The Post-2015 European Border Regime. New Approaches in a Shifting Field

Il regime dei confini dopo il 2015. Nuovi approcci per un ambito di studi in evoluzione

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1. Introduction

1   To state, four years after the Summer of Migration, that the events of 2015 have had a profound and drastic impact on the European migration and border regime and thus on the European project as a whole seems obvious and self-evident. Next to the spectacle of Brexit with its very own entanglement with migration and borders, migration and its governance is still the main issue on the EU's political agenda, and it is a contentious issue in public European discourse. Since central policy initiatives have stalled in the run-up to the elections to the European Parliament, it is safe to assume that migration and borders will retain a prominent spot on the level of the EU and its member states.

2   Looking back to 2015 and its direct consequences, numerous reports by the media, human rights organisations, political parties and research institutions vividly describe how the temporary collapse of the EU's migration and border regime in 2015 and its instable reconstruction since then have not only created a human rights crisis within Europe (see among others Vries *et al.* 2016; Masouridou, Kyprioti 2018), but have also given rise to dubious policy mechanisms through a more or less explicitly declared "state of exception".

3   All this is well known. More surprising is that assessing the recent academic research literature, the events of 2015 and the fragile re-stabilisation attempts of the European border regime since then – i.e. the very object of study of a sizeable part of the field of international border studies – has left fewer traces in the (inter-)discipline than one

might have assumed given the magnitude of the dynamics and the sweeping consequences that followed. Notwithstanding the general boom in migration studies – and particularly its sub-field of refugee studies focusing on forced migrants' experiences and integration – and some highly insightful empirical work on specific sites such as the Balkan Route (Beznec *et al.* 2016; Bužinkić, Hameršak 2018), the hotspots (Vradis *et al.* 2019; Tazzioli, Garelli 2018; Antonakaki *et al.* 2016) and the Central Mediterranean (Cuttitta 2016) have been attracting recent research interest, a more comprehensive account of the effects and repercussion of the migratory movements of 2015 on the border regime's essential pillars and rationales is still missing.

4   We are not able to produce such a comprehensive empirical analysis in the range of this article. Rather, what we aim to do here is to assess the central concepts and theories that have been employed in border studies with regard to their adequacy and appropriateness in understanding the new dynamics that have come to characterise the European border and migration regime. We argue that the Summer of Migration matters precisely because it has put the agency and the force of the movements of migration squarely back on the table, both for migration policy makers as well as for border studies. It has emphasised – again – the intrinsic link between the border and the government of migration in Europe, and it challenges us to explore new paradigms and approaches in order to conceptualise not only this link, but particularly the conflictive dynamics that structure the encounter of the movements of migration and the political-technocratic desires of its government in the recent years. Conversely, we would argue that we have to abandon a somewhat modernist or teleological perspective on the technological devices inherent in the designs of the border regime as a driver of constant and unidirectional refinement of the practicability of the regime. This is after all the promise of the proponents of smarter borders, and even a critical perspective on these promises which can often be found in border studies (Broeders 2007; Dijstelbloem, Meijer 2011) runs the risk of nevertheless affirming this underlying assumption, which the Summer of Migration has so forcefully disproved.

5   The collapse of the European border and migration regime reminds us of its underlying «multi-level complexity» (Brambilla *et al.* 2015: 1) leading to its central conceptualisation as an unstable ensemble, characterised by the heterogeneity of its actors, institutions and discourses, its shifting alliances and allegiances, its diverging interests and its practice of ad-hoc solutions and «quick fixes» (Sciortino 2004: 32; Transit Migration Forschungsgruppe 2007; Walters 2002; Hess *et al.* 2018). In contrast to the official discourse treating the events of 2015 as a "refugee crisis", we re-iterate the necessity to turn the perspective and to approach the border regime as structurally ridden by moments of crisis, where stability is at best temporal, the outcome of a constant effort, and can never be taken for granted (Hess, Kasparek 2017). Challenged by the movements of migration, its stability may perish instantaneously, inaugurating a period of ambivalent re-constitution and re-stabilisations. Such a perspective, we would add, also motivates a more genealogical approach to the reconstruction of the border regime, resulting in a longer perspective on the often-subtle shifts in narratives and rationales, but also centering on the sometimes hidden, sometimes highly visible struggles of migration. For the events of 2015, it would certainly allow for an analysis that takes into account the longer crisis of Schengen after 2011 (Cuttitta *et al.* 2011;

Kasparek, Tsianos 2015) as well as the continuities and dis-continuities of certain policy instruments deployed in reaction to them.

6   In the course of our ethnographic research project *Transit Migration 2*, we had the opportunity to study *in situ* and *in actu* the variegated strategies and practices aimed at the border regime's re-stabilisation in the immediate aftermath of the closure of the Balkan Route and the conclusion of the EU-Turkey agreement in Spring 2016. Our fieldwork in Turkey, Greece, Macedonia, Serbia and Hungary revealed a veritable hotbed of experimentation in the arts and crafts of governing migration, aimed at re-asserting control, and introducing new infrastructural materialities, administrative processes, institutional cooperations, legal innovations, reconfigurations of sovereignty and spatial practices that we could then trace from our field sites into the emerging policy proposals on the level of the various institutions of the EU. The new constitution of the European border and migration regime, and by extension the new constitution of Europe, is being written from its "borderscapes" (Rajaram, Grundy-Warr 2007; Brambilla 2015). This insight is not only an argument for the vital contribution that ethnographical inquiry makes to border studies, it also motivates a new take at exploring the genealogy of the European project from the borders and from practices. In order to do so, we propose to extend the theoretical tool chest of border studies, which we will develop in the following sections based on our findings.

2. Border studies' four conceptual pillars

7   It is a common denominator of border studies to emphasise the transformation of the border from a demarcation line delimiting national territory and sovereignty to an ubiquitous, techno-social, deterritorialised apparatus or regime producing geographically stretched borderscapes (Balibar 2002; Johnson *et al.* 2011). Concepts such as the «biopolitical border» (Walters 2002), «border zones» and «borderscapes» (Parker, Vaughan-Williams 2009; Brambilla *et al.* 2015), or «network borders» (Rumford 2006) refer to this common notion. These conceptualisations initiated a turn to practice in border studies, emphasising the process of «doing border» or «performing border» (Van Houtum, Van Naerssen 2002; Salter 2011), which in turn gives rise to an analytic of the border as being an effect of a multiplicity of human and non-human agents and practices, as captured in the notion of «borderwork» (Rumford 2008), rendering the border a highly dynamic social endeavour.

8   This approach holds especially valuable insights for the genesis of the European Union's border and migration control regime, which can be regarded as a "laboratory" of said transformation (Lahav, Guiraudon 2000; Walters, Haahr 2005; Transit Migration Forschungsgruppe 2007). Emerging from the first Schengen agreement in 1985, the European project had heralded the creation of a continental border regime, with the newly created notion of an "external border" as the pivotal mechanism and space for migration control (Karamanidou, Kasparek 2018; Casas-Cortes *et al.* 2015). Even despite being initially outside the formal EC/EU framework, this globally unique process of regionalisation and of supra-national harmonisation was a driving force towards an accelerated and deepened process of the Europeanisation of the policy field of Justice and Home Affairs, timidly inaugurated through the Treaty of Maastricht, then incorporated through the Treaty of Amsterdam, and formally properly communitarised through the Treaty of Lisbon (Hess, Tsianos 2007). Its main political imagination is the

"Area of Freedom, Security and Justice", introduced in Amsterdam, and it was accompanied by the parallel construction of the European border regime as «a fluid assemblage» (Bialasiewicz 2012; Walters, Haahr 2005) involving European Union agencies, European legislation, processes of standardisations and harmonisations – especially around the practices of border management – and a growing military-industrial-academic complex largely funded by the EU. These new forms exist alongside more traditional national apparatuses of migration control that had evolved since the 1970s and were complemented by the flexible involvement of international and intergovernmental organisations such as the UNHCR or the IOM (Hess, Karakayali 2007; Ratfisch, Scheel 2010; Hess, Kasparek 2010; Geiger, Pécoud 2010).

9   Even though we would stress the absence of a central organising rationale within the border regime, many of its problematisations revolve around what Lahav and Giroudon have called the fundamental «control dilemma» (2000: 844) in regard of the «twin imperatives of Schengenland», as Walters and Haahr put it (2005: 110). This dilemma refers to the question how to reconcile a neoliberal economic paradigm epitomised by the foundational European project of the Single Market and its projection onto a global economic order built on the free circulation of goods, services and capital with a continued biopolitical will to control the movements of people. While the EU upholds these four freedoms internally (their inalienability is the pivotal question of the Brexit negotiations), towards the outside, the EU is merely committed to the first three of these freedoms. There is no – however abstract – commitment to a global freedom of movement for people. Rather, many authors of border studies or studies of European integration have pointed to the fact that the creation of the Single Market in conjunction with necessary abolition of internal border controls opened the door to a wide field of security actors (Bigo, Guild 2005) and led to an intensified securitisation of questions of mobility (Huysmans 2000; Brouwer 2008). Or, to quote Walters and Haahr: «Schengenland can be seen as having certain acts of securitisation as its conditions of possibility» (Walters, Haahr 2005: 95).

10   In regard of the border regime, the main practical answer to the control dilemma was, according to Lahav and Giroudon (2000), to move border controls «away from the border and outside the states», creating multi-layered borderscapes that stretch to the outside as well as to the inside and enact a punctuated and selective filter mechanism, akin to a «firewall» (Walters 2006: 197). The dream, exemplified in the Commission communication on smart borders (Commission of the European Communities 2008), was a techno-scientific vision of a "smart", invisible yet selective border that is able to seemlessly distinguish between bona-fide travellers and unwanted migrants that were, labelled as "illegal migration", the main object of border control initiatives from the very beginning (Commission of the European Communities 2001). To this end, broadly speaking four rationales were enacted within the European border regime, and pointed out by border studies.

11   To the outside, (1) a paradigm of "remote control" and externalisation via highly differentiated policies and practices like the visa regime, carrier sanctions or "migration and development" policies (Lavenex 2004, 2006; Zolberg 2006; Bigo, Guild 2005; Dünnwald 2015; Schwertl 2015). (2) Second, a paradigm of a fortified, yet smart external border through technology, digitalisation and biometrisation. These two paradigms are reflected within border studies by the centrality of conceptualisations such as securitisation (Bigo 2002; Donnan, Wilson 2010; Huysmans 2000, 2006; Van

Houtum, Pijpers 2007), deterritorialisation and externalization (Balibar 2002; Lahav, Guiraudon 2000; Bialasiewicz 2012; Genç *et al.* 2018) as well as digitalisation (Koslowski 2005; Dijstelbloem, Meijer 2011) and biometrisation (Kuster, Tsianos 2013a; Sontowski 2018).

12   We would like to point out two more paradigmatic rationales constituting the European border regime prior to 2015, but that have attracted less attention. (3) An internal mobility regime steeped in the institution of asylum and put into practice through the Dublin and Eurodac regulations (Papadimitriou, Papageorgiou 2005; Schuster 2010, 2011; Kuster, Tsianos 2013b; Mouzourakis 2014; Tsianos 2015; Kasparek 2016a; Picozza 2017a, 2017b), aiming at the immobilisation of migrant populations within the European territory and remaining the main point of contention in the currently deadlocked process of a reform of the Common European Asylum System. And over the recent years, a (4) humanitarian paradigm increasingly influencing the debates and politics of migration government (Fassin 2007; Walters 2011; Rozakou 2012; Cuttitta 2014; Pallister-Wilkins 2015), which is conflictually entangled with the paradigm of securitisation (Kasparek 2015; Andersson 2017; Moreno-Lax 2018; Perkowski 2018).

13   After a long and lingering crisis, this architecture of the European border regime broke down in summer 2015, it collapsed confronted by a new quality of migrant arrival. What are the implications for border studies?

14   Our ethnographic research project clearly demonstrated that the reconstruction of the European border regime entails mechanisms and dynamics that are only ill-grasped by the established conceptualisations of border as outlined above. Apart from new and strong processes of externalisation, which we could observe, we were confronted in our fieldwork with a plethora of new dynamics and fragmentations acting towards the interior, i.e. new processes of internalisation reconfiguring the European and Schengen space. They urged us to extend our theoretical tool box, which we did by reaching out to vibrant research fields such as legal anthropology and camp and infrastructure studies.

3. Extending the tool box of border studies

15   Our fieldwork revealed that the initial response of the European Union, its agencies and its member states, as well as the response of third countries along the routes of migration was heterogeneous and fragmented, both with respect to policy rationales as well as measures. The policy response was reactive in nature, answering to an "emergency" with ad-hoc measures and a large degree of improvisation. It mainly consisted of re-nationalisations and new regionalisations (for example the countries of the Visegrád group), a proliferation and remilitarisation of borders within Europe, the utilisation of extra- or semi-legal practices and a renewed focus on externalisation of migration control. The later is most evident in the EU-Turkey deal, which has already been discussed extensively under the externalisation paradigm. We would however add that the EU-Turkey deal also effected the social, political and legal space of Europe. Speaking about the interior of the EU, we observed both a rise in importance of national policies and bilateral practices on the one hand, and an appeal to a continued and deepened Europeanisation on the other, even though these were ambivalent themselves. While the Commission saw an opportunity for a stronger supra-nationalisation, certain member states preferred to utilise already existing European

harmonisation as a justification for coercive measures directed against other member states – the threat of the exclusion of Greece from the Schengen area is a case in point.

16 Concerning fundamental rights such as asylum, the aspirationally homogeneous landscape of the Common European Asylum System, with its externalised elements via the safe third countries doctrine splintered into areas of a multiplicity of divergent norms and practices, such as Turkey under the newly invented "temporary protection regime", the "hotspot islands" of the Eastern Aegean, the "retention zone" of the Greek mainland, the "buffer zones" of Macedonia and Serbia, and the reinforced border zones of Schengen mainland, beginning at the Northern end of Serbia and stretching into Hungary, or via Croatia into Slovenia. The effects on the living conditions, legal status and experiences of transit of refugees and migrants were and still are drastic and characterised by a heightened social and legal precarity, epitomised by the new landscape of refugee camps that were hitherto predominantly seen, and researched, in the Global South. Inseparably from these camps, new infrastructures of migration control have sprung up, stretching from the camp cities of the Turkish-Syrian border and the hotspot centres on the Greek islands to the "transit zones" of the Hungarian border and the fast-track, consolidated asylum centres in Germany where reception, asylum process and deportation are merged into one.

4. Politics of exception? Insights from legal anthropology

17 The denomination of the Summer of Migration as a humanitarian crisis has resulted in severe repercussions that can be felt until today. Reactions were structured as a "politics of exception" (Calhoun 2004; Kasparek 2016b), laying a legitimising foundation on which policies that systematically undermine and lower the standards of international and European law are based, and which inhibits legal challenges. The re-stabilisation of the European migration and border regime goes hand in glove with formal and informal attacks on legal norms and practices that undermine and circumvent them. Legal norms and developments in the field of law have always been important for the understanding of migration and border regimes. This is even more the case after 2015 where law is rewritten in the interstices, grey areas and undefined jurisdictions of the ad-hoc architectures of Europe's borderscapes. New practices invented and tested there find their way into legislative proposals and become law, shaping the legal foundations of the coming border, migration and asylum regime in Europe. The proposed reforms of the Common European Asylum System constitute a good example, as they can be directly traced to the hotspots in Greece and Italy, as well as to the failed policies that gave rise to these new infrastructures.

18 Border studies often left the analysis and interpretation of law and legislative processes to legal experts. However, given the deep entanglement of bordering practices and legal and legislative procedures, norms and rights, border studies needs theoretical approaches that allow for a conceptualisation of this interplay. For this purpose, we propose to draw on the advances legal anthropology has accomplished over the last decades. The conceptualisation of law as a process and practice in legal anthropology – as opposed to law as a framework to be best applied by experts – constitutes a productive vantage point (Moore 2000; Nader, Yngvesson 1973).

19   Questions regarding the implementation and enforcement of human rights and transnational justice on a local level have increasingly moved to the centre of legal anthropology (Von Benda-Beckmann *et al.* 2012; Goodale, Merry 2007). Legal anthropology, once a sub-field of anthropology largely concerned with law in Non-Western societies has thus evolved as a vibrant research field in Anglophone cultural and social anthropology, studying a much larger legal geography and transnational legal matters (Moore 2001). Law and jurisprudence are not perceived as static, but rather as an integral part of political dynamics, contestation and social practices (Binder 2017; Ravenda 2011). Legal anthropology thus urges us to look at «law in action» (Moore 2001: 109) and to analyse the implementation of legal norms and regulations in specific local settings. These approached therefore offer a unique approach to the emergence of codified law out of practices and allows querying their institutionalisation (Klepp 2011; Wilson 2000; Comaroff, Comaroff 2009).

5. Campisation - Insights from camp studies and infrastructure studies

20   The control and immobilisation of larger refugee populations throughout Europe after 2015 relies, to a large extent, on camp-like infrastructures, which extend the borderscapes far into the European territory and ultimately into its cities. Kreichauf speaks of «campization» in order to capture this development (Kreichauf 2018), which calls for an engagement with the growing field and theoretical controversies of empirical camp studies. However, so far camp studies have usually been conceptualised separately from border studies, with a geographical focus on the Global South. Recent studies have added a perspective on camps in conjunction with the control of mobility, but so far no larger connection with border studies' theories exists as camp studies mostly focus on local sites and on actors inside the camps (Inhetveen 2010; Krause 2013).

21   Recent developments however suggests that refugee camps – widely defined – should be considered nodal sites of migration management and control (Rygiel 2011; Andrijasevic 2010; Ravenda 2009; Walters 2008), where the «camp» can be seen as a «global dispositive» (Agier 2014: 21) or as a «global device» (Turner 2015: 144). This designation draws our attention to the global modes of organising camps with and through NGOs and IGOs (especially the UNHCR) that enact a specific figuration of control and policing as well as humanitarian assistance and protection (Agier 2014; Hoffmann 2016). Particularly noteworthy is the emergence of a new humanitarian-military nexus also within the context of the process of campization, where military forces are deployed under a humanitarian rationale. This can be seen in the use of the army in the construction of refugee camps and hotspot centres in Greece or temporarily in Croatia. In so far the restructuration attempts not only give rise to an increased militarization of the border such as in Macedonia, Hungary or Austria where the army or new military-police units are called to support the border guards, but also produce a new securitarian-military-humanitarian complex internally (Hess, Kasparek 2017). We do not suggest that this implies a militarisation of humanitarian practices per se, even though a praxeographic study of such practices is desirable. Rather, for nation states having to resort to such paradigmatic national institutions is indicative of the transformations sovereignty is undergoing.

22 The emergent international interdisciplinary field of camp research is structured by two contradictory paradigms. One is based on a "logic of exception" following the work of Giorgio Agamben (1998), focussing on the exceptionality of camp spaces, absence of rights and the «bare life» of their inhabitants (Minca 2015). Most of the recent empirical camp studies – in reaction to Agamben – have turned their attention on the camp as a socio-political space. They highlight the specific sociality, political subjectivities and practices that play out in such camps (Sigona 2014; Inhetveen 2010) or following a «logic of migration» (Rygiel 2011: 2). These paradigms contextualise camps in the larger field of mobility control and a politics of citizenship where camps are seen not as means of totalizing exclusion but as a central device to produce «differentiated modalities of mobilities» and subject positions (Andrijasevic 2010: 160; see also Panagiotidis, Tsianos 2007).

23 Whereas camps in the Global South usually centre on a prolonged confinement of people, for Europe, a different typology of camps is described. Michel Agier qualified them as «sorting centres» that function like «airlocks» utilised to «brake or reorient the trajectories of immigrants» (2011: 47). With the post-2015 emerging border and migration regime we have to study anew the very function of the European refugee camps obviously shifting towards a rationale of prolonged confinement, spatial segregation and a «regime of differential detention» (Vries *et al.* 2016: 5; see also Umek *et al.* 2018), which will leave a deep mark on the European notion of citizenship (Li Causi 2013). Kreichauf sheds light on the deployment of «forced infrastructures of arrival» (2018: 4) in Europe since the 1990s that have undergone decisive changes with the arrivals of 2015. The hotspot centres on the Greek islands then are the most specific example of new infrastructures that blur the functional lines of reception, accommodation, detention and confinement – a rational that also dominates the transformation of the camp-system of Germany (Hess, Hänsel, Schurade 2019). Equal attention should however be paid to more informal, self-organised and make-shift camps (Martin *et al.* 2019) such as Calais (Müller, Schlüper 2018; Agier *et al.* 2020) that continuously pop up alongside the formal camp infrastructures.

24 We therefore propose a conceptualisation of the camp as a legal-material space, thus bringing back the question of infrastructures and exceptionality in an empirical way. Meiches (2015) has already highlighted the relevance of material elements of the camp, while a perspective of the camp as a space where rights are processed on a practical and daily basis by material, administrative and legal devices is still missing. Conceptually, this entails an understanding of the legal-material space of the camp as a highly dynamic and contested assemblage (Ong, Collier 2005).

25 This also means taking an interest in infrastructures. Historians of European infrastructure (Misa, Schot 2005) have long held that the invisible integration of Europe is particularly a history of infrastructure, preceding the political project, a growing together on a concrete and material level, fostering the very imaginability of Europe as an entity, materialisation of Europe as well as connections in between (Dalakoglou 2010). Keller Easterling (2014) stresses how this space is imbued with a power that she refers to as «extrastatecraft», while Susan Leigh Star (1999, 2002) draws our attention to the exclusionary moments of infrastructure. She urges us to study the mundane, and boring nodes of infrastructures to reconstruct in detail the exclusion produced by seemingly innocent, innocuous objects without resorting to a mere moralising depiction. These approaches lend themselves particularly well to ethnographic

enquiries, and speak well to the characteristics of the post-2015 European border regime.

6. Conclusion

26 The emergence of camps and new infrastructures of migration control, as well as the legislative processes inaugurated will have deep repercussions. They will not only structure the emergent border and migration regime, and thus the future of European citizenship and the European project. They will also have an impact on how the international regime of refugee protection represented by the Geneva Convention on Refugees can be upheld in the 21st century, and will also give rise to new hybrid forms, such as an emerging military-humanitarian complex. A reconstruction and critical analysis is more than ever warranted for. Border studies offer a unique vantage point, as they are a method in themselves for decoding these developments (Mezzadra, Neilson 2013). Returning the focus on the movements on migration, and describing and analysing their struggles not merely in the abstract, but in the specific sites where migration encounters its government, i.e. the border, the camp, the hotspot, the administration and the courts offers a productive and insightful approach in a century that will more than ever be characterised by migration.

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ABSTRACTS

Against the background of our recent ethnographic research project on the European border regime in South-East Europe in 2016, the article calls for a re-visiting of established paradigms and approaches in border studies. The article assesses established theoretical conceptualisations of border studies, such as securitisation, externalisation, digitalisation, but also internal mobility regimes and humanitarian rationales. Focussing especially on the vast encampment within Europe, the inner-European buffer zoning, shifting legal foundations as well as new infrastructures of migration control, the authors argue for an extension of theoretical and methodological perspectives of border studies by drawing on insights from legal anthropology and camp and infrastructural studies.

Ancorandosi a un recente progetto di ricerca etnografica sul regime di confine europeo, svoltosi con un focus sull'Europa sud-orientale nel 2016, l'articolo invita a un ripensamento degli ormai consolidati paradigmi e approcci nell'ambito dei *border studies*. Più precisamente, l'articolo si focalizza dapprima su un'analisi critica delle più consolidate concettualizzazioni teoriche dei *border studies*, come quelle concernenti la securitizzazione, l'esternalizzazione, la digitalizzazione, ma anche i regimi di mobilità interna e le "ragioni umanitarie". Concentrandosi in particolare sul vasto accampamento "dentro" l'Europa, la cosiddetta zona "tampone" europea interna, come anche sui mutevoli fondamenti legali e le infrastrutture del controllo delle migrazioni, gli autori propongono un'estensione delle prospettive teoriche e metodologiche dei *border studies*, riferendosi alle conoscenze dell'antropologia legale e degli studi sui campi e le infrastrutture.

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