.

(81) Lavenex, S., Panizzon, M., *Multilayered Migration Governance: The Partnership Approach in the EU and Beyond*, Geneva, United Nations Research Institute for Social Development, draft paper, 2013.

case of Libya, the one-man rule certainly affected the course of diplomatic exchange and its instrumental use of migration as a bargaining chip. The absence of domestic opposition meant that the regime could handle negotiations unhindered by domestic factors that, by contrast, were hamstringing elected politicians reliant on different constituencies.⁽⁸²⁾ Similarly, constraints within the European institutions had an impact on the EU capacity to “transfer” its policies.

Increasing competences and leverage of different institutions have impacted the outcome of the negotiations. In both cases, the European Parliament acted as bulwark of human rights with special attention given to the treatment of third country nationals. However, the relative leverage of the European Parliament varied between the two cases. With regard to the collaboration with Libya, the European Parliament was critical about the possible use of readmission though it welcomed broader cooperation in the realm of border management. Tensions between different EU bodies were exacerbated, with the European Parliament taking a critical stance towards the European Commission. The fact that the European Parliament criticised the position of the Commission signals an important change in the competences of the European Parliament after the Lisbon Treaty.⁽⁸³⁾ To an extent, this explains the outcome of the negotiations. The fragmented and conflict-ridden political milieu weakened the European clout *vis-à-vis* Libya. This was not the case of EU-Russia negotiations where the European Parliament was less influential. However, during the debates on the readmission agreements with Russia in 2007 the European Parliament also voiced doubts about the legitimacy of such an agreement largely in relation to the human rights situation in Russia.⁽⁸⁴⁾

Thirdly, one important similarity likens the two case studies, namely the connection between migration and other strategic issues on the bilateral agenda such as business and energy market and broader bargaining patterns. In the case of Libya, the EU’s strong interest

(82) In Russia, there has been a consensus among all political forces that the visa free regime with the EU is desirable. However, some have criticised the readmission agreement as potentially too burdensome (Bordachev, T., “Toward a strategic alliance”, *Russia in Global Affairs*, vol. 4, no. 2, 2006, http://eng.globalaffairs.ru/number/n_6581).

(83) Héritier, A. Reh, C., “Codecision and its discontents: intra-organisational politics and institutional reform in the European Parliament”, *West European Politics*, 35 (5), 2012, p. 1134-1157.

(84) Ferrero-Waldner, B., *EU-Russia visa-facilitation and readmission agreements. Statement to the European Parliament plenary session*, Strasbourg, 14 February 2007.

to tap into Libya’s economic and energy potential heavily informed discussions on migration. (85) Libya was able to either withhold or contest some of the EU proposals on migration because of EU determination to pursue negotiations on other issues, *no matter what*. Simply put, Libya benefited from making negotiations on strategic issue contingent upon EU concession in the area of migration. (86) The relative dependence of the EU on Libya’s endorsement adds an element of complexity to our puzzle. EU’s susceptibility to Libya’s demand creates opportunities for policy-resistance by the latter. We also observe similar dynamics in the case of Russia with the EU relying on its interlocutor to control borders further afield and prevent irregular migration. The leeway that Libya and Russia enjoyed *vis-a-vis* the EU reflects two-way transfer and a complex landscape of mutual concessions. This process can be seen as prototype of reverse power relations that in turn implicates the significance of the neighbourhood policy. Not being formally a neighbour and, thus, not partaking the full gamut of ENP policies and programmes, is not determinative of the success or failure of policy transfer.

The differences in the EU cooperation with Russia and Libya as regards migration suggest that any analysis of EU external relations with third countries that builds primarily on general formal categories of “neighbours” and “non-neighbours” runs the risk of oversimplification. The above analysis shows that the absence of a formal “neighbour” status in two cases has had divergent effects as regards migration policy transfer. Whereas Libya has resisted to the majority of EU-driven initiatives, Russia has more often than not engaged with EU demands although sometimes tailoring them to its own needs within a wider migration and external policy agenda. The appreciation of the significant role of the two “outsiders” in the development of EU migration policy thus invites reflection on the added value of the ENP as a policy transfer stimulating framework. We are thus led to re-examine the meaning of neighbourhood and its significance in terms of policy formulation and policy outcomes. In thinking critically and beyond the formal boundaries of the European Neighbourhood the analysis calls for more research

(85) Bahgat, G., “The geopolitics of energy: Europe and North Africa”, *The Journal of North African Studies*, 15 (1), 2010, p. 39-49.

(86) Cuttitta, P., “Readmission and forcible return in the relations between Italy and North African Mediterranean countries”, paper presented at the *Ninth Mediterranean Research Meeting*, Florence, Montecatini Terme, 12-15 March 2008.

on the multifaceted web of power relations and the role of the ENP in it. Further research on the multi-vector influences in the way in which the EU cooperates with “non-neighbours” is necessary.

Conclusion

The main objectives of this article were to explore the ways in which migration has been negotiated in the cases of EU-Libya and EU-Russia relations, compare them and understand power asymmetries beyond the confines of ENP and through the lens of the concept of policy transfer. Our analysis reveals that despite the absence of ENP framework, sustained and wide-ranging interactions are at play. The final policy outcomes, however, are mixed.

In the case of Russia, the agreement on visa facilitation bespeaks reciprocal policy transfer with Russia’s resistance to sign a readmission agreement being the reason for the emergence of an EU-wide visa facilitation mechanism. Hence, the readmission agreement can be best defined as a case of “policy diffusion”. After sealing the agreement with the EU, Russia sought to establish similar readmission arrangements with neighbouring countries. We thus argued that Russia can be qualified as “transferring actor” shoving neighbouring countries into espousing similar policies. Russia had been acting with a view of policy transfer to third countries but for the EU this was a case of policy diffusion since EU policies have diffused beyond the immediate policy transfer interaction between the EU and Russia. The case of Libya differs insofar as the EU was unable to entice Libya into acquiring EU-driven migration policies. The proposals to conclude a readmission agreement, to carry out joint border patrolling and join the Barcelona Process met Libya’s opposition and were eventually abandoned. Notably, the EU was unable to secure Libya’s commitment to readmit migrants who had transited in Libya on their way to Europe.

Overall, the negotiations with Libya and Russia share two similarities and one difference. The first two rest on the political sway that authoritarian governments tend to enjoy and the strategic employment of the linkages between issues within the broader negotiations. By contrast, the fragmented nature of EU denotes a difference in Russia’s and Libya’s interactions with the EU. This confirms relevant academic works on the ENP. For example, Lavenex has documented

the “inherent limits on the EU’s capacity to act hierarchically” on immigration control. (87) In her view the limits stem from the partly intergovernmental structure of internal governance and the lack of resources to compensate for the distribution problems implied.

To an extent, these factors explain the scope of EU’s ability to achieve its objectives. They testify to the fluid dynamics of policy transfer. Despite the varying results ascribable to one-way or reciprocal transfer, resistance or diffusion of EU-led policies, the two cases are neither antithetical nor do they tally entirely. One main overarching reflection can thus be derived and this leads us back to the broader predicament of ENP. While there was no overarching scheme defining the relations of Russia and Libya with the EU, the two countries were involved in very close exchanges with the EU that normally one would expect to be the case for the countries engaged in the ENP framework. The contrast between the deep engagement of the EU with the disobliging nature of both interlocutors begs the question of the role, scope and effectiveness of the ENP. It was designed as a facilitative framework for EU policy transfer and was supposed to create scope conditions that would allow the “one size fits all” approach employed by the EU to impact very different recipient countries. However, scholars have noted that this EU strategy as well as EU attempt of constructing a secure “ring of friends” along its borders through an accelerated policy transfer facilitated by the ENP have mostly failed. (88) Transfer of particular policies and “best practices” from the EU to its neighbours has been successful in some cases and unsuccessful in others. In at least some of these “neighbours”, various endogenous factors have influenced policy transfer processes more significantly than the exogenous ENP. (89) Further investigation on these and similar outliers may help better inform policies towards members and non-members alike. In the current rapidly changing geopolitical context this becomes a particularly timely task.

(87) Lavenex, S., “A governance perspective on the European neighbourhood policy: integration beyond conditionality”, *Journal of European Public Policy*, 15 (6), 2008, p. 938-955.

(88) Blockmans, S., *The 2015 ENP Review: A policy in suspended animation. CEPS Commentary*, Brussels, CEPS, 2015.

(89) Boerzel, T. and Pamuk, Y., « Pathologies of Europeanization. Fighting Corruption in the Southern Caucasus », *West European Politics*, 35 (1), 2012, p. 79-97; Wunderlich, D., « Differentiation and Policy Convergence against Long Odds: Lessons from implementing EU migration policy in Morocco », *Mediterranean Politics*, 15(2), 2010, p. 249-272.

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