

MOVING BORDERS. EUROPEAN IMMIGRATION POLICY AND THE MULTIDIMENSIONAL INSTABILITY OF THE BOUNDARIES

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Abstract: *Two contemporary phenomena in the field of immigration force us to reflect upon the relationship between the migration flows and their political management: the tortuous development of the European immigration policies, and the contemporary struggles between member states in the administration and regulation of the last flows of immigrants coming from the 2011 “Arab Spring” countries. This paper attempts to answer two interrelated questions: What do these phenomena teach us about the features of the political and territorial space called Europe? Is it possible to read the current struggles on immigration as the essential political nature of Europe? Particular attention is paid to the agreement on migration among member states and European institutions and, at the same time, to the dimensions and dialectics of borders, with some examples from the Italian and Spanish cases. In this light, this paper aims to show how a wide theoretical and historical approach can be useful to understand the contradictory character of immigration policy and the multidimensional features of the EU borders.*

Keywords: *European borders, immigration policy, Italy, Schengen area, Spain, security*

1. Introduction

The European Union is a political “space” of extreme interest for contemporary political science. Its socio-political features and institutional characteristics make Europe a unique area in the international context. In addition, the relationship between the European Union, its institutions and policies, and international migration is an issue that has attracted academic interest in recent decades. There is no doubt that, in the years when the European Union enlarged, the common opinion

has interpreted this relationship in two opposite ways. On one hand, it is a *causal* relationship: the EU enlargement has encouraged immigration into the EU Member States and, in the same way, does not pay enough attention to irregular immigration. The opposing view looks at the EU policy as a *resolving* relationship: the EU policy can help solving the issue of immigration on the European continent. On the other hand, the academic sphere has often emphasized the contradictions and ambiguities, to the point that it is common to refer to Europe as a “*cluster of contradictions*”¹.

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¹ Lydia Morris, *Managing Migration. Civic Stratification and Migrants’ Rights*, (London-New York: Routledge, 2002) pp. 10-27.

Similarly, Joaquin Arango in a recent article states that “a look at the circumstances of immigration in the EU in the early years of twenty first century highlights two contradictory trends. One, the number of those coming from outside continues to grow. At the same time, the immigration policies of almost all EU countries are increasingly restrictive”².

In this context, the immigration policies of liberal states, at least over the last decades, are characterized by a restrictive tendency, dominated by the cutting of rights and freedoms of immigrants –especially illegal– and a strengthening of controls and border surveillance³. With these lenses a current phenomenon could be read: the recent struggles between member states in the administration and regulation of the last flows of immigrants coming from the 2011 “Arab spring” countries. Giving credence to the assertion of Aristide Zolberg according to whom the control that states exercise over borders is a distinctive social and political process⁴, it seems clear that the main challenge of the immigration policies is the *governance* of this social phenomenon. This governance would control possible effects for the stability of the political system and would formulate measures to ensure stability itself. In other words, the role of the immigration policy would be to regulate and channel immigration in order not to destabilize the political and economic systems of so-called *host societies*.

The explicit immigration policies of the individual Member States and of the EU have been developing with special attention

to the borders. In that light, this paper will draw attention not only to the relationship between the EU and the immigration, but in particular to the changes that have affected Europe’s borders, both at theoretical and practical levels. The aim of this research is to underline the evolutionary and transforming dimension of the borders, to demonstrate the “porous” and multiple nature of the “institution” of the border, and to highlight the internal and external elements belonging to the national and European borders.

This paper is structured in two tiers. First, it shows how, through a historical overview of European integration, the process of sharing power among Member States proceeded to the *communitisation* of the immigration policy, with its different phases and dialectic between institutions. Then this paper will stress many dimensions of the idea of “borders”, showing the dynamics taking place and operating at the border, in and out of the Union’s territory.

2. Historical development of the “allegedly” common immigration policy: Enlargement and institutional dialectics.

A first-level analysis in the study of the characteristics and features of the border and the immigration policy in Europe cannot disregard the evolution, the institutional integration and the spatial dynamics of expanding the European Union.

There are two analytical approaches for studying the process of European political and institutional developments concerning

² Joaquín Arango, “Europa y la inmigración: una relación difícil” in Blanco, C., *Migraciones. Nuevas moviidades en un mundo en movimiento*, (Barcelona: Anthropos, 2006), p. 91. [Translation of the author]

³ Mehmet Ugur, “Libertad de circulación versus exclusión: una reinterpretación de la división “propio-extraño” en la Unión Europea” in Malgesini, G. (ed.), *Cruzando fronteras. Migraciones en el sistema mundial*, (Madrid: Fundación hogar del empleado, 1998), p. 303 ss.

⁴ Aristide Zolberg, “The Next Waves: Migration Theory for a Changing World”, *International Migration Review*, 23 (3), (1989) p. 405.

immigration. The first perspective is to consider the attempts of the European Commission – and to a lesser degree of the Parliament – in order to create a European migration policy based on the harmonization of national policies. The second perspective focuses on the analysis of intergovernmental mechanisms that European immigration policy has managed and continues to manage. This paper connects the two fields by showing, through a brief historical excursus, the institutional processes which reflect the dialectics between the European and national political governance.

It is widely known that immigration and asylum policy were not among the original competencies of European institutions. The foundations of the communitarian system of immigration policies have only been established in the last twenty-five years. This refers to those fundamental and critical years between the creation of the *Schengen Area*⁵, the *Single European Act* (1986) and the *Maastricht Treaty* (1992). These initial moments influenced all the following framework of the EU policy on immigration and thus are worthy to be analyzed.

The *Schengen Agreement* is the first essential element in structuring a European area that produced a convergence of immigration policies. Despite that the Schengen Convention is essentially an agreement on borders and, therefore, not a European immigration policy, it is still the largest intergovernmental agreement in this field. Silent on residence permits, work permits and family reunification,

it significantly affects the immigration concerning border crossing. Basically, the Schengen system establishes common rules for the control of borders, the conditions of entry and visa policies, fines for carriers, the criteria for examining requests for asylum and, finally, a system of information among Member States. From the functional point of view, the signatories of the agreement wanted to strengthen police and judicial cooperation among States with the aim of abolishing internal borders and strengthening the external ones. Likewise, the *Single European Act* in 1986 aimed to create an internal market area. It also promoted the consideration of immigration as an issue to be addressed at the European level, encouraging the development of a closer cooperation among Member States.

Seven years later, with the *Treaty of Maastricht*, the immigration and asylum policies were incorporated into the agenda of the integration process. They entered the European agenda as subjects of the *Justice and Home Affairs* pillar within which decisions are made at intergovernmental level⁶.

The *Treaty of Amsterdam* gives a first shy step towards a *communitarisation* of immigration and asylum policy. Signed in October 1997 and in effect since May 1999, the Treaty of Amsterdam accelerated the transformation of these governmental issues into communitarian issues, by linking them with both the achievement of the *European area of Freedom, security and justice* and with the incorporation of the *Schengen Agreement* into the communitarian *acquis*.

⁵ The governments of France, Germany, Belgium, Netherlands and Luxembourg signed the Schengen Agreement on 14 June 1985. Other countries incorporated later: Italy (1990), Spain and Portugal (1991), Greece (1992), Austria (1995), Denmark, Sweden and Finland (1995).

⁶ It is important to note that, when the Treaty of Lisbon was signed, the first pillar of the European Union was the communitarian pillar. The second pillar concerns the foreign policy, and the third justice and home affairs issues. These latter two are areas of intergovernmental cooperation.

In particular, the Treaty of Amsterdam amends three of the European legal aspects that relate to immigration. Firstly, it proceeds with the *communitarisation* of visas, asylum, immigration issues, and other policies related to free movement of persons that are inserted in Part IV of *The Treaty on European Union* (TEU). It establishes that immigration and asylum policies change from the third to the first pillar and, therefore, that they belong to the Union's competencies. Secondly, it alters the *EU Treaty*, specifically Title VI on provisions relating to police and judicial cooperation in criminal matters. Finally, the *Treaty of Amsterdam* incorporated the Schengen *acquis* to the EU, *communitarising* the work done since the Schengen agreement in 1985. However, although it opens the possibility of developing Community legislation, the *Treaty of Amsterdam* imposes some restrictions: during the first five years the decisions had to be made unanimously at the Council⁷.

The *Tampere European Council* from October 1999 gives another step towards the communitarization of immigration policies of Member States. The Council was dedicated to the development of the *Area of freedom, security and justice*, which ended with the adoption of a number of dispositions on asylum and immigration. In these dispositions, the Council even required the EU Commission to formulate detailed proposals that were to lead to a common European policy

on asylum and immigration. Since then, the European Commission has presented several proposals to develop legislation on issues such as the regulation of immigration flows, the rights of third-country nationals, prevention of illegal immigration, and so forth⁸. In many respects, these proposals aimed at improving the rights and treatment of immigrants, but the Commission's proposals have not always been approved by the European Council. It is important to note that until April 2004 the Council had the exclusive jurisdiction for approval of the communications submitted by the Commission. The Council, after receiving the proposal from the Commission, and the opinions from the European Parliament and the Economic and Social Committee, could change any desirable aspects giving final approval to a text that can be very different from the original proposal.

Nevertheless, the focus of this summit was on the fight against illegal immigration. The Council's conclusions in this regard reveal the intentions of Member States.

"The European Council is determined to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants. It urges the adoption of legislation foreseeing severe sanctions against this serious crime. The Council is invited to adopt by the end of 2000, on the basis of a proposal by the Commission,

⁷ Regarding institutional arrangements, the *Treaty of Nice* established a political change in the balance of power among the Commission, Council and Parliament. This Treaty established that from May 1, 2004, would extend the system of qualified majority voting to establishing the conditions under which nationals of third-party countries could travel freely within the territory of the EU, for a period not exceeding three months, as well as the measures related to immigration and illegal residence, including repatriation of illegal residents.

⁸ Examples include: the Commission Communication on a Community immigration policy, COM (2000) 757, of November 2000; the draft Council Directive on the rights of long-term residents, COM (2001) 127 of March 2001, or the Communication 672 on illegal immigration, COM (2001) 672, 15 October 2001, where the Commission proposed the development of a *Global Action Plan* to the Council.

legislation to this end. Member States, together with Europol, should direct their efforts to detecting and dismantling the criminal networks involved. The rights of the victims of such activities shall be secured with special emphasis on the problems of women and children"⁹.

After the Council of Tampere, the EU has a number of tools that allow it to manage migration and to facilitate integration in different areas, such as family reunification, the status of long duration third-country nationals, minimum standards for the reception of asylum seekers and measures to combat discrimination.

Years later, under the French Presidency in 2008, the Council reached a European agreement on immigration – called the *European Migration Pact* – which essentially certified the inadequacy of the measures taken so far on immigration in Europe. This pact also raised five areas of policy action in which Member States and the EU should focus their efforts: incentives for legal immigration, such as the establishment of a *blue card* to attract immigrants with high educational levels; the reinforcement of the contrast measures of illegal immigration and the strengthening of Frontex, the external border agency; the enforcement of border control in Southern and Eastern Europe; the establishment of joint flights for the repatriation of illegal immigrants; the development of common guarantees on asylum policy; and, finally, the development of relationships with third-party nations for the prevention of illegal immigration and the promotion of legal immigration through education and

employment opportunities. These same perspectives and measures are also the improvements introduced by the *Treaty of Lisbon*, which underlines, once again, the importance of laying the groundwork for a European immigration policy.

2.1. The contradictory elements of the EU immigration policy

As it has already been shown, the European Union programmatic texts on immigration tend periodically to repeat measures and commitments. These programs show to some extent the provisional and unsystematic nature of the European immigration policy. From summit to summit, there is always the intention to highlight the intergovernmental and community collaboration. At the same time, there is still a retained dialectics between a convergence of European action and the resistance of states to lose their control over immigration. In this sense, in order to highlight the contradictory elements of the immigration policies in Europe, it is interesting to explore the relationship between state sovereignty and the current migration phenomenon.

History is inherently characterized by the phenomenon of the displacement of groups of people from one land to another¹⁰. Nonetheless it should be said that contemporary immigration is a process that inevitably affects democratic societies, manifesting the tension that lies between universalism and particularism. The principle example of this tension is the paradox created by the fact that immigration is an internationally recognized right, but

⁹ Tampere European Council, 15 and 16 October 1999. *Presidency Conclusions*, §23.

¹⁰ Leslie Page Moch, *Moving Europeans. Migration in Western Europe since 1650*, (Indinapolis: Indiana University Press, 2003). Leslie Page Moch, *Moving Europeans. Migration in Western Europe since 1650*, (Indinapolis: Indiana University Press, 2003).

the right to enter into another country is not. *The Universal Declaration of Human Rights* (UDHR) provides in Article 13 the freedom of movement as a fundamental right¹¹. However, the same Declaration emphasizes the sovereign power of States.

Like in the UDHR, the *Status of Refugees* does not include a right to enter into the country where the immigrant seeks asylum, but it claims a right to not be rejected (*non-refoulement*). Once it is established which human rights must be safeguarded at the international level, the fulfilling of these rights is a task to the States themselves.

It is also noteworthy that the universalistic rhetoric of the freedom of movement flourished until the fall of the communist regimes. More precisely, during the cold war liberal democracies were faced with communist regimes that did not easily allow the free movement or the exit of citizens outside their national borders. Since then, both the political speech and the concrete policies changed because of increasing migration. Liberal societies retreated and, while there was the progressive release of the movement of goods and capital, it was paradoxically accompanied by a resetting of borders for human beings¹².

The paradox between the free movement of goods and capital versus restrictive regulation for individuals is a topic discussed by many contemporary

authors, among which stands out Saskia Sassen. In regards to the subject this paper develops, it should be noted that Sassen discusses how globalization and current immigration affect the sovereignty and the exclusive-excluding territoriality of the modern state¹³. Arguing that globalization is affecting at least in part the typical spatial structure of the state system, Sassen also glimpses at return dynamics to a rhetoric based on the territoriality of politics. On one hand, there is partial denationalization of national territories and a parallel transfer of sovereignty to supranational institutions. On the other hand, there is a tension between this denationalization of the national space and a renationalization of the political discourse. There is a visible tension in the conflicting relationship between state sovereignty, claimed by the states through nationalistic arguments, and international human rights provided by the supranational institutions¹⁴. In that light, the phenomenon of global migration¹⁵ would be the axis through which this tension between economic and spatial denationalization and re-nationalization of political discourse can be analyzed.

For Sassen, state sovereignty and border control – although almost always delegated by the Constitution as a key role of the state – are in part affected by the growing global economic interdependency and by the partial displacement of state sovereignty to

¹¹ Art. 13. *Universal Declaration of Human Rights (UDHR)*. adopted by the United Nations General Assembly on December 10, 1948: (1). *Everyone has the right to freedom of movement and residence within the borders of each State.* (2) *Everyone has the right to leave any country, including his own, and to return to his country.*

¹² Leslie Page Moch, *Moving Europeans*, op. cit., pp. 193-194; Sandro Mezzadra, *Derecho de fuga. Migraciones, ciudadanía y globalización*, (Madrid, Traficantes de Sueños, 2005), particularly pp. 43-54, 97-100, 107-115.

¹³ Saskia Sassen, *Territory, Authority, Rights. From Medieval to Global Assemblages*, (Princeton and Oxford: Princeton University Press, 2006) pp. 224-230.

¹⁴ Saskia Sassen, *Losing control? Sovereignty in an age of globalization*, (New York: Columbia University Press, 1996), pp. 97-104.

¹⁵ Saskia Sassen, *Migranten, Siedler, Flüchtlinge. Von der Massenauswanderung zur Festung Europa*, (Frankfurt am Main: Fischer Taschenbuch Verlag, 1996).

new supranational institutions and human rights advocacy groups. Sassen questions the nature of state control over immigration, taking into account international agreements on human rights and the extension of various social and political rights to resident immigrants¹⁶. The author illustrates the current role of the state through a set of policies on immigration control which often have unintended or unanticipated effects: a state may have the power to write the text of an immigration policy, but it will likely face complex transnational processes that can only be partially covered or regulated by an immigration policy as conventionally understood¹⁷. Likewise, other scholars support this “gap hypothesis”, which foresees that “significant and persistent gap exists between official migration policies and actual policy outcomes”¹⁸.

Therefore, the dimensions in which the state and the EU act specifically in the Union space should be examined.

3. Dimensions of borders: Communitarian politics and in-and-out dialectics

At the European Union language level, it is common to speak of the three aspects of immigration policy. At the EU level there is an axis, namely the development and cooperation policy, that should be added to the two major axes of the migration policies of any sovereign state, the control and integration policies. This policy aims to limit the causes that promote the migration

from third-party countries to Europe. The European Union, in other words, acts as a threefold perspective: through internal and external policies and through the border related actions. Moreover, this threefold nature of the EU immigration policy somehow reflects the *communitarisation* of the spatial dimension of sovereign states, which by this nature establish an inside-outside dialectics.

In order to highlight these spatial dimensions and the “moving” dynamics of the borders themselves, it is worthy to stress the European action within and outside its borders.

3.1. Border Measures

The boundaries represent the place *par excellence* of immigration policy. Borders are, at symbolic, factual and legislative levels, the focus of both states and the European Union. The idea of border is related to that of sovereignty, namely the prerogative of states to rule within a defined territory¹⁹, or the monopoly of the legitimate use of physical force²⁰. In addition, the boundaries are important because they start regular or irregular situations, depending on the possession or not of entry permits.

Notwithstanding, the Schengen Agreement had the effect of devaluing the internal borders between Member States and revaluing of the external borders. In recent decades, external borders have increased their role as a security element of the EU, especially against illegal

¹⁶ Saskia Sassen, *Losing control?*, op. cit., pp. 79-87; 97-104.

¹⁷ *Ibid.*

¹⁸ Wayne Cornelius, et al., *Controlling Immigration: A Global Perspective*. (Stanford CA: Stanford University Press, 1994), p. 4.

¹⁹ Hans H. Gerth and C. Wright Mills, *From Max Weber: Essays in Sociology*. (New York: Oxford University Press, 1958)

²⁰ Max Weber, *Basic Concepts in Sociology*. (London: Peter Owen, 1964).

immigration, cross-border crime and terrorism. Indeed, the EU provided the establishment of a *European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union* (Frontex)²¹, with the aim to coordinate the operational cooperation between Member States in the field of external border management and to assist Member States in training national border guards. In the same way, the Agency conducts risk analysis and assists Member States in circumstances requiring increased technical assistance and operations at external borders.

However, Frontex has some weaknesses. Firstly, the intrinsic nature of the Agency: its dependence on intergovernmental dynamics prevents it from acting in a long range and from a communitarian perspective. A second criticism stresses this relative dependence and a lack of functional transparency. It is questionable that often it is forced to operate beyond the borders themselves, exercising extraterritorial control and monitoring, under bilateral agreements between Member States and third-party countries. In doing this, critics say, it could potentially risk violating the *Geneva Convention on the Status of Refugees*.

It should be noted that the Council Regulation 2007 / 2004 clarifies that “the responsibility for control and surveillance of external borders lies with the member states”²². In this sense, it stresses the fact that borders are a classic element of state sovereignty, and it underlines that states are

reluctant to cede any sovereignty that can potentially affect their security. In this light, it is important to remember that, at least since the Peace of Westphalia in 1648, the State has considered control over borders as one of its essential powers²³.

3.2. External measures

The EU policy starts and ends its actions against immigration beyond its borders. External actions, both of Member States and of the EU itself, are comprised in two major policies: the visa policy and the relationships of the Member States with third-party countries. The visa policy addresses the issuing of visas by consulates and embassies, in order to regulate immigration. This paper focuses on analyzing the second area of these external actions, namely relationships with third-party countries. In this context, the European foreign policy is characterized as much by its preventative side as it is by its corrective role.

This preventative part essentially consists of development and cooperation policies: all the measures suited to the financing of projects help the development and improvement of living conditions in the immigrants’ countries of origin, and therefore aim to stop the arrival of immigrants to Europe. Many of these measures provide funding for: infrastructure to accommodate asylum seekers, the development of public facilities for registration, and the establishment of reception centers for illegal immigrants and refugees in countries of transit.

²¹ Frontex was established by the Regulation (EC) No 2007 / 2004 of the Council of 26 October 2004 (OJ no. L 349, 25 November, 2004).

²² 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, art. 4.

²³ Myron Weiner, *The Global Migration Crisis: Challenges to States and Human Rights*. (New York: Harper Collins, 1995).

To the contrary, corrective foreign policy aims to ameliorate what preventive policy has failed to do, and it especially has to do with irregular immigration. If the policy of cooperation and border control has failed and there are conditions of irregular immigrants, then there is the possibility of expulsion of immigrants from the EU territory. Moreover, in order to proceed with an expulsion, the state of origin must readmit these immigrants. This involves the signing of international agreements among EU member countries and third-party nations, to ensure their cooperation and specifically the readmission of their nationals who entered the EU through their territories. In this sense, there are some interesting directives of the Council of the EU, such as the Directive 2001/40/EC of 28 May 2001 concerning the mutual recognition of decisions on expulsion of nationals of third countries²⁴, Directive 2003 / 110 / EC Council on assistance in cases of transit for the purposes of removal by air²⁵, and Directive 2004 / 573 / EC of 29 April, 2004 on the organization of joint flights for removals from the territory of two or more Member States of third country nationals who are subject to individual removal orders²⁶. It should be noted, however, that applying these precepts and policies has drawn criticism²⁷ and, at the same time, can cause some difficulties: many states do not cooperate; an immigrant with a deportation order may or may not have papers to indicate his or her nationality; a state of origin simply cannot accept him or her; or consular authorities act with extreme

slowness in identifying or allowing the return permission.

In line with these considerations, one can take into account the literature considering the externalization as a central aspect of the EU immigration policy²⁸. The process of externalization of control power refers to those European measures that shift the place where the controls are made: from the frontier itself to the countries of migration origin²⁹. Border controls, in that light, cross over the internal territories, take place outside the EU space and are made by transnational security and military forces.

3.3. Internal measures

The last group of European policies addressing illegal immigration is composed of those that are applied to the internal territory of the EU. In this field, two kinds of key actions are taken. First, the EU implements measures and actions with the goal of protecting the illegal immigrant as a person in a vulnerable position. Policies that protect the rights of irregular migrants in Europe are rare. They are observable, indirectly, as “complementary” policies, such as those arising from the struggle against racism and xenophobia. However, the main objective of the Union is to develop measures to correct irregular situations, such as controlling identifying documents, detaining irregular immigrants in the temporary detention centers and, finally, repatriating the person to his or her country of origin.

²⁴ (OJ No. L 149, 2 June, 2001)

²⁵ (OJ No. L 321, 6 December, 2003)

²⁶ (OJ No. L 261, 6 August, 2004)

²⁷ Amnesty International, “Italy: Forcible Return/Fear for Safety/Fear of Torture”. PUBLIC AI Index: EUR 30/002/2005, 18 March.

²⁸ Christina Boswell, ‘The “External Dimension” of EU Immigration and Asylum Policy’, *International Affairs*, 79 (3), (2003), 619-38.

²⁹ Didier Bigo, and Elspeth Guild, “Introduction: Policing in the Name of Freedom”, in D. Bigo and E. Guild (eds) *Controlling Frontiers: Free Movement Into and Within Europe*. (Aldershot: Ashgate, 2005).

As mentioned in the section on foreign policies, the return is the core measure taken by Member States against irregular immigration. If someone lives in the EU without the necessary permits to remain, EU normative say that he or she must return to his or her country of origin. However, it is worthy to note that the other pole of the measures – which focuses on the internal territory of Member States – represents the logical corollary to the external measures. In this sense, the two actions projected at the European level are represented by the control of identity documentation of immigrants and the detention in temporary detentions centers for irregular immigrants.

Identification checks made by the local police represent a concrete and daily-enforced policy, emblematic of the sovereignty and security principles. In recent decades and particularly in recent years³⁰, such measures have been strengthened. The sole purpose of this policy is the localisation of foreign citizens in illegal situations. These controls typically occur in public places, which are normally frequented by illegal immigrants. These are centers where immigrants try to regularise their legal status – such as consulates and embassies –, or places of everyday life like phone cards distributors, healthcare centers, public transport stations, cultural centers and so forth. It should be stressed that trade unions and associations working with foreigners have denounced these systematic and indiscriminate methods of

identification checks. As well, they have underlined that the police carries out these checks by using racial profiling to identify those who are likely to be foreigners.

These systematic identification checks carried out by the police in public places with the sole purpose of locating and identifying illegal migrants represent a first step towards the restriction of freedom for immigrants. The second step is bringing those immigrants who cannot prove their legal residence within the Community to the police station. Finally, the detainment of these irregular immigrants at the temporary detention centers for foreigners represents the final stage of this *securitization* trend. Both the normative basis for these policies and their implementation raise relevant legal and constitutional problems.

In regards to the temporary detention centers for foreigners³¹, it should be emphasized that officially they are the infrastructure of the public administration, designed as a first reception and projected to provide social services and benefits, such as basic legal and psycho-medical assistance. These are centers spread throughout Europe with the aim of interning immigrants who have received a repatriation order and are awaiting their return³². Officially, they are not prisons and the immigrants who are detained have not committed any crime, while the stated purpose of these centers is purely defensive and protective. However, the detention of foreign nationals in these centers is *de facto* an arrest, since they

³⁰ A recent example is the Circular no. 1/2010 of 25 January 2010, of the *General Commissariat for Immigration and Border of Spanish Police and Civil Guard*. It gives instructions recommending to the police to bring those foreigners who do not prove their legal residency in the Spanish territory, even those with identification, to the Commissariat.

³¹ Regarding Spain, the regulation of immigration centers is based on Articles 163 to 165 of Royal Decree 2393/04 of 30 December 2004, approving the Regulations of the Organic Law 4/2000, 11 January 2000, on rights, freedoms and social integration of foreigners in Spain. As regards to Italy, the Centers for temporary stay –today called Identification and Expulsion Centers– were instituted in 1998, through art. 12 of Law 40/1998, also called “Turco-Napolitano”.

³² In the case of Italy, the so-called “Bossi-Fini” Law (L 189/2002), establishes that the stay in these centers is set to a maximum of 30 days, extendable for another 30, in the case where it is not possible to execute the order of expulsion.

are deprived of personal freedom and are subject to a coercive regime that prevents them from receiving visitors³³.

4. Conclusion

Contemporary societies are apparently lush in all kinds of material goods and protections but, paradoxically, are those in which a sense of insecurity seems to penetrate the daily life of all social strata³⁴. These are, in the broadest increases of uncertainties, some examples of the collective fears: apprehension about the vulnerability of the economic future, fear against organized crime or immigration, fear of possible disease epidemics, international terrorism or nuclear proliferation. The need for security has become a prime political issue³⁵. The fear has a widespread, collective impact on individuals and communities, and managing this feeling represents a horizon of control. In this sense, the needs of European society to increase control over contemporary migration flows can be analyzed through a fear-security dialectical lens.

Nevertheless, one could envisage a series of reflections. On one side, it has been shown that in many cases the policies pursued by European governments are more generous with immigrants than those demanded by citizens and political parties, who normally do not agree with sporadic policies, such as episodic regularization of undocumented immigrants, announced and enforced quotas, selective and discretionary admissions³⁶. It can also be stated that migration policies are as restrictive to the

point that they have created a situation of permanent control³⁷.

In this context, it should be stressed that contemporary security and immigration issues in the content of the EU can be only understood by contextualizing it in a whole historical and theoretical analysis.

In the first section of the paper, through the historical analysis, the paper shows the trajectory in which the EU immigration policy has been developed during the last thirty years. By drawing the main steps of the improvement of this policy, this research has underlined the dialogical mechanisms between communitarian and intergovernmental power. It has also been shown that the fight against illegal immigration is a priority in the European immigration policy. Secondly, from a theoretical point of view, the paper enhances the contradictory elements that characterize any immigration policy. Finally, this investigation shows the specific dimensions of the European immigration measures, which take place, at once, in, out and at the borders.

This paper addresses the European immigration policy with a wide approach. It shows how the European measures in immigration affairs produce a “movement of the borders”, both at the communitarian and intergovernmental level. Moreover, by stressing the foundational elements of immigration policies, the paper emphasizes the “structural” instability and the multidimensional character of borders, both at the theoretical level and in terms of concrete policies.

³³ Héctor Claudio Silveira Gorski, “Los Centros de Internamiento de Extranjeros y el futuro del Estado de Derecho”, *Mientras Tanto*, 83, (2002), p. 94

³⁴ Robert Castel, *L'Insécurité sociale : qu'est-ce qu'être protégé ?*, (Paris : Édition du Seuil, 2003)

³⁵ Alessandro Dal Lago, ‘La tautologia della paura’, *La Rassegna Italiana di Sociologia*, 40 (1), (1999), 5-41.

³⁶ Catherine Withol de Wenden, *Les obstacles à une politique européenne de l'immigration*, (Luxemburg: OPOCE, 1998).

³⁷ Andrew Geddes, *Immigration and European Integration: Towards Fortress Europe?* (Manchester: Manchester University Press, 2000).

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