



Ricard Zapata-Barrero

Professor of Political Science, Universitat Pompeu Fabra (Barcelona).

ricard.zapata@upf.edu

THE EXTERNAL DIMENSION OF MIGRATION POLICY IN THE MEDITERRANEAN REGION: PREMISES FOR NORMATIVE DEBATE

In recent years, policies on migratory flows have taken a new direction, based on an external dimension that entails the implementation of policy beyond state borders. This article aims to unravel the meaning of externalisation, which is not only seen as a new policy orientation, but also as a new discourse based on the idea that confrontation over migration between countries of origin and destination does not lead to the resolution of problems and that it is more beneficial for all parties to negotiate and cooperate. This article is structured into two parts: in chapter one we will examine the “externalisation” category in detail, based on the practices it encompasses; in chapter two we will present the main threads of a debate that has only just begun and the main criticisms of the issue, and we will conclude by highlighting the premises of a normative debate that has arisen as a result of these new practices.

Externalisation, migration, policy, policies, EU, Mediterranean, external dimension

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I: INTRODUCTION: THE CONTEXT AND OBJECTIVE

In recent years, policies relating to the management of migration flows have taken a new direction, based on an *external dimension* that entails the implementation, by destination countries, of policies to manage migratory flows beyond their borders. For some time now, the European Union has been drawing a clear distinction between the control of land borders and the control of migration flows. Little by little, the two, which were initially used almost interchangeably, have grown further and further apart by force of circumstance. There seems to be a clear logic to this argument: “before migrants come and ask to be let in, it is better to prevent them from leaving”. Images of Ceuta and Melilla, the Canary Islands and, more explicitly and large-scale, what happened in Lampedusa in October 2013 – an unacceptable boat tragedy that resulted in the death of more than 200 people, partly on account of the inhumane requirements of Italian law which discourages locals from helping migrants in distress - also demonstrate the political difficulty of defining boundaries that are both national (Italian) and European. As R. Zapata-Barrero already pointed out in 2007, in the case of Spain, state management of European borders poses conceptual and policy challenges which evidence the contradictions between policy practices for the management of human mobility and the very foundation of the state’s foreign policy.

If we are to review the institutional framework contextualising our starting point, we should begin with the conclusions of the Tampere Summit of 1999, which aimed to develop common policies with countries of origin, create a common European asylum system, introduce measures to ensure the fair treatment of third-country nationals and manage migratory flows. The official conclusions outlined a global approach to migration, and can be considered a milestone in the development of a common migration policy. The full report stressed the importance of preventing and addressing the root causes of migration and therefore paved the way for placing greater emphasis on the external aspects of migration. The main objective of this approach is to link the internal migration cooperation policies of the countries of origin and transit, including political, economic, development and human rights matters. Therefore, it was internal migration policy that justified the need for external action.

The guidelines set by the Summit can be regarded as the first official inclusion of migration in EU external relations and the creation of a framework for the establishment of a common policy in this area.

A review of how the EU reacts to these situations in the Euro-Mediterranean context reveals the following: on the one hand, at the Seville European Council of 2002, the need to use instruments of EU external relations to manage illegal migration was explicitly recognised for the first time. The obligation to include a “readmission of illegal immigrants” clause in all future association or equivalent agreements between the EU and third countries was also presented at the meeting of the Council. After indications of new trends in the means of entry of immigrants (from Ceuta and Melilla to the Canary Islands), the Spanish and Moroccan governments undertook an initiative with the support of the EU: the Euro-African Conference on Migration and Development, held in Rabat in July 2006.¹ This action was one of the first attempts to demonstrate the EU’s priorities: the inclusion of development and the African countries in the EU’s external policy on migration. The Conference in Rabat gave rise to a second one on Migration and Development, which was held in Paris², and brought together fifty-six of the countries that were involved in the African migration routes.

We must also mention the EU-African Ministerial Conference on Migration and Development held in Tripoli in November 2006³, where, for the first time, Africa and the European Union approved a joint strategy to address the challenges and harness the positive benefits of international migration. The EU and African Action Plan on trafficking in human beings, officially approved at the conference, is an integral part of the global strategy adopted in Tripoli.

The main conclusions of these two conferences were recognition of poverty and underdevelopment as the causal factors of migration, and the need to develop specific action plans. Furthermore, the collective responsibility and solidarity of the African stakeholders, i.e., the countries of origin and destination, was extended to include the countries of transit. The Maghreb countries are therefore obliged to take proactive stances that will very likely lead to amendments of their legal and institutional arrangements.

1 The Rabat Declaration and Action Plan: Euro-African Ministerial Conference on Migration and Development:

2 On 25 November 2008, the second Euro-African Ministerial Conference on Migration and Development was held in Paris on the occasion of France’s presidency of the Council of the European Union. It was inspired by the findings of the three working sessions for the implementation of the Rabat Action Plan, which were held, respectively, in Rabat (March 2008), where experts were brought together to address the issue of legal migration; in Ouagadougou (May), to discuss the fight against illegal immigration, and in Dakar (July), to assess the link between migration and development.

3 EU-African Ministerial Conference on Migration and Development in November 2006 <http://www.africa-union.org/root/au/Conferences/Past/2006/November/SA/EU/EU-AU.htm> (in English and French)

Finally, it is important to mention the dialogue on migration in the Western Mediterranean (5+5). At a conference held in Algeciras (and continued in Évora),⁴ this multilateral forum sought to include a number of Sub-Saharan African countries in the discussions, thus incorporating transit countries as stakeholders and establishing all aspects of integration and development as priorities for the period. This signalled the intention to make the countries of origin and transit of migrants collectively responsible for solidarity and integration. The so-called Global Approach to Migration announces the need for a balanced, global and coherent approach aimed at gathering relevant policies to fight against illegal immigration and, in cooperation with third countries, to expand the benefits of legal migration. It stipulates that migration issues are central to the EU's relations with a broad range of third countries, including, in particular, the neighbouring countries east and south of the Union. In fact, the Global Approach results from the invitation made by the European Council to the Commission in late 2005. The Commission advanced in its global approach to external relations, development and employment, and justice and security, fixing target actions focused on Africa and the Mediterranean. It also suggests including new political areas that were not part of the initial global approach, such as legal measures regarding migration and integration, mentioning the need to instil greater efficiency in EU decision-making in this area.

To summarise early institutional action, the EU's first reaction to human mobility that violated human dignity in the Mediterranean was to demand that responsibility be shared with the countries of origin and, secondly, a change of approach, linking migration and development, and implementing state policy outside the jurisdiction of the nation, in the territory of the countries of origin, with the latter countries' agreement. Various strategies have been developed in the EU with the aim of managing the flow of migrants before they leave their countries of origin. We can see that this new approach could be expressed either through restrictive border control policies or proactive policies aimed at reducing the causes that lead to the decision to emigrate. Another feature of this new approach is bilateralism, i.e., it only occurs when there is interaction between two countries (receiving and sending countries) with a view to jointly managing the migration process. The change demonstrates a very clear turn in policy: what was once seen as a problem that divided at least two states is now seen as a way of uniting them.

With this new approach, it is interesting from a theoretical perspective to draw a distinction between two policy practices that are initially seen as linked: border control and management of migration flows. This practice reveals an assumption that

4 Dialogo 5+5 para las migraciones en el Mediterráneo. Dialogue 5+5 for migration in the Mediterranean. Sexta Conferencia Ministerial sobre la Migración en el Mediterráneo Occidental Évora (Portugal), 26 y 27 de mayo de 2008 Sixth Ministerial Conference on Migration in the Western Mediterranean in Évora (Portugal), 26 and 27 May 2008.

has accompanied migration policy during all these years: the link between border control and the management of migration flows. That is to say, work in the area has always been carried out on the premise that the only way to manage migratory flows was to develop border control policies.

In this context, this article attempts to theorise the externalisation of migration policy and identify the interpretations and definitions that apply to this phenomenon. We will also attempt to identify the main criticisms received, which ultimately depend on where we draw the line that separates the field of human rights. Finally, we will attempt to demonstrate that externalisation is not just a new policy orientation, but a new theoretical discourse based on the idea that *c o n f r o n t a t i o n* over migration between countries of origin and destination does not lead to the resolution of problems, and that it is more beneficial for the parties concerned to negotiate and cooperate. The question is what institutional narrative should be used to describe this discourse, because, as we shall see, there are several possible philosophies which are not all consistent because they have different interests and objectives. This article is structured into two parts: in chapter one we will examine the “externalisation” category in detail, based on the practices it encompasses; in chapter two we will present the main threads of a debate that has only just begun and the main criticisms of the issues, and we will conclude by highlighting the main points of the normative debate that has arisen as a result of these new shifts in policy in the hope of encouraging additional empirical research on the subject.

I. THE EXTERNALISATION CATEGORY AND THE PRACTICES IT ENCOMPASSES

The main purpose of this paper is to open up a line of analysis categorising a set of political practices that imply interaction between two countries and affect the domestic policy of the decision-making actor. The Mediterranean area is the territorial context of this interaction. These new directions in immigration policy are labelled by the EU itself as an external dimension of migration policy, but two other terms are also used, and are perhaps more appropriate to an academic discussion: namely, the externalisation of immigration policy, or simply, extra-territorialisation of immigration policy. Whatever the term, there is a set of basic characteristics that form a common conceptual core: the link between policy and territory and sovereignty, in the sense that policymaking and the implementation and outcomes of these decisions differ territorially. There is a sort of hierarchical relationship in this two-territory relationship, in that there is one state with monopoly over both the decision-making process and the basic policy outcomes (this being the receiving country), and another where the policy is implemented and that only influences indirectly, through common meetings and agreement.

Our most immediate goal is to delimit the category of “externalisation of policies” (and its related notions). This categorisation will be carried out through three main complementary steps. The first step is conceptual, and has the basic purpose of defining the notion of “externalisation” with reference to immigration policy (section 1.1). As a second step, and situating the study within the current debate, the main research focus will be outlined, proposing two main approaches (section 1.2). Finally, the third step will be more empirically-oriented. This last phase is aimed at delimiting the notion of “externalisation” through a set of policy practices (section 1.3).

1.1 Definition: what does “externalisation” mean in defining an immigration policy?

Traditionally a core aspect of state sovereignty, immigration control began by moving up to the inter-governmental level. It was then brought closer to supranational governance and is now gradually moving out towards the realm of EU foreign relations⁵. Without entering the debate on whether extra-territorial control is a new phenomenon or a new step in an old process of cross-governmental cooperation logic⁶, what can be said is that the notion refers to a set of political practices with diverse, yet inter-related conceptualisations, emphasising different aspects of these shared practices. All perhaps come under the common umbrella of designing governance and policy extension beyond borders, between at least two countries sharing a specific asymmetrical relationship, not only in terms of power and socio-economic disparities, but also in their capacities to politically-respond to the same phenomenon: the movement of people between one country and the other. A number of phenomena are grouped under the category of “externalisation”⁷.

- a) Elements of the domestic system that have international implications, such as the creation of camps for different types of migrants, outside and inside borders.
- b) Increased emphasis on external borders and on the fight against illegal immigration, such as border control measures, the construction of fences, patrols, and so on.
- c) Measures for the repatriation of “illegal” migrants, re-admission agreements, and means of transport to third countries (for example, group flights).
- d) Proposals for the processing of asylum claims outside the European territory,

⁵ LAVENEX, Sandra “Shifting Up and Out: The Foreign Policy of European Immigration Control”, *West European Politics*, vol. 29, no. 2, 2006, pp. 329-350.

⁶ LAVENEX, Sandra, “Politics of Exclusion and Inclusion in the Wider Europe”, in De Bardeleben, J. (ed.) *Soft or Hard Borders? Managing the Divide in an Enlarged Europe*, London, Ashgate, 2005, pp. 123-144.

⁷ DEBENEDETTI, Sara, *Externalization of European asylum and migration policies*. Florence: School on Euro-Mediterranean Migration and Development, Robert Schuman Centre for Advanced Studies, 2009.

for instance through regional protection and transit processing centres.

- e) Action targeting “root causes” and attempts to link migration and development.

The term “externalisation” has an economic origin. It involves “the transfer of a business function to an external entity, requiring a degree of coordination and trust between the outsourcer and this external entity”⁸. Taking into account the international dimension of the migration phenomenon, this cooperation seeks to engage countries of origin and transit in the control of migration flows. At its core is the notion of “remote control”, which involves shifting the locus of control further afield from the common territory.⁹ The more traditional type of instrument are visa policies.¹⁰ A second is the mobilisation of third countries in the control of migration flows to Europe.¹¹ This practice implies at least two main premises:

- a) Shifting migrants at the border through state agents (visas), private actors (carrier sanctions), third states (cordon sanitaire in East and South of Europe).
- b) Extra-territoriality: processing demands in relation to the management of migration flows outside the EU.

What this also means is that migration is being integrated as a major stake in international negotiations and expresses, directly or indirectly, the co-responsibility of a common interest: to control people’s movements. Following this line of thought, some authors are beginning to talk of externalisation policy as a new mode of governance.¹²

Drawing on M.E. Smith’s¹³ distinction between four types of boundaries – geopolitical, institutional/legal, transactional and cultural – external governance can be said to occur when the institutional/legal boundary is moved out beyond the circle of Member States. Thus, the crucial criterion is the extension of the legal boundary of

8 RIJPMMA, Jorrit and CREMONA, Marise “The Extra-Territorialisation of EU Migration Policies and the Rule of Law” *EUI Working Papers*. LAW. European University Institute, 2007.

9 ZOLBERG, Aristide, “The Archaeology of ‘Remote Control’”, in A. Fahrmeir, O. Faron, and P. Weil (eds.) *Migration Control in the North Atlantic World: The Evolution of State Practices in Europe and the United States from the French Revolution to the Inter-War Period*, New York, Berghan Books, 2003.

10 See, among others, TRAUNER, Florian, and KRUSE, Imke, *EC Visa facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood*. CEPS Working Document No. 290, 2008. SÁNCHEZ-MONTIJANO, Elena, VAQUER i FANÉS, Jordi y VILLUP, Elina (eds.) *La política de visados para el siglo XXI: más allá de la cola del visado*, Barcelona: Cidob editorial, 2012.

11 LAVENEX, Sandra, op cit, 2006, p. 334.

12 See, for example, LAVENEX, Sandra, op cit, 2006, pp. 329-350.

13 SMITH, Michael “The European Union and a Changing Europe: Establishing the Boundaries of Order”, *Journal of Common Market Studies* 34, 1996, pp. 13-18.

authority.¹⁴

External governance is thus defined as the “shifting of the legal boundary beyond institutional integration”, and is interpreted in terms of extra-territorialisation, designating the fact that the EU *acquis* reaches beyond EU territory to affect third countries, and how these third countries adopt the EU *acquis* and values in their own legal orders¹⁵. In this respect, there is also a conceptual link between “extra- territorialisation” and “external governance”. The term extra-territorialisation was proposed by J. Rijpma and M. Cremona¹⁶ and covers the means by which the EU attempts to push back its external borders. In other words, how it uses “remote control policies” to control unwanted migration flows. “Extra-territorialisation” includes the way in which the EU and its Member States attempt not only to prevent non-Community nationals from leaving their countries of origin, but also to ensure that if they manage to do so, they remain as close to their country of origin as possible, or in any case outside the EU territory. It furthermore covers measures that ensure that if individuals do manage to enter the EU they will be repatriated or removed to ‘safe third countries’¹⁷.

Based on recent practices by the EU and its Member States, as well as literature on the matter, different forms of extra-territorialisation come under the policy externalisation category:

- a) Autonomous policy action that requires third countries’ cooperation. Namely, political action taken by a political entity, independently of a third country, which nevertheless impacts on the legal order of that third country and the position of third country nationals outside the territory of the EU. For instance, visa policies or the FRONTEX agency.
- b) External policy action, such as international agreements and cases where third countries undertake to align their domestic law with the community *acquis*, or other complex interactions. Examples of this include the immigration liaison officers’ network by regulation, an effective return policy and elaboration of a list of safe countries of origin.
- c) Promotion of EU *acquis* amongst third countries in the adoption of their own domestic legal orders. This can be done through formal agreements such as association agreements.

¹⁴ LAVENEX, Sandra, “EU External Governance in Wider Europe”, *Journal of European Public Policy*, vol. II, no. 4, 2004, pp. 680–700.

¹⁵ RIJPMMA, Jorrit, and CREMONA, Marise, op cit, 2007.

¹⁶ idem.

¹⁷ idem.

To sum up this conceptual analysis, all these related meanings share the view that there is a strong link between the externalisation of policies and an orientation towards managing migratory flows. In the end, what the externalisation policy seeks is to reduce flows and/or control them. From this basis, some basic inter-related premises can be established:

- a) Inside/outside territory is no longer a frame of reference for policy-making, since there is a growing trend to go beyond these traditional limits in drawing up new policies related to immigration (a fact pointed out by D. Bigo¹⁸). There is a link, then, between external and internal policies. In other words, an external practice has the aim of provoking internal effects.¹⁹
- b) It thus follows that there is a shared understanding of the state's obligations engaged by a territorial nexus.²⁰
- c) Perhaps the best expression to capture the meaning of “externalisation of policy” is “policy at a distance”, or “remote policy”.²¹ That is, policies implemented in the sending country, yet which seek to impact on the receiving country's internal dynamics. It follows, then, that the search for policy solutions with the domestic territory is less motivated by the search for innovative solutions than by the internal need for security and stability.
- d) The notion of inter-dependence explains why a state/the EU chooses to engage in external action, and hence bind third countries to the fulfilment of its internal policy goals.²² This externalisation is primarily conditioned by the construction of a “security community” in a geopolitical context. If we take the European Member States and the European Union as a territorial framework of reference, this would mean having the main aim of ensuring the area of

18 BIGO, Didier, “The Möbius ribbon of internal and external security (ies)”, in M. Albert, M., Jacobson, D., and Y. Lapid (eds.) *Identities, Borders, Orders: Rethinking International Relations Theory*, London, University of Minneapolis Press, 2001.

19 It is not so much seen as the “external effect” of internal policy (LAVENEX, Sandra and UÇARER, Emek, “The External Dimension of Europeanization: The Case of Immigration Policies”, *Cooperation and Conflict*, Vol. 39, no. 4, 2004, pp. 417-443.), but rather, as the “internal effect” of external action in relation to migration policy.

20 GIL-BAZO, María-Teresa, “The Practice of Mediterranean States in the Context of the European Union's Justice and Home Affairs External Dimension. The Safe Third Country Concept Revisited”, *International Journal of Refugee Law*, vol. 18, no. 3-4, 2006, p.593.

21 This term was taken from BIGO, Didier and GUILD, Elpeth, “Policing at distance: Schengen visa policies”, in (eds.) *Controlling Frontiers. Free Movement into and within Europe*. Hants (England), Burlington (USA), Ashgate, 2005, pp. 233-263.

22 LAVENEX, Sandra, “EU External Governance in Wider Europe”, *Journal of European Public Policy*, vol. 11, no. 4, 2004, pp. 681.

freedom, security and justice within the Union.²³

1.2 Two approaches to externalisation

What the very recent literature on this subject suggests is that there are, at least, two main approaches to externalisation that orient arguments for normative debate. The original one can be labelled as a “remote control approach”, where the basic objective is to have internal effects in receiving countries in terms of security.²⁴ The rationale behind this is that potential migrants wishing to enter Europe can be “controlled” before they reach the destination country. Another premise of “remote control” is based on the supposition that it is much more difficult to expel unwanted migrants once they have arrived in European territory because of legal and human protections.²⁵ This is a security-based philosophy and reactive approach and reflects what could be called a “policy as restriction”, in the sense that it establishes policy with the aim of restraining the movement of people.

The second approach is development-based and proactive in character. Its basic orientation is not to restrain the movement of people, but to construct an alternative through political innovation. Its rationale is that we must seek to influence, while also reducing, the push factors motivating people to leave their home countries. This approach is far more centred on the causes than on the effects of migrants’ exit-option. It has a preventive dimension and can be labelled, in contrast to “remote control”, as the “root cause approach”.²⁶ Schematically, both approaches can be presented as follows:

Table I Two approaches to the externalisation of migration policy

Remote control approach	Root cause approach
Security-based	Development-based
Reactive (control of flows)	Proactive (preventive)
Policy as restriction	Policy as innovation

23 In a document about the priorities and objectives for external relations in the field of justice and home affairs, the President’s Office clarified that the main aim of the external dimension was the creation of a common area of Freedom, Security and Justice within the EU. Council of the European Union “European Union priorities and policy objectives for external relations in the field of justice and home affairs”, Doc.7653/00 6, June 2000

24 “Remote control” was initially conceptualised by ZOLBERG, Aristide, op cit., 2003.

25 Also see GUIRAUDON, Virginie, “Before the EU Borders: Remote Control of the ‘Huddled Masses’”, in: K. Groenendijk, E. Guild and P. Minderhoud (eds.) *In search of Europe’s Borders*, Brussels, Migration Policy Group, 2003.

26 An initial formulation of these two approaches can be found in C. Boswell (2003). The basic difference is that a distinction is drawn between the externalisation and prevention approaches, and externalisation is identified with the remote control approach. However, we have placed the two approaches (the remote control and root cause approaches) in the externalisation category.

In empirical terms, one could say that the “remote control approach” defines the domestic and/or EU migration control tools traditionally applied to engage sending and transit countries, such as combating illegal entry, migrant smuggling and trafficking. In contrast, the “root cause approach” relates more directly to innovative tools, developing preventive mechanisms that address the causes of migration.²⁷ This approach is highlighted in several EU institutional documents, but is often still seen as wishful thinking.

In 1992, the Council of the European Union adopted a specific Declaration on the principles governing the external aspects of migration policy in which it recognised: “(...) the importance of analysing the causes of immigration pressure, and analysing ways of removing the causes of migratory movements”.²⁸ For this purpose, it laid out the various elements of root cause approaches, and these can be regarded as the dimensions defining the development-based philosophy:

- Conflict prevention, preservation of peace, full respect for human rights and the rule of law;
- Protection of refugees and displaced people by the region of origin should be the rule, except in cases of “particular need”;
- Support for economic and trade liberalisation;
- Provision of development aid;
- Fight against illegal immigration;
- Finalisation of readmission agreements;
- Cooperation in situations of mass influx.

Apart from the multilateral framework of the Euro-Mediterranean Partnership (EMP), external governance takes place at the bilateral level through association agreements. The Agreement concluded between Tunisia and Morocco includes identical provisions on migration policy, which is given first priority in the list of co-operation issues in the social field (Chapter III, Article 71). In Article 71, the contracting parties agree to carry out projects and programmes aimed at: “(a) reducing migratory pressure, in particular by improving living conditions, creating jobs and developing training in areas from which emigrants come”; and “(b) resettling those repatriated because of their illegal status under the legislation of the state in

27 PAPADOPOULOS, Apostolos, “Editorial: Migration and Human Security in the Balkans”, *Migration Letters*, vol. 4, no. 2, 2007, pp. 95-100.

28 EUROPEAN COUNCIL “Declaration on principles of governing external aspects of migration policy”, Annex 5 of *Conclusions of the Presidency of the European Council meeting in Edinburgh*, 11-12 Bull EC 12-1992, December 2002.

question”.²⁹ Finally, we can also mention the European Commission Communication stating the need for a thematic approach, emphasising the need to change the focus of the external dimension of migration policy from a security-based to a more development-based one centred on root-cause concerns:

“Policy developments (...) referring to migration and development and to legal economic migration are probably destined to exert the more innovative effects. This goes in parallel with the fact that until recently the external dimension of the migration policy has been prevalently built around the objective of better managing the migratory flows with a view to reducing the migratory pressure on the Union. Although this remains a valid goal, the additional challenge today lies in the development of policies which recognise the need for migrant workers to make our economies function in those sectors where the EU is facing labour and skills shortages and, at the same time, which maximise both for the migrants and for their countries of origin the benefits triggered by the migration. This presupposes an approach which goes beyond the questions of border control and fight against illegal immigration, to incorporate other dimensions of the migratory phenomenon, in particular development and employment.”³⁰

This implies that the future thematic programme would have the following five strands:³¹

- Fostering links between migration and development;
- Promoting well-managed labour migration;
- Fighting illegal immigration and facilitating the readmission of illegal immigrants;
- Protecting migrants against exploitation and exclusion;
- Promoting asylum and international protection, including through regional protection programmes.

This root cause approach also belongs to the human rights framework referred to in the Report of the Global Commission on International Migration (October, 2005).³² Within the section on state sovereignty and responsibility, it is argued that: “The Commission also urges states to uphold those provisions of the trafficking and smuggling protocols that emphasise the need to combat the root causes of these phenomena by alleviating poverty, underdevelopment and a lack of equal opportunities, and by

²⁹ LAVENEX, Sandra, *op cit*, 2004, p. 334. 680–700.

³⁰ Thematic programme for cooperation with third countries in the areas of migration and asylum, Brussels, 25.I.2006, COM (2006) 26 final (3.2. Strategic guidelines, p. 10)l;

³¹ *idem*.

³² This report is available at the Global Commission's website: www.gcim.org.

paying special attention to economically and socially depressed areas” (p. 58).

1.3 Identifying the practices and actions of policy externalisation

There is a concern in defining the different strategies for the externalisation of migration

Policies. A. Papadopoulos³³, for instance, identifies three basic strategies:

- *remote control* strategy: transfer of border controls to third countries and/or border countries;
- *remote protection* strategy: emphasis on the extra-territorial dimension of refugee protection;
- *capacity-building* strategy in certain sending and transit countries, which mainly includes the transfer of know-how, surveillance technologies, facilities and institutions.

In a bid to identify the concrete practices that define this policy, the following table shows three dimensions of practices through which the externalisation of policies is conceptualised, and the different actions within each:

Table II The main practices and actions involved in the externalisation of migration policy

Diplomatic practices	External institutions	Policies
Bilateral meetings	Camps and processing centres	Visa
Multilateral meetings	Immigration offices	Return
Readmission agreements	Border control	Repatriation
		Extradition policies

I will now proceed to describe these.

1.3.1 Diplomatic practices

This refers to activities taking place outside the territory.³⁴ Such activities could consist of bilateral (between sending/receiving countries) or multilateral meetings (among several countries or at the regional level). These diplomatic practices may also

³³ PAPADOPOULOS, Apostolos, *op cit.*, 2007, pp. 95-100.

³⁴ LAVENEX, Sandra, *op cit.*, 2006, pp. 329-350.

include political agreements affecting the lives of people who try to migrate, such as, most importantly, re-admission agreements, which is a primary tool for the management of migration flows.

Broadly defined, such agreements establish a mutual commitment from each party to welcome back, without any formalities, certain categories of persons at the other party's

request. Their main purpose is to combat irregular entry. Re-admission agreements tend to be bilateral because Member States' differing legal systems render the multilateral approach too complex.³⁵

Readmission agreements are agreements whereby each party undertakes to welcome back those persons who passed through its territory before illegally entering and living in the territory of the other party.

However, it is important to point out that in bilateral agreements, the word "readmission" can have up to three different meanings: firstly, "repatriation", which means that an illegal immigrant of a state must be readmitted by the country of which he is a citizen; secondly, "readmission", strictly speaking, refers only to the admission by a state of a non-national who passed through this state on his way to another country where he is an illegal immigrant; and thirdly, "transit", which refers to the passage of a foreign person through a state on his way to another (usually the state of which he is a national) on his way from the country where he is an illegal immigrant.

1.3.2 External institutions

The term "external institutions" refers to the building of structures with the specific functional aim of implementing one or several dimensions of policy externalisation. This institutional structure does not have, in principle, a permanent status, but is circumstantial and pursuant to a political decision. This category encompasses, for instance, camps and processing centres, which have the function of receiving irregular migrants in specifically designated places.³⁶ It also includes immigration offices, which have an added diplomatic dimension given their aim of establishing contact between the potential immigrant and the receiving country before the migratory process is embarked upon, as well as other border control institutions, which may

35 HURWITZ, Agnes. "The Externalization of EU Policies on Migration and Asylum: Re-admission Agreements and Comprehensive Approaches", paper presented at the UNU-WIDER Conference "Poverty, International Migration and Asylum", Helsinki, 27-28 September 2002 (full text of the conference is available at: ; <http://archive.unu.edu/update/downloads/43wider1.pdf>)

36 While "camps" is the familiar name spread by NGOs, the official name is "centres of temporary stay" or "reception centres".

include joint border patrols³⁷ or police control networks, such as the Spanish SIVE and the European FRONTEX.³⁸

1.3.3 Policies

Finally, there are also a set of policies related to the management of migratory flows, such as visa, return and repatriation policies. While each policy covers a different aspect and has its own specific legal interpretation, they all produce the same result: the obligation of the migrant to abandon his plan to emigrate and return to his point of origin. We will now take a closer look at the general definitions of each policy action.

Return is the case when persons seeking to enter Spain, who do not meet all the requirements or have not completed the required formalities, are intercepted at the border, denied entry and “(forced to) return to their country of origin.” The “return” therefore does not refer to illegal entry attempts, but to entry authorisation denials. The administrative act by which a foreigner who attempted to enter Spain illegally is returned to his country of origin is known as *repatriation*. Finally, *extradition* is the process whereby a person who has been accused or convicted of an offense under the law of one state is arrested in another and returned to stand trial or to serve a sentence that has already been imposed.

While international cooperation in criminal matters is strong, there is still the rule that a state is only obliged to extradite a foreign criminal if it has an international treaty with the state requesting extradition. In the absence of an extradition treaty, the requested state is empowered to extradite the criminal, but is not obliged to do so.

2. THE DEBATE: EXTERNALISATION AND THE MAIN CRITICISMS

In this section, we will present the main threads of a debate on externalisation that has only just begun. It is particularly interesting to consider the reasons given to justify this shift in policy direction. At this point, we can say that externalisation came about in response to the shortcomings of traditional migration management policies (section 2.1.). After looking at this, we will move on to the arguments put forward by those who criticise this policy shift because it takes a Eurocentric and securitisation approach (section 2.2.). And, finally, we will examine the factors that underlie externalisation and affect the development of the new policy shift (section 2.3.).

³⁷ LAVENEX, Sandra, *op cit*, 2006, p. 334. 329-350.

³⁸ DEBENEDETTI, Sara, *op cit*, 2009.

2.1 Externalisation as a response to the shortcomings of traditional policies

In this section we will explore the reasons and justification for having to externalise migration policies which were initially confined to the domestic sphere (within state borders). What is the rationale behind the externalisation of policy? The general response is that domestic migration policies were insufficient for controlling migration flows and that it therefore became necessary to develop the external dimension. C. Boswell³⁹ notes that European states have experienced an increase in illegal immigration due to the restrictive immigration policies of recent decades. This, in turn, has given rise to the need to cooperate with the countries of origin and transit in combating illegal migration until such time as immigration is established as a priority issue in EU external policy. S. Debenedetti⁴⁰ speaks about the importance that coordination of national Member State legislation has had in the development of an external dimension. As a result, harmonisation of migration policy has enhanced the role played by the EU and made association and cooperation with third countries a policy instrument for the control of migration.

The need of national agents to circumvent the restrictions by developing migration policy at the domestic level is another factor that has enabled the inclusion of immigration in EU external policy. Within this framework, several actors⁴¹ have highlighted the importance of the role played by internal policy and, particularly, the legal and social limitations of liberal democratic states in developing migration policy at the intergovernmental level. It has been pointed out that it is easier for the architects of restrictive policy to operate at the transgovernmental level because their actions lack transparency. Here, groups in favour of immigration policies (pro-migration organisations) have less room to manoeuvre. Guiraudon and Lahav⁴² argue, for instance, that migration control functions have been delegated to three spheres. Apart from the change from the national arena to the intergovernmental one, and from here to local agents (through decentralisation), there has also been a shift outwards, from the state to non-state agents (airline companies, transport companies, etc.). For Guiraudon⁴³, the shift from the national level to the intergovernmental level has been possible because of what she calls the *venue shopping* framework; and, because of the authorisation of the

39 BOSWELL, Christina, “‘The External Dimension’ of EU immigration and asylum policy”, *International Affairs*, vol. 79, no. 3, 2001, pp. 619-683.

40 DEBENEDETTI, Sara, *op cit*, 2009.

41 C. Joppke (1998), V. Guiraudon (2000), V. Guiraudon and G. Lahav (2000), and S. Lavenex (2006)

42 GUIRAUDON, Virginie and LAHAV, Gallya “A Reappraisal of the State Sovereignty Debate: The Case of Migration Control” *Comparative Political Studies*, vol. 33, no. 2, 2000, pp. 163-195

43 GUIRAUDON, Virginie, “European Integration and Migration Policy: Vertical Policy-making as Venue Shopping” *Journal of Common Market studies*, vol. 38 no. 2, 2000, 251-271.

officials responsible for migration control, they can operate in international spaces in different ways.

Firstly, they can avoid judicial constraints and eliminate adversaries at the national level, and enlist much-needed cooperating parties, particularly in origin and transit countries. The tension between the local and state level over migration control and, particularly, the local actors' desire to have a say in migration matters that fall within their remit also play an important role. Guiraudon and Lahav⁴⁴ point out that delegating responsibility for migration control to the local authorities is an old trick that is used when it is necessary to tighten migration policy at the state level. This demonstrates, therefore, a change of action on the part of non-state and foreign agents towards the exterior. The authors maintain that the abolition of the EU's internal borders and, hence, the outward "shift" of its external borders is the main reason for sharing the burden of immigration with private stakeholders and third countries.⁴⁵ The penalties imposed on transport companies are an example of how European states are imposing stricter controls on passengers before reaching EU territory. S. Lavenex⁴⁶ has also observed a change – in the first case – "upwards" in the intergovernmental sphere, and then "outwards", but her viewpoint is different. She sees these shifts in migration policy as part of the EU's external policy and not as a process of sharing the burden between state and non-state actors.

Following the same line of reasoning, Boswell⁴⁷ and Lavenex⁴⁸ highlight the fact that externalisation of migration control instruments and increased cooperation between third countries are more a logical continuation of the transnational cooperation that already existed than a new phenomenon⁴⁹. The abolition of internal borders has also given rise to the development of the external dimension of migration policy, in an attempt to harmonise the policies of new Member States and transit states.⁵⁰ According to Boswell⁵¹, in the 1980s and '90s, state and EU officials were convinced

44 GUIRAUDON, Virginie. and LAHAV, Gallya, *op cit.*, 2000, pp. 163-195

45 FERRER-GALLARDO, Xavier, and KRAMSCH, Olivier- Thomas, "El archipiélago-frente Mediterráneo: fractura, ensamblaje y movimiento en el contorno sur de la UE", in R. ZAPATA-BARRERO and X. FERRER-GALLARDO (eds.) *Fronteras en movimiento: Migraciones en el contexto Mediterráneo*, Barcelona, Edicions Bellaterra, 2012, pp. 79-102.

46 LAVENEX, Sandra, *op cit.*, 2006, p. 334. 329-350.

47 BOSWELL, Christina, *op cit.*, 2001, pp. 619-683

48 LAVENEX, Sandra, *op cit.*, 2006, pp. 329-350.

49 Also see GEDDES, Andrew, "International Migration and State Sovereignty in an Integrating Europe" *International Migration*, vol. 39 no. 2, 2001, pp. 21-42.

50 In addition to the previous literature, see also J. Rijpma and M. Cremona (2007).

51 BOSWELL, Christina, *op cit.*, 2001, pp. 619-683

that the most appropriate way to protect the Schengen area was to externalise border control, limit the number of asylum seekers and step up cooperation in order to combat people trafficking. The development of an area without borders within the EU also paved the way for the perception of immigrants as a threat to the EU and its Member States. This has prompted the reactive rhetoric that legitimises the restrictive policies of policymakers in the area of migration, focusing their discourse on the strengthening of the external borders in order to control migration flows.⁵²

2.2 Criticisms of the externalisation of migration policies: Eurocentrism and the securitisation approach

The externalisation of immigration policies has its advantages in terms of efficient management of migration flows and a shared commitment by the countries of origin and destination. However, the severest critics have questioned how this change in policy direction is affecting third countries and immigrants, particularly those in need of international protection. The EU's approach has been branded as unnecessarily Eurocentric in that it only benefits the Union and its Member States.

As a result of growing communitisation, the need for Member State policies and legislation that are conducive to convergence in migration control matters is also becoming apparent. The common ground for this convergence is the moment migrants express their desire to emigrate. Accordingly, the first externalisation actions taken by JHA officials are expressed in what has been termed the remote control approach, which focuses, according to Lavenex, on finding ways to control migration before migrants cross state borders. The main criticism is the unilateralism of the EU approach, which favours control and the combat of illegal migration over an approach that links migration and development.⁵³ Over-emphasis on control neglects important

52 See LINDSTRÖM, Channe, "European Union Policy on Asylum and Immigration. Addressing the Root Causes of Forced Migration: A Justice and Home Affairs Policy of Freedom, Security and Justice?" *Social Policy & Administration*, vol. 39 no. 6, 2005, 587-605, DEBENEDETTI, Sara, *op cit.*, 2009. ZAPATA-BARRERO, Ricard, "Political Discourses about Borders: On the Emergence of a European Political Community", in H. Lindahl (ed.) *A Right to Inclusion or Exclusion? Normative Fault Lines of the EU's Area of Freedom, Security and Justice*, Oxford, Hart Publishing, 2009b, pp. 15-31.

53 See, among others, LAVENEX, Sandra and UÇARER, Emek, *op cit.*, 2004, pp. 417-443, STERKX, Steven "Curtailling the comprehensive approach: Governance export in EU asylum and migration policy", ECPR Joint Sessions of Workshops, Workshop 16: *Who Makes Immigration Policy?* Uppsala, April 2004, BENDEL, Petra, "Immigration Policy in the European Union: Still bringing up the walls for fortress Europe?" *Migration Letters*, vol. 2, no. 1, 2005, pp. 20-31. KOFF, Harlan, "Security, Markets and Power: The Relationship Between EU Enlargement and Immigration" *European Integration*, vol. 27, no. 4, 2005, pp. 397-415 LINDSTRÖM, Channe, *op cit.*, 2005, 587-605. VAN MUNSTER, Rens, *The EU and the Management of Immigration Risk in the Area of Freedom, Security and Justice*. Political Science publications, no. 12. University of Southern Denmark, 2005, BALDWIN-EDWARDS, Martin "Inmigración en el Mediterráneo. Cambio de perspectiva: de la se-

aspects such as the promotion of legal migration and humanitarian concerns like immigrants who require international protection. Furthermore, the Eurocentric approach overlooks the needs of the countries of origin, which already suffer inequalities and lack of infrastructure.

Advocating a more proactive approach in the area of migration, Sterkx asserts that externalisation has focused exclusively on the export of migration control instead of focusing on the root causes of migration. A quote by a Commission official in an article by Sterkx published in 2004 is quite explicit: “(...) There is no progress at EU level and Member States do not want to progress on migration policy. They just shift responsibility to lots of countries. The main building block is lack of will to progress at the internal level, and because of that they shift to other countries. Third countries have to do the job we are not able to do (...)”.

Joint border control operations have been quite successful in reducing the number of illegal immigrants (the “unwanted immigrants” category). However, ever more restrictive migration policies in Europe have merely resulted in immigrants seeking out alternative and often more dangerous routes for entering Europe. Rodier⁵⁴ argues that, instead of resolving the issue of unwanted migration, stricter controls at the EU’s external borders have merely resulted in the movement of the borders and conflict with migrants into neighbouring countries. This is a problem because people in need of international protection are at risk of being deprived of this right. C. Lindström⁵⁵ specifically criticises the fact that the greater attention afforded to migration control is jeopardising application of the right of non-refoulement of migrants at risk, which is what is happening with asylum seekers who are sometimes returned to their countries

guridad al desarrollo regional”, in Y. Courbage, T. Yousef, G. Martine, P. Fargues et al. *Población y desarrollo en el mediterráneo. Transiciones demográficas y desigualdades socioeconómicas*, Barcelona, Icaria/ IEmed, 2009, pp. 367-384, LAVENEX, Sandra, op cit, 2006, pp. 329-350. RODIER, Claire “Analysis of the external dimension of the EU’s asylum and immigration policies - summary and recommendations for the European Parliament” *The European Parliament, Policy Department*, 2006, DEBENEDETTI, Sara, op cit, 2009, RIJPM, Jorrit, and CREMONA, Marise, op cit, 2007, WOLFF, Sarah, “Border Management in the Mediterranean: Internal, External and Ethical Challenges” *Cambridge Review of International Affairs*, vol. 21 no. 2, 2008, pp. 253-271, DOVER, Robert, “Towards a Common EU Immigration Policy: a Securitization Too Far.” *European Integration*, vol. 30, no. 1, 2008, pp. 113-130, KRUSE, Imke *The EU’s Policy on Readmission of Illegal Migrants*. Max Planck Institute for the Study of Societies, Germany, 2002, Available at: <http://socsci2.ucsd.edu/~aronatas/scrretreat/Kruse.Imke.pdf>, MARTÍN y PÉREZ DE NANCLARES, José (coord.) *La dimensión exterior del Espacio de Libertad, Seguridad y Justicia en la Unión Europea: en busca de una acción de la Unión Europea eficaz, coherente y coordinada*, Madrid: Iustel, 2012.

54 RODIER, Claire, op cit., 2006

55 LINDSTRÖM, Channe, op cit., 2005, 587-605.

of origin. C. Boswell⁵⁶ highlights the secondary effects of restrictive EU migration policy and claims that efforts to restrict the arrival of immigrants have, conversely, led to a rise in “illegal” migration.

Dover⁵⁷ also criticises the EU’s security-centred approach to immigration and claims that its policy in relation to Sub-Saharan Africa is counterproductive, both in terms of higher transaction costs and physical danger, as it forces immigrants to look for alternative entry routes. As a result of restrictive EU policies, the number of migrants attempting to enter the EU illegally has increased, although the number of migrants seeking entry has remained the same. Dover⁵⁸ points out that many illegal migrants are unaware of the most appropriate channels for entering the EU and therefore enter illegally unintentionally.⁵⁹ By denying them legal access to its territory, the EU contributes to economic and social insecurity in the region instead of promoting development (which it officially claims to be doing in, for instance, the ENP Action Plans).⁶⁰ Using the same argument, Rodier⁶¹ asserts that the more countries willing to introduce control mechanisms at their borders, the more likely instability is to increase in the region and the greater the risk of human rights abuse.

Koff⁶² examines the approach of the EU in the context of enlargement and argues that the threat of uncontrolled, illegal migration movements has not been demonstrated. The author claims that by focusing solely on the security aspect of migration policy, there is a real risk of promoting irregular migration and, moreover, encouraging people trafficking and criminal organisation activity, and that instead of reducing the risk to public and human safety, it has actually increased it.

Another critic of the approach followed by the EU, Dover⁶³ claims that the EU’s exclusion policies for Sub-Saharan African nationals are racist because they are perceived as unsuitable for European citizenship on account of their origin. This systematic racism is further reinforced by migration control technology which is (more or less) effective at keeping out unwanted immigrants. The result of this reactive policy is that the prediction is fulfilled: the number of migrants from Sub-Saharan Africa trying to

⁵⁶ BOSWELL, Christina, *op cit.*, 2001, pp. 619-683

⁵⁷ DOVER, Robert, *op cit.*, 2008, pp. 113-130

⁵⁸ *ibidem*

⁵⁹ Also see RODIER, Clair, *op cit.*, 2006

⁶⁰ “Neighbourhood Policy Strategy Paper” Communication from the Commission, COM (2004) 373 final

⁶¹ RODIER, Clair, *op cit.*, 2006

⁶² KOFF, Harlan, *op cit.*, 2005, pp. 397-415

⁶³ DOVER, Robert, *op cit.*, 2008, pp. 113-130

enter the EU by unsafe and illegal means has increased, as have the number of right-wing nationalists in the EU, as they see how their invasion and chaos argument is corroborated. In the same vein, Van Munster⁶⁴ talks about the technical-management framework of immigration and highlights the danger of seeing migration as a problem that can easily be solved with technology solutions aimed at managing the risk. When immigration is seen solely in terms of risk, the possibility of understanding this complex socio-economic phenomenon in more depth is reduced, as are ways of assessing the pros and cons of its consequences.

Critics of the Eurocentric approach have basically focused on the EU's readmission policy. According to Sterkx,⁶⁵ the fact that the agreement is reciprocal, and therefore binds the two parties to the readmission obligation, demonstrates gross hypocrisy on the part of the EU because, obviously, it is highly unlikely that an EU Member State will ever have to readmit an illegal immigrant from a third country. Indeed, this is the main reason why the EU has found it difficult to persuade third states to sign these agreements.⁶⁶ The hypocrisy of the EU is further evidenced by the fact that it purports to implement human rights protection, but it does so only in relation to its own citizens, while neglecting those of the nationals of other states.⁶⁷ The countries of origin see this "double standard" as one of the biggest obstacles to understanding. How can you tell what is worthy of being treated in accordance with international human rights standards and what is not?

Furthermore, not much consideration is given to the selection criteria of countries with which to negotiate readmission agreements.⁶⁸ For example, the EU should examine the human rights record of the country with which it is negotiating a readmission agreement in order to ensure the safe return of repatriates. However, this is hardly ever the case, and it can have serious consequences for individuals who are returned.⁶⁹ Debenedetti⁷⁰ highlights the responsibility of the EU and its Member States in the readmission process. The fact that many third countries have an abysmal record in the area of human rights (Libya, for example) puts the lives of migrants returned to their countries of origin at risk. However, this fact is not really taken into account by the EU when signing readmission agreements.

As we are aware, immigration issues have become increasingly important in the

64 VAN MUNSTER, Rens, *op cit.*, 2005.

65 STERKX, Steven, *op cit.*, 2004.

66 See also F. Trauner and I. Kruse (2008).

67 DOVER, Robert, *op cit.*, 2008, pp. 113-130

68 STERKX, Steven, *op cit.*, 2004

69 LINDSTRÖM, Channe, *op cit.*, 2005, 587-605 and RODIER, Clair, *op cit.*, 2006.

70 DEBENEDETTI, Sara, *op cit.*, 2009.

European Neighbourhood Policy (ENP). On this point, Rodier⁷¹ has pointed out that while the action plans should reflect the interests of both parties, this has not been the case when it comes to migration. The EU focuses solely on its own interests, which include measures to restrict unwanted migration flows, and only accepts highly qualified migrants as labour. Many countries that cooperate with the EU are obliged (through the so-called “principle of conditionality”) to develop a management system for the prevention or stoppage of migration flows.⁷² Based on this observation, S. Wolff⁷³ argues that the ENP is basically a policy that establishes a “trade-off system”, whereby the EU grants partner countries access to its internal market and EU programmes in return for compliance with its requests, which are always aimed at ensuring security in the region for the benefit of the EU.⁷⁴ Therefore, if the action plans include conditionality clauses and put the interests of the EU above those of its neighbouring countries, there is reason to question how equality and dialogue are implemented by the EU. Lavenex and Uçarer⁷⁵ go a step further and argue that the restrictive migration policies and conditionality clauses that the EU uses in its agreements with other countries may actually damage its image in the outside world. Europe’s integrity will be severely compromised if it continues to act solely in its own interests, instead of implementing mechanisms to assist countries in need.

Clearly, there is a contradiction between the sovereignty of states when selecting migrants seeking to enter their territories, and the developed countries’ responsibility towards developing nations in the context of human rights. On this point, Dover⁷⁶ has pointed out that some aspects of the EU’s approach to migration contradict the Declaration of Human Rights and the Treaty on European Union (which follow the declarations of the United Nations). In accordance with international declarations, the EU must help persons in their regions of origin or grant them access to the EU Member States. By placing government responsibility on the state where the risk originates, the EU is neglecting its responsibility towards third countries and missing out on the opportunity to import much-needed immigrant workers. One example of a transfer of responsibility and, incidentally, the externalisation of policy, is the case of readmission agreements.

71 RODIER, Clair, *op cit.*, 2006

72 LINDSTRÖM, Channe, *op cit.*, 2005, 587-605 and RODIER, Clair, *op cit.*, 2006.

73 WOLFF, Sarah, *op cit.*, 2008, pp. 253-271

74 WOLFF, Sarah. and ZAPATA-BARRERO, Ricard, “*Border Management: Impacting on the construction of the EU as a polity?*” in S. WOLFF, F.A.N.J. GOUDAPPEL & J. W. de Zwaan (Eds.), *Freedom, Security and Justice after Lisbon and Stockholm. The Hague, T.M.C Asser Press*, 2011, pp. 117-134.

75 LAVENEX, Sandra and UÇARER, Emek, *op cit.*, 2004, pp. 417-443

76 DOVER, Robert, *op cit.*, 2008, pp. 113-130.

Rijpma and Cremona⁷⁷ focus on the fundamental value of the rule of law that the EU aims to promote and protect, arguing that it poses a challenge to the externalisation of its migration policy. From the perspective of the law, the difficulty of cooperating with third countries in matters relating to migration is a lack of common standards and guarantees between the parties.

Now that we have identified the main criticisms of the overly solipsist approach of the EU, let us take a look at the factors which, according to the current debate, underlie externalisation and assess how these affect its development.

2.3 The factors underlying and affecting the development of externalisation

We have identified at least three of the factors underlying policy externalisation, and affecting the development of this new shift in policy. Firstly, there are the geopolitical factors; secondly, the Schengen context and enlargement of the EU and, thirdly, there is the domestic arena, which includes the development of migration control, an increase in extreme right-wing parties and other constraints that policymakers are facing in the field of migration.

2.3.1 Development-based geopolitical factors

In the Euro-Mediterranean space there exist diverse typologies of factors affecting an impact on a renewed development of the externalisation of migratory policies. Firstly, for those countries on the northern shore of the Mediterranean, the demographic and economic projections in relation to the southern Mediterranean countries seem to suggest the non-sustainability of a policy of development assistance aimed at maintaining the labour force of these countries “in situ”. This is especially the case when these northern Mediterranean countries will continue to need constant flows of labour,⁷⁸ making the expansion of migratory management a necessity. Thus, the growth of the Euro-Mediterranean migratory system down towards the south, increasingly involving sub-Saharan African countries, is forcing the abandonment of the narrow approach focused solely on migration control. In order to conceive a successful, flexible model, it is essential to alternatively envisage a policy that further considers the dynamics of the labour markets, as well as a positive relation between migration and development.

This perspective elucidates the results of the first Euro-Mediterranean Ministerial Conference on Migration, held in November 2007, which established the fundamental principle of recognition of the economic and social benefits that regular migration

⁷⁷ RIJPMMA, Jorrit, and CREMONA, Marise, *op cit*, 2007.

⁷⁸ COLLYER, Michael, “The Development Impact of Temporary International Labour Migration on Southern Mediterranean Sending Countries: Contrasting Examples of Morocco and Egypt”, *Sussex Centre for Migration Research, Working Paper*, 2004.

can bring, for the source, destination and transit countries. Moreover, the agreement highlights the importance of strengthening joint management through shared responsibility with a more global and balanced approach. In terms of more concrete objectives, it emphasises the need to speed up procedures related to the migratory process and to promote regular migration within the Euro-Mediterranean area, taking into account the respective labour markets.⁷⁹

Also in this line, one should note the important change in recent years in how existing relations between mobility and development are conceptualised. Adding to the paradigm “more development for less migration”, there is now greater awareness about the relations between mobility and socio-economic development. In this new conceptualisation, the relation between migratory and development cooperation policies does not aim to reduce the migratory pressure, but rather to optimise the positive impact of migration in the origin and destination countries.⁸⁰

In this new conceptual framework, it is especially relevant to bear in mind that for the Euro-Mediterranean space, the causal link between migration and the North/South economic imbalance derives from the enlargement of free trade and globalisation. This fact should be considered when defining Euro-Mediterranean cooperation. Consequently, the detachment of migratory policies from the development policies of the countries of origin would be incongruous, as both have a growing geostrategic link.

This change of paradigm – from “more development for less migration” to “better migration for more development” – integrated the official European rhetoric with the launch of the Global Approach to Migration by the Commission⁸¹, having found its practical expression in the organisation of the two Euro-African conferences in Rabat and Tripoli and, more recently, in the proposal for circular migration and mobility partnerships.⁸² We should bear in mind that the Euro-African Conference on Migration and Development, held in Rabat in July 2006, was one of the first and, at least symbolically, the clearest attempt to showcase the European priorities over this next period:

79 EUROMED “Ministerial Conclusions of the First Euro-Mediterranean Ministerial Meeting on Migration”, 2007, Available at: http://www.eu2007.pt/UE/vEN/Noticias_Documentos/20071119Conclusoeseuromed.htm

80 See the following publications, among others: FARGUES, Philippe. “Migraciones en el Mediterráneo: un panorama general”, in Y. Courbage, T. Yousef, G. Martine, P. Fargues (eds.). *Población y desarrollo en el mediterráneo. Transiciones demográficas y desigualdades socioeconómicas*. Barcelona: Icaria/ IEmed, 2009, pp. 267-283, y BALDWIN-EDWARDS, Martin, op cit. 2009, pp. 367-384.

81 European council, Presidency Conclusions. Annex I: Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean. 15/16 December 2005.

82 EUROPEAN COMMISSION “On circular migration and mobility partnerships between the European Union and third countries”, COM (2007) 248 final, 2007, Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0248:FIN:EN:PDF>

pushing forward the development dossier and engaging African countries in foreign policy strategies related to migration.⁸³

In their turn, there is a growing need for agreement between the southern Mediterranean countries as regards the regulation of migratory flows. This need emerges particularly from the increase of irregular flows, by sea, land or air. These new migratory dynamics force transit countries (and in some cases, also of destination, such as Morocco) to adapt their role and redraw their agenda of priorities when dealing with the external dimension of migration.

Nevertheless, there are other factors that explain the externalisation of migratory policies. In the European Union, migration has become part of foreign policy. This process began with the Tampere programme, which put forward a space of freedom, security and justice, reflecting a new comprehensive approach that also envisaged exploring the links between migration, trade and political cooperation as tools to reduce the “push factors” characterising countries of origin.⁸⁴ Tampere also introduced an approach whereby third countries were involved in the management of migration, with source countries undertaking border control and the re-admission of returned emigrants.⁸⁵ Later, the Commission enhanced this external dimension and broadened the fields of action to address the root causes of migration.⁸⁶ In 2005, the Global Approach to Migration⁸⁷ strengthened the need for a comprehensive and coherent strategy, simultaneously encompassing the fight against irregular immigration and cooperation with third countries, putting special emphasis on countries of the neighbouring area (south and east of the EU). In general, the integration of migration into the EU’s foreign policy agendas reveals a constant attempt to balance cooperation with the agendas of security and development.

2.3.2 The Schengen context and enlargement of the EU: transfer of policy and conditionality

83 AUBARELL, Gemma, “Europe, the Mediterranean and Migrations: New Paradoxes”, *Mediterranean Yearbook*, Med.2007, Barcelona, IEMed.-CIDOB, 2008, Available at: <http://www.iemed.org/anuari/2007/aarticles/aAubarell.pdf>

84 Tampere European Council 15/16 October 1999. Towards A Union of Freedom, Security and Justice.

85 The strategy of returns can be followed in COM (2002) 175 final. Green paper on a community return policy on illegal residents and Presidency Conclusions. Seville European Council, 21 and 22 June 2002.

86 COM (2002) 703 final. Communication on Integrating Migration in the European Union’s Relations with Third Countries.

87 28 Brussels European Council, 15/16 December 2005, Presidency Conclusions. Annex I: Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean.

One of the factors that directly affects the externalisation of migration policy is the realisation of the four fundamental freedoms of the common market (the free movement of goods, services, capital and people). The step towards a more integrated Europe began very early, in 1985, when the Schengen area without internal borders was agreed between a number of Central European States. The Schengen package and the resulting secondary legislation have become an integral part of the EU treaties, and its successive enlargements. The free movement of people within the EU abolished interior borders and made the nation states more vulnerable to the consequences and effects of migration. This raises security concerns for governments, as they no longer control the internal borders of the EU and, to make up for it, additional security measures have been implemented in the EU's external borders.⁸⁸

At the same time, a "spatial shift" has taken place in the EU with the emergence of new borders and spaces due to EU enlargement. In terms of the level of development, the relationship with some of the new neighbouring countries is very asymmetric, and this also contributes to the focus on security and the creation of new types of borders between "them" and "us". Furthermore, in the context of Europeanisation, it is becoming increasingly important for more and more Member States and the EU itself to maintain good relations with the countries of origin. As we have seen, the European Neighbourhood Policy (ENP), in operation since 2004, could serve as an example for the promotion of good relations with neighbouring countries.

The idea that "Europe Strengthens" illustrates the other side of the coin, that is, the fear of large-scale unchecked migration. This fear is strongly related to the negative impact that uncontrolled migration would have on the social cohesion of the Member States and the EU as a whole. This climate of fear and uncertainty could affect policies aimed at controlling immigration and take them to the more restrictive end of the spectrum.⁸⁹ However, even before the accession of the new Member States, the EU had already expanded its security regime in order to reduce the import of certain internal security risks (such as organised crime and uncontrolled population movements). This way of dealing with the issue of migration is exacerbating the democratic deficit of the EU.

On the other hand, the EU is keen to maintain good relations with other states in order to promote adaptation to a liberal democratic political and social culture. This is particularly true in the case of countries involved in accession negotiations with the EU and whom it is hoped will adopt the community *acquis* (initially the Schengen

88 MISILEGAS, Valsamis, "The borders paradox: the surveillance of movement in a Union without internal frontiers", in H.. Lindahl (ed.) *A Right to Inclusion or Exclusion? Normative Fault Lines of the EU's Area of Freedom, Security and Justice*, Oxford, Hart Publishing, 2009, pp. 33-64

89 GEDDES, Andrew, *Immigration and European Integration: Towards a Fortress Europe?* Manchester University Press, Manchester, 2000.

acquis, which was incorporated into the main body of EU law with the Amsterdam Treaty). Lavenex and Uçar⁹⁰ use the policy transfer framework to examine how the EU influences neighbouring non-Member State countries, providing them with incentives for adapting their policies to those of the EU. The forms of adapting these policies include unilateral emulation, adaptation to externalisation and the transfer of policy through conditionality. Furthermore, the degree of alignment or mismatch between the policies of the EU and the internal arrangements in the third country, national patterns of interest in the third country and the costs of non-adaptation for third countries have an impact on the method and effectiveness of the policy transfer process.

The EU has used the principle of “Conditionality” to encourage compliance. This is basically a reward system whereby the EU rewards countries of origin that comply with its conditions and withholds the reward if they fail to do so. This strategy is often used by the EU to encourage third countries involved in accession negotiations to adapt to the community acquis. However, for conditionality to be successful, it must meet certain requirements. Firstly, the standard to be transferred must be determined and clear; secondly, the value attributed to the expected reward and the speed with which this will be obtained and, finally, the promise/threat of the EU has to be credible. Lavenex and Uçar⁹¹ provide examples of the mechanisms used by the EU to transfer policy to non-Member States. Countries can be classified into five groups, depending on their link with the EU. For example, Turkey and the Balkan countries, which have pre-accession agreements with the EU, have increased cooperation with the Union on migration policy. Adaptation to the community acquis in the areas of asylum and immigration has become an integral part of preparations for Turkey’s accession to the EU. The situation is similar for the countries of former Yugoslavia. In addition, the changes made to the pre-accession agreements with these countries are similar to those of new Member States. The latter found themselves forced to adapt to the migration acquis in order to accede to the Union. The decision by third countries to implement the community acquis requires compliance with “inappropriate conditions”, and making accession conditional upon the transfer of policy carries a huge price, should it fail to do so. It therefore has a “numbing” effect on the opposition at home. Adaptation to the community acquis by third countries is important for the EU as it enables it to control migration flows from these third countries more effectively. The objective is basically to prevent and divert the movement of people within the EU, but it has given rise to the creation of a “buffer zone” around the Union.⁹² To summarise, the Schengen framework and EU enlargement appear to have affected the development of the external dimension of EU immigration policy. Firstly, the abolition of internal borders within EU territory has made nation states more vulnerable to the consequences

90 LAVENEX, Sandra and UÇARER, Emek, *op cit.*, 2004, pp. 417-443.

91 *idem*

92 LINDSTRÖM, Channe, *op cit.*, 2005, 587-605

and effects of migration. To make up for this, additional security measures have been implemented at the external borders of the EU. Secondly, it is becoming increasingly important for Member States and the EU itself to maintain good relations with non-member countries in order to avoid the feeling of being under constant threat of migrant influxes. In effect, the fear of an uncontrolled movement of people within the EU has given rise to more restrictive policies and greater cooperation with third countries for the management of migration flows.

2.3.3 Factors at the state level

Factors at the state level have also contributed to the externalisation of migration policy in the EU. In this respect, a fundamental aspect that has had a direct effect on policy orientation is the emergence of new right-wing parties. Boswell⁹³ claims that, since the 1980s, political parties have been competing for votes with the promise to restrict unwanted migration, and that the redefinition of migration in a discourse that focuses on security and threats (“Europe Strengthens”) has paved the way for the entry of xenophobic forces.⁹⁴ Without a doubt, the emergence of radical, populist right-wing parties, typified by their ethno-nationalist xenophobia and anti-populism, has had a very direct impact on the reactive policy discourse of traditional parties, especially when the party has been part of government.⁹⁵

In addition to the fast route to publicity that immigration has provided to right-wing parties on account of the fear and uncertainty it generates, there is a second factor that is closely related to the first one: the increasingly strong link between migration policy and negative public opinion. However, negative opinion is not so much generated by immigration as by its management and governability⁹⁶, and this explains why a reactive policy that focuses more on security and the interests of the public has been gaining ground.

These two factors have unquestionably contributed to the search for alternative policy orientations in the management of migration, promoted the externalisation of policy and demonstrated that the EU and Member States are willing to force the countries of origin to take part in the control of migration flows, either by encouraging or coercing them to cooperate, using, as we have seen, the conditionality strategy. The discourse justifying the externalisation of policy lies, in this case, in showing that

93 BOSWELL, Christina, *op cit.*, 2001, pp. 619-683

94 For additional reading on political discourse in relation to the management of immigration in general and growing populism and traditionalism, see the paper by R. Zapata-Barrero (2009c)

95 ZAPATA-BARRERO, Ricard, *Fundamentos de los discursos políticos en torno a la inmigración*. Madrid: Trotta, 2009c.

96 This is the “governance hypothesis” we advocate elsewhere, Zapata-Barrero, Ricard, *op cit.*, 2009b, pp. 15-31

internal policy measures were not sufficient to address the problem of migration.

There is, however, a third important domestic factor which has had an impact on externalisation: institutional dynamics at the state level. Joppke⁹⁷, for example, argues that limited sovereignty might explain why states accept unwanted immigration. In Europe, judicial and moral constraints have prevented states from complying with zero migration targets since the channel for hiring immigrants was closed. This is due in large part to the fact that the courts have invoked the rights of immigrants and their families in open opposition to restrictionist policymakers⁹⁸.

Based on this, Guiraudon⁹⁹ claims that the design and implementation of policy has taken on a vertical dimension since the 1980s, and that an ongoing venue-shopping framework is the most adequate to account for the timing of the creation, the form and the content of EU cooperation on migration matters. This framework implies that governments have circumvented national constraints on migration control by creating transnational cooperation mechanisms backed by the law and the public officers responsible for migration control.¹⁰⁰ In other words, constraints at the state level (judicial and logistics restrictions) to managing global migration control have prompted national actors to “flee” to the inter-governmental level that is externalisation. The major problem here is that because the latter arena is not restricted by supra-national bodies, there is very little transparency, making it the ideal setting in which to strengthen reactive policies over proactive ones. The externalisation scenario currently fosters the remote control approach, and has become the main obstacle to shifting towards a more proactive approach based on development and “root causes”.

3. IN CONCLUSION: PREMISES FOR A NORMATIVE DEBATE

The policy shift in the management of migration flows known as “externalisation” requires setting the terms for a new normative debate based on the idea put forward by Zolberg¹⁰¹, i.e., that “remote policies” exist. This type of policy orientation calls for reflection, because, in a way, it challenges the traditional migration debate framework.

97 JOPPKE, Christian, “Why Liberal States Accept Unwanted Immigration” *World Politics*, vol. 50 no. 2, 1998, pp. 266-293

98 See also BOSWELL, Christina, *op cit.*, 2001, pp. 619-683, and LAVENEX, Sandra, *op cit.*, 2006, pp. 329-350.

99 GUIRAUDON, Virginie, *op cit.*, 2000, 251-271.

100 *ibidem*

101 ZOLBERG, Aristide “Matters of State: Theorizing Immigration Policy”, in C. Hirschman, P. Kasinitz and J. Dewind (eds.) *The Handbook of International Migration: The American Experience*, New York, Russell Sage, 1999, pp. 71-93.

Furthermore, given that the issue is related to the externalisation of borders, there are implications with regard to the extent of the sovereignty of states that have not yet had their say on the policy. Along with the debate on externalisation comes a theoretical debate which calls for deeper reflection on state governance and sovereignty. We must also remember that the relationship between two countries, despite being called a bilateral relationship, is in fact asymmetrical; it is a relationship with an unequal balance of power and de facto unilateralism.¹⁰² Indeed, we must start with the premise that the movement of people is not a problem in itself and that it should not be the subject of discussion unless it has three dimensions that generally go together:

- a) A political dimension, because most people move from non-democratic states – or at least developing democracies - to consolidated democracies.
- b) An economic dimension, a movement from developing economies to consolidated economies.
- c) Thirdly, an obvious social dimension: the movement of people attracted by our welfare and social rights systems. In other words, the movement of people between advanced democracies, similar economies and basic social rights is not part of the problem in the movement of people.

The second theoretical issue raised by the new shift in policy is the impact that a new type of relationship, based not on trade or defence, but on the movement of people, has on international relations. Transformation of the movement of people into a geopolitical issue is new and has obvious global ethical implications.¹⁰³ Countries of origin and destination are in the process of developing their respective foreign policies, taking into consideration issues relating to migration and following the guidelines for cooperation in bilateral/multilateral relations. As a starting point, we can state that immigration policies at the EMP level have not been effective enough to establish a common Euro-Mediterranean strategy. In contrast, policies at the national level (both North and South) are being developed in several fields, such as foreign affairs relations, development cooperation and border control programmes. In this respect, in addition to the EMP dynamic, other multilateral processes have been simultaneously active in this field, thus creating a scenario of overlapping strategies that despite prioritising the issue of migration, do not offer a homogeneous framework to find solutions to this shared problem. After making Barcelona the headquarters of the Mediterranean Union, and after the so-called Arab Spring revolutions, the time has come to take

¹⁰² ZAPATA-BARRERO, Ricard, “The Spanish Governance of EU borders: Normative Questions”, *Mediterranean Politics*, vol. 12 no. 1, 2007, pp. 85-90.

¹⁰³ See, for example, the special monograph devoted to the new debates on the ethics of migration in ZAPATA-BARRERO, Ricard, and PÉCOUD, Antoine (eds) “New perspectives on the Ethics of International Migration”, *special issue of American Behavioral Scientist*, vol. 56 no. 9, 2012.

stock of the situation and to establish a new agenda in relation to human mobility.¹⁰⁴ Interpretation of human mobility in the Mediterranean region will determine the basis of policy responses to this global phenomenon.

¹⁰⁴ The main issues have already been discussed in ZAPATA-BARRERO, Ricard, “Borders in motion. Concept and Policy Nexus”, *Refugee Survey Quarterly*, vol 32, no. 1, 2013, pp. 1-23.

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